R30. Administrative Services, Office of Inspector General of Medicaid Services.
R30-1. Office Procedures.
R30-1-1. Purpose.

The purpose of this rule is to describe the manner in which the office shall execute the requirements of Title 63A, Chapter 13 and the program integrity functions described in the Memorandum of Understanding and Agreement for Services between the department and the office.

R30-1-2. Authority.

This rule is authorized by Section 63A-13-602.

R30-1-3. Definitions.

Terms used in this rule are defined in Section 63A-13-102, in addition:

(1) "audit" means an independent, objective review of a program or process and associated controls to determine the effectiveness, efficiency and or compliance of the program or process.

R30-1-4. Audit Procedures.

(1)(a) When commencing an audit, the office's audit unit shall:

(i) contact the entity to be audited to advise the entity an audit will be performed;

(ii) send a written announcement memorandum to the entity when the audit begins; and

(iii) obtain background information from the entity to be used in determining the parameters of the audit.

(b) In the course of the audit, the audit unit shall:

(i) hold an entrance conference with the entity to discuss the scope, objectives and timeframe of the audit;

(ii) obtain information from the entity to conduct the audit; and

(iii) keep the entity apprised of issues that arise and any proposed audit findings or conclusions.

(c) At the conclusion of the audit, the audit unit shall conduct an exit conference with the entity audited to:

(i) review any recommendations resulting from the audit; and

(ii) provide the entity with a draft of the audit report.

(d) The entity shall have fourteen days to respond to the audit unit regarding the findings in the audit report.

(e) The entity's response shall be included in a final audit report, which will then be made available to the public.

(2) The audit unit shall seek to incorporate the audit standards created by the Council of Inspectors General on Integrity and Efficiency, the Association of Inspector Generals, and the Generally Accepted Government Auditing Standards created by the United States Government Accountability Office.

R30-1-5. Requests for Records.

(1) Requests for records sent by the office shall be:

(a) in writing and identify the records to be copied; and

(b) mailed by first class postage to the mailing address on file with the department unless the provider or entity notifies the office in writing of an alternative physical or email address to be used for requests for records.

(2)(a) The records requested shall be returned within thirty calendar days of the date of the written request.

(b) A provider's response to a request for records shall include the complete record of all services and supporting services for which reimbursement is claimed.

(3)(a) If a provider has not provided any records within the first 20 days from the date of a request, the office shall:

(i) verify the request for records was sent to the correct address; and

(ii) attempt to contact the provider before the end of the thirty-day period and remind the provider the records must be provided within 30 days from the date of the original request for records.

(b)(i) If the provider fails to provide any records within the thirty-day period, the office shall notify the provider in writing that the records requested were not received.

(ii) The written notice to the provider shall indicate the provider has an additional 15 days from the date of the notification to submit the records or a credit adjustment on the claim shall be instituted pursuant to Section R414-1-14, the Utah Medicaid General Information Provider Manual, and Section 63G-13-202.

R30-1-6. On-site Inspections.

(1)(a) Unless there is a credible allegation of fraud, the office shall contact a provider or entity prior to an on-site inspection.

(b) The notification to the provider or entity shall identify the information sought to be reviewed during the on-site visit.

(2) If a provider is unable to produce records requested by the office during an on-site inspection, the provider shall have fifteen business days to provide a copy of the records to the office.

R30-1-7. Self-Audits.

(1) When billing concerns are identified, the office may send out a self-audit packet to a provider, which notifies the provider of:

(a) the type of potential billing errors identified by the office;

(b) a list of claims, which may have been billed incorrectly;

(c) the policy, which describes how the claims should be billed;

(d) instructions on conducting a self-audit;

(e) information about refunding any payments the provider identifies as an overpayment; and

(f) the period for conducting the self-audit and responding to the office.

(2) Once the time for responding to the self-audit has passed, the office shall review any information received from a provider to determine if the provider has fully resolved the issues identified by the office.

(3) If the office is not satisfied the provider fully addressed the concerns identified by the office, the office may:

(a) contact the provider about the issues, which were not fully resolved;

(b) conduct a full investigation and initiate a recovery action if appropriate; or

(c) close the case.

(4) Participation in the self-audit program does not preclude any entity from pursuing any criminal, civil, or administrative remedies or to obtain additional damages, penalties, or fines related to the subject of the self-audit.

R30-1-8. Human Resources.

(1) The Department of Human Resource Management rules found in R477 shall apply to all office employees.

(2) All office employees shall comply with the requirements of the office's internal policies and procedures.

KEY: Office of the Inspector General of Medicaid Services, Medicaid fraud, Medicaid waste, Medicaid abuse
June 1, 2018 63A-13

R30. Administrative Services, Office of Inspector General of Medicaid Services.
R30-2. Adjudicative Procedures.
R30-2-1. Purpose.

The purpose of this rule is to describe the procedures to be followed in adjudicative proceedings handled by the office.

R30-2-2. Authority.

This rule is authorized by Section 63A-13-602 and Title 63G, Chapter 4.

R30-2-3. Definitions.

Terms used in this rule are defined in Section 63A-13-102, in addition:

(1) "agency action" means an adjudicative proceeding initiated by the office under Title 63G, Chapter 4 against a provider, including a:

(a) recovery action seeking repayment of division funds from a provider; or

(b) payment suspension action under Section 63A-13-205 or 42 CFR Section 455.23; and

(2) "ALJ" means an impartial administrative law judge who has been appointed by the inspector general to conduct an adjudicative proceeding according to these rules.

R30-2-4. Agency Action.

(1) When the office determines a division payment made to a provider was incorrect or that a provider's payments from the division should be suspended, the office may file a notice of agency action pursuant to Section 63G-4-201.

(2) The notice of agency action and any other documents associated with the agency action shall be mailed by first class postage to the provider's mailing address on file with the department unless the provider notifies the office in writing of an alternative physical or email address to be used for the adjudicative proceedings.

(3) An agency action initiated by the office shall be an informal adjudicative proceeding under Section 63G-4-202.

(4) Unless otherwise provided by these rules, the rules regarding the calculation of time found in Rule 6 of the Utah Rules of Civil Procedure shall be applicable to an action.

(5) After the initiation of an agency action, the ALJ may issue an order of default against a provider pursuant to Section 63G-4-209 if the ALJ finds a provider:

(a) fails to appear or participate in any step of the adjudicative process; or

(b) unreasonably prolongs the adjudicative process without good cause.

R30-2-5. Request for Agency Review.

(1) If a provider disagrees with the findings contained in a notice of agency action, a provider may file a written request for review within thirty days from the date of the notice of agency action.

(2) The request for review shall be filed with the office and include:

(a) a fully completed "Request for Review" form provided with the notice of agency action;

(b) a copy of the notice of agency action sent by the office; and

(c) a detailed explanation of why the provider is seeking review.

(3)(a) A request for review shall be considered filed on the date it is received by the office as indicated by the date and time:

(i) hand-delivered to the office;

(ii) of the postmark if it is mailed; or

(iii) logged on an email or fax.

(b) If the postmark date is illegible, erroneous, or omitted, the request for review shall be considered filed on the date the office receives it, unless the provider can demonstrate through competent evidence it was mailed before the date of receipt.

(4)(a) If a provider does not request review in a recovery action, a provider shall repay the money sought to be recovered in the notice of agency action within 30 days.

(b) A provider may repay money to the division by:

(i) sending in a check to the address listed in the notice of recovery;

(ii) contacting the office to arrange for a credit adjustment; or

(iii) voiding the original claim paid by the division.

(c) If a provider has not repaid the division within 60 days from the date of the notice of recovery, the office shall issue a final order and request the division initiate a credit adjustment in the amount listed on the notice of recovery.

(5) If a provider does not request review in a payment suspension action, the suspension shall become effective on the date indicated in the notice of suspension.

(6)(a) If a provider does not object to the remedy requested in the notice of agency action after having requested review, the provider may send a withdrawal of the request for hearing to the office.

(b) In response to the provider's withdrawal of the request for hearing, the office shall enter a final order closing the case and canceling any further proceedings.

R30-2-7. Review Process.

(1)(a) If a provider requests review of an agency action initiated by the office, the matter shall be set for a settlement conference between the parties.

(b) The purpose of the settlement conference is to give the parties an opportunity to discuss the issues in the case and attempt to resolve the matter without a hearing.

(2) If the parties are able to resolve the matter, the office shall memorialize the resolution reached in writing and send a copy to the provider.

(3)(a) If after negotiation, the parties are unable to resolve the matter, a party may request the matter be set for a prehearing conference with the ALJ.

(b) The purpose of the prehearing with the ALJ is to set the matter for hearing.

(4) A party may be represented by counsel in the agency review process and at a hearing.

R30-2-8. Hearing.

(1) Hearings before the ALJ shall be governed by the procedures in Section 63G-4-203.

(2)(a) A provider may have access to relevant information contained in the office's files the office intends to use in an action as provided in Title 63G, Chapter 2.

(b) A provider's right to discovery is limited and does not extend to interrogatories, requests for admissions, requests for the production of documents, requests for the inspection of items, or depositions.

(c) Subpoenas and orders to secure the attendance of witnesses or the production of evidence may be issued by the ALJ when requested by a party or on the ALJ's own motion.

(3) At the conclusion of a hearing, the ALJ shall issue a final order as provided in Section 63G-4-203.

R30-2-9. Reconsideration.

(1) A party may seek reconsideration of the ALJ's decision pursuant to Section 63G-4-302.

(2) If a party files a request for reconsideration with the office, the inspector general shall review the request for reconsideration, along with the ALJ's decision, and may:

(a) uphold the ALJ's decision;

(b) reject the ALJ's decision or any portion of the decision, and make an independent determination based upon the record;

or

(c) remand the matter to the ALJ to obtain additional evidence and issue a new decision.

(3)(a) The decision of the Inspector General constitutes final administrative action and is subject to judicial review.

(b) The Inspector General shall send a copy of the final decision to each party, which includes notice of the parties' right to judicial review and the time limits for filing an appeal.

KEY: Office of the Inspector General of Medicaid Services, adjudicative procedures
June 1, 2018 **63A-13**
63G-4

R30. Administrative Services, Office of Inspector General of Medicaid Services.
R30-3. Declaratory Orders.
R30-3-1. Purpose.

The purpose of this rule is to describe the procedures the office shall follow in declaratory proceedings.

R30-3-2. Authority.

This rule is authorized by Section 63A-13-602 and Section 63G-4-503.

R30-3-3. Definitions.

(1) Terms used in this rule are defined in Section 63A-13-102.

(2) In addition, "ALJ" means an impartial administrative law judge who has been appointed by the inspector general to conduct adjudicative proceedings according to these rules.

R30-3-4. Petition Form and Filing.

(1) A petition for a declaratory order shall be delivered to the office as provided by Subsection R30-2-6(3).

(2) The petition shall:

(a) be clearly designated as a request for declaratory order;

(b) identify the statute, rule or order to be reviewed;

(c) describe in detail the situation or circumstances to be reviewed;

(d) describe the reason or need for the review, addressing in particular, why the review should not be considered frivolous;

(e) include an address and telephone where the petitioner can be contacted during regular business hours; and

(f) be signed by the petitioner.

R30-3-5. Reviewability.

(1) The agency may not issue a declaratory order if the subject matter is:

(a) excluded from review under Subsection 63G-4-503(3);

(b) not within the jurisdiction and expertise of the agency;

(c) frivolous, trivial, irrelevant or immaterial; or

(d) otherwise excluded by state and federal law.

R30-3-6. Petition Review and Disposition.

(1) A petition for declaratory relief shall be referred to the ALJ for review and consideration.

(2) The ALJ may request input from the petitioner and the office prior to issuing a written order as provided in Subsection 63G-4-503(6).

KEY: Office of the Inspector General of Medicaid Services, declaratory orders
June 1, 2018 **63A-13**
63G- 4-503

R51. Agriculture and Food, Administration.
R51-5. Rural Rehabilitation Loans.
R51-5-1. Authority.

Pursuant to Sections 4-19-101 et seq. and 4-2-103(1)(i) of the Utah Code, this rule establishes the general operating practices by which the Rural Rehabilitation Loan program shall function.

R51-5-2. Definitions.

(1) AGRICULTURAL ADVISORY BOARD: A twenty-one-member board appointed by the Commissioner of Agriculture to advise the Commissioner regarding: the planning, implementation, and administration of the Department of Agriculture and Food's programs as authorized by UCA 4-2-108.

(2) BOARD: The Agricultural Advisory Board

(3) BORROWER/APPLICANT: A person applying to or borrowing Rural Rehabilitation federal or state funds.

(4) COMMISSIONER: The Commissioner of the Utah Department of Agriculture and Food, who is responsible for the conduct and administration of the Rural Rehabilitation Loan Program within the State in accordance with the Use Agreement entered into in January 1975.

(5) EXECUTIVE LOAN COMMITTEE: A committee consisting of the Board's chair, vice chair, and two other members selected for the Board who approve loans. The Executive Loan Committee shall be nominated at the beginning of each calendar year and shall serve a one year term.

R51-5-3. Program Objectives.

(1) The program is available to any entity allowed under the January 1975 Use Agreement, state or federal law, including individual farmers and ranchers or agricultural cooperatives, corporations, or other entities that directly or indirectly provide assistance to such farmers or members of their families.

(2) The Rural Rehabilitation Loan program may use funds for any purpose allowed under the January 1975 Use Agreement, including for one or more of the following rural rehabilitation purposes:

(a) Loans; such as:
(i) Real Estate Loans;
(ii) Farm Operating Loans;
(iii) Youth Loans;
(iv) Education Loans; or
(v) Irrigation and Water Conservation Projects
(b) Grants;
(i) Youth and Education Grant
(c) Reserve Fund; and
(d) Other Rural Rehabilitation Purposes

(3) Loans shall be for lands within the borders of the State of Utah and any collateral or security for a loan must be located within the State of Utah.

(4) Such portion of the cost of administration and protection of assets as necessary may be also used by the state for:

(a) Cost of Administration;
(b) Protection of the Assets; and
(c) Temporary investments, annual reports, implementing agreements and other allowed uses.

(5) The Department may not make a loan authorized under this chapter for a period to exceed 10-years but the loan is renewable. Total borrowings by any one entity shall be limited to no more than $350,000 with each application.

(6) For the purposes of protecting its interest in a defaulting loan, the Board may use either appropriated or repayment monies to purchase or otherwise obtain property in which the Board has acquired a security interest by any mortgage, trust deed, pledge, assignment, judgment, or other means at any execution, bankruptcy, or foreclosure sale.

(7) The Board may also operate or lease, if necessary to protect is investment, any property in which it has an interest, or sell or otherwise dispose of such property to recover loaned funds.

R51-5-4. Loan Application.

(1) Loan requests shall be accepted and processed from eligible Applicants regardless of race, age, sex, creed, color, religion, national origin, or on any other basis prohibited by law.

(2) A request for a loan must be in writing as required on the forms provided by the Department.

(3) The Executive Loan Committee and Board requires a minimum of 90 days to process, approve and close a loan.

(4) A request for a loan may be filed at any time during the program year.

(5) Approval of loan shall be subject to availability of funds. The loan staff shall impartially consider each loan application on the basis of program objectives and priorities set in place and approved by the Executive Loan Committee and Board.

(6) Use of loan money in conjunction with federal funds is encouraged. Applicants should apply for available federal (Farm Service Agency) or other cost-share assistance.

(7) The Department, through the Executive Loan Committee and/or Board and in conjunction with the Commissioner, may adopt additional policies and procedures as necessary to carry out the purposes of the Rural Rehabilitation Loan program. These policies and procedures may be in addition to those outlined in this Rule.

R51-5-5. Application Procedure.

(1) Any person or group of persons desiring to participate in the Rural Rehabilitation Loan program must apply through the Utah Department of Agriculture and Food through the Agriculture Loan department.

(2) The one page application letter must contain all information needed as instructed on the Application Information page that shall be sent to the prospective Applicant upon inquiry to the loan program. To be considered, the application must contain all appropriate information as instructed, be fully completed, and must provide all requested personal information.

(3) The completed application shall be sent directly to the Agriculture Loan department either by email or regular mail. Upon receipt, loan staff shall contact the Applicant and provide further information to the Applicant about the policies and procedures to obtain approval by the Board. This conversation and/or any other actions by the loan staff does not guarantee loan approval.

R51-5-6. Loan Review.

(1) The application and required documentation shall be reviewed by loan staff and discussed with the Applicant(s) or their representative. Loan staff shall proceed with a policy compliance review, credit analysis and underwriting prior to presenting a written loan proposal to the Executive Loan Committee for approval.

(2) Decisions concerning the use of loan program funds shall be the decision of the Agricultural Advisory Board by recommendation of the Commissioner and the Department loan staff.

(3) The Board shall ensure, to the best of its ability, that available rural rehabilitation loan funds can be borrowed in accordance with this rule and state and federal laws. If there are insufficient funds to fund all loan applications, funds shall be distributed based on the date the complete application is received, in sequential order.

(4) All loans shall be approved by a majority of the Executive Loan Committee and ratified by the Agricultural

Advisory Board.

(5) All credit approved on this basis shall be reported to the Board for ratification at the next scheduled Board meeting.

May 2, 2018 **4-19-103 4-2-103(i) 4-19-102**

R51-5-7. Loan Closing.

(1) Upon approval by the Executive Loan Committee and ratification by the Board, the Commissioner shall sign and make the final obligation of funds by signing the Rural Rehabilitation Obligation to Purchase form.

(2) Loan staff shall prepare loan documents and instruction letter for the title company closing; including a signed Warrant Request to disburse funds.

(3) The Borrower may proceed with the closing at the title company.

(4) Neither the state, the Department nor the Board have any obligation to disburse funds prior to the completion of the above described procedures.

(5) The Applicant shall be required to cover any costs incurred for loan closing including escrow fees, title insurance, recording fees, and appraisal when necessary.

R51-5-8. Collections.

(1) Collection Policy. The following procedures should be followed on delinquent loans:

(a) 30 Days Past Due: If payment has not been received within 30 days after due date, a delinquent notice reflecting the amount due including penalty shall be sent to the Borrower.

(b) 60 Days Past Due: If payment has not been received within 60 days after due date, a second delinquent notice shall be sent out. Personal contact shall also be made by loan staff with the Borrower during this time period to try to collect the payment.

(c) 90 Days Past Due: If payment has not been received within 90 days after due date, a third delinquent notice shall be sent out. This notice may also advise the Borrower that payment must be made or other satisfactory arrangements made with loan staff within 30 days or the account shall be assigned to the Attorney General's Office for appropriate action. Attempts to make personal contact by loan staff shall be made during this period of time to try to collect the payment or make acceptable arrangements with the Borrower.

(d) 120 to 180 Days Past Due: Loan staff shall work with the Borrower to make satisfactory arrangements for payment of past due amounts. This may include modifying of the terms of the original contract to meet the Borrower's ability to perform on the obligation, taking additional or substitute collateral if the lender is deemed insecure, or any other appropriate actions to provide service for the Borrower and protect against loss should be done. If it appears that the Borrower shall be unable to pay the loan, refuses to communicate or cooperate with the Department or loan staff or fails to cure the delinquency, the account shall be assigned to the Attorney General's office for collection and foreclosure proceedings. These actions are at the discretion of the loan staff in consultation with the Commissioner or his/her designee and the Attorney General's Office.

(2) Notwithstanding the above time guidelines, at any time, the loan staff, with approval from the Commissioner his/her designee, may consult with the Attorney General's Office on behalf of the Department to protect the state's interest in any pledged security or collateral on a loan or to protect its interest in any property, real or otherwise.

(3) Notwithstanding the above time guidelines, the state or the Department may, at any time, pursue any legal or equitable remedy allowed under state or federal law to protect its interest in any pledged security or collateral on a loan or to protect its interest in any property, real or otherwise.

KEY: Rural Rehabilitation Loans, loans

R64. Agriculture and Food, Conservation Commission.
R64-2. Conservation Commission Electronic Meetings.
R64-2-1. Authority and Purpose.

(1) Purpose. Utah Code Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to establish written procedures for such meetings. This rule establishes procedures for conducting commission meetings by electronic means.

(2) Authority. This rule is enacted under the authority of Sections 52-4-207, and 4-18-105.

(3) Procedure. The following provisions govern any meeting at which a voting majority of commissioners appear at the anchor location, by telephone, or electronically pursuant to Utah Code Section 52-4-207:

(a) If enough commission members which constitute a voting majority intend to participate electronically or by telephone, public notices of the meeting shall be posted. In addition, the notice shall specify the anchor location where the members of the commission not participating electronically or by telephone will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be posted on the Public Notice Website. These notices shall be provided at least 24 hours before the meetings.

(c) Notice of the possibility of an electronic meeting shall be given to the commission members at least 24 hours before the meeting. In addition, the notice shall describe how a commission member may participate in the meeting electronically or by telephone.

(d) When notice is given of the possibility of a member appearing electronically or by telephone, any commission member may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the commission. At the commencement of the meeting, or at such time as any commission member initially appears electronically or by telephone, the chair shall identify for the record all those who are appearing by telephone or electronically. Votes by members of the commission who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Agriculture and Food, 350 N Redwood Road, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

KEY: electronic meetings
August 21, 2013 **52-4-207**
Notice of Continuation June 1, 2018

R68. Agriculture and Food, Plant Industry.
R68-9. Utah Noxious Weed Act.
R68-9-1. Authority.

Promulgated under authority of 4-2-2 and 4-17-3.

R68-9-2. Designation and Publication of State Noxious Weeds.

A. The following weeds are hereby officially designated and published as noxious for the State of Utah, as per the authority vested in the Commissioner of Agriculture and Food under Section 4-17-3:

There are hereby designated five classes of noxious weeds in the state: Class 1A (EDRR Watch List), Class 1 (EDRR), Class 2 (Control), Class 3 (Containment), and Class 4 (Prohibited for sale or propagation).

TABLE

Class 1A: Early Detection Rapid Response (EDRR) Watch List
Declard noxious and invasive weeds not native to te state of Utah and not known to exist in the State that pose a serious threat to the state and should be considered as a very high priority.

Common crupina	Crupina vulgaris
African rue	Peganum harmala
Small bugloss	Anchusa arvensis
Mediterranean sage	Salvia aethiopis
Spring millet	Milium vernale
Syrian beancaper	Zygophyllum fabago
Ventenata (North Africa grass)	Ventenata dubia
Plumeless thistle	Carduus acanthoides
Malta starthistle	Centaurea melitensis

Class 1B: Early Detection Rapid Response (EDRR)
Declared noxious and invasive weeds not native to the State of Utah that are known to exist in the state invery limited populations and pose a serious threat to the state and should be considered as a very high priority.

Camelthorn	Alhagi maurorum
Garlic mustard	Alliaria petiolata
Purple starthistle	Centaurea calcitrapa
Goatsrue	Galega officinalis
African mustard	Brassica tournefortii
Giant reed	Arundo donax
Japanese knotweed	Polygonum cuspidatum
Blueweed (Vipers bugloss)	Echium vulgare
Elongated mustard	Brassica elongata
Common St. Johnswort	Hypericum perforatum
Oxeye daisy	Leucanthemum vulgare
Cutleaf vipergrass	Scorzonera laciniata

Class 2: Control
Declared noxious and invasive weeds not native to the state of Utah, that pose a threat to the state and should be considered a high priority for control. Weeds listed in the control list are known to exist in varying populations throughout the state. The concentration of these weeds is at a level where control or eradication may be possible.

Leafy spurge	Euphorbia esula
Medusahead	Taeniatherum caput-medusae
Rush skeletonweed	Chondrilla juncea
Spotted knapweed	Centaurea stoebe
Purple loosestrife	Lythrum salicaria
Squarrose knapweed	Centaurea virgata
Dyers woad	Isatis tinctoria
Yellow starthistle	Centaurea solstitialis
Yellow toadflax	Linaria vulgaris
Diffuse knapweed	Centaurea diffusa
Black henbane	Hyoscyamus niger
Dalmation toadflax	Linaria dalmatica

Class 3: Containment
Declared noxious and invasive weeds not native to the State of Utah that are widely spread. Weeds listed in the containment noxious weeds list are known to exist in various populations throughout the state. Weed control efforts may be directed at reducing or eliminating new or expanding weed populations. Known and established weed populations, as determined by the weed control authority, may be managed by any approved weed control methodology, as determined by the weed control authority. These weeds pose a threat to the agricultural industry and agricultural products.

Russian knapweed	Acroptilon repens
Houndstounge	Cynoglossum officianale
Perennial pepperweed (Tall whitetop)	Lepidium latifolium
Phragmites (Common reed)	Phragmites australis ssp.
Tamarisk(Saltcedar)	Tamarix ramosissima
Hoary cress	Cardaria spp.
Canada thistle	Cirsium arvense
Poison hemlock	Conium maculatum
Musk thistle	Carduus nutans
Quackgrass	Elymus repens
Jointed goatgrass	Aegilops cylindrica
Bermudagrass*	Cynodon dactylon
Perennial Sorghum spp.	including but not limited to Johnson Grass (Sorghum halepense)and Sorghum almum (Sorghum almum).
Scotch thistle (Cotton thistle)	Onopordum acanthium
Field bindweed (Wild Morning-glory)	Convolvulus spp.
Puncturevine(Goathead)	Tribulus terrestris

* Bermudagrass (Cynodon dactylon) shall not be a noxious weed in Washington County and shall not be subject to provisions of the Utah Noxious Weed Law within the boundaries of that county. It shall be a noxious weed throughout all other areas of the State of Utah and shall be subject to the laws therein.

Class 4: Prohibited
Declared noxious and invasive weeds, not native to the state of Utah, that pose a threat to the state through the retail sale or propagation in the nursery and greenhouse industry. Prohibited noxious weeds are annual, biennial, or perennial plants that the commissioner designates as having the potential or are known to be detrimental to human or animal health, the environment, public roads, crops, or other property.

Cogongrass (Japanese blood grass)	Imperata cylindrica
Myrtle spurge	Euphorbia myrsinites
Dames Rocket	Hesperis matronalis
Scotch broom	Cytisus scoparius
Russian olive	Elaeagnus angustifolia

Each county in Utah may have different priorities regarding specific State designated Noxious Weeds and is therefore able to reprioritize these weeds for their own needs.

R68-9-3. Designations and Publication of Articles Capable of Disseminating Noxious Weeds.

A. As provided in Section 4-17-3, the following articles are designated and published by the Commissioner as capable of disseminating noxious weeds:

1. Machinery and equipment, particularly combines and hay balers.
2. Farm trucks and common carriers.
3. Seed.
4. Screenings sold for livestock feed.
5. Livestock feed material.
6. Hay, straw, or other material of similar nature.
7. Manure.
8. Soil, sod and nursery stock.
9. Noxious weeds distributed or sold for any purpose.
10. Livestock.

R68-9-4. Prescribed Treatment for Articles.

A. As provided in Section 4-17-3, the Commissioner has determined that the following treatments shall be considered minimum to prevent dissemination of noxious weed seeds or such parts of noxious weed plants that could cause new growth by contaminated articles:

1. Machinery and Equipment.

a. It shall be unlawful for any person, company or corporation to

(1) bring any harvesting or threshing machinery, portable feed grinders, portable seed cleaners or other farm vehicles or machinery into the state without first cleaning such equipment free from all noxious weed seed and plant parts; or

(2) move any harvesting or threshing machinery, portable feed grinders or portable seed cleaners from any farm infested with any noxious weed without first cleaning such equipment free from all noxious weed seed and plant parts.

(a) Immediately after completing the threshing of grain or seed which is contaminated with noxious weeds, such machine is to be cleaned by:

(1) removing all loose material from the top and side of the machine by sweeping with a blower

(2) opening the lower end of elevator, return and measuring device and removing infested material from shakers, sieves, and other places of lodgement;

(3) running the machine empty for not less than five minutes, alternately increasing and retarding the speed; and

(4) following the manufacturer's detailed suggestions for cleaning the machine.

2. Farm Trucks and Common Carriers.

It shall be unlawful for any person, company or corporation to transport seed, screenings or feed of any kind containing noxious weed seed over or along any highway in this State or on any railroad operating in this State unless the same is carried or transported in such vehicles or containers which will prevent the leaking or scattering thereof. All common carriers shall thoroughly clean and destroy any noxious weed seeds or plant parts in cars, trucks, vehicles or other receptacles used by them after each load shall have been delivered to consignee before again placing such car, truck, vehicle or receptacle into service.

3. Seed.

a. It shall be unlawful for any person, firm or corporation to sell, offer or expose for sale or distribute in Utah any agricultural, vegetable, flower or tree and shrub seeds for seeding purposes which contain any seeds of those weeds declared noxious by the Commissioner of Agriculture and Food.

b. It shall be the duty of the State Agricultural Inspector to remove from sale any lots of seeds offered for sale which are found to contain noxious weed seeds. Such seed may be recleaned under the supervision of the inspector and, if found to be free from noxious weed seeds, the same may be released for sale or distribution; otherwise, such seed shall be returned to point of origin, shipped to another state where such weed shall be returned to point of origin, shipped to another state where such weed seed is not noxious, or destroyed or processed in such a manner as to destroy viability of the weed seeds.

4. Screenings Sold for Livestock Feed.

a. All screenings or by-products of cleaning grains or other seeds containing noxious weed seeds, when used in commercial feed or sold as such to the ultimate consumer, shall be ground fine enough or otherwise treated to destroy such weed seeds so that the finished product contains not more than six whole noxious weed seeds per pound.

b. All mills and plants cleaning or processing any grains or other seeds shall be required to grind or otherwise treat all screenings containing noxious weed seeds so as to destroy such weed seeds to the extent that the above stated tolerance is not exceeded before allowing the same to be removed from the mill or plant. Such screenings may be moved to another plant for grinding and treatment; provided that: each container or shipment is labeled with the words "screenings for processing - not for seeding or feeding" and with the name and address of the consignor and the consignee.

5. Livestock Feed Material.

a. It shall be unlawful for any person, company or corporation to sell or offer for sale, barter or give away to the ultimate consumer any livestock feed material, including whole grains, which contain more than six whole noxious weed seeds per pound. Whole feed grain which exceeds this tolerance of noxious weed seeds may be sold to commercial processors or commercial feed mixers where the manner of processing will reduce the number of whole noxious weed seed to no more than six per pound.

6. Hay, Straw or Other Material of Similar Nature.

a. It shall be unlawful for any person, company or corporation to sell or offer for sale, barter or give away any hay, straw, or other material of similar nature, which is contaminated with mature noxious weed seeds or such parts of noxious weed plants which could cause new growth, or to alter, change or falsify in anyway information contained on a phytosanitary certificate.

7. Manure.

a. Manure produced from grain, hay, or other forage infested with noxious weeds shall not be applied or dumped elsewhere than upon the premises of the owner thereof.

8. Soil, Sod and Nursery Stock.

a. No soil, sod or nursery stock which contains or is contaminated with noxious weed seeds, or such parts of the plant that could cause new growth, shall be removed from the premises upon which it is located until cleaned of such weed seed or plant parts, except that such contaminated soil may be used for restrictive non-planting purposes upon permission and under direction of the county weed supervisor or a representative of the Utah Department of Agriculture and Food.

9. Noxious Weeds Distributed or Sold for Any Purpose.

a. It shall be unlawful for any person, company or corporation to sell, barter or give away any noxious weed plants or seeds for any purpose.

10. Livestock.

a. No livestock to which grain, hay, or other forage containing noxious weed seeds has been fed shall be permitted to range or graze upon fields other than those upon which they have been so fed for a period of 72 hours following such feeding. During such period, they shall be fed materials which are not contaminated with noxious weed seeds.

R68-9-5. Reports From Counties.

A. The Board of County Commissioners of each county, with the aid of their county Weed Board and their County Weed Supervisor, shall submit an "Annual Progress Report of County Noxious Weed Control Program" to the Commissioner of Agriculture and Food by January 15 of each year, covering the activities of the previous calendar year. A prescribed form for this report shall be supplied by the Commissioner.

R68-9-6. Notices.

A. General and individual notices pertaining to the control and prevention of noxious and invasive weeds shall be substantially of the types prescribed herein; namely, General Notice to Control Noxious Weeds, Individual Notice to Control Noxious Weeds, and Notification of Noxious Weed Lien Assessment.

1. General Notice To Control Noxious Weeds.

A general public notice shall be posted by the County Weed Board in at least three public places within the county and be published in one or more newspapers of general circulation throughout the county, on or before May 1 of each year and at any other times the County Weed Board determines. Such public notice shall state that it is the duty of every property owner to control and prevent the spread of noxious weeds on any land in his possession, or under his control, and shall serve as a warning that if he fails to comply with this notice, enforced weed control measures may be imposed at the direction of county authorities. Such general notice shall also include a list of weeds declared noxious for the State of Utah and for said county, if any.

2. Individual Notice to Control Noxious Weeds.

Following publication of a general notice, if a County Weed Board determines that definite weed control measures are required to control noxious weeds on a particular property, the Board shall cause an individual notice to be served upon the

owner or the person in possession of said property, giving specific instructions concerning when and how the noxious weeds are to be controlled within a specified period of time. The individual notice shall also inform the property owner or operator of legal action which may be taken against him if he fails to comply with said notice.

3. Notification of Noxious Weed Lien Assessment.

If it is deemed advisable, the Board of County Commissioners may cause noxious weeds to be controlled on a particular property and any expenses incurred by the county shall be paid by the owner of record or the person in possession of the property. A notice shall be provided such person, showing an itemized cost statement of the labor and materials necessarily used in the work of said control measures. This notice shall also state that the expense constitutes a lien against the property and shall be added to the general taxes unless payment is made to the County Treasurer within 90 days.

KEY: noxious weeds, weed classifications, weed control
February 2, 2016 4-2-2
Notice of Continuation June 1, 2018 4-17-3

R68. Agriculture and Food, Plant Industry.
R68-16. Quarantine Pertaining to Pine Shoot Beetle, Tomicus piniperda.
R68-16-1. Authority.

A. Promulgated under authority of Subsection 4-2-2(1)(k), and Section 4-35-9.

B. Refer to the Notice of Quarantine, Pine Shoot Beetle, Tomicus piniperda (Linnaeus), Effective December 28, 1992, issued by Utah Department of Agriculture and Food.

R68-16-2. Pest.

Pine Shoot Beetle, Tomicus Piniperda (Linnaeus), a beetle, family Scolytidae, is a serious pest of pine trees, and also known to damage fir, larch, and spruce trees by attacking the trunks and stems.

R68-16-3. Areas Under Quarantine.

All areas of the United States and Canada that are declared high risk by the United States Department of Agriculture, Animal and Plant Health Inspection Service, plant protection and quarantine or Utah Commissioner of Agriculture and Food.

R68-16-4. Articles and Commodities Under Quarantine.

The following are hereby declared to be regulated articles, hosts, and possible carriers of the Pine Shoot Beetle:

A. The Pine Shoot Beetle, Tomicus piniperda (Linnaeus), in any living stage of development.

B. Plants of the genus Pinus spp. whether balled and burlapped or cut live for use as Christmas trees.

C. Timber pine bark products or whole log forms of the genus Pinus spp., Abies spp., Larix spp., and Picea spp. with any bark intact.

D. Ornamental foliage from the genus Pinus spp. including pine wreaths and garlands, raw materials for wreaths and garlands, bark nuggets and bark chips.

E. Any other plant, plant part, article, or means of conveyance when it is determined by the Commissioner of the Department of Agriculture and Food or the Commissioner's duly authorized agent to present a hazard of spreading live Pine Shoot Beetle due to infestation or exposure to infestation by Pine Shoot Beetle.

R68-16-5. Restrictions.

A. All articles and commodities under quarantine are prohibited entry into Utah from an area under quarantine with the following exceptions:

1. From uninfested areas of the states listed in R68-16-3 when accompanied by a certificate of origin stating the origin of the material and that the plant material originated from an area not known to be infested with the Pine Shoot Beetle.

2. Regulated articles as listed in 7 CFR Chapter III 301.51-2.

R68-16-6. Treatment and Management Methods.

All treatment shall follow procedures as described in 7 CFR Chapter III 301.50-10.

R68-16-7. Disposition of Violations.

Any or all shipments or lots of quarantined articles or commodities listed in R68-16-4, arriving in Utah in violation of this quarantine shall immediately be sent out of the state, destroyed, or treated by a method and in a manner as directed by the Commissioner of the Utah Department of Agriculture and Food or his agent. Treatment shall be performed at the expense of the owner, or owners, or their duly authorized agent.

KEY: quarantine
July 2, 2008 4-2-2(1)(k)
Notice of Continuation May 23, 2018 4-35-9

R81. Alcoholic Beverage Control, Administration.
R81-10. Off-Premise Beer Retailers.
R81-10-1. Separation of Alcoholic Beverages from Non-Alcoholic Beverages and Required Signage.

(1) Authority and General Purpose. This rule is pursuant to 32B-7-202(5) that requires:

(a) an off-premise beer retailer to prominently post in the separate and distinct area where beer is sold, an easily readable sign that reads in print that is no smaller than .5 inches, bold type, "These beverages contain alcohol. Please read the label carefully," and requires the commission to define by rule the format of the sign.

(2) Application of the Rule.

(a) Sign requirements.

(i) The sign required by 32B-7-202(5) must be:

(A) prominently posted in the area where beer is sold;

(B) easily readable;

(C) in print that is no smaller than .5 inches, bold type.

(ii) The print on the sign must be clearly readable and on a solid, contrasting background.

(iii) The size of the sign, and the size of the print must be sufficiently large so as to be readable, and clearly and unambiguously convey to a consumer that the beverage products displayed in that area contain alcohol. In no instance may the sign be smaller than 8.5 inches x 3.5 inches.

(iv) Additional signs may be necessary depending on the size and type of display area. For example, an entire aisle devoted to beer products may require more than one sign to adequately inform the consumer.

R81-10-2. Off-Premise Beer Retailer State License.

(1) Authority and General Purpose. This rule is pursuant to 32B-7-401 that requires:

(a) the commission establish a deadline for each off-premise beer retailer in operation on July 1, 2018 to submit an application for an off-premise beer retailer state license.

(2) Application of the Rule.

(a) An off-premise beer retailer in operation on July 1, 2018 must submit a complete application for an off-premise beer state license by October 10, 2018.

(i) An off-premise beer retailer is considered "in operation as of July 1, 2018" if they have all local licensing in place and are open to the public.

(ii) A "complete application" includes the department's application form and all supplemental materials listed on the department's application checklist.

KEY: alcoholic beverages
December 28, 2017 **32B-1-102**
Notice of Continuation May 23, 2018 **32B-7-202**
32B-7-401

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

October 16, 2014	**13-2-5**
Notice of Continuation May 17, 2018	**13-32a-102(23)**
	13-32a-112.5

R156. Commerce, Occupational and Professional Licensing.
R156-63a. Security Personnel Licensing Act Contract Security Rule.
R156-63a-101. Title.

This rule is known as the "Security Personnel Licensing Act Contract Security Rule."

R156-63a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 63, as used in Title 58, Chapters 1 and 63 or this rule:

(1) "Approved basic education and training program" means a basic education and training program that:

(a) meets the standards and is approved by the Division as set forth in Section R156-63a-602; and

(b) has the content required by Section R156-63a-603.

(2) "Approved basic firearms training program" means a firearms education and training program that:

(a) meets the standards and is approved by the Division as set forth in Section R156-63a-602; and

(b) has the content required by Section R156-63a-604.

(3) "Authorized emergency vehicle" is as defined in Subsection 41-6a-102(3).

(4) "Contract security company" includes a peace officer who engages in providing security or guard services when acting in a capacity other than as an employee of the law enforcement agency by whom the peace officer is employed.

(5) "Contract security company" does not include a company which hires as employees, individuals to provide security or guard services for the purpose of protecting tangible personal property, real property, or the life and well-being of personnel employed by, or animals owned by or under the responsibility of that company, as long as the security or guard services provided by the company do not benefit any person other than the employing company.

(6) "Compensated", as used in Subsection 58-63-302(1)(c)(viii)(A), means remuneration in the form of W-2 wages unless the qualifying agent is an owner of a contract security or armored car company, in which case "compensated" means the owner's profit distributions or dividends.

(7) "Conviction" means criminal conduct where the filing of a criminal charge has resulted in:

(a) a finding of guilt based on evidence presented to a judge or jury;

(b) a guilty plea;

(c) a plea of nolo contendere;

(d) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(e) a pending diversion agreement; or

(f) a conviction which has been reduced pursuant to Section 76-3-402.

(8) "Corporate officer" as defined in Subsection 58-63-102(9), includes an individual who is on file with the Division of Corporations and Commercial Code as a limited liability company's company officer or "governing person" as defined in Subsection 48-3a-102(7), or as a limited partnership's "general partner" as defined in Subsection 48-2e-102(8).

(9) "Employee" means an individual providing services in the security guard industry for compensation, when the amount of compensation is based directly upon the security guard services provided and upon which the employer is required under law to withhold federal and state taxes, and for whom the employer is required under law to provide worker's compensation insurance coverage and pay unemployment insurance.

(10) "Instructor" means a person who directly facilitates learning through means of live in-class lecture, group participation, practical exercise, or other means, who has fulfilled the instructor experience and training requirements set forth in Section R156-63a-602.

(11) "Qualified continuing education" means continuing education that meets the standards set forth in Subsection R156-63a-304.

(12) "Qualifying agent" means a natural person who meets all of the requirements set forth in Subsection 58-63-302(1)(c).

(13) "Soft uniform" means a business suit or a polo-type shirt with appropriate slacks. The coat or shirt has an embroidered badge or contract security company logo that clips on to or is placed over the front pocket.

(14) "Supervised on-the-job training" means training of an armed or unarmed private security officer under the supervision of a licensed private security officer who has been assigned to train and develop the on-the-job trainee.

(15) "Supervision" means general supervision as defined in Subsection R156-1-102a(4)(c).

(16) "Trainer" has the same meaning as "instructor".

(17) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-63a-502.

R156-63a-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 63.

R156-63a-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.

R156-63a-201. Advisory Peer Committee created - Membership - Duties.

(1) There is created in accordance with Subsection 58-1-203(1)(f), the Education Advisory Committee to the Security Services Licensing Board, consisting of:

(a) one member who is a corporate officer, director, manager or trainer of a contract security company;

(b) one member who is a corporate officer, director, manager or trainer of an armored car company;

(c) one member who is an armored car security officer or a contract security officer;

(d) one member representing the general public; and

(e) one member who is a trainer, and who is also, in order of preference:

(i) a member of the Utah Peace Officers Association;

(ii) a qualifying agent of a licensed security company that is in good standing with the Division; or

(iii) a member of a security association that is in good standing wit the Utah Division of Corporations.

(2) The Education Advisory Committee shall be appointed and serve in accordance with Section R156-1-205. The duties and responsibilities of the Education Advisory Committee shall include assisting the Division in collaboration with the Board in their duties, functions, and responsibilities regarding the acceptability of educational programs, requesting approvals from the Division, and periodically reviewing all approved basic education and training programs and approved basic firearms training programs regarding current curriculum requirements.

(3) The Education Advisory Committee shall consider, when advising the Board of the acceptability of an education and training program:

(a) whether in keeping with Subsections R15663a-102(1) and (2), or Subsections R156-63b-102(1) and (2), a proposed basic education and training program meets:

(i) the operating standards of Sections R156-63a-602 or

R156-63b-602; and

(ii) the content requirements of Sections R156-63a-603 or R156-63b-603; and

(b) whether a proposed basic firearms training program meets:

(i) the operating standards of Sections R156-63a-602 or R156-63b-602; and

(ii) the content requirements of Sections R156-63a-604 or R156-63b-604.

R156-63a-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as a contract security company shall be accompanied by:

(a) two fingerprint cards for each of the applicant's:

(i) qualifying agent;

(ii) corporate officers;

(iii) directors;

(iv) equity holders or shareholders owning more than 5% of the equity or outstanding shares;

(v) partners;

(vi) proprietors; and

(vii) responsible management personnel; and

(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, for each of the persons required to provide a fingerprint card under Subsection (1)(a) above.

(2) An application for licensure as an armed or unarmed private security officer shall be accompanied by:

(a) two fingerprint cards for the applicant; and

(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records for the applicant with:

(i) the Federal Bureau of Investigation; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety.

(3) Applications for change in licensure classification from unarmed to armed private security officer shall only require the following additional documentation:

(a) successful completion of an approved basic firearms training program; and

(b) an additional criminal history background check pursuant to Section 58-63-302 and Subsection R156-63a-302a(2).

R156-63a-302b. Qualifications for Licensure - Basic Education and Training Requirements.

(1) In accordance with Subsections 58-1-203(1)(b), 58-63-302(2)(g), and 58-63-302(2)(h), an applicant for licensure as an armed private security officer shall successfully complete:

(a) an approved basic education and training program, as defined in Subsection R156-63a-102(1); and

(b) an approved basic firearms training program, as defined in Subsection R156-63a-102(2).

(2) In accordance with Subsections 58-1-203(1)(b) and 58-63-302(3)(f), an applicant for licensure as an unarmed private security officer shall successfully complete an approved basic education and training program, as defined in Subsection R156-63a-102(1).

R156-63a-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the examination requirements for licensure in Section 58-63-302 are defined, clarified, or established herein.

(1) The qualifying agent for an applicant who is a contract security company shall obtain a passing score of at least 75% on the Utah Contract Security Company Qualifying Agent Examination.

(2) An applicant for licensure as an armed private security officer or an unarmed private security officer shall obtain a score of at least 80% on the approved basic education and training program's final examination.

R156-63a-302d. Qualification for Licensure - Liability Insurance for a Contract Security Company.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the insurance requirements for licensure as a contract security company in Subsection 58-63-302(1)(j)(i) are defined, clarified, or established herein.

(1) An applicant shall file with the Division a "Certificate of Insurance" providing liability insurance for the following exposures:

(a) general liability;

(b) assault and battery;

(c) personal injury;

(d) false arrest;

(e) libel and slander;

(f) invasion of privacy;

(g) broad form property damage;

(h) damage to property in the care, custody or control of the contract security company; and

(i) errors and omissions.

(2) The required insurance shall provide liability limits in amounts not less than $300,000 for each incident and not less than $1,000,000 total aggregate for each annual term.

(3) The insurance carrier must be an insurer which has a certificate of authority to do business in Utah, or is an authorized surplus lines insurer in Utah, or is authorized to do business under the laws of the state in which the corporate offices of foreign corporations are located.

(4) All contract security companies shall have a current insurance certificate of coverage as defined in Subsection (1) on file at all times and available for immediate inspection by the Division during normal working hours.

(5) All contract security companies shall notify the Division immediately upon cancellation of the insurance policy, whether such cancellation was initiated by the insurance company or the insured agency.

R156-63a-302e. Qualifications for Licensure - Age Requirement for Armed Private Security Officer.

In accordance with Subsections 76-10-509(1) and 76-10-509.4, an armed private security officer must be 18 years of age or older at the time of submitting an application for licensure.

R156-63a-302f. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In accordance with Subsections 58-63-302(1)(h), (2)(c), and (3)(c), in addition to those criminal convictions prohibiting licensure, the following criminal convictions may disqualify an applicant or licensee from obtaining or holding an unarmed private security officer license, an armed private security officer license, or a contract security company license:

(a) crimes against a person as defined in Title 76, Chapter 5, Part 1;

(b) theft, including retail theft, as defined in Title 76;

(c) larceny;

(d) sex offenses as defined in Title 76, Chapter 5, Part 4;

(e) any offense involving a controlled substance as defined in Subsection 58-37-2(1)(f);

(f) fraud;

(g) extortion;
(h) treason;
(i) forgery;
(j) arson;
(k) kidnapping;
(l) perjury;
(m) conspiracy to commit any of the offenses listed herein;
(n) hijacking;
(o) burglary;
(p) escape from jail, prison, or custody;
(q) false or bogus checks;
(r) terrorist activities;
(s) desertion;
(t) pornography;
(u) two or more convictions for driving under the influence of alcohol within the last three years; and
(v) any attempt to commit any of the above offenses.

(2) An applicant may not obtain initial licensure or license renewal as an armed private security officer or as a contract security company providing armed private security services, and the license of an armed private security officer or of a contract security company providing armed private security services shall be automatically revoked, if the applicant or licensee is in violation of any provision set forth in:

(a) 18 U.S.C. Chapter 44, 922(g)1-9, concerning restrictions on firearms and ammunition transportation by certain persons; or

(b) Utah Code Section 76-10-503, concerning restrictions on possession, purchase, transfer, or ownership of dangerous weapons by certain persons.

(3) In accordance with Subsection 58-63-302(1), if the applicant or licensee is a contract security company, the background of the following individuals shall be considered:

(a) corporate officer;
(b) director;
(c) any shareholder owning 5% or more of the outstanding stock of the company as described in Subsection 58-63-302(1)(d)(ii);
(d) partner;
(e) proprietor;
(f) qualifying agent; and
(g) management personnel employed within Utah or having direct responsibility for managing operations of the company within Utah.

(4) Criminal history and statutory violations that do not automatically disqualify an applicant under statute or rule shall be considered on a case-by-case basis in accordance with Section R156-1-302.

R156-63a-302g. Qualifications for Licensure - Immediate Issuance of an Interim Permit.

In accordance with Section 58-63-310, upon receipt of a complete application for licensure as an unarmed private security officer or as an armed private security officer, the Division may immediately issue an interim permit to the applicant, if the applicant:

(1)(a) submits with the applicant's application an official criminal history report from the Bureau of Criminal Identification, Utah Department of Public Safety, showing "No Criminal Record Found";

(b) has not answered "yes" to any question on the qualifying questionnaire section of the application; and

(c) has not had a license to practice an occupation or profession denied, revoked, suspended, restricted, or placed on probation.

(2) If an applicant's application is denied, an interim permit issued under this section shall automatically expire.

R156-63a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 63 is established by rule in Section R156-1-308a.

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

R156-63a-304. Continuing Education for Armed and Unarmed Private Security Officers as a Condition of Renewal.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a continuing education requirement as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armed private security officer and unarmed private security officer.

(2) Armed and unarmed private security officers shall complete 16 hours of continuing education every two years consisting of education that includes:

(a) company operational procedures manual;
(b) applicable state laws and rules;
(c) legal powers and limitations of private security officers;
(d) observation and reporting techniques;
(e) ethics; and
(f) emergency techniques.

(3) Credit for the 16 hours of continuing education shall be recognized in accordance with the following:

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

(b) Unlimited hours shall be recognized for continuing education that is provided via Internet provided the course provider verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.

(4) In addition to the required 16 hours of continuing education, armed private security officers shall complete not less than 16 additional hours of continuing firearms education and training every two years. The continuing firearms education and training shall be completed in four-hour blocks every six months and shall not include any hours for the continuing education requirement in Subsection R156-63a-304(2). The continuing firearms education and training shall include as a minimum:

(a) live classroom instruction concerning the restrictions in the use of deadly force and firearms safety on duty, at home and on the range; and

(b) a recognized practical pistol recertification course on which the licensee achieves a minimum score of 80% using regular or low light conditions.

(5) An individual holding a current armed private security officer license in Utah who fails to complete the required four hours of continuing firearms education within the appropriate six month period will be required to complete one and one half times the number of continuing firearms education hours the licensee was deficient for the reporting period (this requirement is hereafter referred to as penalty hours). The penalty hours shall not be considered to satisfy in whole or in part any of the continuing firearms education hours required for subsequent renewal of the license.

(6) If a renewal period is shortened or lengthened to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

(7) Each licensee shall maintain documentation showing

compliance with the requirements above.

(8) The continuing education course provider shall provide course participants who complete the continuing education course with a course completion certificate.

(9) The course certificate shall contain:

(a) the name of the participant;

(b) the date the course was taken;

(c) the location where the course was taken;

(d) the title of the course;

(e) the name of the course provider and instructor; and

(f) the number of continuing education hours completed.

R156-63a-305. Criminal History Renewal and Reinstatement Requirement.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b) and R156-1-302, a criminal history background check is required for all applications for renewal and reinstatement.

(2) The criminal history background check shall be performed by the Division and is not required to be submitted by the applicant.

(3) If the criminal background check discloses a criminal background, the Division shall evaluate the criminal history in accordance with Sections 58-63-302 and R156-63a-302f to determine appropriate licensure action.

R156-63a-306. Change of Qualifying Agent.

Within 60 days after a qualifying agent for a licensed contract security company ceases employment with the licensee, or for any other reason is not qualified to be the licensee's qualifier, the contract security company shall file with the Division an application for change of qualifier on forms provided by the Division, accompanied by a fee established in accordance with Section 63J-1-504.

R156-63a-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) making any statement that would reasonably cause another person to believe that a private security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;

(2) utilizing a vehicle with markings, lighting, and/or signal devices that imply or suggest that the vehicle is an authorized emergency vehicle as defined in Subsection 41-6a-102(3) and Section 41-6a-310 and in Title R722, Chapter 340;

(3) utilizing a vehicle with an emergency lighting system that violates the requirements of Section 41-6a-1616 of the Utah Motor Vehicle Code;

(4) wearing a uniform, insignia, or badge that would lead a reasonable person to believe that the unarmed or armed private security officer is connected with a federal, state, or municipal law enforcement agency;

(5) being incompetent or negligent as an unarmed private security officer, an armed private security officer, or a contract security company, so as to cause injury to a person or create an unreasonable risk that a person might be harmed;

(6) failing as a contract security company or its officers, directors, partners, proprietors or responsible management personnel to adequately supervise employees so as to place the public health and safety at risk;

(7) failing to immediately notify the Division of the cancellation of the contract security company's insurance policy;

(8) failing as a contract security company or an armed or unarmed private security officer to report a criminal offense pursuant to Section R156-63a-613;

(9) pursuant to Subsection R156-63a-612(3), failing as a contract security company or an armed private security officer to report to the Division a violation of:

(a) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;

(b) Utah Code Subsection 76-10-503(1); or

(c) Utah Code Subsections 58-63-302(1)(a), (2)(c), or (3)(c); and

(10) wearing a uniform, insignia, or badge, or displaying a license, that would lead a reasonable person to believe that an individual is connected with a contract security company, when not employed as an armed or unarmed private security officer by a contract security company.

R156-63a-503. Mandatory Sanctions - Administrative Penalties.

(1) The license of a contract security company or an armed private security officer shall be suspended for a period of time determined by the Board if the licensee fails to report to the Division a violation of:

(a) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;

(b) Utah Code Subsection 76-10-503(1); or

(c) Utah Code Subsections 58-63-302(1)(a), (2)(c), or (3)(c).

(2) In accordance with Subsection 58-63-503, the following citation fine schedule shall apply to citations issued under Title 58, Chapter 63:

TABLE

FINE SCHEDULE

Violation	Contract Security Company	Armed or Unarmed Security Officer
FIRST OFFENSE		
58-63-501(1)	$ 800.00	N/A
58-63-501(4)	$ 800.00	$ 500.00
SECOND OFFENSE		
58-63-501(1)	$1,600.00	$1,000.00
58-63-501(4)	$1,600.00	$1,000.00

(3) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-63-503(3)(h)(iii).

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

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

(6) 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.

R156-63a-601. Operating Standards - Firearms.

(1) An armed private security officer shall carry only that firearm with which the officer has passed an approved basic firearms training program.

(2) Shotguns and rifles owned and issued by the contract security company, may be used in situations where they would constitute an appropriate defense for the armed private security officer, if the officer has successfully completed an approved basic firearms training program in

their use.

(3) An armed private security officer shall not carry a firearm except when acting on official duty as an employee of a contract security company, unless the licensee is otherwise qualified under the laws of the state to carry a firearm.

R156-63a-602. Division Approval and Operating Standards - Training Programs for Armed and Unarmed Private Security Officers.

(1) To obtain Division approval of any training program for armed private security officers and unarmed private security officers, the program owner shall submit to the Division:

(a) an application in a form prescribed by the Division;

(b) a fee for the approval of the program; and

(c) a written education and training manual which includes:

(i) a course syllabus with an hourly breakdown of the course outline and training schedule;

(ii) a course curriculum;

(iii) a four-hour instructor training program;

(iv) testing tools; and

(v) if an online curriculum or multi-media learning tools are used, a copy of the original medium.

(2) If any individual or entity uses an approved basic education and training program that the user does not own, the user shall submit to and maintain with the Division a current copy of the user's written contract with the program owner, which identifies the duration allowed for use. The user shall promptly update this information in writing with the Division as necessary.

(3) A course curriculum for armed private security officers shall include the content established in Sections R156-63a-603 and R156-63a-604.

(4) A course curriculum for unarmed private security officers shall include the content established in Section R156-63a-603.

(5) All instructors teaching an approved basic education and training program shall:

(a) have at least three years of supervisory experience reasonably related to providing contract security services; and

(b) have completed a four-hour instructor training program which shall include the following:

(i) motivation and the learning process;

(ii) teacher preparation and teaching methods;

(iii) classroom management;

(iv) testing; and

(v) instructional evaluation.

(6) All instructors teaching an approved basic firearms training program shall have the following qualifications:

(a) current Peace Officers Standards and Training firearms instructor certification; or

(b) current certification as a firearms instructor by:

(i) the National Rifle Association;

(ii) a Utah law enforcement agency;

(iii) a Federal law enforcement agency;

(iv) a branch of the United States military; or

(v) other qualification or certification found by the Division, in collaboration with the Board, to be equivalent.

(7) When an instructor for a Division-approved training program begins providing instruction, the user of the Division-approved training program shall report the instructor's name to the Division, on a form supplied by the Division.

(8) When an instructor for a Division-approved training program ceases to instruct for that program, or no longer meets instructor requirements, the user of the Division-approved training program shall report that information and the instructor's name to the Division, on a form supplied by the Division.

(9) All approved training programs shall maintain training records on each individual trained, including the dates of attendance at training, a copy of the instruction given, and the location of the training. These records shall be maintained in the program's files for at least three years.

(10) If an approved training program provider of basic education and training ceases to engage in business, the provider shall establish a method approved by the Division by which the records of the education and training shall continue to be available for a period of at least three years after the education and training is provided.

(11) Instructors who teach continuing education programs and are licensed armed or unarmed private security officers, shall receive continuing education credit for actual preparation time for up to two times the number of hours to which participants are entitled. For example, for learning activities in which participants receive four continuing education hours, instructors may receive up to eight continuing education hours (four hours for preparation plus four hours for presentation).

R156-63a-603. Content of Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

In accordance with Subsections 58-63-302(2)(g) and 58-63-302(3)(f), an approved basic education and training program for armed and unarmed private security officers shall have at least 24 hours of classroom or online instruction, including:

(1) 16 hours of basic instruction, to include:

(a) the nature and role of private security, including a private security officer's:

(i) scope and limits of authority;

(ii) civil liability; and

(iii) role in today's society;

(b) state laws and rules applicable to private security;

(c) the legal responsibilities of private security, including:

(i) constitutional law;

(ii) search and seizure; and

(iii) other such topics;

(d) situational response evaluations, including:

(i) protecting and securing crime or accident scenes;

(ii) notifying internal and external agencies; and

(iii) controlling information;

(e) security ethics;

(f) the use of force, emphasizing the de-escalation of force and alternatives to using force;

(g) documentation and report writing, including:

(i) preparing witness statements;

(ii) performing log maintenance;

(iii) exercising control of information;

(iv) taking field notes;

(v) organizing information into a report; and

(v) performing basic writing;

(h) patrol techniques, including:

(i) mobile patrol versus fixed post;

(ii) accident prevention;

(iii) responding to calls and alarms;

(iv) security breaches; and

(v) monitoring potential safety hazards;

(i) police and community relations, including fundamental duties and personal appearance of security officers;

(j) sexual harassment in the workplace; and

(2) eight hours of elective coursework determined by the instructor, which may include:

(a) current certification in:

(i) cardiopulmonary resuscitation (CPR);
(ii) automated external defibrillator (AED);
(iii) first aid; or
(iv) any other recognized basic life-saving certification;
(b) introduction to executive protection;
(c) basic self-defense;
(d) driving techniques for the security professional;
(e) escort techniques;
(f) crowd control;
(g) access control and the use of electronic detection devices;
(h) introduction to security's role with closed-circuit television systems;
(i) use of defensive items and objects;
(j) management of aggressive behavior, use of force, de-escalation techniques;
(k) homeland security involving bomb threats and anti-terrorism;
(l) Americans with Disabilities Act (ADA) compliance; and
(m) prior training as evidenced by third-party documentation, which may be accepted at the trainer's discretion to count towards the eight hours of elective training; and
(3) a final examination that:
(a) competently examines the student on the subjects included in the 16 hours of basic instruction; and
(b) mandates a minimum pass score of 80%.

R156-63a-604. Content of Approved Basic Firearms Training Program for Armed Private Security Officers.

In accordance with Subsection 58-63-302(2)(h), an approved basic firearms training program for armed private security officers shall have the following components:
(1) at least six hours of classroom firearms instruction to include the following:
(a) the firearm and its ammunition;
(b) care and cleaning of the firearm;
(c) the prohibition against alterations of the firearm's firing mechanism;
(d) firearm inspection review procedures;
(e) firearm safety on duty;
(f) firearm safety at home;
(g) firearm safety on the range;
(h) legal and ethical restraints on firearms use;
(i) explanation and discussion of target environment;
(j) stop failure drills;
(k) explanation and discussion of stance, draw stroke, cover and concealment, and other firearm fundamentals;
(l) armed patrol techniques;
(m) use of deadly force under Utah law and the provisions of Title 76, Chapter 2, Part 4, and a discussion of 18 USC 44 Section 922; and
(n) instruction that an armed private security officer shall not fire the officer's weapon unless there is an imminent threat to life, and at no time shall the weapon be drawn as a threat or means to force compliance with any verbal directive not involving imminent threat to life;
(2) a final examination that demonstrates the competency of the participant on the subjects included in the six hours of classroom firearms instruction, with a passing score requirement of 80%; and
(3) at least six hours of firearms range instruction to include the following:
(a) basic firearms fundamentals and marksmanship;
(b) demonstration and explanation of the difference between sight picture, sight alignment, and trigger control; and
(c) a recognized practical pistol course on which the applicant achieves a minimum score of 80% using regular and low light conditions.

R156-63a-605. Operating Standards - Uniform Requirements.

(1) All unarmed and armed private security officers while on duty shall wear the uniform of their contract security company employer unless assigned to work undercover.
(2) Each armed and unarmed private security officer wearing a soft uniform unless assigned to an undercover status shall at a minimum display on the outermost garment of the uniform the name of the contract security company under whom the armed and unarmed private security officer is employed, and the word "Security", "Contract Security", or "Security Officer".
(3) The name of the contract security company and the word "Security" shall be of a size, style, shape, design and type which is clearly visible by a reasonable person under normal conditions.
(4) Each armed and unarmed private security officer wearing a regular uniform shall display on the outermost garment of the uniform in a style, shape, design and type which is clearly visible by a reasonable person under normal conditions identification which contains:
(a) the name or logo of the contract security company under whom the armed or unarmed private security officer is employed; and
(b) the word "Security", "Contract Security", or "Security Officer".

R156-63a-606. Operating Standards - Badges.

(1) At the contract security company's request, an unarmed or armed private security officer may, while in uniform and while on duty, wear a shield inscribed with the words "Security," or "Security Officer". The shield shall not contain the words "State of Utah" or the seal of the state of Utah.
(2) The use of a star badge with any number of points on a uniform, in writing, advertising, letterhead, or other written communication is prohibited.

R156-63a-607. Operating Standards - Notification and Prohibition of Criminal Status of Contract Security Company Corporate Officer, Director, Partner, Proprietor, Qualifying Agent, Private Security Officer, Manager, or Shareholder.

(1) In accordance with Subsections 58-63-302(1)(h), 58-63-302(2)(d) and (d), 58-63-302(3)(c), and Section R156-63a-302f, this section applies to any contract security company:
(a) corporate officer;
(b) director;
(c) partner;
(d) proprietor;
(e) qualifying agent;
(f) private security officer;
(g) management personnel employed within Utah having direct responsibility for managing operations of a contract security company within Utah; and
(h) shareholder owning 5% or more as described in Subsection 58-63-302(1)(d)(ii).
(2) A person identified in Subsection (1) shall not participate at any level or capacity in the management, operations, sales, or employment of a contract security company, and shall not own any part of a contract security company (except less than 5% under Subsection 58-63-302(1)(d)(ii), if the person fails to meet a licensing requirement set forth in:
(a) Subsections 58-63-302(1)(h), or 58-63-302(2)(c) or

(3)(c), for conviction of a felony, or of a misdemeanor involving moral turpitude, or a of a crime that when considered with the duties and responsibilities of the license by the Division and the Board indicates that the best interests of the public are not served by granting the license; or

(b) Subsections 58-63-302(1)(h)(iii) or 58-63-302(2)(d), for conviction of violating any provision set forth in:

(i) 18 U.S.C. Chapter 44, 922(g)1-9, concerning restrictions on firearms and ammunition transportation by certain persons; or

(ii) Subsection 76-10-503, concerning restrictions on possession, purchase, transfer, or ownership of dangerous weapons by certain persons.

(3) A contract security company shall:

(a) within ten calendar days of occurrence, report to the Division in writing any event that occurs in regard to a person identified in Subsection (1), respecting:

(i) any conviction listed under this Subsection (2) or Subsection R156-63b-302f(2) as a disqualifying criminal conviction; and

(ii) any conviction listed under Subsection R156-63b-302f(1) as a potentially disqualifying criminal conviction; and

(b) take appropriate steps to ensure that company ownership and operations comply with this Section.

R156-63a-608. Operating Standards - Implying an Association with Public Law Enforcement Prohibited.

(1) No contract security company shall use any name which implies intentionally or otherwise that the company is connected or associated with any public law enforcement agency.

(2) No contract security company shall permit the use of the words "special police", "special officer", "cop", or any other words of a similar nature whether used orally or appearing in writing or on any uniform, badge, or cap.

(3) No person licensed under this chapter shall use words or designations which would cause a reasonable person to believe he is associated with a public law enforcement agency.

R156-63a-609. Operating Standards - Proper Identification of Private Security Officers.

All armed and unarmed private security officers shall carry a valid security license together with a government-issued identification card or a current state-issued driver license whenever performing the duties of an armed or unarmed private security officer and shall exhibit said license and identification upon request.

R156-63a-610. Operating Standards - Vehicles.

(1) All contract security vehicles shall conform to the following requirements:

(a) green, amber, and white are the only colors that may be used in roof mounted light bars facing forward on a contract security vehicle;

(b) green, amber, and red are the only colors that may be used in roof mounted light bars facing rearward on a contract security vehicle;

(c) light bars may only be operated on private property in which the company has a written contract;

(d) light bars may be operated on public highways only when personally directed to do so by a peace officer; and

(e) all contract security vehicles shall meet the requirements of Section 41-6a-1616.

(2) A contract security company or its personnel may not utilize a vehicle whose marking, lighting and signal devices:

(a) display any form of blue lighting;

(b) use a siren in any manner;

(c) display a star or star badge insignia; or

(d) employ any wording that suggests they are connected with law enforcement.

(3) A contract security company vehicle may have a public address system, an air horn, or both.

(4) The word "Security", either alone or in conjunction with the company name, shall appear on each side and the rear of the company vehicle in letters no less than four inches in height and in a color contrasting with the color of the contract security company vehicle and shall be legible from a reasonable distance.

R156-63a-611. Operating Standards - Operational Procedures Manual.

(1) Each contract security company shall develop and maintain an operational procedures manual which includes the following topics:

(a) detaining or arresting;
(b) restraining, detaining, and search and seizure;
(c) felony and misdemeanor definitions;
(d) observing and reporting;
(e) ingress and egress control;
(f) natural disaster preparation;
(g) alarm systems, locks, and keys;
(h) radio and telephone communications;
(i) crowd control;
(j) public relations;
(k) personal appearance and demeanor;
(l) bomb threats;
(m) fire prevention;
(n) mental illness;
(o) supervision;
(p) criminal justice system;
(q) code of ethics for private security officers;
(r) sexual harassment in the workplace; and
(s) hazardous chemical release.

(2) The operations and procedures manual shall be immediately available to the Division upon request.

R156-63a-612. Operating Standards - Display of License.

The license issued to a contract security company shall be prominently displayed in the company's principal place of business and a copy of the license shall be displayed prominently in all branch offices.

R156-63a-613. Operating Standards - Notification of Criminal Arrest, Charge, Indictment, or Conviction - Notification of On-Duty Firearm Discharge.

(1) In accordance with Subsection 58-63-302(2):

(a) A licensed armed or unarmed private security officer shall notify the licensee's employing contract security company, or if none, shall notify the Division, within 72 hours of being arrested, charged, indicted, or convicted for:

(i) any criminal offense above the level of a Class C misdemeanor;

(ii) any offense set forth in:

(A) 18 U.S.C. Chapter 44, 922(g)1-9, concerning restrictions on firearms and ammunition transportation by certain persons;

(B) Section 76-10-503, concerning restrictions on possession, purchase, transfer, or ownership of dangerous weapons by certain persons;

(C) Subsections 58-63-302(2)(c), or (3)(c), concerning a felony, a misdemeanor involving moral turpitude, or a crime that when considered with the duties and responsibilities of a private security officer by the Division and the Board indicates that the best interests of the public are not served by granting the license; or

(D) Subsection R156-63b-302g(1), concerning certain

potentially disqualifying criminal offenses;

(b) A contract security company shall notify the Division within 72 hours of receiving notification, or becoming aware, of any arrest, charge, indictment, or conviction of any of its licensed employees under this Subsection (1).

(c) Notification under this Subsection (1)(b) shall be in writing, and include:

(i) the employee's name;

(ii) the name of the court or arresting agency, if applicable;

(iii) the court or agency case number or similar case identifier;

(iv) the date of the arrest, charge, indictment, or conviction; and

(v) the nature of the criminal offense or violation.

(2) In accordance with Subsections 58-63-302(2) and 58-1-202(1)(d), the following notice and appearance standards shall apply to an on-duty discharge of a firearm by an armed private security officer:

(a) Within 24 hours of the on-duty discharge, the armed private security officer shall notify the officer's employing contract security company, or if none, then the armed private security officer shall notify the Division.

(b) Within 72 hours of receiving notification, or becoming aware, of an on-duty firearm discharge by its employee, the employing contract security company shall notify the Division.

(c) Notification under this Subsection (2) shall be in writing, and include:

(i) the employee's name;

(ii) the date of the firearm discharge;

(iii) the nature of the firearm discharge; and

(iv) the physical location of the firearm discharge.

(d) The Security Services Licensing Board shall require a mandatory appearance before the Board by the qualifying agent over that officer, to review the company policy and procedure for dealing with an on-duty discharge.

KEY: licensing, security guards, private security officers

December 11, 2017 58-1-106(1)(a)

Notice of Continuation May 15, 2018 58-1-202(1)(a)

58-63-101

R156. Commerce, Occupational and Professional Licensing.
R156-63b. Security Personnel Licensing Act Armored Car Rule.
R156-63b-101. Title.

This rule is known as the "Security Personnel Licensing Act Armored Car Rule."

R156-63b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 63, as used in Title 58, Chapters 1 and 63 or this rule:

(1) "Approved basic education and training program" means a basic education and training program that:

(a) meets the standards and is approved by the Division as set forth in Section R156-63b-602; and

(b) has the content required by Section R156-63b-603.

(2) "Approved basic firearms training program" means a firearms education and training program that:

(a) meets the standards and is approved by the Division as set forth in Section R156-63b-602; and

(b) has the content required by Section R156-63b-604.

(3) "Armored car company" includes a peace officer who engages in providing security or guard services when acting in a capacity other than as an employee of the law enforcement agency by whom the peace officer is employed.

(4) "Armored car company" does not include a company which hires as employees, individuals to provide security or guard services for the purpose of protecting tangible property, currency, valuables, jewelry, SNAP benefits as defined in Section 35A-1-102, or other high value items that require secured delivery from one place to another and are owned by or under the responsibility of that company, as long as the security or guard services provided by the company do not benefit any person other than the employing company.

(5) "Authorized emergency vehicle" is as defined in Subsection 41-6a-102(3).

(6) "Compensated", as used in Subsection 58-63-302(1)(c)(viii)(A), means remuneration in the form of W-2 wages unless the qualifying agent is an owner of a contract security or armored car company, in which case "compensated" means the owner's profit distributions or dividends.

(7) "Conviction" means criminal conduct where the filing of a criminal charge has resulted in:

(a) a finding of guilt based on evidence presented to a judge or jury;

(b) a guilty plea;

(c) a plea of nolo contendere;

(d) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(e) a pending diversion agreement; or

(f) a conviction which has been reduced pursuant to Section 76-3-402.

(8) "Corporate officer" as defined in Subsection 58-63-102(9), includes an individual who is on file with the Division of Corporations and Commercial Code as a limited liability company's company officer or "governing person" as defined in Subsection 48-3a-102(7), or as a limited partnership's "general partner" as defined in Subsection 48-23-102(8).

(9) "Employee" means an individual providing services in the armored car industry for compensation when the amount of compensation is based directly upon the armored car services provided, and upon which the employer is required under law to withhold federal and state taxes, and for whom the employer is required under law to provide worker's compensation insurance coverage and pay unemployment insurance.

(10) "Instructor" means a person who directly facilitates learning through means of live in-class lecture, group participation, practical exercise, or other means, who has fulfilled the instructor experience and training requirements set forth in Section R156-63b-602.

(11) "Qualified continuing education" means continuing education that meets the standards set forth in Subsection R156-63b-304.

(12) "Qualifying agent" means a natural person who meets all of the requirements set forth in Subsection 58-63-302(1)(c).

(13) "Soft uniform" means a business suit or a polo-type shirt with appropriate slacks. The coat or shirt has an embroidered badge or armored car company logo that clips onto or is placed over the front pocket.

(14) "Supervised on-the-job training" means training of an armored car security officer under the supervision of a licensed armored car security officer who has been assigned to train and develop the on-the-job trainee.

(15) "Supervision" means general supervision as defined in Subsection R156-1-102a(4)(c).

(16) "Trainer" has the same meaning as "instructor".

(17) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-63b-502.

R156-63b-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 63.

R156-63b-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.

R156-63b-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as an armored car company shall be accompanied by:

(a) two fingerprint cards for each of the applicant's:

(i) qualifying agent;

(ii) corporate officers;

(iii) directors;

(iv) equity holders or shareholders owning more than 5% of the equity or outstanding shares;

(v) partners;

(vi) proprietors; and

(vii) responsible management personnel; and

(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, for each of the persons required to provide a fingerprint card under Subsection (1)(a) above.

(2) An application for licensure as an armored car security officer shall be accompanied by:

(a) two fingerprint cards for the applicant; and

(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records for the applicant with:

(i) the Federal Bureau of Investigation; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety.

R156-63b-302b. Qualifications for Licensure - Basic Education and Training Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-63-302(4)(g), an applicant for licensure as an armored car security officer shall successfully complete an approved basic education and training program as defined in Subsection

R156-63b-102(1).

R156-63b-302c. Qualifications for Licensure - Firearm Training Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-63-302(4)(h), an applicant for licensure as an armored car security officer shall successfully complete an approved basic firearms training program as defined in Subsection R156-63b-102(2).

R156-63b-302d. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the examination requirements for licensure in Section 58-63-302 are defined, clarified, or established herein.

(1) The qualifying agent for an applicant who is an armored car company shall obtain a passing score of at least 75% on the Utah Armored Car Company Qualifying Agent Examination.

(2) An applicant for licensure as an armored car security officer shall obtain a score of at least 80% on the approved basic education and training program's final examination.

R156-63b-302e. Qualification for Licensure - Liability Insurance for a Armored Car Company.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the insurance requirements for licensure as an armored car company in Subsection 58-63-302(1)(j)(i) are defined, clarified, or established herein.

(1) An applicant shall file with the Division a "Certificate of Insurance" providing liability insurance for the following exposures:

(a) general liability;
(b) assault and battery;
(c) personal injury;
(d) libel and slander;
(e) broad form property damage;
(f) damage to property in the care, custody or control of the armored car company; and
(g) errors and omissions.

(2) Said insurance shall provide liability limits in amounts not less than $500,000 for each incident and not less than $2,000,000 total aggregate for each annual term.

(3) The insurance carrier must be an insurer which has a certificate of authority to do business in Utah, or is an authorized surplus lines insurer in Utah, or is authorized to do business under the laws of the state in which the corporate offices of foreign corporations are located.

(4) All armored car companies shall have a current insurance certificate of coverage as defined in Subsection (1) on file at all times and available for immediate inspection by the Division during normal working hours.

(5) All armored car companies shall notify the Division immediately upon cancellation of the insurance policy, whether such cancellation was initiated by the insurance company or the insured agency.

R156-63b-302f. Qualifications for Licensure - Age Requirement for Armored Car Security Officer.

In accordance with Subsections 76-10-509(1) and 76-10-509.4, an armored car security officer must be 18 years of age or older at the time of submitting an application for licensure.

R156-63b-302g. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In accordance with Subsections 58-63-302(1)(h) and (4)(c), in addition to those criminal convictions prohibiting licensure, the following criminal convictions may disqualify an applicant or licensee from obtaining or holding an armored car security officer license, or an armored car company license:

(a) crimes against a person as defined in Title 76, Chapter 5, Part 1;
(b) theft, including retail theft, as defined in Title 76;
(c) larceny;
(d) sex offenses as defined in Title 76, Part 4;
(e) any offense involving a controlled substance as defined in Subsection 58-37-2(1)(f);
(f) fraud;
(g) extortion;
(h) treason;
(i) forgery;
(j) arson;
(k) kidnapping;
(l) perjury;
(m) conspiracy to commit any of the offenses listed herein;
(n) hijacking;
(o) burglary;
(p) escape from jail, prison, or custody;
(q) false or bogus checks;
(r) terrorist activities;
(s) desertion;
(t) pornography;
(u) two or more convictions for driving under the influence of alcohol within the last three years; and
(v) any attempt to commit any of the above offenses.

(2) An applicant may not obtain initial licensure or license renewal as an armored car security officer or as an armored car company, and the license of an armored car security officer or of an armored car company shall be automatically revoked, if the applicant or licensee is in violation of any provision set forth in:

(a) 18 U.S.C. Chapter 44, 922(g)1-9, concerning restrictions on firearms and ammunition transportation by certain persons; or

(b) Utah Code Section 76-10-503, concerning restrictions on possession, purchase, transfer, or ownership of dangerous weapons by certain persons.

(3) In accordance with Subsection 58-63-302(1), if the applicant or licensee is an armored car company, the background of the following individuals shall be considered:

(a) corporate officer;
(b) director;
(c) any shareholder owning 5% or more of the outstanding stock of the company as described in Subsection 58-63-302(1)(d)(ii);
(d) partner;
(e) proprietor;
(f) qualifying agent; and
(g) management personnel employed within Utah or having direct responsibility for managing operations of the company within Utah.

(4) Criminal history and statutory violations that do not automatically disqualify an applicant under statute or rule shall be considered on a case-by-case basis in accordance with Section R156-1-302.

R156-63b-302h. Qualifications for Licensure - Immediate Issuance of an Interim Permit.

In accordance with Section 58-63-310, upon receipt of a complete application for licensure as an armored car security officer, the Division may immediately issue an interim permit to the applicant, if the applicant:

(1)(a) submits with the application an official criminal history report from the Bureau of Criminal Identification, Utah Department of Public Safety, showing "No Criminal

Record Found";

(b) has not answered "yes" to any question on the qualifying questionnaire section of the application; and

(c) has not had a license to practice an occupation or profession denied, revoked, suspended, restricted, or placed on probation.

(2) If an applicant's application is denied, an interim permit issued under this section shall automatically expire.

R156-63b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 63 is established by rule in Section R156-1-308a.

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

R156-63b-304. Continuing Education for Armored Car Security Officers as a Condition of Renewal.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a continuing education requirement as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armored car security officer.

(2) Armored car security officers shall complete 16 hours of continuing education every two years consisting of education that includes:

(a) company operational procedures manual;

(b) applicable state laws and rules;

(c) ethics; and

(d) emergency techniques.

(3) Credit for the 16 hours of continuing education shall be recognized in accordance with the following:

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

(b) Unlimited hours shall be recognized for continuing education that is provided via the Internet provided the course provider verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.

(4) In addition to the required 16 hours of continuing education, armored car security officers shall complete not less than 16 additional hours of continuing firearms education and training every two years. The continuing firearms education and training shall be completed in four-hour blocks every six months and shall not include any hours for the continuing education requirement in Subsection R156-63b-304(2). The continuing firearms education and training shall include as a minimum:

(a) live classroom instruction concerning the restrictions in the use of deadly force and firearms safety on duty, at home and on the range; and

(b) a recognized practical pistol recertification course on which the licensee achieves a minimum score of 80% using regular or low light conditions.

(5) Firearms education and training shall comply with the provisions of Title 15, USC Chapter 85, the Armored Car Industry Reciprocity Act.

(6) An individual holding a current armored car security officer license in Utah who fails to complete the required four hours of continuing firearms education within the appropriate six month period will be required to complete one and one half times the number of continuing firearms education hours the licensee was deficient for the reporting period (this requirement is hereafter referred to as penalty hours). The penalty hours shall not be considered to satisfy in whole or in part any of the continuing firearms education hours required for subsequent renewal of the license.

(7) If a renewal period is shortened or lengthened to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

(8) Each licensee shall maintain documentation showing compliance with the requirements of this section.

(9) The continuing education course provider shall provide course participants, who complete the continuing education course, with a course completion certificate.

(10) The course certificate shall contain:

(a) the name of the participant;

(b) the date the course was taken;

(c) the location where the course was taken;

(d) the title of the course;

(e) the name of the course provider and instructor; and

(f) the number of continuing education hours completed.

R156-63b-305. Criminal History Renewal and Reinstatement Requirement.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b) and R156-1-302, a criminal history background check is required for all applications for renewal and reinstatement.

(2) The criminal history background check shall be performed by the Division and is not required to be submitted by the applicant.

(3) If the criminal background check discloses a criminal background, the Division shall evaluate the criminal history in accordance with Sections 58-63-302 and R156-63b-302g to determine appropriate licensure action.

R156-63b-306. Change of Qualifying Agent.

Within 60 days after a qualifying agent for a licensed armored car company ceases employment with the licensee, or for any other reason is not qualified to be the licensee's qualifier, the armored car company shall file with the Division an application for change of qualifier on forms provided by the Division, accompanied by a fee established in accordance with Section 63J-1-504.

R156-63b-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) making any statement that would reasonably cause another person to believe that an armored car security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;

(2) utilizing a vehicle with markings, lighting, and/or signal devices that imply or suggest that the vehicle is an authorized emergency vehicle as defined in Subsection 41-6a-102(3) and Section 41-6a-310 and in Title R722, Chapter 340;

(3) utilizing a vehicle with an emergency lighting system that violates the requirements of Section 41-6a-1616 of the Utah Motor Vehicle Code;

(4) wearing a uniform, insignia, or badge that would lead a reasonable person to believe that the armored car security officer is connected with a federal, state, or municipal law enforcement agency;

(5) being incompetent or negligent as an armored car security officer or as an armored car company so as to cause injury to a person or create an unreasonable risk that a person might be harmed;

(6) failing as an armored car company or its officers, directors, partners, proprietors or responsible management personnel to adequately supervise employees so as to place

the public health and safety at risk;

(7) failing to immediately notify the Division of the cancellation of the armored car company's insurance policy;

(8) failing as an armored car company or an armored car security officer to report a criminal offense pursuant to Section R156-63b-612;

(9) pursuant to Subsection R156-63b-612(3), failing as an armored car company or an armored car security officer to report to the Division a violation of:

(a) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;

(b) Utah Code Subsection 76-10-503(1); or

(c) Utah Code Subsection 58-63-302(1)(a), (2)(c), or (3)(c); and

(10) wearing a uniform, insignia, or badge, or displaying a license, that would lead a reasonable person to believe that an individual is connected with an armored car company, when not employed as an armored car security officer by an armored car company.

R156-63b-503. Mandatory Sanctions - Administrative Penalties.

(1) The license of an armored car company or an armored car security officer shall be suspended for a period of time determined by the Board if the licensee fails to report to the Division a violation of:

(a) any provision set forth in 18 U.S.C. chapter 44, 922(g)1-9;

(b) Utah Code Subsection 76-10-503(1); or

(c) Utah Code Subsections 58-63-302(1)(a), (2)(c), or (3)(c).

(2) In accordance with Subsection 58-63-503, the following citation fine schedule shall apply to citations issued under Title 58, Chapter 63:

TABLE

FINE SCHEDULE

Violation	Armored Car Company	Armed or Unarmed Armored Car Security Officer
FIRST OFFENSE		
58-63-501(1)	$ 800.00	N/A
58-63-501(4)	$ 800.00	$ 500.00
SECOND OFFENSE		
58-63-501(1)	$1,600.00	$1,000.00
58-63-501(4)	$1,600.00	$1,000.00

(3) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-63-503(3)(h)(iii).

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

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

(6) 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.

R156-63b-601. Operating Standards - Firearms.

(1) An armored car security officer shall carry only that firearm with which the officer has passed an approved basic firearm training program.

(2) Shotguns and rifles owned and issued by the armored car company, may be used in situations where they would constitute an appropriate defense for the armored car security officer, if the officer has successfully completed a firearms training program specific to shotgun or rifle use.

(3) An armored car security officer shall not carry a firearm except when acting on official duty as an employee of an armored car company, unless the licensee is otherwise qualified under the laws of the state to carry a firearm.

R156-63b-602. Division Approval and Operating Standards - Training Program for Armored Car Security Officers.

(1) To obtain Division approval of a training program for armored car security officers, the program owner shall submit to the Division:

(a) an application in a form prescribed by the Division;

(b) a fee for the approval of the program; and

(c) a written education and training manual which includes:

(i) a course syllabus with an hourly breakdown of the course outline and training schedule;

(ii) a course curriculum;

(iii) a four-hour instructor training program;

(iv) testing tools; and

(v) if an online curriculum or multi-media learning tools are used, a copy of the original medium.

(2) If any individual or entity uses a Division-approved training program that the user does not own, the user shall submit to and maintain with the Division a current copy of the user's written contract with the program owner, which identifies the duration allowed for use. The user shall promptly update this information in writing with the Division as necessary.

(3) A course curriculum shall include the following content:

(a) for a basic education and training program, the content established in Section R156-63b-603; and

(b) for a basic firearms training program, the content established in Section R156-63b-604.

(4) All instructors teaching an approved basic education and training program shall:

(a) have at least three years of supervisory experience reasonably related to providing armored car security services; and

(b) have completed a four-hour instructor training program which shall include the following:

(i) motivation and the learning process;

(ii) teacher preparation and teaching methods;

(iii) classroom management;

(iv) testing; and

(v) instructional evaluation.

(5) All instructors teaching an approved basic firearms training program shall have the following qualifications:

(a) current Peace Officers Standards and Training firearms instructor certification; or

(b) current certification as a firearms instructor by:

(i) the National Rifle Association;

(ii) a Utah law enforcement agency;

(iii) a Federal law enforcement agency;

(iv) a branch of the United States military; or

(v) other qualification or certification determined by the Division, in collaboration with the Board, to be equivalent.

(6) When an instructor for a Division-approved training program begins providing instruction, the user of the Division-approved training program shall report the

instructor's name to the Division, on a form supplied by the Division.

(7) When an instructor for a Division-approved training program ceases to instruct for that program, or no longer meets instructor requirements, the user of the Division-approved training program shall report that information and the instructor's name to the Division, on a form supplied by the Division.

(8) All approved training programs shall maintain training records on each individual trained, including the dates of attendance at training, a copy of the instruction given, and the location of the training. These records shall be maintained in the program's files for at least three years.

(9) If an approved training program provider ceases to engage in business, the provider shall establish a method approved by the Division by which the records of the education and training shall continue to be available for a period of at least three years after the education and training is provided.

(10) Instructors who teach continuing education programs and are licensed armored car security officers, shall receive continuing education credit for actual preparation time for up to two times the number of hours to which participants are entitled. For example, for learning activities in which participants receive four continuing education hours, instructors may receive up to eight continuing education hours (four hours for preparation plus four hours for presentation).

R156-63b-603. Content of Approved Basic Education and Training Program.

In accordance with Subsection 58-63-302(4)(g), an approved basic education and training program for armored car security officers shall have at least 24 hours of instruction, including:

(1) 16 hours of basic instruction, to include:

(a) the nature and role of private security, including an armored car security officer's:

(i) scope and limits of authority;

(ii) civil liability;

(iii) role in today's society;

(b) state laws and rules applicable to armored car security;

(c) legal responsibilities of armored car security, including:

(i) constitutional law;

(ii) search and seizure; and

(iii) other such topics;

(d) ethics;

(e) use of force, emphasizing the de-escalation of force and alternatives to using force;

(f) police and community relations, including fundamental duties and the personal appearance of an armored car officer;

(g) sexual harassment in the workplace;

(h) driving policies and procedures, driver training and vehicle orientation;

(i) emergency situation response, including:

(i) terminal security;

(ii) traffic accidents;

(iii) robbery situations;

(iv) homeland security;

(v) reducing risk potential through street procedures and tactics;

(vi) securing robbery scenes; and

(vii) dealing with the media; and

(j) armored operations, including:

(i) proper paperwork;

(ii) street control procedures;

(iii) vehicle transfers;

(iv) vault procedures; and

(v) other proper branch procedures.

(2) Eight hours of elective coursework determined by the instructor, which may include:

(a) current certification in:

(i) cardiopulmonary resuscitation (CPR);

(ii) automated external defibrillator (AED);

(iii) first aid; or

(iv) any other recognized basic life-saving certification;

(b) introduction to executive protection;

(c) basic self-defense;

(d) escort techniques;

(e) access control and the use of electronic detection devices;

(f) use of defensive items and objects;

(g) management of aggressive behavior, use of force, de-escalation techniques;

(h) homeland security involving bomb threats and anti-terrorism;

(i) Americans with Disabilities Act (ADA) compliance; and

(j) prior training, as evidenced by third-party documentation, which may be accepted at the trainer's discretion to count towards the eight hours of elective training.

(3) A final examination that:

(a) competently examines the student on the subjects included in the 16 hours of basic classroom instruction; and

(b) mandates a minimum pass score of 80%.

R156-63b-604. Content of Approved Basic Firearms Training Program.

In accordance with Subsection 58-63-302(4)(h), an approved basic firearms training program for armored car security officers shall have the following components:

(1) at least six hours of classroom firearms instruction, to include the following:

(a) the firearm and its ammunition;

(b) care and cleaning of the firearm;

(c) the prohibition against alterations of the firearm's firing mechanism;

(d) firearm inspection review procedures;

(e) firearm safety on duty;

(f) firearm safety at home;

(g) firearm safety on the range;

(h) legal and ethical restraints on firearms use;

(i) explanation and discussion of target environment;

(j) stop failure drills;

(k) explanation and discussion of stance, draw stroke, cover and concealment, and other firearm fundamentals;

(l) armed patrol techniques;

(m) use of deadly force under Utah law and the provisions of Title 76, Chapter 2, Part 4, and a discussion of 18 USC 44 Section 922; and

(n) instruction that an armored car security officer shall not fire the officer's weapon unless there is an imminent threat to life, and at no time shall the weapon be drawn as a threat or means to force compliance with any verbal directive not involving imminent threat to life;

(2) a final examination that demonstrates the competency of the participant on the subjects included in the six hours of classroom firearms instruction, with a passing score requirement of 80%; and

(3) at least six hours of firearms range instruction to include the following:

(a) basic firearms fundamentals and marksmanship;

(b) demonstration and explanation of the difference between sight picture, sight alignment, and trigger control;

and

(c) a recognized practical pistol course on which the applicant achieves a minimum score of 80% using regular and low light conditions.

R156-63b-605. Operating Standards - Uniform Requirements.

(1) All armored car security officers while on duty shall wear the uniform of their armored car company employer unless assigned to work undercover.

(2) The name of the armored car company shall be of a size, style, shape, design and type which is clearly visible by a reasonable person under normal conditions.

(3) Each armored car company officer wearing a regular uniform shall display on the outermost garment of the uniform in a style, shape, design and type which is clearly visible by a reasonable person under normal conditions identification which contains the name or logo of the armored car company under whom the armored car security officer is employed.

R156-63b-606. Operating Standards - Badges.

(1) At the armored car company's request, an armored car security officer may, while in uniform and while on duty, wear a shield inscribed with the words "Security," or "Security Officer". The shield shall not contain the words "State of Utah" or the seal of the state of Utah.

(2) The use of a star badge with any number of points on a uniform, in writing, advertising, letterhead, or other written communication is prohibited.

R156-63b-607. Operating Standards - Notification and Prohibition of Criminal Status of Armored Car Company Corporate Officer, Director, Partner, Proprietor, Qualifying Agent, Armored Car Security Officer, Manager, or Shareholder.

(1) In accordance with Subsections 58-63-302(1)(h) and (i), 58-63-302(4)(c) and (d), and Section R156-63b-302g, this section applies to any armored car company:

(a) corporate officer;

(b) director;

(c) partner;

(d) proprietor;

(e) qualifying agent;

(f) armored car security officer;

(g) management personnel employed within Utah or having direct responsibility for managing operations of the armored car company within Utah; and

(h) shareholder owning 5% or more as described in Subsection 58-63-302(1)(d)(ii).

(2) A person identified in Subsection (1) shall not participate at any level or capacity in the management, operations, sales, or employment of an armored car company, and shall not own any part of an armored car company (except less than 5% as described in Subsection 58-63-302(1)(d)(ii)), if the person fails to meet a licensing requirement set forth in:

(a) Subsections 58-63-302(1)(h) or 58-63-302(4)(c), for conviction of a felony, or of a misdemeanor involving moral turpitude, or of a crime that when considered with the duties and responsibilities of the license by the Division and the Board indicates that the best interests of the public are not served by granting the license; or

(b) Subsections 58-63-302(1)(h)(iii) or 58-63-302(4)(d), for conviction of violating any provision set forth in:

(i) 18 U.S.C. Chapter 44, 922(g)1-9, concerning restrictions on firearms and ammunition transportation by certain persons; or

(ii) Subsection 76-10-503, concerning restrictions on possession, purchase, transfer, or ownership of dangerous weapons by certain persons.

(3) An armored car company shall:

(a) within ten calendar days of occurrence, report to the Division in writing any event that occurs in regard to a person identified in Subsection (1), respecting:

(i) any conviction listed under this Subsection (2) or Subsection R156-63b-302g(2) as a disqualifying criminal conviction; and

(ii) any conviction listed under Subsection R156-63b-302g(1) as a potentially disqualifying criminal conviction; and

(b) take appropriate steps to ensure that company ownership and operations comply with this Section.

R156-63b-608. Operating Standards - Implying an Association with Public Law Enforcement Prohibited.

(1) No armored car company shall use any name which implies intentionally or otherwise that the company is connected or associated with any public law enforcement agency.

(2) No armored car company shall permit the use of the words "special police", "special officer", "cop", or any other words of a similar nature whether used orally or appearing in writing or on any uniform, badge, or cap.

(3) No person licensed under this chapter shall use words or designations which would cause a reasonable person to believe he is associated with a public law enforcement agency.

R156-63b-609. Operating Standards - Proper Identification of Armored Car Security Officers.

All armored car security officers shall carry a valid security license together with a government-issued identification card or a current state-issued driver license whenever performing the duties of an armored car security officer and shall exhibit said license and identification upon request.

R156-63b-610. Operating Standards - Operational Procedures Manual.

(1) Each armored car company shall develop and maintain an operational procedures manual which includes the following topics:

(a) detaining or arresting;

(b) restraining, detaining, and search and seizure;

(c) felony and misdemeanor definitions;

(d) observing and reporting;

(e) ingress and egress control;

(f) natural disaster preparation;

(g) alarm systems, locks, and keys;

(h) radio and telephone communications;

(i) crowd control;

(j) public relations;

(k) personal appearance and demeanor;

(l) bomb threats;

(m) fire prevention;

(n) mental illness;

(o) supervision;

(p) criminal justice system;

(q) code of ethics for armored car security officers;

(r) sexual harassment in the workplace; and

(s) hazardous chemical release.

(2) The operations and procedures manual shall be immediately available to the Division upon request.

R156-63b-611. Operating Standards - Display of License.

The license issued to an armored car company shall be prominently displayed in the company's principal place of business and a copy of the license shall be displayed prominently in all branch offices.

R156-63b-612. Operating Standards - Notification of Criminal Arrest, Charge, Indictment, or Conviction - Notification of On-Duty Firearm Discharge.

(1) In accordance with Subsection 58-63-302(4):

(a) A licensed armored car security officer shall notify the licensee's employing armored car company, or if none, shall notify the Division, within 72 hours of being arrested, charged, indicted, or convicted for:

(i) any criminal offense above the level of a Class C misdemeanor;

(ii) any offense set forth in:

(A) 18 U.S.C. Chapter 44, 922(g)1-9, concerning restrictions on firearms and ammunition transportation by certain persons;

(B) Section 76-10-503, concerning restrictions on possession, purchase, transfer, or ownership of dangerous weapons by certain persons;

(C) Subsections 58-63-302(4)(c), concerning a felony, a misdemeanor involving moral turpitude, or a crime that when considered with the duties and responsibilities of an armored car security officer by the Division and the Board indicates that the best interests of the public are not served by granting the license; or

(D) Subsection R156-63b-302g(1), concerning certain potentially disqualifying criminal offenses.

(b) An armored car company shall notify the Division within 72 hours of receiving notification, or becoming aware, of any arrest, charge, indictment, or conviction of any of its licensed employees under this Subsection (1).

(c) Notification under this Subsection (1)(b) shall be in writing, and include:

(i) the employee's name;

(ii) the name of the court or arresting agency, if applicable;

(iii) the court or agency case number or similar case identifier;

(iv) the date of the arrest, charge, indictment, or conviction; and

(v) the nature of the criminal offense or violation.

(2) In accordance with Subsection 58-63-302(4) and 58-1-202(1)(d), the following notice and appearance standards shall apply to an on-duty discharge of a firearm by an armored car security officer:

(a) Within 24 hours of the on-duty discharge, the armored car security officer shall notify the officer's employing armored car company, or if none, then the armored car security officer shall notify the Division.

(b) Within 72 hours of receiving notification, or becoming aware, of an on-duty firearm discharge by its employee, the employing armored car company shall notify the Division.

(c) Notification under this Subsection (2) shall be in writing, and include:

(i) the employee's name;

(ii) the date of the firearm discharge;

(iii) the nature of the firearm discharge; and

(iv) the physical location of the firearm discharge.

(d) The Security Services Licensing Board shall require a mandatory appearance before the Board by the qualifying agent over that officer, to review the company policy and procedure for dealing with an on-duty discharge.

KEY: licensing, security guards, armored car security officers, armored car company

December 11, 2017 58-1-106(1)(a)
Notice of Continuation May 15, 2018 58-1-202(1)(a)
58-63-101

R277. Education, Administration.
R277-104. ADA Complaint Procedure.
R277-104-1. Definitions.

A. "ADA" means the Americans with Disabilities Act, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of such disability, 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 this or any such entity.

B. "The ADA Coordinator" means the designee of the Superintendent, who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities who are not USOE or USOR employees in accordance with the Americans with Disabilities Act, or provisions of this rule.

C. "Days" means calendar days.

D. "Disability" means, with respect to an individual disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual consistent with the Americans with Disabilities Act, 42 U.S.C. 12201.

E. "Executive Director" means the Executive Director of the Utah State Office of Rehabilitation.

F. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

G. "Individual with a disability" (hereinafter individual) means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities. This rule is directed at non-employees, including all types and periods of employment, of the Board, the USOE or the USOR.

H. "Superintendent" means the State Superintendent of Public Instruction.

I. "USOE" means the Utah State Office of Education.

J. "USOR" means the Utah State Office of Rehabilitation.

R277-104-2. Authority and Purpose.

A. This rule is authorized pursuant to 28 CFR 35.107 which adopts, defines, and publishes complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans with Disabilities Act, as amended.

B. The purpose of this rule is to establish USOE and USOR procedures for non-USOE, non-USOR and non-Board employees to file complaints under the federal ADA law and to provide appropriate classification of the records of complaints and appeals.

C. No qualified individual with a disability, by reason of such disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the USOE or USOR, or be subjected to discrimination by the USOE or USOR.

R277-104-3. Filing of Complaints.

A. The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but not later than 30 days from the date of the alleged act of discrimination.

B. The complaint shall be filed with the USOE's ADA Coordinator in writing or in another format reasonable for the individual and the USOE or USOR.

C. Each complaint shall:

(1) include the individual's name and address;

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

(3) describe the USOE's or USOR's alleged

discriminatory action in sufficient detail to inform the USOE or USOR of the nature and date of the alleged violation;

(4) describe the action and accommodation desired; and

(5) be signed by the individual or by his legal representative.

R277-104-4. Investigation of Complaint.

A. The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Section 3(C) of this rule if it is not made available by the individual.

B. When conducting the investigation, the coordinator may seek assistance from the USOE's and USOR's legal, human resource, budget, and State Risk Management staff in determining what action, if any, shall be taken on the complaint.

R277-104-5. ADA Coordinator Recommendation.

A. Within 30 days, the ADA Coordinator shall make a recommendation outlining what action, if any, shall be taken by the USOE or USOR on the complaint to the Superintendent, Executive Director, or both depending upon the circumstances of the complaint.

B. If the ADA Coordinator does not make a recommendation to the Superintendent within 30 days, the ADA Coordinator shall notify both the complainant and the Superintendent that the decision is delayed and provide a date certain for the investigation recommendation to be provided.

R277-104-6. Superintendent or the Executive Director or Both Review and Decision.

A. The Superintendent shall review the recommendation of the ADA Coordinator and make a final decision about action to be taken, if any, by the USOE or USOR.

B. The Superintendent shall provide a written decision to the complainant no more than 10 working days from the receipt of the ADA Coordinator's recommendation.

C. In making the decision, the Superintendent shall consult with the Executive Director if necessary and may discuss the investigation with the ADA Coordinator or other USOE or USOR employees, may gather additional information and interview other individuals with relevant information or expertise and shall give appropriate deference to the ADA Coordinator's fact finding and review of information.

D. The Superintendent's decision is the final USOE and USOR administrative decision regarding the complaint.

(1) If the complaint and recommendation is solely about USOR services or facilities, the Superintendent shall consult with the Executive Director in making the decision.

(2) If the complaint and decision include USOE actions or facilities only, the Superintendent shall make the final administrative decision.

R277-104-7. Classification of Records.

A. The investigative record of each complaint and all written records produced or received as part of such investigations, recommendations, or actions, shall be classified as protected under Section 63G-2-305, until the Superintendent issues the decision.

B. Any portions of the record which pertain to individual's medical condition shall remain classified as private, as defined under Section 63G-2-302, or controlled, as defined in Section 63G-2-304. All other information gathered as part of the complaint record shall be classified as protected information.

C. The final written decision of the Superintendent shall be public information.

R277-104-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to the individuals under Section 67-19-32; the Federal ADA Complaint Procedures (28 CFR Subpart F, beginning with Part 35.170, 1992 edition); or any other Utah state or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: complaints, disabled persons
June 7, 2012 **28 CFR 35.107**
Notice of Continuation May 11, 2018

R277. Education, Administration.
R277-107. Educational Services Outside of Educator's Regular Employment.
R277-107-1. Definitions.

A. "Activity sponsor" means a private or public individual or entity that employs an employee in any program in which public school students participate.

B. "Board" means the Utah State Board of Education.

C. "Extracurricular activity" means an activity for students recognized or sanctioned by an LEA which may supplement or compliment, but is not part of, the LEA's required program or regular curriculum.

D. "LEA" or "local education agency" means a school district, charter school or, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

E. "Public education employee (employee)" means a person who is employed on a full-time, part-time, or contract basis by any LEA.

F(1) "Private, but public education-related activity" means any type of activity for which:

(a) a public education employee receives compensation; and

(b) the principle clients are students at the school where the employee works.

(2) "Private, but public education-related activity" may include:

(a) tutoring;
(b) lessons;
(c) clinics;
(d) camps; or
(e) travel opportunities.

R277-107-2. 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-1-402.5 which directs the Board to make rules that establish basic ethical conduct standards for employees who provide public education-related services or activities outside of their regular employment, and 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide direction and parameters for employees who provide or participate in public education-related services or activities outside of their regular public education employment.

C. The Board recognizes that public school educators have expertise and training in various subjects and skills and should have the opportunity to enrich the community with their skills and expertise while still respecting the unique public trust that public educators have.

R277-107-3. LEA Responsibility.

An LEA may have policies providing for the following, consistent with the provisions of this R277-107 and the law:

A. sponsorship or specific non-sponsorship of extracurricular activities; or

B. opportunities for students.

R277-107-4. LEA Relationship to Activities Involving Educators.

A(1) An LEA may sponsor extracurricular activities or opportunities for students.

(2) Extracurricular activities are subject to Utah's school fee laws and rules, fee waivers, procurement and all other applicable laws and rules.

B. An employee that participates in a private, but public education-related activity, is subject to the following:

(1) the employee's participation in the activity shall be separate and distinguishable from the employee's public employment as required by this rule;

(2) the employee may not, in promoting the activity:

(a) contact students at the public schools, except as permitted by this rule; or

(b) use education records, resources, or information obtained through the employee's public employment unless the records, resources, or information are readily available to the general public;

(3) the employee may not use school time to discuss, promote, or prepare for:

(a) a private activity; or

(b) a private, but public education-related activity;

(4) the employee may:

(a) offer private, but public education-related services, programs or activities to students provided that they are not advertised or promoted by the employee during school time;

(b) discuss a private, but public education-related activity with students or parents outside of the classroom and the regular school day;

(c) use student directories or online resources which are available to the general public; and

(d) use student or school publications in which commercial advertising is allowed, to advertise and promote the activity.

C. Credit and participation in a public school program or activity may not be conditioned on a student's participation in such activities as clinics, camps, private programs, or travel activities not equally and freely available to all students.

D. No employee may state or imply to any person that participation in a regular school activity or program is conditioned on participation in a private activity.

E. No provision of this rule shall preclude a student from requesting or petitioning a teacher or school for approval of credit based on an extracurricular educational experience consistent with LEA policy.

R277-107-5. Advertising.

A. An employee may purchase advertising space to advertise an activity or service in a publication, whether or not sponsored by the public schools, that accepts paid or community advertising.

B. The advertisement may identify the activity, participants, and leaders or service providers by name, provide non-school contact information, and provide details of the employee's employment experience and qualification.

C. Posters or brochures may be posted or distributed in the same manner as could be done by a member of the general public, advertising an employee's services, consistent with LEA policy.

D. Unless an activity is sponsored by the LEA, the advertisement shall state clearly and distinctly that the activity is NOT sponsored by the LEA.

E. The name of an LEA may not be used in the advertisement except as the LEA's name may relate to the employee's employment history or if school facilities have been rented for the activity.

F. If the name of the employee offering the service or participating in the activity is stated in any advertisement sent to the employee's students, or is posted, distributed, or otherwise made available in the employee's school, the advertisement shall state that the activity is not school sponsored.

R277-107-6. Public Education Employees.

A. Public education employees shall comply with Title 63G, Chapter 6a, Utah Procurement Code.

B. Public education employees shall comply with Title 67, Chapter 16, Public Officers' and Employees' Ethics Act.

C. Except as provided in R277-107-6D, consistent with

Section 63G-6a-2404 and Title 67, Chapter 16, Public Officers' and Employees' Ethics Act, a public education employee may not solicit or accept gifts, incentives, honoraria, or stipends from private sources:

(1) for the employee's personal or family use;

(2) in exchange for payment for advertising placed by the employee; or

(3) in exchange for payment for securing agreements, contracts or purchases between private company and public education employer, programs or teams.

D. A public education employee may accept a gift, incentive, honoraria, or stipend from a private source if the gift, incentive, honoraria, or stipend is:

(1)(a) of nominal value and is for birthdays, holidays, or teacher appreciation occasions; or

(b) a public award in recognition of public service; and

(2) consistent with school or LEA policies and the Utah Public Employees Ethics Act.

E. A public education employee who holds a Utah educator license shall be subject to license discipline (including license suspension or revocation) for violation of this R277-107 and applicable provisions of Utah law.

R277-107-7. Public Education Employee/Sponsor Agreements or Contracts.

A. An agreement between an employee and an activity sponsor shall be signed by the employee and include a statement that reads substantially: I understand that this activity is not sponsored by an LEA, that my responsibilities to the activity sponsor are outside the scope of and unrelated to any public duties or responsibilities I may have as a public education employee, and I agree to comply with laws and rules of the state and policies regarding my advertising and participation.

B. An employee shall provide the LEA business administrator, superintendent, or charter school director with a signed copy of all contracts between the employee and a private activity sponsor.

C. An LEA shall maintain a copy of a contract described in R277-107-7B in the employee's personnel file.

KEY: school personnel
August 26, 2015 **Art X Sec 3**
Notice of Continuation May 11, 2018 **53A-1-402.5**
53A-1-401(3)

R277. Education, Administration.
R277-400. School Facility Emergency and Safety.
R277-400-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Emergency" means a natural or man-made disaster, accident, act of war, or other circumstance which could reasonably endanger the safety of school children or disrupt the operation of the school.

C. "Emergency Preparedness Plan" means policies and procedures developed to promote the safety and welfare of students, protect school property, or regulate the operation of schools during an emergency occurring within an LEA or a school.

D. "Emergency Response Plan" means a plan developed by an LEA or school to prepare and protect students and staff in the event of school violence emergencies.

E. "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.

R277-400-2. 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, and Subsection 53E-3-401(4) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish general criteria for both Emergency Preparedness and Emergency Response plans required of schools and LEAs in the event of school emergencies as defined in R277-400-1B. This rule also directs LEAs to develop prevention, intervention, and response measures and to prepare staff and students to respond promptly and appropriately to school emergencies.

R277-400-3. Establishing LEA Emergency Preparedness and Emergency Response Plans.

A. By July 1 of each year, each LEA shall certify to the Board that the LEA emergency preparedness and emergency response plan has been practiced at the school level, presented to and reviewed by its teachers, administrators, students and their parents, local law enforcement, and public safety representatives consistent with Subsection 53G-4-402(18).

B. As a part of an LEA's annual application for state or federal Safe and Drug Free School funds, the LEA shall reference its Emergency Response plan.

C. The plan(s) shall be designed to meet individual school needs and features. An LEA may direct schools within the LEA to develop and implement individual plans.

D. The LEA shall appoint a committee to prepare plan(s) or modify existing plan(s) to satisfy this rule. The committee shall consist of appropriate school and community representatives which may include school and LEA administrators, teachers, parents, community and municipal governmental officers, and fire and law enforcement personnel. The committee shall include governmental agencies and bodies vested with responsibility for directing and coordinating emergency services on local and state levels.

E. Each LEA shall review the plan(s) at least once every three years.

F. The Board shall develop Emergency Response Plan models under Subsection 53G-4-402(18)(c).

R277-400-4. Notice and Preparation.

A. Each school shall file a copy of the plan(s) with the LEA superintendent or charter school director.

B. At the beginning of each school year, the LEA or school shall send or provide online a written notice to parents and staff of relevant sections of LEA and school plans which are applicable to that school.

C. Each school shall designate an Emergency Preparedness/Emergency Response week prior to April 30 of each school year. Community, student, teacher awareness, or training, such as those outlined in R277-400-7 and 8, would be appropriate activities offered during the week.

D. Each school's emergency response plan shall include procedures to notify students, to the extent practicable, who are off campus at the time of a school violence emergency consistent with Subsection 53G-4-402(18)(b)(v).

R277-400-5. Plan(s) Content--Educational Services and Student Supervision and Building Access.

A. An LEA's plan shall contain measures which assure that school children receive reasonably adequate educational services and supervision during school hours during an emergency and for education services in an extended emergency situation.

(1) Evacuation procedures shall assure reasonable care and supervision of children until responsibility has been affirmatively assumed by another responsible party.

(2) LEAs or schools shall not release children younger than ninth grade age at other than regularly scheduled release times unless the parents or other responsible persons have been notified and have assumed responsibility for the children. LEAs or schools may release older children without such notification if a school official determines that the children are reasonably responsible and notification is not practicable.

B. LEA plans, as determined by the LEA board, shall address access to public school buildings by specific groups: students, community members, lessees, invitees, and others.

(1) Access planning may include restricted access for some individuals.

(2) Plans shall address building access during identified time periods.

(3) Plans shall address possession and use of school keys by designated administrators and employees.

C. An LEA's or school's plan shall identify resources and materials available for emergency training for LEA employees.

R277-400-6. Emergency Preparedness Training for School Occupants.

A. The plan shall contain measures which assure that school children receive emergency preparedness training.

B. LEAs or schools shall provide school children with training appropriate to their ages in rescue techniques, first aid, safety measures appropriate for specific emergencies, and other emergency skills.

C. Emergency drills:

(1) During each school year, elementary schools shall conduct emergency drills at least once each month during school time.

(2) LEAs shall alternate one of the following practices or drills with required fire drills:

(a) shelter in place;
(b) earthquake;
(c) lock down for violence;
(d) bomb threat;
(e) civil disturbance;
(f) flood;
(g) hazardous materials spill;
(h) utility failure;
(i) wind or other types of severe weather;
(j) shelter and mass care for natural and technological hazards; or
(k) an emergency drill appropriate for the particular school location.

D. Fire drills:

(1) Fire drills shall include the complete evacuation of all persons from the school building or the portion of the building used for educational purposes. LEAs or schools may make an exception for the staff member responsible for notifying the local fire emergency contact and handling emergency communications.

(2) All schools shall have one fire drill in the first 10 days of the regular school year.

(3) Elementary schools (grades K-6) shall have at least one fire drill every other month throughout the school year.

(4) Secondary schools (grades 7-12) shall have at least one fire drill every two months throughout the school year.

(5) Secondary schools (grades 7-12) shall have one fire drill in the first 10 days of the calendar year.

(6) When required by the local fire chief, the LEA shall notify the local fire department prior to each fire drill.

(7) When a fire alarm system is provided, an LEA shall initiate by activation of the fire alarm system.

E. Schools that include both elementary and secondary grades in the school shall comply, at a minimum, with the elementary emergency drill requirements.

R277-400-7. Emergency Response Review and Coordination.

A. Each LEA shall provide an annual training for LEA and school building staff on employees' roles, responsibilities and priorities in the emergency response plan.

B. LEAs shall require schools to conduct at least one annual drill for school emergencies in addition to drills required under R277-400-6C(2) which shall be held no later than October 1 annually.

C. LEAs shall require schools to review existing security measures and procedures within their schools and make adjustments as needs demonstrate and funds are available.

D. LEAs shall develop standards and protections to the extent practicable for participants and attendees at school-related activities, with special attention to those off school property.

E. LEAs and schools shall coordinate with local law enforcement and other public safety representatives in appropriate drills for school safety emergencies.

R277-400-8. Prevention and Intervention.

A. LEAs shall provide schools, as part of their regular curriculum, comprehensive violence prevention and intervention strategies such as resource lessons and materials on anger management, conflict resolution, and respect for diversity and other cultures.

B. As part of the violence prevention and intervention strategies, schools may provide age-appropriate instruction on firearm safety including appropriate steps to take if a student sees a firearm or facsimile in school.

C. LEAs shall also develop, to the extent resources permit, student assistance programs such as care teams, school intervention programs, and interagency case management teams.

D. In developing student assistance programs, LEAs should coordinate with and seek support from other state agencies and the Utah State Office of Education.

R277-400-9. Cooperation With Governmental Entities.

A. As appropriate, an LEA may enter into cooperative agreements with other governmental entities to assure proper coordination and support during emergencies.

B. LEAs shall cooperate with other governmental entities, as reasonably feasible, to provide emergency relief services. The plan(s) shall contain procedures for assessing and providing school facilities, equipment, and personnel to meet public emergency needs.

C. The plan(s) developed under R277-400-5 shall delineate communication channels and lines of authority within the LEA, city, county, and state.

(1) the Board, through its superintendent, is the chief officer for emergencies involving more than one LEA, or for state or federal assistance;

(2) the local board, through its superintendent, is the chief officer for LEA emergencies;

(3) the local charter school board through its director is the chief officer for local charter school emergencies; and

(4) In the event of an emergency, school personnel shall maintain control of public school students and facilities during the regular school day or until students are released to parents or legal guardians.

R277-400-10. Fiscal Accountability.

The plan(s) under R277-400-5 shall address procedures for recording LEA funds expected for emergencies, for assessing and repairing damage, and for seeking reimbursement for emergency expenditures.

R277-400-11. School Carbon Monoxide Detection.

A. New educational facilities shall have a carbon monoxide detection system installed consistent with International Fire Code (IFC), Chapter 9, Sections 908.7.2.1 through 908.7.2.6.

B. Existing facilities shall have a carbon monoxide detection system installed consistent with International Fire Code (IFC), Chapter 11, Section 1103.9.

C. Where required, LEAs shall provide a carbon monoxide detection system where a fuel-burning appliance, a fuel-burning fireplace, or a fuel-burning forced air furnace is present consistent with IFC 908.7.2.1.

D. LEAs shall install each carbon monoxide detection system consistent with NFPA 720 and the manufacturer's instructions, and listed systems as complying with UL 2034 and UL 2075.

E. LEAs shall install each carbon monoxide detection system in the locations specified in NFPA 720.

F. A combination carbon monoxide/smoke detector is an acceptable alternative to a carbon monoxide detection system if the combination carbon monoxide/smoke detector is listed consistent with UL 2075 and UL 268.

G. Each carbon monoxide detection system shall receive primary power from the building wiring if the wiring is served from a commercial source. If primary power is interrupted, a battery shall provide each carbon monoxide detection system with power. Wiring shall be permanent and without a disconnecting switch other than that required for over-current protection.

H. LEAs shall maintain all carbon monoxide detection systems consistent with IFC 908.7.2.5 and NFPA 720.

I. Performance-based alternative design of carbon monoxide detection systems is acceptable consistent with NFPA 720, Section 6.5.4.5.

J. LEAs shall monitor carbon monoxide detection systems remotely consistent with NFPA 720.

K. LEAs shall replace a carbon monoxide detection system that becomes inoperable or begins to produce end-of-life signals.

KEY: emergency preparedness, disasters, safety, safety education

October 9, 2014 Art X Sec 3

Notice of Continuation February 13, 2014 53E-3-401(4)

53G-4-402(1)(b)

R277. Education, Administration.
R277-401. Child Abuse-Neglect Reporting by Education Personnel.
R277-401-1. 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 62A-4a-403, which requires individuals to report suspected child abuse or neglect to appropriate authorities; 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 clarify:

(a) the Board's support for taking early protective measures towards allegations of child abuse by education personnel whose daily contact with children places them in a unique position to identify and refer suspected cases of abuse or neglect; and

(b) the role of all school employees in reporting and participating in investigations of suspected child abuse and neglect.

R277-401-2. Definitions.

(1) "Abused child" has the same meaning as defined in Subsection 78A-6-105(2).

(2) "DCFS" means the Utah Division of Child and Family Services.

(3) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(4) "Neglected child" has the same meaning as defined in Subsection 78A-6-105(36).

R277-401-3. Policies and Procedures.

(1) Each LEA shall develop and adopt a child abuse-neglect policy, which shall include, at a minimum, the following provisions:

(a) an LEA employee shall cooperate with social service and law enforcement agency employees authorized to investigate charges of child abuse and neglect, including:

(i) allowing appropriate access to students;

(ii) allowing authorized agency employees to interview children consistent with DCFS and local law enforcement protocols;

(iii) making no contact with the parents or legal guardians of children being questioned by DCFs or law enforcement authorities; and

(iv) maintaining appropriate confidentiality;

(b) an LEA shall preserve the anonymity of those reporting or investigating child abuse or neglect; and

(c)(i) any school employee who knows or reasonably believes that a child has been neglected, or physically or sexually abused, shall immediately notify the nearest peace officer, law enforcement agency, or DCFS.

(ii) If a school employee reasonably suspects child abuse or neglect, it is not the responsibility of the school employee to prove that the child has been abused or neglected, or determine whether the child is in need of protection.

(iii) Investigation by education personnel prior to submitting a report should not go beyond that necessary to support a reason to believe that a reportable problem exists.

(2) An LEA policy may direct a school employee to notify a school official of suspected neglect or abuse, but any such requirement shall clarify that notifying a school official does not satisfy the employee's personal duty to report to law enforcement or DCFS.

(3) Persons making reports or participating in an investigation of alleged child abuse or neglect in good faith are immune from any civil or criminal liability that otherwise might arise from those actions, as provided by law.

(4) An LEA shall annually notify an employee of the employee's legal responsibility to report suspected child abuse or neglect to appropriate authorities as described in Section 62A-4a-403.

KEY: child abuse, employees, reporting, students
September 21, 2017 Art X Sec 3
Notice of Continuation July 19, 2017 53E-3-401(4)

R277. Education, Administration.
R277-402. School Readiness Initiative.
R277-402-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Economically disadvantaged status" means public education students who satisfy criteria of Section 53F-6-301(2).

C. "Eligible LEA," for purposes of this rule, means an LEA that meets requirements of Subsection 53F-6-301(4).

D. "LEA" means local education agency, including local school boards/ public school districts and charter schools.

E. "School Readiness Board" means the board established under Section 53F-6-302.

F. "USOE" means the Utah State Office of Education.

R277-402-2. 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, Subsection 53F-6-305(13) that requires the Board to make rules to effectively administer and monitor the high quality school readiness grant program, and Subsection 53E-3-401(4) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide for appointments of School Readiness Board members by public education entities, provide timelines for USOE review and Board approval of proposals for the High Quality School Readiness Programs, and provide for program monitoring, evaluation and reporting as required by law.

R277-402-3. Board and Board-related Responsibilities.

A. The Board shall appoint one member to the School Readiness Board.

B. The Chair of the State Charter School Board shall appoint one member of the School Readiness Board.

C. The Board shall solicit proposals from eligible LEAs on the following timeline:

(1) the USOE shall convene a committee (expert committee) composed of members with early childhood experience or expertise;

(2) eligible LEAs shall submit proposals to the USOE by June 1 annually;

(3) the expert committee shall use a USOE-developed rubric to review proposals from eligible LEAs and make recommendations to the Board for funding based on point scores of applications before July 1 annually; and

(4) the Board shall make recommendations to the School Readiness Board before August 1 annually.

D. LEA grant recipients shall provide reports annually to the Board, consistent with Subsection 53F-6-305(11).

E. The Board shall share information with the School Readiness Board for the School Readiness Board's report to the Education Interim Committee, consistent with Section 53F-6-310.

F. The Board may adjust application timelines from year to year as necessary.

R277-402-4. LEA Responsibilities.

A. LEAs shall submit proposals consistent with the USOE application and the timeline in R277-402-3(2).

B. LEAs that receive school readiness grants, shall assign each student that participates in the school readiness initiative a unique student identifier, in consultation with the USOE, before September 20 annually.

C. LEAs that receive school readiness grants shall report annually to the Board and the School Readiness Board.

D. LEA grant recipients shall cooperate with Board and School Readiness Board requests for data to satisfy monitoring and reporting requirements.

KEY: schools, readiness, initiatives, grants
October 9, 2014 **Art X Sec 3**
53F-6-305(3)
53E-3-401(4)

R277. Education, Administration.
R277-403. Student Reading Proficiency and Notice to Parents.
R277-403-1. 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) Section 53F-2-503, which directs the Board to make rules to implement the K-3 Reading Improvement Program and to require progress reports from each LEA documenting the LEA's satisfaction with its reading goals.

(2) The purpose of this rule is:

(a) to designate assessments required in Section 53E-4-307;

(b) to provide definitions of terms used in Section 53E-4-307;

(c) to provide necessary testing and reporting windows and timelines; and

(d) to require submission by LEAs of student reading assessment data to the Board.

R277-403-2. Definitions.

(1) "Benchmark reading assessment" means the Dynamic Indicators of Basic Early Literacy Skills or DIBELS assessment.

(2) "Competency" means a demonstrable acquisition of a specified knowledge, skill, or ability that has been organized into a hierarchical arrangement, leading to higher levels of knowledge, skill, or ability.

(3) "Notification to parents" means notice by any reasonable means, including electronic notice, notice by telephone, written notice, or personal notice.

(4) "Reading below grade level" means that a student:

(a) performs below the benchmark score on the benchmark reading assessment; and

(b) requires additional instruction beyond that provided to typically-developing peers in order to close the gap between the student's current level of reading achievement and that expected of all students in that grade.

(5) "Reading remediation interventions" means reading instruction or reading activities, or both, given to students in addition to their regular reading instruction, during another time in the school day, outside regular instructional time, or in the summer, which is focused on specific needs as identified by reliable and valid assessments.

(6) "Utah eTranscript and Record Exchange" or "UTREx" means the same as that term is defined in Section R277-404-2.

R277-403-3. Superintendent Responsibilities.

(1) The Superintendent shall provide procedures for LEAs to determine expected reading competencies of students in grade 1, grade 2, and grade 3.

(2) To the extent that funds are available, the Superintendent shall distribute the diagnostic reading assessment tool designated in Section 53F-4-201 to LEAs.

R277-403-4. LEA Responsibilities - Timelines.

(1) An LEA shall administer the benchmark reading assessments in grade 1, grade 2, and grade 3 within the following testing windows:

(a) the first benchmark before September 30;

(b) the second benchmark between December 1 and January 31; and

(c) the third benchmark between the middle of April and June 15.

(2) An LEA shall report benchmark reading assessment results to the Superintendent by:

(a) October 30;

(b) the last day of February; and

(c) June 30.

(3) If a benchmark assessment or supplemental reading assessment indicates a student is reading below grade level, the LEA shall implement the notification and reading remediation interventions described in Section 53E-4-307.

(4) An LEA shall report benchmark reading assessment results to parents of students in grade 1, grade 2, and grade 3 by:

(a) October 30;

(b) the last day of February; and

(c) June 30.

(5) An LEA shall also report to parents the student's reading level at the end of grade 3.

(6) An LEA shall submit to UTREx the following information from the benchmark assessment:

(a) whether or not each student is reading on grade level at each administration of the assessment;

(b) whether or not each student received reading intervention; and

(c) the composite score for each student at each administration of the assessment.

(7) An LEA that selects the reading assessment technology shall use the assessment consistent with Board directives.

KEY: students, reading, competency

October 11, 2016	**Art X, Sec 3**
Notice of Continuation June 10, 2013	**53E-4-307**
	53E-3-401(4)

R277. Education, Administration.
R277-406. K-3 Reading Improvement Program and the State Reading Goal.
R277-406-1. 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 in accordance with its responsibilities; and

(c) Subsection 53F-2-503(14)(a), which directs the Board to develop rules for implementing the K-3 Reading Improvement Program.

(2) The purpose of this rule is to outline the responsibilities of the Superintendent and LEAs for implementation of Section 53F-2-503, K-3 Reading Improvement Program, and Section 53E-4-306, State Reading Goal-Reading Achievement Plan.

R277-406-2. Definitions.

(1) "Benchmark assessment" means an assessment that:

(a) is given three times each year at:

(i) the beginning of the school year;

(ii) the midpoint of the school year; and

(iii) the end of the school year;

(b) gives teachers information to:

(i) plan appropriate instruction; and

(ii) evaluate the effects of instruction; and

(c) provides data about the extent to which students are prepared to be successful on the end of year Criterion Referenced Test.

(2) "Grade level in reading" means that a student gains adequate meaning from independently reading texts designed for instruction at that grade level.

(3) "LEA plan" means the K-3 Reading Achievement Program Plan submitted by a public school district or a charter school.

(4) "Midpoint of school year" means January 31 of the school year.

(5) "Program" means the K-3 Reading Improvement Program.

(6) "Program money" means the same as that term is defined in Section 53F-2-503.

(7) "School plan" means the K-3 Reading Achievement Program Plan submitted by a public school or a charter school.

R277-406-3. Board/Superintendent Responsibilities.

(1) The Board shall approve a program plan submitted by an LEA pursuant to Subsection R277-406-4(1).

(2) In accordance with Subsection 53F-2-503, the uniform standard for a growth goal is that the goal:

(a) signifies the percentage of third grade students who made typical, above typical, or well-above typical progress from the beginning of the year to the end of the year in third grade as measured by the benchmark assessment; and

(b) sets the target percentage of third graders making typical progress or better at 47.83 percent.

(3) The Superintendent shall use the information provided by an LEA described in Subsection R277-406-4(3) to determine the progress of each student in grade 3 within the following categories:

(i) well-above typical;

(ii) above typical;

(iii) typical;

(iv) below typical; or

(v) well-below typical.

R277-406-4. Responsibilities of LEAs.

(1) To receive Program money, a school with K-3 grade levels shall submit a school plan to its local board or charter board, and each LEA shall submit an LEA plan to the Board for reading proficiency improvement that incorporates the components described in Subsections 53E-4-306(3)(d) and 53F-2-503(4)(a).

(2) The school plan shall be created:

(a) for a school in a district, under the direction of the school community council;

(b) for a charter school, under the direction of the charter school governing board.

(3)(a) An LEA shall complete the report required by Subsections 53F-2-503(13)(a) and 53F-2-503(14)(b)(i) within timelines set by the Superintendent.

(b) The report shall include:

(i) the information described in Subsection 53F-2-503(16)(a) for kindergarten, first grade, second grade, and third grade, including information from the previous five years; and

(ii) the composite scores on the benchmark assessment of students in grades 1 through 3 to the Superintendent:

(A) through UTREx; and

(B) on or before July 1 of each year.

(4) An LEA that loses Program money due to a failure to meet its goal of increasing the percentage of third grade students at grade level may reapply for the Program money upon submission of a revised K-3 Reading Improvement Plan after one year of not receiving Program money.

KEY: reading, improvement, goals

October 8, 2015	**Art X Sec 3**
Notice of Continuation June 10, 2013	**53E-3-401(4)**
	53F-2-503(14)(a)

R277. Education, Administration.
R277-407. School Fees.
R277-407-1. Authority and Purpose.

(1) This rule is authorized under:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Article X, Section 2 of the Utah Constitution, which provides that:

(i) public elementary schools shall be free; and

(ii) secondary schools shall be free, unless the Legislature authorizes the imposition of fees;

(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; and

(d) Subsection 53G-7-503(2), which authorizes the Board to adopt rules regarding student fees.

(2) This rule also serves to comply with the Permanent Injunction issued in Doe v. Utah State Board of Education, Civil No. 920903376 (3rd District 1994).

(3) The purpose of this rule is to:

(a) permit the orderly establishment of a system of reasonable fees;

(b) provide adequate notice to students and families of fees and fee waiver requirements; and

(c) prohibit practices that would exclude those unable to pay from participation in school-sponsored activities.

R277-407-2. Definitions.

(1)(a) "Fee" means any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods.

(b) An admission fee, transportation charge, or similar payment to a third party is a fee if the charge is made in connection with an activity or function sponsored by or through a school.

(c) For purposes of this rule, a charge related to the National School Lunch Program is not a fee.

(2) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(3) "Optional project" means a non-mandatory project chosen and retained by a student, for which the student covers the cost or provides the materials, in lieu of, or in addition to a mandatory classroom project otherwise available to the student which would require only school-supplied materials.

(4)(a) "Provision in lieu of fee waiver" means an alternative to fee payment or waiver of fee payment.

(b) A plan under which fees are paid in installments or under some other delayed payment arrangement is not a waiver or provision in lieu of fee waiver.

(5)(a) "Student supplies" means items which are the personal property of a student which, although used in the instructional process, are also commonly purchased and used by persons not enrolled in the class or activity in question and have a high probability of regular use in other than school-sponsored activities.

(b) "Student supplies" include:

(i) pencils;

(ii) paper;

(iii) notebooks;

(iv) crayons;

(v) scissors;

(vi) basic clothing for healthy lifestyle classes; and

(vii) similar personal or consumable items over which a student retains ownership.

(c) "Student supplies" does not include items listed in Subsection (5)(b) for which specific requirements such as brand, color, or a special imprint are set in order to create a uniform appearance not related to basic function.

(6) "Supplemental Security Income for children with disabilities" or "SSI" means a benefit administered through the Social Security Administration that provides payments for qualified children with disabilities in low income families.

(7) "Temporary Assistance for Needy Families" or "TANF," means a program, formerly known as AFDC, which provides monthly cash assistance and food stamps to low-income families with children under age 18 through the Utah Department of Workforce Services.

(8) "Textbook" means a book, workbook, or materials similar in function, which are required for participation in a course of instruction.

(9) "Waiver" means a release from the requirement of payment of a fee and from any provision in lieu of fee payment.

R277-407-3. Classes and Activities During the Regular School Day.

(1) No fee may be charged in kindergarten through sixth grades for:

(a) materials;

(b) textbooks;

(c) supplies; or

(d) any class or regular school day activity, including assemblies and field trips.

(2) A school may charge textbook fees in grades seven through twelve.

(3)(a) Notwithstanding, Subsection (1), a school may charge fees to students in sixth grade if the student attends a school that includes any grades seven through twelve.

(b) If a school charges fees in accordance with Subsection (3)(a), the school shall annually provide notice to parents that the school will collect fees from sixth grade students and that the fees are subject to waiver.

(4) If a class is established or approved, which requires payment of fees or purchase of items in order for students to participate fully and to have the opportunity to acquire all skills and knowledge required for full credit and highest grades, the fees or costs for the class shall be subject to the fee waiver provisions of Rule R277-407-6.

(5)(a) A school may require a student at any grade level to provide materials or pay for an optional project, but a school may not require a student to select an optional project as a condition for enrolling in or completing a course.

(b) A school shall base mandatory course projects on experiences that are free to all students.

(6)(a) A school shall provide student supplies for k-6 students.

(b) A school may require a student to replace student supplies provided by the school, which are lost, wasted, or damaged by the student through careless or irresponsible behavior.

(7)(a) An elementary school or teacher may provide to parents or guardians a suggested list of student supplies.

(b) A suggested list provided in accordance with Subsection (a) shall contain the express language in Subsection 53G-7-503(4)(c).

(8) A school may require a secondary student to provide student supplies, subject to the provisions of Section R277-407-6.

R277-407-4. School Activities Outside of the Regular School Day.

(1) A school may charge a fee, subject to the provisions of Section R277-407-6, in connection with any school-sponsored activity, which does not take place during the regular school day, regardless of the age or grade level of the student, if participation in the activity is voluntary and does not affect a student's grade or ability to participate fully in any

course taught during the regular school day.

(2) A fee related to an extracurricular activity may not exceed limits established by the LEA governing board.

(3) A school shall collect fees for school-sponsored activities consistent with LEA policies and state law.

R277-407-5. General Provisions.

(1) An LEA may not charge or assess a fee in connection with any class or school-sponsored or supported activity, including an extracurricular activity, unless the fee has been set and approved by the LEA's governing board and distributed in an approved fee schedule or notice in accordance with this rule.

(2)(a) An LEA governing board shall adopted a fee schedule and fee policies for the LEA at least once each year in a regularly scheduled public meeting.

(b) An LEA shall provide public notice in accordance with Title 52, Chapter 4, Open and Public Meetings Act and shall encourage public participation in the development of fee schedules and waiver policies.

(c) An LEA shall keep minutes of meetings during which fee and waiver policies are developed or adopted, together with copies of approved policies, in accordance with Section 52-4-203.

(3)(a) An LEA shall adopt procedures to reasonably ensure that the parent or guardian of each child who attends a school within the LEA receives written notice of all current and applicable fee schedules and fee waiver policies.

(b) An LEA policy shall include easily understandable procedures for obtaining a fee waiver and for appealing a denial of a fee waiver, as soon as possible prior to the time when fees become due.

(4) An LEA shall include a copy of the schedules and waiver policies with registration materials provided to potential or continuing students.

(5)(a) A school may not deny a present or former student receipt of transcripts or a diploma, nor may a school refuse to issue a grade for a course for failure to pay school fees.

(b) A school may impose a reasonable charge to cover the cost of duplicating or mailing transcripts and other school records.

(c) A school may not charge for duplicating or mailing copies of school records to an elementary or secondary school in which a former student is enrolled or intends to enroll.

(6) To preserve equal opportunity for all students and to limit diversion of money and school and staff resources from the basic school program, each LEA's fee policies shall be designed to limit student expenditures for school-sponsored activities, including expenditures for activities, uniforms, clubs, clinics, travel, and subject area and vocational leadership organizations, whether local, state, or national.

(7)(a) An LEA may solicit and accept a donation or contribution in accordance with the LEA's policies, but all such requests must clearly state that donations and contributions are voluntary.

(b) A donation is a fee if a student is required to make a donation in order to participate in an activity.

R277-407-6. Waivers.

(1) An LEA shall provide, as part of any fee policy or schedule, for adequate waivers or other provisions in lieu of fee waivers to ensure that no student is denied the opportunity to participate in a class or school-sponsored or supported activity because of an inability to pay a fee.

(2) An LEA shall waive textbook fees for eligible students in accordance with Subsection 53G-7-603(2).

(3) An LEA shall designate at least one person at an appropriate administrative level in each school to review and grant fee waiver requests.

(4) An LEA shall administer the process for obtaining a fee waiver or pursuing an alternative fairly, objectively, without delay, and in a manner that avoids stigma, embarrassment, undue attention, and unreasonable burdens on students and parents.

(5) An LEA may not treat a student receiving a fee waiver or provision in lieu of a fee waiver differently from other students.

(6) A school may not identify a student on fee waiver to students, staff members, or other persons who do not need to know.

(7)(a) An LEA shall ensure that a fee waiver or other provision in lieu of fee waiver is available to any student whose parent is unable to pay a fee.

(b) A school or LEA administrator shall verify fee waivers consistent with this rule.

(8) An LEA shall submit fee waiver compliance forms for each school consistent with Doe v. Utah State Board of Education, Civil No. 920903376 (3rd District 1994) that affirm compliance with the permanent injunction.

(9) An LEA shall adopt a policy for review of fee waiver requests which:

(a) gives parents the opportunity to review proposed alternatives to fee waivers;

(b) establishes a timely appeal process, which shall include the opportunity to appeal to the LEA or its designee; and

(c) suspends any requirement that a given student pay a fee during any period for which the student's eligibility for waiver is under consideration or during which an appeal of denial of a fee waiver is in process.

(10) The granting of waivers and provisions in lieu of fee waivers in an LEA may not produce significant inequities through unequal impact on individual schools.

(11) An LEA may pursue reasonable methods for collecting student fees, but may not, as a result of unpaid fees:

(a) exclude a student from school;

(b) refuse to issue a course grade; or

(c) withhold official student records, including written or electronic grade reports, diplomas or transcripts.

(12)(a) A school may withhold student records in accordance with Subsection 53G-8-212(2)(a).

(b) Notwithstanding Subsection (12)(a), a school may not withhold any records required for student enrollment or placement in a subsequent school.

(13) A school is not required to waive fees for class rings, letter jackets, school photos, or yearbooks, which are not required for participation in a class or activity.

(14) Expenditures for uniforms, costumes, clothing, or accessories, other than items of typical student dress, which are required for school attendance or participation in school activities, and expenditures for student travel as part of a school team, student group, or other school-approved trip, are fees requiring approval of the LEA, and are subject to the provisions of this section.

R277-407-7. Fee Waiver Eligibility.

(1) A student is eligible for fee waiver if an LEA receives verification that:

(a) based on family income, the student qualifies for free school lunch under United States Department of Agriculture child nutrition program regulations;

(b) the student to whom the fee applies receives SSI;

(c) the family receives TANF funding;

(d) the student is in foster care through the Division of Child and Family Services; or

(e) the student is in state custody.

(2) In lieu of income verification, an LEA may require

alternative verification under the following circumstances:

(a) If a student's family receives TANF, an LEA may require a letter of decision covering the period for which a fee waiver is sought from the Utah Department of Workforce Services;

(b) If a student receives SSI, an LEA may require a benefit verification letter from the Social Security Administration;

(c) If a student is in state custody or foster care, an LEA may rely on the youth in custody required intake form and school enrollment letter or both provided by a case worker from the Utah Division of Child and Family Services or the Utah Juvenile Justice Department.

(3) A school may grant a fee waiver to a student, on a case by case basis, who does not qualify for a fee waiver under Subsection (1), but who, because of extenuating circumstances is not reasonably capable of paying the fee.

R277-407-8. Fee Waiver Reporting Requirements.

(1) An LEA shall attach to its annual S-3 statistical report for inclusion in the State Superintendent of Public Instruction's annual report the following:

(a) a summary of:

(i) the number of students in the LEA given fee waivers;

(ii) the number of students who worked in lieu of a waiver; and

(iii) the total dollar value of student fees waived by the LEA;

(b) a copy of the LEA's fee and fee waiver policies;

(c) a copy of the LEA's fee schedule for students; and

(d) the notice of fee waiver criteria provided by the LEA to a student's parent or guardian.

(e) a fee waiver compliance form approved by the Superintendent for each school and LEA.

KEY: education, school fees
September 21, 2017 **Art X Sec 2**
Notice of Continuation July 19, 2017 **Art X Sec 3**
53E-3-401(4)
53G-7-503
Doe v. Utah State Board of Education, Civil No. 920903376

R277. Education, Administration.
R277-409. Public School Membership in Associations.
R277-409-1. 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 place limitations on public school membership in certain associations with rules or policies that conflict with Board policies.

R277-409-2. Definitions.

(1) "Association" means an organization that governs or regulates a student's participation in an interscholastic activity.

(2) "Interscholastic activity" means an activity within the state in which the students that participate represent a school in the activity.

(3) "Recruiting" means a solicitation or conversation:

(a) initiated by:

(i) an employee of a school or school district;

(ii) a coach or advisor of an interscholastic activity; or

(iii) a member of a booster, alumni, or other organization that performs a substantially similar role as a booster organization, affiliated with a school or school district; and

(b) to influence a student, or the student's relative or legal guardian, to transfer to a school for the purpose of participating in an interscholastic activity at the school.

R277-409-3. Membership Restrictions.

(1) Beginning with the 2017-2018 school year, a public school may not be a member of, or pay dues to an association that adopts rules or policies that are inconsistent with this R277-409-3.

(2) An association shall permit the Board to audit the association's:

(a) financial statements; and

(b) compliance with Utah Code, Board rule, and the association's bylaws, policies, rules, and best practices.

(3) An association may not treat similarly situated schools differently in the association's designation of division classifications, or in applying other association policies, based solely on the school's status as a charter school or district public school.

(4) An association may sanction a school, coach, or individual who oversees or works with students as part of an interscholastic activity of a public school if the association finds that the coach or individual:

(a) engaged in recruiting activities; or

(b) violated any other rule or policy of the association.

(5) An association shall establish a policy or rule to govern the association's use of student data that complies with the student data privacy requirements of:

(a) FERPA;

(b) Title 53E, Chapter 9, Part 3, Student Data Protection Act;

(c) Title 53E, Chapter 9, Part 2, Utah Family Educational Rights and Privacy Act; and

(d) R277-484.

(6) An association shall establish policies or rules that require:

(a) coaches and individuals who oversee interscholastic activities or work with students as part of an interscholastic activity to meet a set of professional standards that are consistent with the Utah Educator Professional Standards described in Rule R277-515; and

(b) the association or public school to annually train each coach or other individual who oversees or works with students as part of an interscholastic activity of a public school on the following:

(i) child sexual abuse prevention as described in Section 53G-9-207;

(ii) the prevention of bullying, cyber-bullying, hazing, harassment, and retaliation as described in:

(A) Title 53G, Chapter 9, Part 6, Bullying and Hazing; and

(B) R277-613; and

(iii) the professional standards described in Subsection (6)(a).

(7) An association shall establish procedures and mechanisms to:

(a) monitor LEA compliance with the association's training requirements described in Subsection (6);

(b) sanction individuals who violate the association's professional standards described in Subsection (6)(a);

(c) track individuals who violate the association's standards described in Subsection (6)(a); and

(d) prohibit individuals who have violated the association's standards described in Subsection (6)(a) from coaching, overseeing, or working with students as part of an interscholastic activity.

(8) An association shall establish a policy or rule that requires the association to follow requirements similar to the requirements of:

(a) Title 52, Chapter 4, Open and Public Meetings Act; and

(b) Title 63G, Chapter 2, Government Records Access and Management Act.

KEY: schools, memberships, associations
December 8, 2016 **Art X Sec 3**
53E-3-401(4)

R277. Education, Administration.
R277-410. Accreditation of Schools.
R277-410-1. 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) Section 53E-3-501, which directs the Board to establish rules governing school accreditation.

(2) The purpose of this rule is to require qualifying secondary schools to be accredited.

R277-410-2. Definitions.

For the purposes of this rule:

"Qualifying secondary school" means a public school that:

(1) includes any of grades 9-12; or

(2) offers credits toward high school graduation.

R277-410-3. Accreditation of Public Schools.

(1) A qualifying secondary school shall obtain accreditation from a regional accrediting body.

(2) If a qualifying secondary school does not obtain accreditation before the beginning of the school's second year of operation, the credit awarded by the qualifying secondary school is considered earned from a non-accredited source as described in Section R277-705-3:

(a) for the school's first year of operation; and

(b) until the school becomes accredited.

(3)(a) In addition to standards set by an accrediting body, the Superintendent shall establish Utah-specific assurances demonstrating compliance with state law and Board rule.

(b) The Superintendent shall ensure that qualified secondary schools meet the Utah-specific assurances described in Subsection (3)(a).

(4) The Superintendent may require on-site visits as part of the accreditation process.

R277-410-4. Transfer or Acceptance of Credit.

(1) A qualifying secondary school shall accept transfer credits from an accredited qualifying secondary school consistent with Section 53G-7-206 and Section R277-705-3.

(2) A qualifying secondary school may accept transfer credits from other credit sources consistent with Section R277-705-3.

KEY: accreditation, public schools, nonpublic schools
August 7, 2017 **Art X Sec 3**
Notice of Continuation June 6, 2017 **53E-3-501(1)(c)**
53E-3-401(4)

R277. Education, Administration.
R277-412. State Capitol Visit Program.
R277-412-1. Definitions.

A. "Board" means Utah State Board of Education.

B. "State Capitol visit" means public school student field trips to the State Capitol.

C. "USOE" means the Utah State Office of Education.

R277-412-2. Authority and Purpose.

A. The rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Subsection 53F-2-509(3) which requires the Board to make rules establishing procedures for applying for and awarding grants and specifying how grant money shall be allocated among school districts and charter schools, and Subsection 53E-3-401(4), which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide criteria, procedures and timelines for the Board to select schools to participate in State Capitol visits.

R277-412-3. School Application Process.

A. All public schools shall be eligible for the program.

B. An applicant school shall provide a completed application for the school's State Capitol field trip that shall:

(1) indicate how the field trip will meet self-identified academic objectives;

(2) estimate the number of students served by the program; and

(3) provide additional information requested by the USOE on the application.

R277-412-4. School Selection Criteria and Timeline.

A. The USOE shall provide an application for the Capitol Visit funding by June 15, 2013.

B. The USOE shall screen all applications for compliance with all application requirements.

C. The USOE shall seek the participation and advice of the Utah Commission on Civic and Character Education in selecting the applications for consideration for funding to ensure an equitable distribution of funding to as many school districts and public charter schools within the state as possible. The Board shall make final school selections.

D. The Board shall select and notify successful applicants no later than August 15, 2013.

KEY: public schools, State Capitol visits
October 8, 2013 **Art X, Sec 3**
53E-2-509(3)
53E-3-401(4)

R277. Education, Administration.
R277-417. Prohibiting LEAs and Third Party Providers from Offering Incentives or Disbursement for Enrollment or Participation.
R277-417-1. 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:

(a) to provide standards and procedures for prohibiting LEAs and third party providers from offering incentives for student enrollment; and

(b) to provide standards for an LEA working with a third party provider to ensure the third party provider complies with this R277-417.

R277-417-2. Definitions.

(1)(a) "Disbursement" means the payment of money or provision of other item of value greater than $10, per school year, offered as payment or compensation to a student or to a parent or guardian for:

(i) a student's enrollment in an LEA; or

(ii) a student's participation in an LEA's program.

(b) "Disbursement" does not include a reimbursement paid by an LEA to a student, parent or guardian, for an expenditure incurred by the student, parent or guardian on behalf of the LEA if:

(i) the expenditure is for an item that will be the property of the LEA; and

(ii) the expenditure was preauthorized by the LEA, as evidenced by preauthorization documentation.

(2) "Incentive" means one of the following given to a student or to the student's parent or guardian by an LEA or by a third party provider as a condition of the student's enrollment in an LEA or specific program for any length of time, during any school year:

(a) money greater than $10; or

(b) an item of value greater than $10.

(3) "Program" means a program within a school that is designed to accomplish a predetermined curricular objective or set of objectives.

(4) "Section 504 accommodation plan" required by Section 504 of the Rehabilitation Act of 1973, means a plan designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(5) "Third party provider" means a third party who provides educational services on behalf of an LEA.

R277-417-3. LEA and Third Party Provider Use of Public Funds for Incentives and Disbursement.

(1) An LEA or a third party provider may not use public funds, as defined under Subsection 51-7-3(26), to provide the following to a student, parent or guardian, individual, or group of individuals:

(a) an incentive for a student's:

(i) enrollment in an LEA; or

(ii) participation in an LEA's program; or

(b) a referral bonus for a student's:

(i) enrollment in an LEA; or

(ii) participation in an LEA's program.

(2) An LEA or third party provider may not use public funds to provide a disbursement to a student or the student's parent or guardian for:

(a) curriculum exclusively selected by a parent;

(b) instruction not provided by the LEA;

(c) private lessons or classes not provided by:

(i) an employee of the LEA; or

(ii) a third party provider who meets all of the requirements of R277-417-4;

(d) technology devices exclusively selected by a parent; or

(e) other educational expense exclusively selected by a parent.

(3) An LEA may use public funds to provide:

(a) uniforms, technology devices, curriculum, or materials and supplies to a student if the uniforms, technology devices, curriculum, or materials and supplies are:

(i) available to all students enrolled in the LEA or program within the LEA; or

(ii) authorized by the student's college and career readiness plan, IEP, or 504 accommodation plan; or

(b) internet access for instructional purposes to a student:

(i) in kindergarten through grade 6; or

(ii) in grade 7 through grade 12 if:

(A) the internet access is provided in accordance with the fee waiver policy requirements of Section R277-407-6; or

(B) failure to provide the internet access will cause economic hardship on the student or parent.

(4) An LEA or third party provider shall ensure that equipment purchased or leased by the LEA or third party provider remains the property of the LEA and is subject to the LEA's asset policies if:

(a) the LEA or third party provider purchases equipment; and

(b) provides the equipment to a student or to the student's parent or guardian.

R277-417-4. Third Party Provider Provision of Educational Services.

(1) An LEA that contracts with a third party provider to provide services on behalf of the LEA shall:

(a) establish monitoring and compliance procedures to ensure that a third party provider who provides educational services to a student on behalf of the LEA complies with the provisions of this rule;

(b) develop a written monitoring plan to supervise the activities and services provided by the third party provider;

(c) ensure the third party provider is complying with:

(i) federal law;

(ii) state law; and

(iii) Board rules;

(d) monitor and supervise all activities of the third party provider related to services provided by the third party provider to the LEA; and

(e) maintain documentation of the LEA's supervisory activities consistent with the LEA's administrative records retention schedule.

(2) An LEA shall:

(a) verify the accuracy and validity of a student's enrollment verification data, prior to enrolling a student in the LEA; and

(b) provide a student and the student's parent or guardian with notification of the student's enrollment in a school or program within the LEA.

(3) The Board or the Superintendent may require an LEA to repay public funds to the Superintendent if:

(a) the LEA or the LEA's third party provider fails to comply with the provisions of this rule; and

(b) the repayment is made in accordance with the procedures established in R277-114.

KEY: students, enrollment, incentives
March 14, 2017 **Art X Sec 3**
53E-3-401(4)

R277. Education, Administration.
R277-418. Distance, Blended, Online, or Competency Based Learning Program.
R277-418-1. Definitions.

A. "Blended learning program" means a program under the direction of an LEA:

(1) where a student learns at least in part:

(a) at a supervised brick and mortar location away from home; and

(b) at least in part through an online delivery; and

(2) that may include some element of student control over time, place, or path, or pace.

B. "Board" means the Utah State Board of Education.

C. "Distance learning program" means a program, under the direction of an LEA, in which the participants are a distance from each other in space.

D. "Enrollment verification data" includes:

(1) a student's birth certificate or other verification of age;

(2) verification of immunization or exemption from immunization form;

(3) proof of Utah public school residency;

(4) family income verification; or

(5) special education program information, including information for:

(a) an individualized education program;

(b) a Section 504 accommodation plan; and

(c) an English learner plan.

E. "Competency based learning program" means an education program that requires a student to acquire a competency and includes a classroom structure and operation that aid and facilitate the acquisition of specified competencies on an individual basis wherein a student is allowed to master and demonstrate competencies as fast as the student is able.

F. "LEA" or "local education agency" means a school district or charter school.

F. "Nontraditional Program" means a program within an LEA that consists of eligible, enrolled public school students where the student receives instruction through a:

(1) distance learning program;

(2) online learning program;

(3) blended learning program; or

(4) competency based learning program.

G. "Online learning program" means a program, under the direction of an LEA, where there is an organized offering of courses delivered primarily over the internet.

H. "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

I. "Third party provider" means a third party who provides educational services on behalf of an LEA.

R277-418-2. 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 and by Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide standards and procedures for nontraditional programs.

R277-418-3. Distance, Blended, Online, or Competency Based Learning Program Standards.

A. An LEA offering a nontraditional program shall comply with the following standards:

(1) student eligibility and membership/enrollment requirements described in R277-419-5, 419-6, and 419-7;

(2) school and program requirements described in R277-419-3(A);

(3) minimum school day requirements described in R277-419-4(A)1-2;

(4) compliance with official record standards and membership audit requirements described in:

(a) R277-419-4B(1) and (2); and

(b) R277-419-4C and 4D;

(5) educator licensure requirements described in R277-502;

(6) fingerprint and background check requirements for educators, employees and volunteers, described in:

(a) Title 53G, Chapter 11, Part 4, Background Checks;

(b) Section 53G-5-402;

(c) Section 53E-6-403;

(d) R277-516; and

(e) R277-520;

(7) integration of the Utah Core Standards in the nontraditional program's student instruction consistent with Subsection 53E-3-501(1)(a) and R277-700;

(8) compliance with statewide assessment administration requirements by the LEA, as required under:

(a) Title 53E, Chapter 4, Part 3, Achievement Tests; and

(b) R277-404; and

(9) compliance with the public school data confidentiality and disclosure requirements described in R277-487.

B. An LEA that contracts with a third party provider to provide educational services on behalf of the LEA for the LEA's nontraditional program shall:

(1) develop a written monitoring plan to supervise the activities and services provided by the third party provider;

(2) ensure the third party provider is complying with:

(a) federal law;

(b) state law; and

(c) Board rules;

(3) monitor and supervise all activities of the third party provider related to services provided by the third party provider to the LEA; and

(4) maintain documentation of the LEA's supervisory activities consistent with the LEA's administrative records retention schedule.

C. An LEA shall:

(1) verify the accuracy and validity of a student's enrollment verification data, prior to enrolling a student in the LEA; and

(2) provide a student and the student's parent or guardian with notification of the student's enrollment in a school or program within the LEA.

D. The Board or the Superintendent may require an LEA to repay public funds to the Superintendent if:

(1) the LEA or the LEA's third party provider fails to comply with the provisions of this R277-418; and

(2) the repayment is made in accordance with the procedures established in R277-114.

E. An LEA offering a nontraditional program shall retain sufficient documentation to demonstrate the nontraditional program's compliance with this R277-418-3.

KEY: student, enrollment, nontraditional learning programs
July 8, 2015 **Art X Sec 3**
53E-3-401(4)

R277. Education, Administration.
R277-419. Pupil Accounting.
R277-419-1. 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) Subsection 53E-3-501(1)(e), which directs the Board to establish rules and standards regarding:

(i) cost-effectiveness;

(ii) school budget formats; and

(iii) financial, statistical, and student accounting requirements;

(d) Subsection 53E-3-602(2), which requires a local school board's auditing standards to include financial accounting and student accounting;

(e) Subsection 53E-3-301(3)(d), which requires the Superintendent to present to the Governor and the Legislature data on the funds allocated to LEAs; and

(f) Section 53G-4-404, which requires annual financial reports from all school districts.

(2) The purpose of this rule is to specify pupil accounting procedures used in apportioning and distributing state funds for education.

R277-419-2. Definitions.

(1) "Aggregate Membership" means the sum of all days in membership during a school year for eligible students enrolled in a public school.

(2) "Approved CTE course" means a course approved by the Board within the Career and Technical Education (CTE) Pathways in the eight areas of study.

(3) "Blended learning program" means a program under the direction of an LEA:

(a) where a student learns at least in part:

(i) at a supervised brick and motar location away from a student's home; and

(ii) through an online delivery; and

(b) that may include some element of student control over time, place, or path, or pace.

(4) "Brick and mortar school" means a traditional school or traditional school building.

(5) "Competency based learning program" means an education program that requires a student to acquire a competency and includes a classroom structure and operation that aid and facilitate the acquisition of specified competencies on an individual basis wherein a student is allowed to master and demonstrate competencies as fast as the student is able.

(6) "Continuing enrollment measurement" means a methodology used to establish a student's continuing membership or enrollment status for purposes of generating membership days.

(7) "Data Clearinghouse" means the electronic data collection system used by the Superintendent to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

(8) "Distance learning program" means a program, under the direction of an LEA, in which students receive educational services in a location other than a brick and mortar school, and may include educational services delivered over the internet.

(9) "Early graduation student" means a student who has an early graduation student education plan as described in Rule R277-703.

(10) "Eligible student" means a student who satisfies the criteria for enrollment in an LEA, set forth in Section R277-419-5.

(11) "Enrollment verification data" includes:

(a) a student's birth certificate or other verification of age;

(b) verification of immunization or exemption from immunization form;

(c) proof of Utah public school residency;

(d) family income verification; or

(e) special education program information, including:

(i) an individualized education program;

(ii) a Section 504 accommodation plan; or

(iii) an English learner plan.

(12) "Face-to-face learning program" means a program within an LEA that consists of eligible, enrolled public school students who physically attend school in a brick and mortar school.

(13)(a) "Home school" means the formal instruction of children in their homes instead of in an LEA.

(b) The differences between a home school student and an online student include:

(i) an online student may receive instruction at home, but the student is enrolled in a public school that follows state Core Standards;

(ii) an online student is:

(A) subject to laws and rules governing state and federal mandated tests; and

(B) included in accountability measures;

(iii) an online student receives instruction under the direction of a highly qualified, licensed teacher who is subject to the licensure requirements of R277-502 and fingerprint and background checks consistent with R277-516 and R277-520;

(iv) instruction delivered in a home school course is not eligible to be claimed in membership of an LEA and does not qualify for funding under the Minimum School Program in Title 53F, Chapter 2, Minimum School Program Act.

(14) "Home school course" means instruction:

(a) delivered in a home school environment where the curriculum and instruction methods, evaluation of student progress or mastery, and reporting, are provided or administered by the parent, guardian, custodian, or other group of individuals; and

(b) not supervised or directed by an LEA.

(15)(a) "Influenza pandemic" or "pandemic" means a global outbreak of serious illness in people.

(b) "Influenza pandemic" or "pandemic" may be caused by a strain of influenza that most people have no natural immunity to and that is easily spread from person to person.

(16) "ISI-1" means a student who receives 1 to 59 minutes of YIC related services during a typical school day.

(17) "ISI-2" means a student who receives 60 to 179 minutes of YIC related services during a typical school day.

(18)(a) "Membership" means a public school student is on the current roll of a public school class or public school as of a given date.

(b) A student is a member of a class or school from the date of entrance at the school and is placed on the current roll until official removal from the class or school due to the student having left the school.

(c) Removal from the roll does not mean that an LEA should delete the student's record, only that the student should no longer be counted in membership.

(19) "Minimum School Program" means the same as that term is defined in Section 53F-2-102.

(20) "Nontraditional Program" means a program within an LEA that consists of eligible, enrolled public school students where the student receives instruction through a:

(a) distance learning program;

(b) online learning program;
(c) blended learning program; or
(d) competency based learning program.
(21) "Online learning program" means a program:
(a) that is under the direction of an LEA; and
(b) in which students receive educational services primarily over the internet.
(22) "Private school" means an educational institution that:
(a) is not an LEA;
(b) is owned or operated by a private person, firm, association, organization, or corporation; and
(c) is not subject to governance by the Board consistent with the Utah Constitution.
(23) "Program" means a course of instruction within a school that is designed to accomplish a predetermined curricular objective or set of objectives.
(24) "Resource" means a student who receives 1 to 179 minutes of special education services during a typical school day consistent with the student's IEP provided for under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1400 et seq., amended in 2004.
(25) "Qualifying school age" means:
(a) a person who is at least five years old and no more than 18 years old on or before September 1;
(b) with respect to special education, a person who is at least three years old and no more than 21 years old on or before September 1;
(c) with respect to YIC, a person who is at least five years old and no more than 21 years old on or before September 1.
(26) "Retained senior" means a student beyond the general compulsory school age who is authorized at the discretion of an LEA to remain in enrollment as a high school senior in the year(s) after the student's cohort has graduated due to:
(a) sickness;
(b) hospitalization;
(c) pending court investigation or action; or
(d) other extenuating circumstances beyond the control of the student.
(27) "S1" means the record maintained by the Superintendent containing individual student demographic and school membership data in a Data Clearinghouse file.
(28) "S2" means the record maintained by the Superintendent containing individual student data related to participation in a special education program in a Data Clearinghouse file.
(29) "S3" means the record maintained by the Superintendent containing individual student data related to participation in a YIC program in a Data Clearinghouse file.
(30) "School" means an educational entity governed by an LEA that:
(a) is supported with public funds;
(b) includes enrolled or prospectively enrolled full-time students;
(c) employs licensed educators as instructors that provide instruction consistent with Section R277-502;
(d) has one or more assigned administrators;
(e) is accredited consistent with Section R277-410-3; and
(f) administers required statewide assessments to the school's students.
(31) "School day" means a minimum of two hours per day per session in kindergarten and a minimum of four hours per day in grades one through twelve, subject to the requirements described in Section R277-419-4.
(32) "School membership" means membership other than in a special education or YIC program in the context of the Data Clearinghouse.
(33) "School of enrollment" means:
(a) a student's school of record; and
(b) the school that maintains the student's cumulative file, enrollment information, and transcript for purposes of high school graduation.
(34) "School year" means the 12 month period from July 1 through June 30.
(35) "Self-contained" means a public school student with an IEP or YIC, who receives 180 minutes or more of special education or YIC related services during a typical school day.
(36) "Self-Contained Resource Attendance Management (SCRAM)" means a record that tracks the aggregate membership of public school special education students for state funding purposes.
(37) "SSID" means Statewide Student Identifier.
(38) "Unexcused absence" means an absence charged to a student when:
(a) the student was not physically present at school at any of the times attendance checks were made in accordance with Subsection R277-419-6(3); and
(b) the student's absence could not be accounted for by evidence of a legitimate or valid excuse in accordance with local board policy on truancy as defined in Section 53G-6-201.
(39) "Year end upload" means the Data Clearinghouse file due annually by July 15 from LEAs to the Superintendent for the prior school year.
(40) "Youth in custody (YIC)" means a person under the age of 21 who is:
(a) in the custody of the Department of Human Services;
(b) in the custody of an equivalent agency of a Native American tribe recognized by the United States Bureau of Indian Affairs and whose custodial parent or legal guardian resides within the state; or
(c) being held in a juvenile detention facility.

R277-419-3. Schools and Programs.
(1)(a) The Superintendent shall provide a list to each school detailing the required accountability reports and other state-mandated reports for the school type and grade range.
(b) All schools shall submit a Clearinghouse report to the Superintendent.
(c) All schools shall employ at least one licensed educator and one administrator.
(2)(a) A student who is enrolled in a program is considered a member of a public school.
(b) The Superintendent may not require programs to receive separate accountability and other state-mandated reports.
(c) A student reported under an LEA's program shall be included in the LEA's WPU and student enrollment calculations of the LEA's school of enrollment.
(d) A course taught at a program shall be credited to the appropriate school of enrollment.
(3) A private school or program may not be required to submit data to the Superintendent.
(4) A private school or program may not receive annual accountability reports.

R277-419-4. Minimum School Days.
(1)(a) Except as provided in Subsection (1)(b) and Subsection 53F-2-102(7), an LEA shall conduct school for at least 990 instructional hours over a minimum of 180 school days each school year.
(b) an LEA may seek an exception to the number of school days described in Subsection (1)(a):
(i) except as provided in Subsection (1)(b)(ii), for a

whole school or LEA as described in R277-121;

(ii) for a school closure due to snow, inclement weather, or other emergency as described in R277-419-12; or

(iii) for an individual student as described in Section R277-419-11.

(2)(a) An LEA may offer the required school days and hours described in Subsection (1)(a) at any time during the school year, consistent with the law.

(b) All school day calculations shall exclude lunch periods and pass time between classes but may include recess periods that include organization or instruction from school staff.

(c) Each school day that satisfies the minimum hourly instruction time described in Subsection R277-419-2(31), shall count as a school day, regardless of the number or length of class periods or whether or not particular classes meet.

(3)(a) An LEA shall plan for emergency, activity, and weather-related exigency time in its annual calendaring.

(b) If school is closed for any reason, the school shall make up the instructional time missed under the emergency or activity time as part of the minimum required time to qualify for full Minimum School Program funding.

(4) Minimum standards apply to all public schools in all settings unless Utah law or this rule provides for a specific exception.

(5) An LEA's governing board shall provide adequate contingency school days and hours in the LEA's yearly calendar to avoid the necessity of requesting a waiver except in the most extreme circumstances.

(6)(a) In addition to the allowance to use up to 32 instructional hours or four school days for professional learning described in Subsection 53F-2-102(7), to provide planning and professional development time for staff, an LEA may hold school longer some days of the week and shorter other days so long as minimum school day requirements, as provided for in this R277-419-4 and Subsection R277-419-2(32), are satisfied.

(b) A school may conduct parent-teacher and student Plan for College and Career Readiness conferences during the school day.

(c) Parent-teacher and college and career readiness conferences may only be held for a total of the equivalent of three full school days or a maximum of 16.5 hours for the school year.

(d) Student membership for professional development or parent-teacher conference days shall be counted as that of the previous school day.

(e) An LEA may designate no more than a total of 12 instructional days at the beginning of the school year, at the end of the school year, or both for the assessment of students entering or completing kindergarten.

(f) If instruction days are designated for kindergarten assessment:

(i) an LEA shall designate the days in an open meeting;

(ii) an LEA shall provide adequate notice and explanation to kindergarten parents well in advance of the assessment period;

(iii) qualified school employees shall conduct the assessment consistent with Section 53F-4-205; and

(iv) assessment time per student shall be adequate to justify the forfeited instruction time.

(g) The final decision and approval regarding planning time, parent-teacher and SEP conferences rests with an LEA, consistent with Utah law and Board administrative rules.

(h) Total instructional time and school calendars shall be approved by an LEA in an open meeting.

R277-419-5. Student Membership Eligibility and Continuing Enrollment Measurements.

(1) A student may enroll in two or more LEAs at the discretion of the LEAs.

(2) A kindergarten student may only enroll in one LEA at a time.

(3) In order to generate membership for funding through the Minimum School Program for any clock hour of instruction on any school day, an LEA shall ensure that a student being counted by the LEA in membership:

(a) has not previously earned a basic high school diploma or certificate of completion;

(b) has not been enrolled in a YIC program with a YIC time code other than ISI-1 or ISI-2;

(c) does not have unexcused absences, which are determined using one of the continuing enrollment measurements described in Subsection (4);

(d) is a resident of Utah as defined under Section 53G-6-302;

(e) is of qualifying school age or is a retained senior;

(f)(i) is expected to attend a regular learning facility operated or recognized by an LEA on each regularly scheduled school day, if enrolled in a face-to-face learning program;

(ii) has direct instructional contact with a licensed educator provided by an LEA at:

(A) an LEA-sponsored center for tutorial assistance; or

(B) the student's place of residence or convalescence for at least 120 minutes each week during an expected period of absence, if physically excused from such a facility for an extended period of time, due to:

(I) injury;

(II) illness;

(III) surgery;

(IV) suspension;

(V) pregnancy;

(VI) pending court investigation or action; or

(VII) an LEA determination that home instruction is necessary;

(iii) is enrolled in an approved CTE course(s) on the campus of another state funded institution where such a course is:

(A) not offered at the student's school of membership;

(B) being used to meet Board-approved CTE graduation requirements under Subsection R277-700-6(14); and

(C) a course consistent with the student's SEOP/Plan for College and Career Readiness; or

(iv) is enrolled in a nontraditional program under the direction of an LEA that:

(A) is consistent with the student's SEOP/Plan for College and Career Readiness;

(B) has been approved by the student's counselor; and

(C) includes regular instruction or facilitation by a designated employee of an LEA.

(4) An LEA shall use one of the following continuing enrollment measures:

(a) For a student primarily enrolled in a face-to-face learning program, the LEA may not count a student as an eligible student if the eligible student has unexcused absences during all of the prior ten consecutive school days.

(b) For a student enrolled in a nontraditional program, an LEA shall:

(i) adopt a written policy that designates a continuing enrollment measurement to document the continuing membership or enrollment status for each student enrolled in the nontraditional program consistent with Subsection (3)(c);

(ii) document each student's continued enrollment status in compliance with the continuing enrollment policy at least once every ten consecutive school days; and

(iii) appropriately adjust and update student membership records in the student information system for

students that did not meet the continuing enrollment measurement, consistent with Subsection (3)(c).

(5) The continuing enrollment measurement described in Subsection (4)(b) may include some or all of the following components, in addition to other components, as determined by an LEA:

(a) a minimum student login or teacher contact requirement;

(b) required periodic contact with a licensed educator;

(c) a minimum hourly requirement, per day or week, when students are engaged in course work; or

(d) required timelines for a student to provide or demonstrate completed assignments, coursework or progress toward academic goals.

(6) For a student enrolled in both face-to-face and nontraditional programs, an LEA shall measure a student's continuing enrollment status using the methodology for the program in which the student earns the majority of their membership days.

(7)(a) An LEA desiring to generate membership for student enrollment in courses outlined in Subsection (3)(f)(iii), or to seek a waiver from a requirement(s) in Subsection (3)(f)(iii), shall submit an application for course approval by April 1 of the year prior to which the membership will be counted.

(b) An LEA shall be notified within 30 days of the application deadline if courses have been approved.

R277-419-6. Student Membership Calculations.

(1)(a) Except as provided in Subsection (1)(b) or (1)(c), a student enrolled in only one LEA during a school year is eligible for no more than 180 days of regular membership per school year.

(b) An early graduation student may be counted for more than 180 days of regular membership in accordance with the student's early graduation student education plan.

(c) A student transferring within an LEA to or from a year-round school is eligible for no more than 205 days of regular membership per school year.

(2)(a) Except as provided in Subsection (2)(b), (2)(c), or (2)(d), a student enrolled in two or more LEAs during a school year is eligible for no more than 180 days of regular membership per school year.

(b) A student transferring to or from an LEA with a schedule approved under Subsection R277-419-4(1)(b) is eligible for no more than 220 days of regular membership per school year.

(c) A student transferring to or from an LEA where the student attended or will attend a year-round school is eligible for no more than 205 days of regular membership per school year.

(d) If the exceptions in Subsections (2)(b) and (2)(c) do not apply but a student transfers from one LEA to another at least one time during the school year, the student is eligible for regular membership in an amount not to exceed the sum of:

(i) 170 days; plus

(ii) 10 days multiplied by the number of LEAs the student attended during the school year.

(3) If a student is enrolled in two or more LEAs during a school year and the aggregate regular membership generated for the student between all LEAs exceeds the amount allowed under Subsection (2), the Superintendent shall apportion the days of regular membership allowed between the LEAs.

(4) If a student was enrolled for only part of the school day or only part of the school year, an LEA shall prorate the student's membership according to the number of hours, periods or credits for which the student actually was enrolled in relation to the number of hours, periods or credits for which a full-time student normally would have been enrolled. For example:

(a) If the student was enrolled for 4 periods each day in a 7 period school day for all 180 school days, the student's aggregate membership would be 4/7 of 180 days or 103 days.

(b) If the student was enrolled for 7 periods each day in a 7 period school day for 103 school days, the student's membership would also be 103 days.

(5) For students in grades 2 through 12, an LEA shall calculate the days in membership using a method equivalent to the following: total clock hours of instruction for which the student was enrolled during the school year divided by 990 hours and then multiplied by 180 days and finally rounded up to the nearest whole day. For example, if a student was enrolled for only 900 hours during the school year, the student's aggregate membership would be (900/990)*180, and the LEA would report 164 days.

(6) For students in grade 1, an LEA shall adjust the first term of the formula to use 810 hours as the denominator.

(7) For students in kindergarten, an LEA shall adjust the first term of the formula to use 450 hours as the denominator.

(8) The sum of regular plus self-contained special education and self-contained YIC membership days may not exceed 180 days.

(9) The sum of regular and resource special education membership days may not exceed 360 days.

(10) The sum of regular, ISI-1 and ISI-2 YIC membership days may not exceed 360 days.

(11) An LEA may also count a student in membership for the equivalent in hours of up to:

(a) one period each school day, if the student has been:

(i) released by the school, upon a parent or guardian's request, during the school day for religious instruction or individual learning activity consistent with the student's SEOP/Plan for College and Career Readiness; or

(ii) participating in one or more extracurricular activities under Rule R277-438, but has otherwise been exempted from school attendance under Section 53G-6-204 for home schooling;

(b) two periods each school day per student for time spent in bus travel during the regular school day to and from another state-funded institution, if the student is enrolled in CTE instruction consistent with the student's SEOP/Plan for College and Career Readiness;

(c) all periods each school day, if the student is enrolled in:

(i) a concurrent enrollment program that satisfies all the criteria of Rule R277-713;

(ii) a private school without religious affiliation under a contract initiated by an LEA to provide special education services which directs that the instruction be paid by public funds if the contract with the private school is approved by an LEA board in an open meeting;

(iii) a foreign exchange student program under Subsection 53G-6-707(7); or

(iv) a school operated by an LEA under a Utah Schools for the Deaf and the Blind IEP provided that:

(A) the student may only be counted in S1 membership and may not have an S2 record; and

(B) the S2 record for the student is submitted by the Utah Schools for the Deaf and the Blind.

R277-419-7. Calculations for a First Year Charter School.

(1) For the first operational year of a charter school or a new satellite campus, the Superintendent shall determine the charter school's WPU funding based on October 1 counts.

(2) For the second operational year of a charter school or a new satellite campus, the Superintendent shall determine the charter school's WPU funding based on Section 53F-2-

302.

R277-419-8. Reporting Requirements, LEA Records, and Audits.

(1) An LEA shall report aggregate membership for each student via the School Membership field in the S1 record and special education membership in the SCRAM Membership field in the S2 record and YIC membership in the S3 record of the Year End upload of the Data Clearinghouse file.

(2) In the Data Clearinghouse, aggregate membership is calculated in days of membership.

(3) To determine student membership, an LEA shall ensure that records of daily student attendance are maintained in each school which clearly and accurately show for each student the:

(a) entry date;

(b) exit date;

(c) exit or high school completion status;

(d) whether or not an absence was excused;

(e) disability status (resource or self-contained, if applicable); and

(f) YIC status (ISI-1, ISI-2 or self-contained, if applicable).

(4) An LEA shall ensure that:

(a) computerized or manually produced records for CTE programs are kept by teacher, class, and classification of instructional program (CIP) code; and

(b) the records described in Subsection (4)(a) clearly and accurately show for each student in a CTE class the:

(i) entry date;

(ii) exit date; and

(iii) excused or unexcused status of absence.

(5) An LEA shall ensure that each school within the LEA completes a minimum of one attendance check each school day.

(6) Due to school activities requiring schedule and program modification during the first days and last days of the school year:

(a) for the first five school days, an LEA may report aggregate days of membership equal to the number recorded for the second five-day period of the school year;

(b) for the last five-day period, an LEA may report aggregate days of membership equal to the number recorded for the immediately preceding five-day period; and

(c) schools shall continue instructional activities throughout required calendared instruction days.

(7) An LEA shall employ an independent auditor, under contract, to:

(a) annually audit student accounting records; and

(b) report the findings of the audit to:

(i) the LEA board; and

(ii) the Financial Operations Section of the Board.

(8) Reporting dates, forms, and procedures are found in the State of Utah Legal Compliance Audit Guide, provided to LEAs by the Superintendent in cooperation with the State Auditor's Office.

(9) The Superintendent:

(a) shall review each LEA's student membership and fall enrollment audits as they relate to the allocation of state funds in accordance with the policies and procedures established in Sections R277-484-7 and 8; and

(b) may periodically or for cause review LEA records and practices for compliance with the laws and this rule.

R277-419-9. High School Completion Status.

(1) An LEA shall account for the final status of all students who enter high school (grades 9-12) whether they graduate or leave high school for other reasons, using the following decision rules to indicate the high school completion or exit status of each student who leaves the Utah public education system:

(a) graduates are students who earn a basic high school diploma by satisfying one of the options consistent with Subsection R277-705-4(2) or out-of-school youths of school age who complete adult education secondary diploma requirements consistent with R277-733;

(b) completers are students who have not satisfied Utah's requirements for graduation but who:

(i) are in membership in twelfth grade on the last day of the school year; and

(ii)(A) meet any additional criteria established by an LEA consistent with its authority under Section R277-705-4;

(B) meet any criteria established for special education students under Utah State Board of Education Special Education Rules, Revised, June 2016, and available at: http://www.schools.utah.gov/sars/Laws.aspx and the Utah State Board of Education;

(C) meet any criteria established for special education students under Subsection R277-700-8(5); or

(D) pass a General Educational Development (GED) test with a designated score;

(c) continuing students are students who:

(i) transfer to higher education, without first obtaining a diploma;

(ii) transfer to the Utah Center for Assistive Technology without first obtaining a diploma; or

(iii) age out of special education;

(d) dropouts are students who:

(i) leave school with no legitimate reason for departure or absence;

(ii) withdraw due to a situation so serious that educational services cannot be continued even under the conditions of Subsection R277-419-5(3)(f)(ii);

(iii) are expelled and do not re-enroll in another public education institution; or

(iv) transfer to adult education;

(e) an LEA shall exclude a student from the cohort calculation if the student:

(i) transfers out of state, out of the country, to a private school, or to home schooling;

(ii) is a U.S. citizen who enrolls in another country as a foreign exchange student;

(iii) is a non-U.S. citizen who enrolls in a Utah public school as a foreign exchange student under Section 53G-6-707 in which case the student shall be identified by resident status (J for those with a J-1 visa, F for all others), not by an exit code;

(iv) dies; or

(v) beginning with the 2015-2016 school year, is attending an LEA that is not the student's school of enrollment.

(2)(a) An LEA shall report the high school completion status or exit code of each student to the Superintendent as specified in Data Clearinghouse documentation.

(b) High School completion status or exit codes for each student are due to the Superintendent by year end upload for processing and auditing.

(c) Except as provided in Subsection (2)(d), an LEA shall submit any further updates of completion status or exit codes by October 1 following the end of a student's graduating cohort pursuant to Section R277-484-3.

(d) An LEA with an alternative school year schedule where all of the students have an extended break in a season other than summer, shall submit the LEA's data by the next complete data submission update, following the LEA's extended break, as defined in Section R277-484-3.

(3)(a) The Superintendent shall report a graduation rate for each school, LEA, and the state.

(b) The Superintendent shall calculate the graduation rates in accordance with applicable federal law.

(c) The Superintendent shall include a student in a school's graduation rate if:

(i) the school was the last school the student attended before the student's expected graduation date; and

(ii) the student does not meet any exclusion rules as stated in Subsection (1)(e).

(d) The last school a student attended will be determined by the student's exit dates as reported to the Data Clearinghouse.

(e) A student's graduation status will be attributed to the school attended in their final cohort year.

(f) If a student attended two or more schools during the student's final cohort year, a tie-breaking logic to select the single school will be used in the following hierarchical order of sequence:

(i) school with an attached graduation status for the final cohort year;

(ii) school with the latest exit date;

(iii) school with the earliest entry date;

(iv) school with the highest total membership;

(v) school of choice;

(vi) school with highest attendance; or

(vii) school with highest cumulative GPA.

(g) The Superintendent shall report the four-year cohort rate on the annual state reports.

R277-419-10. Student Identification and Tracking.

(1)(a) Pursuant to Section 53E-4-308, an LEA shall:

(i) use the SSID system maintained by the Superintendent to assign every student enrolled in a program under the direction of the Board or in a program or a school that is supported by public school funding a unique student identifier; and

(ii) display the SSID on student transcripts exchanged with LEAs and Utah public institutions of higher education.

(b) The unique student identifier:

(i) shall be assigned to a student upon enrollment into a public school program or a public school-funded program;

(ii) may not be the student's social security number or contain any personally identifiable information about the student.

(2) An LEA shall require all students to provide their legal first, middle, and last names at the time of registration to ensure that the correct SSID follows students who transfer among LEAs.

(a) A school shall transcribe the names from the student's birth certificate or other reliable proof of the student's identity and age, consistent with Section 53G-6-603;

(b) The direct transcription of student names from birth certificates or other reliable proof of student identity and age shall be the student's legal name for purposes of maintaining school records; and

(c) An LEA may modify the order of student names, provide for nicknames, or allow for different surnames, consistent with court documents or parent preferences, so long as legal names are maintained on student records and used in transmitting student information to the Superintendent.

(3) The Superintendent and LEAs shall track students and maintain data using students' legal names.

(4) If there is a compelling need to protect a student by using an alias, an LEA should exercise discretion in recording the name of the student.

(5) An LEA is responsible to verify the accuracy and validity of enrollment verification data, prior to enrolling students in the LEA, and provide students and their parents with notification of enrollment in a public school.

(6) An LEA shall ensure enrollment verification data is collected, transmitted, and stored consistent with sound data policies, established by the LEA as required in Rule R277-487.

R277-419-11. Exceptions.

(1)(a) An LEA may, at its discretion, make an exception for school attendance for a public school student, in the length of the school day or year, for a student with compelling circumstances.

(b) The time an excepted student is required to attend school shall be established by the student's IEP or Plan for College and Career Readiness.

(2) A school using a modified 45-day/15-day year round schedule initiated prior to July 1, 1995 shall be considered to be in compliance with this rule if the school's schedule includes a minimum of 990 hours of instruction time in a minimum of 172 days.

R277-419-12. Snow, Inclement Weather, or Other Emergency School Closure Days.

(1) An LEA may seek a waiver directly from the Superintendent from the 180 day requirement described in Subsection R277-419-4(1) if:

(a) the LEA closes a school for one school day due to excessive snow, inclement weather, or an other emergency; and

(b) the school closure will result in the LEA not meeting the 180 day requirement described in Section R277-419-4.

(2) The Superintendent may grant up to one waiver, per school year, per school, for the school to close due to excessive snow, inclement weather, or other emergency without Board approval if the LEA has provided adequate contingency school days and hours into the LEA's calendar to avoid the necessity of requesting a waiver as required in Subsection R277-419-4(5).

(3) If the Superintendent denies an LEA's request described in Subsection (1), the LEA may appeal the Superintendent's decision by making the request of the full Board.

(4) If an LEA seeks a waiver for two or more school days due to excessive snow, inclement weather, or other emergency, the LEA shall seek the waiver pursuant to the procedures described in R277-121.

(5)(a) An LEA may request the Board to waive the school day and hour requirement pursuant to a directive from the Utah State Health Department or a local health department, that results in the closure of a school in the event of a pandemic or other public health emergency.

(b) A waiver described in this Subsection (5) may be for a designated time period, for a specific area, or for a specific LEA in the state, as determined by the health department directive.

(c) A waiver may allow an LEA to continue to receive state funds for pupil services and reimbursements.

(d) A waiver granted by the Board or Superintendent as described in this Subsection (5) shall direct an LEA to provide as much notice to students and parents of the suspension of school services, as is reasonably possible.

(e) A waiver granted shall direct an LEA to comply with health department directives, but to continue to provide any services to students that are not inconsistent with the directive.

(f) The Board may encourage an LEA to provide electronic or distance learning services to affected students for the period of the pandemic or other public health emergency to the extent of personnel and funds available.

KEY: education finance, school enrollment, pupil

accounting	
December 8, 2017	**Art X Sec 3**
Notice of Continuation August 14, 2017	**53E-3-401(4)**
	53F-2-102(7)
	53E-3-501(1)(e)
	53E-3-602(2)
	53E-3-301(3)(d)
	53G-4-404

R277. Education, Administration.
R277-420. Aiding Financially Distressed School Districts.
R277-420-1. 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 53G-7-306(5), which requires the Board to develop standards for defining and aiding financially distressed school districts.

(2) The purpose of this rule is to specify eligibility requirements and procedures for nonrecurring or nonroutine interfund transfers for financially distressed school districts.

R277-420-2. Definitions.

(1)(a) "Interfund transfer" means a transaction which withdraws money from one fund and places it in another without recourse.

(b) An interfund transfer is regulated by statute and Board rules.

(c) "Interfund transfers" do not include interfund loans in which money is temporarily withdrawn from a fund with full obligation for repayment during the fiscal year.

(2) "Without recourse" means there is no obligation to return withdrawn money to the fund from which it was transferred.

R277-420-3. Eligibility.

(1) A school district may qualify as financially distressed if the district:

(a) has a deficit of three percent or more in its year end unappropriated maintenance and operation fund balance following a reduction for any amount in an undistributed reserve;

(b) is unable to meet its financial obligations in a timely manner;

(c) is unable to reduce the maintenance and operation deficit by 25 percent in its budget for the next year;

(d) can demonstrate that it has made reasonable, local efforts to eliminate the deficit;

(e) is financially incapable of meeting statewide educational standards adopted by the Board; and

(f) has a deficit resulting from circumstances not subject to administrative decisions.

(2) The Superintendent shall evaluate the criteria outlined in Subsection (1) and make a determination on whether a district is financially distressed following an on-site visit and consultation with the school district and local school board.

R277-420-4. Procedures for Making Interfund Transfers.

(1) A local school board may apply for an interfund transfer under this rule by filing a request with the Superintendent, which shall include:

(a) evidence that the district meets the criteria set forth in Section R277-420-3; and

(b) a plan to eliminate the district's budget deficit.

(2) As part of a district application under Subsection (1)(a), the Superintendent shall:

(a) visit the school district; and

(b) conduct a financial analysis.

(3) The Superintendent may only approve an interfund transfer under this rule if the Superintendent determines that:

(a) the district meets the eligibility requirements of Section R277-420-3; and

(b) the district's request does not conflict with Subsection 53G-7-306(6)(d).

(4) The Superintendent shall advise the Board of any transfers approved under this rule at the next regularly scheduled Board meeting.

(5) A school district designated as financially distressed may make nonrecurring or nonroutine interfund transfers to the district's maintenance and operation fund upon the approval of the Superintendent and in accordance with the plan submitted by the district under Subsection (1)(b).

(6) An interfund transfer shall be established by a school district under the direction of the local school board in an undistributed reserve account consistent with Section 53G-7-304.

KEY: education finance

November 7, 2017	**53G-7-306**
Notice of Continuation September 13, 2017	**53E-3-401(4)**
	53G-7-304

R277. Education, Administration.
R277-421. Out-of-State Tuition Reimbursement.
R277-421-1. 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) Section 53G-6-305, which outlines when a school district may pay out-of-state tuition for a resident student to attend a school district out of state.

(2) The purpose of this rule is to establish procedures for:

(a) obtaining Board approval for reimbursement of out-of-state tuition expenses;

(b) calculating reimbursement costs; and

(c) recording out of state students in district records.

R277-421-2. Definitions.

(1) "ADM" means average daily membership.

(2) "Minimum school program" or "MSP" means the same as that term is defined in Section 53F-2-102.

(3) "NESS" means the Necessarily Existent Small Schools Fund.

(4) "Utah eTranscript and Records Exchange" or "UTREx" means a system that allows individual detailed student records to be exchanged electronically between public education districts and the Superintendent, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

(5) "WPU" means the weighted pupil unit.

R277-421-3. Board Review of Out-of-State Tuition Agreements.

(1) A district shall submit to the Superintendent an agreement to pay tuition to an out-of-state district in accordance with Subsection 53G-6-305(1) by June 30.

(2) A district requesting reimbursement for excess tuition costs under Subsection 53G-6-305(3) shall submit a request to the Superintendent by June 30 including:

(a) an estimate of ADM for out of state students for the upcoming school year; and

(b) an estimate of tuition payment amounts for the upcoming school year.

(3)(a) The Board shall review a request submitted under Subsection (2) no later than August 30.

(b) The Board may deny a request submitted under Subsection (2) if there are insufficient funds to cover the reimbursement.

R277-421-4. Calculation of Out-of-State Tuition Reimbursement.

(1) The Superintendent shall calculate out-of-state reimbursement to a district by subtracting state funds that are calculated based on the WPU generated by an out-of-state resident student's ADM from the total tuition payment per student:

(a) Kindergarten WPU;

(b) Grade 1-12 WPU;

(c) Professional Staff Costs;

(d) NESS;

(e) District Administrative Costs;

(fi) Class-Size Reduction;

(g) Flexible Allocation;

(h) Gifted and Talented program;

(i) K-3 Reading Improvement program;

(j) Voted and Board Local Levy Guarantee programs; and

(k) Applicable Special Education programs.

(2) A district shall not include out-of-state tuition payments in any other MSP formula.

(3) The Superintendent may include in a calculation under Subsection (1) mileage costs reimbursed by a district to parents for transporting students to the nearest bus stop in accordance with Section R277-600-7.

(4) The Superintendent shall reserve the estimated funds identified by a district under Subsection R277-421-3(2)(a) from the new year NESS appropriation, and pay Board-authorized reimbursement payments from reserved funds.

R277-421-5. Recording Student Membership for Out-of-State Students.

(1) A district shall record student membership for students receiving out-of-state tuition reimbursement in accordance with District enrollment and membership policies.

(2) A district shall report students in UTREx for whom they are paying out-of-state tuition using codes identified by the Superintendent.

(3) A district shall report ADM for students attending school out-of-state pursuant to a tuition agreement under Section 53G-6-305 in the same manner as the district calculates ADM for students attending the district's schools.

KEY: out-of-state, tuition, reimbursements
October 11, 2016 **Art X Sec 3**
53E-3-401(4)
53G-6-305

R277. Education, Administration.
R277-422. State Supported Voted Local Levy, Board Local Levy and Reading Improvement Program.
R277-422-1. 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;

(c) Subsection 53E-3-501(1)(e), which directs the Board to establish rules for:

(i) school productivity and cost effectiveness measures;

(ii) federal programs;

(iii) school budget formats; and

(iv) financial, statistical, and student accounting requirements.

(2) The purpose of this rule is to specify requirements, timelines, and clarifications for:

(a) the state-supported voted local levy;

(b) the board local levy; and

(c) the reading improvement program.

R277-422-2. Definitions.

(1) "Ad valorem property tax" means a tax based on the assessed value of real estate or personal property.

(2) "Board local levy" means a tax levied by a local board in accordance with Section 53F-2-602 to support a district's general fund.

(3) "Free or reduced meal applications" means the applications received by a school district or charter school under the Board-supervised federal Child Nutrition Program.

(4) "Local board" means the school board members elected to govern a school district.

(5) "State-supported" means a formula-based state contribution of funds to the voted local levy program and the board local levy program as defined in Section 53F-2-601 and Section 53F-2-602.

(6) "Voted local levy" means a state-supported program in which a voter-approved property tax levy under Section 53F-2-601 is authorized to cover a portion of the costs within the general fund of the state-supported minimum school program in a district.

(7) "Weighted pupil unit " or "WPU" has the same meaning as set forth in Subsection 53F-2-102(8).

R277-422-3. Requirements and Timelines for State-Supported Voted Local Levy and Board Local Levy.

(1) A local board may establish a state-supported voted local levy program following an election process in accordance with Section 53F-2-601.

(2) A local board which has approved voted local levy or voted leeway programs since 1965 may set an annual fiscal year fixed tax rate levy for the voted local levy equal to or less than the levy authorized by the election.

(3) A district may budget and expend state and local funds received under the voted local levy or board local levy program within the school district's general fund as unrestricted revenue.

(4) In order to receive state support for an initial voted local levy tax rate, a local board shall receive voter approval no later than December 1 prior to the commencement of the fiscal year of implementation of that initial voted local levy tax rate.

(5) If a school district qualifies for state support the year prior to an increase in its existing voted local levy; and:

(a) does not receive voter approval for an increase after June 30 of the previous fiscal year and before December 2 of the previous fiscal year; and

(b) intends to levy the additional rate for the fiscal year starting the following July 1; then

(c) the district may only receive state support for the existing voted local levy tax rate and not the additional voter-approved tax rate for the fiscal year commencing the following July 1; and

(d) shall receive state support for the existing and additional voter-approved tax rate for each year thereafter, as long as the district qualifies to receive state support.

R277-422-4. K-3 Reading Achievement Program.

(1) A district may participate in the K-3 Reading Achievement Program by submitting a plan in accordance with Section 53F-2-503 and Rule R277-406.

(2) A school district shall calculate funding under the K-3 Reading Achievement Program using the following data:

(a) the most current numbers of final adjusted assessed valuations received from the Utah State Tax Commission;

(b) the year's tax collection rate, that corresponds to the year provided under Subsection (2)(a);

(c) the previous fiscal year's number of free and reduced price meal applications; and

(d) the current fiscal year total number of WPUs received by each school district for the basic school program.

KEY: education, finance
November 7, 2017 **Art X Sec 3**
Notice of Continuation September 13, 2017 **53E-3-501(1)(e)**
53E-3-401(4)
53F-2-601
53F-2-602
53F-2-503

R277. Education, Administration.
R277-424. Indirect Costs for State Programs.
R277-424-1. 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), which directs the Board to adopt rules for financial, statistical, and student accounting requirements.

(2) The purpose of this rule is to establish Board standards for claiming indirect costs for state programs.

R277-424-2. Definitions.

(1) "Direct costs" mean costs that can be easily, obviously, and conveniently identified by the Superintendent with a specific program.

(2) "Indirect costs" mean the costs of providing indirect services.

(3) "Indirect Services" mean services that cannot be identified with a specific program.

(4) "Restricted indirect cost rate" means a rate assigned to each LEA annually based on the ratio of restricted indirect costs to direct costs as reported in the annual financial report for the specific LEA.

(5) "Unallowable costs" mean expenditures directly attributable to governance, including:

(a) salaries;

(b) expenditures of the office of the district superintendent, the governing board, and election expenses; and

(c) expenditures for fringe benefits, which are associated with unallowable salary expenditures.

(6) "Unrestricted indirect cost rate" means a rate assigned to each LEA annually, based on the ratio of unrestricted indirect costs to direct costs as reported in the annual financial report for the specific LEA.

R277-424-3. Standards.

(1) An LEA may charge indirect costs to state funded programs.

(2) The Superintendent may not authorize or pay indirect costs to higher education institutions for state funded contractual work.

(3)(a) Prior to the beginning of each fiscal year, the Superintendent shall publish a schedule of the indirect cost rates for state programs.

(b) The Superintendent shall develop the schedule from information contained in the annual financial reports and specifically identified items submitted by LEAs.

(c) Each program schedule shall include:

(i) whether or not the restricted or unrestricted indirect cost rate applies; and

(ii) whether or not indirect costs are allowable or applicable.

(4)(a) An LEA may recover indirect costs if funds are available.

(b) If a combination of direct and indirect costs exceeds funds available, then the LEA may not recover the total cost of the project or program.

(c) Recovery of indirect costs is not optional for state programs.

(d) If an LEA elects to recover indirect costs, the LEA shall use the annual rates negotiated by the Superintendent for all applicable federal and state programs.

(5)(a) An LEA may only recover indirect costs for state programs to the extent that direct costs were incurred.

(b) The Superintendent shall apply the indirect cost rate to the amount expended, not to the total grant, in order to determine the amount for indirect costs.

KEY: education finance
November 7, 2017 Art X Sec 3
Notice of Continuation September 13, 2017 53E-3-501(1)(e)
53E-3-401(4)

R277. Education, Administration.
R277-426. Definition of Private and Non-Profit Schools for Federal Program Services.
R277-426-1. 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-3-501(3), which allows the Board to administer federal funds and to distribute them to eligible applicants; 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 define requirements that private, non-public, and non-profit schools must meet in conjunction with federal program criteria to receive services under federal laws requiring the public education system to serve students in these schools.

R277-426-2. Definitions.

(1) "Data Universal Numbering System Number" or "DUNS Number" means a unique numeric identifier assigned to a single business entity by Dun and Bradstreet.

(2) "Exempt Organization Determination Letter" means a letter issued by the Internal Revenue Service, which verifies that an organization is a qualified tax-exempt entity.

R277-426-3. Qualifications.

For the purposes of receiving services under federal programs:

(1) "Private or non-public school" means a school which:

(a) is owned and operated by:

(i) an individual;

(ii) a religious institution;

(iii) a partnership; or

(iv) a corporation other than the State, a subdivision of the State, or the Federal government;

(b) is supported primarily by non-public funds;

(c) vests the operation and determination of its program with other than publicly-elected or appointed officials;

(d) teaches the required subjects on each grade level as designated by the Board for the same length of time as students must be taught in the public schools;

(e) is properly licensed if so required by the appropriate governmental jurisdiction;

(f) complies with any state and local ordinances and codes pertaining to the operation of that type of facility or institution; and

(g) possesses a DUNS number.

(2) "Non-profit school" means a school which:

(a) is not a part of the public school system;

(b) is operated with no intention of making a profit;

(c) does not primarily provide educational services to students enrolled in for profit residential programs;

(d) possesses:

(i) a State of Utah tax exemption number;

(ii) a DUNS number;

(iii) a United States Internal Revenue Service Employer Identification Number; and

(iv) a favorable Exempt Organization Determination Letter;

(e) teaches the required subjects on each grade level as designated by the Board for the same length of time as students must be taught in the public schools if required by the federal program;

(f) is properly licensed if so required by the appropriate governmental jurisdiction; and

(g) complies with any state or local legal requirements pertaining to the operation of that type facility or institution.

KEY: education finance, private schools

November 7, 2017	**Art X Sec 3**
Notice of Continuation September 13, 2017	**53E-3-501(3)**
	53E-3-401(4)

R277. Education, Administration.
R277-433. Disposal of Textbooks in the Public Schools.
R277-433-1. 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) Section 53G-7-606, which requires the Board to make rules providing for the disposal or reuse of useable textbooks in the public schools.

(2) The purpose of this rule is to provide procedures for LEA policies for the reuse or disposal of textbooks in the public schools.

R277-433-2. Definitions.

(1) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(2) "Textbook" means:

(a) any printed book that is required for participation in a course of instruction;

(b) printed texts approved for pilot or trial use by the State Instructional Materials Commission; or

(c) books used in classes for which textbooks are generally not adopted at the state level.

(3) "Useable textbooks" means a set of at least 25 textbooks that are not badly damaged, worn out, or outdated.

R277-433-3. LEA Policies on Disposal of Textbooks.

(1) Each LEA shall develop policies regarding the reuse or disposal of textbooks.

(2) An LEA's policies shall provide procedures for notification to other LEAs of available textbooks and timelines for disposal of textbooks.

(3) An LEA's policies shall provide procedures for negotiating the exchange of the textbooks.

KEY: textbooks

September 21, 2017	**Art X Sec 3**
Notice of Continuation July 19, 2017	**53E-3-401(4)**
	53G-7-606

R277. Education, Administration.
R277-436. Gang Prevention and Intervention Programs in the Schools.
R277-436-1. Definitions.

A. "Student at risk" means any student who because of his individual needs requires some kind of uniquely designed intervention in order to achieve literacy, graduate and be prepared for transition from school to post-school options.

B. "Board" means the Utah State Board of Education.

C. "Gang" (as defined in this rule) means a group of three or more people who form an allegiance and engage in a range of anti-social behaviors that may include violent or unlawful activity or both. These groups may have a name, turf, colors, symbols, or distinct dress, or any combination of the preceding characteristics.

D. "Gang prevention" means instructional and support strategies, activities, programs, or curricula designed and implemented to provide successful experiences for youth and families. These components shall promote cultural and social competence, self-management skills, citizenship, preparation for life skills, academic achievement, literacy, and interpersonal relationship skills required for school completion and full participation in society.

E. "Gang intervention" means specially designed services required by an individual student experiencing difficulty in cultural and social competence, self-management skills, citizenship, preparation for life skills, academic achievement, literacy, and interpersonal relationships within or outside of the school which may impact the individual's susceptibility to gang membership or gang-like activities or both.

F. "Gang Prevention and Intervention Program" means specifically designed projects and activities to help at-risk students stay in school and enhance their cultural and social competence, self-management skills, citizenship, preparation for life skills, academic achievement, literacy, and interpersonal relationship skills required for school completion and full participation in society.

G. "In kind services" means those materials, staff and equipment which are required to develop and implement gang prevention and intervention services, strategies, activities, programs, and curricula with individual students, families, or both. In kind services do not include office space and related office support.

H. "Superintendent" means the State Superintendent of Public Instruction.

I. "USOE" means the Utah State Office of Education.

R277-436-2. 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 Section 53A-17a-166(1)(b) which appropriates funds to be used for Gang Prevention and Intervention Programs in the 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 establish standards and procedures for distributing funding for gang prevention and intervention programs in public schools.

R277-436-3. Application, Distribution of Funds, and Administrative Support.

A. Awards shall be made to individual schools and funds allocated to charter schools or to school districts to distribute to designated schools.

B. School districts may submit a single district-wide proposal for one or more schools within the district. The proposal shall:

(1) provide for distribution of funds to individual schools; and

(2) provide explanations of prevention and intervention activities and strategies planned for individual schools.

C. Charter schools may submit independent or joint proposals.

D. School districts or charter schools or charter consortia may utilize up to ten percent of their funding under the rule for the following specific purposes:

(1) administrative oversight;

(2) professional development for licensed and non-licensed employees who work directly in gang prevention/intervention activities; and

(3) professional and technical services.

E. Proposals/applications shall be provided by the USOE.

F. Awards per school shall be based on funds available.

G. Priority shall be given to applications reflecting interagency and intra-agency collaboration.

H. Proposals receiving funding shall be notified by July 1.

I. Schools or joint school applications that were funded and complied with all requirements of law and rule may reapply in subsequent years using an abbreviated proposal form provided by the USOE.

J. The USOE may retain up to five percent of the annual legislative appropriation for the following specific purposes:

(1) an amount not to exceed 2.5 percent for:

(a) site visits; and

(b) professional development, as determined and guided by the USOE.

(2) an amount not to exceed 2.5 percent for:

(a) administrative oversight; and

(b) statewide coordination training.

R277-436-4. Evaluation and Reports.

A. School districts and charter schools or consortia shall provide the USOE with a year-end evaluation report by June 30 for the previous fiscal year.

B. The year-end report shall include:

(1) an expenditure report;

(2) a narrative description of all activities funded;

(3) copies of any and all products developed;

(4) effectiveness report detailing evidence of individual and overall program impact on gang and gang-related activities and involvement; and

(5) other information or data as required by the USOE.

C. The USOE may require additional evaluation or audit procedures from the grant recipient to demonstrate use of funds consistent with the law and Board rules.

R277-436-5. Waivers.

The Superintendent may grant a written request for a waiver of a requirement or deadline which a district or school finds unduly restrictive.

KEY: public schools, disciplinary problems, students at risk, gangs
August 8, 2011 **Art X Sec 3**
Notice of Continuation May 11, 2018 **53A-17a-166(1)(b)**
53A-1-401(3)

R277. Education, Administration.
R277-437. Student Enrollment Options.
R277-437-1. Definitions.

A. "Available school or program" means a school or program currently designated under the law and this rule by a district as open to nonresident students.

B. "Board" means the Utah State Board of Education.

C. "District of residence" means a student's school district of residence under Section 53G-6-302.

D. "Nonresident student" means a student attending or seeking to attend a school other than the designated school of residence.

E. "Residual per student expenditure" means the expenditure based on the most recent State Superintendent's Annual Report according to the following formula:

(1) Take total expenditures before interfund transfer for:

(a) maintenance and operation;

(b) tort liability; and

(c) capital projects.

(2) Subtract from the sum of (1), above:

(a) resident district's taxes collected under the Minimum School Program;

(b) state revenue;

(c) federal revenue; and

(d) expenditures for site acquisition or new facility construction (new facility construction includes remodeling that increases building square footage or other major remodeling, if approved by the USOE Director of Finance).

(3) Divide the remainder of (1) and (2) above by the total student membership of the district as reported in the most recent State Superintendent's Annual Report.

F. "Safety emergency" means a situation in which:

(1) enrollment in a specific school is necessary to protect the health of the student as determined by a specific medical recommendation from a medical doctor; or

(2) enrollment in a specific school is necessary to protect the emotional or physical safety of a student, based on documentation/evidence provided by the student's previous school, the parent(s)/guardian(s), a clinical psychologist who is tracking the student, or cumulative information.

G. "School of residence" means the school which a student would normally attend in the student's district of residence.

H. "School into which the school's students feed" for purposes of this rule means school boundaries and feeder systems as determined by the local board of education which may change over time.

I. "Serious infraction of the law or school rules" means chronic misbehavior by a student which is likely, if it were to continue after the student was admitted, to endanger persons or property, cause serious disruptions in the school, or to place unreasonable burdens on school staff.

J. "USOE" means the Utah State Office of Education.

R277-437-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, by 53E-3-501(1)(b) which directs the Board to establish rules and minimum standards for access to programs and by 53G-6-405 which directs the Board to provide a formula by rule for resident students who attend school districts under Section 53G-6-401 et seq. This rule is consistent with federal laws and regulations, including the Individuals with Disabilities Act (IDEA), 20 U.S.C., Chapter 33, Section 1412 as amended by Public Law 102-119, and the Elementary and Secondary Education Act of 2001 (ESEA), P.L. 107-110.

B. The purpose of this rule is:

(1) to establish necessary definitions;

(2) to establish a formula for the residual per pupil expenditure for school districts to reimburse each other for full and part-time nonresident students;

(3) to summarize school, school district, and state responsibilities under Section 53G-6-401; and

(4) to provide a standard statewide open enrollment form required under Subsection 53G-6-402(4)(b)(ii).

R277-437-3. Local School Board and District Responsibilities.

A. A local board shall have policies describing procedures for students to follow in applying to attend schools other than their respective schools of residence. Local school boards shall designate which schools and programs will be available for open enrollment during the coming school year consistent with the definitions and timelines of Section 53G-6-401 et seq.

B. The school district shall adjust timelines for open enrollment applications if the district is developing a district-wide reconfiguration of its schools consistent with Subsection 53G-6-401(1).

C. A school district may establish longer or broader timelines for enrollment than required by law.

D. If construction, remodeling, or other circumstances beyond the control of the local board do not reasonably permit the local board to make sufficiently accurate enrollment projections for a given school to determine whether the school should be designated as available for open enrollment for the coming year, the local board shall designate delays and procedures consistent with Subsection 53G-6-402(4)(c).

E. As required under Subsection 53G-6-405(2), a resident district shall pay to a nonresident district one-half of the resident district's residual per student expenditure for each resident student properly registered in the nonresident district.

F. Each local board shall establish a procedure to consider appeals of any denial of initial or continued enrollment of a nonresident student under Subsection 53G-6-404(1).

G. A local board of education may deny enrollment of nonresident students for reasons identified in R277-437-1I.

H. This rule does not govern eligibility for students to participate in activities supervised by the Utah High School Activities Association (UHSAA) if students transfer under Section 53G-6-401.

R277-437-4. State Board of Education Responsibilities.

A. Capacity for special education classrooms shall:

(1) be consistent with Utah Special Education Caseload Guidelines; and

(2) depend on staffing and funding constraints of the receiving school district.

B. A model standard enrollment options application form shall be available on the USOE website.

R277-437-5. Transportation.

A school district may transport its students to schools in other districts under Subsection 53G-6-405(3)(b)(i).

KEY: public education, enrollment options
February 7, 2014 **Art X Sec 3**
Notice of Continuation December 16, 2013 53E-3-401(1)(b)
53G-6-405
53G-6-401 et seq.

R277. Education, Administration.
R277-438. Dual Enrollment.
R277-438-1. 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)(b)(i), which directs the Board to establish rules and minimum standards for access to programs;

(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; and

(d) Section 53G-6-702, which governs dual enrollment.

(2) The purpose of this rule is to provide consistent statewide procedures and criteria for a home school and private school student's participation in a public school course, co-curricular activity, or program.

R277-438-2. Definitions.

(1) "Co-curricular activity" means a school district or school activity, course, or experience, outside of school hours, that also includes a required regular school day component.

(2) "Dual enrollment student" means a student who is enrolled simultaneously in:

(a) a private school or home school; and

(b) a public school.

(3) "Eligibility" means a student's fitness and availability to participate in a school course, activity, or program governed by this rule that is determined by a number of factors, including:

(a) residency;

(b) scholarship;

(c) age; and

(d) the number of semesters of participation in a particular course, activity, or program.

(4) "Full-time student" means a student earning the school district designated number and type of credits required for participation in a course, activity, or program in the school district in which the student's parent resides.

(5) "Home school" means a school in the state comprised of one or more students officially excused from compulsory public school attendance under Section 53G-6-204.

(6) "Private school" means a school in the state that:

(a) is maintained by a private individual or corporation;

(b) is maintained and operated not at public expense;

(c) is generally supported, in part at least, by tuition fees or charges;

(d) operates as a substitute for, and gives the equivalent of, instruction required in a public school;

(e) employs a teacher able to provide the same quality of education as a public school teacher;

(f) is established to operate indefinitely and independently, not dependent upon age of the students available or upon individual family situations; and

(g) is licensed as a business by the Department of Commerce.

(7)(a) "Resident school" means a public school:

(i) that is under the control of a local school board elected under Title 20A, Chapter 14, Nomination and Election of State and Local School Boards; and

(ii) within whose boundaries a student's custodial parent resides.

(b) "Resident school" does not mean a charter school or online school.

(8) "Student participation fee" means a fee charged to all participating students by the resident school for enrollment in a course, program, or co-curricular school activity consistent with Rule R277-407.

R277-438-3. Private and Home School Student Participation in a Public School Course, Co-curricular Activity, or Program.

(1) A student who is exempt from compulsory public school education by a local school board for instruction in a private or home school may enroll in the student's resident school as a dual enrollment student and participate in a course, co-curricular activity, or program at the student's resident school if the student:

(a) takes courses comparable to resident school courses or earns credit under options outlined in Section R277-700-6 in at least as many of the designated courses as required by the local school board of a student for participation in the course, co-curricular activity, or program; or

(b) demonstrates competency to the satisfaction of the LEA in the subject matter taught in the courses required by the local school board of a student for participation the course, co-curricular activity or program.

(2) A public school that is not the student's resident school may allow a private or home school student to enroll in the public school, including in a single course or program, as a dual enrollment student, at the discretion of the public school, and in accordance with Subsection 53G-6-703(2)(d).

(3)(a) A private school dual enrollment student is eligible to participate in a course, co-curricular activity, or program consistent with the eligibility standards for a full-time student, including providing a report card to the resident school or other school described in Subsection (2) upon request.

(b) A home school dual enrollment student is eligible to participate in a course, co-curricular activity, or program if eligibility standards are met consistent with Subsections 53G-6-703(5) through 53G-6-703(14).

R277-438-4. Fees for Private and Home School Students.

A school or school district shall waive a student participation fee for a dual enrollment private or home school student if:

(1) the student is eligible; and

(2) the parent provides required documentation under Section 53G-7-504 and Rule R277-407, School Fees.

R277-438-5. Miscellaneous Issues.

(1) A dual enrollment student attending an activity or a portion of a school day under Section 53G-6-702 is subject to the same behavior and discipline rights and requirements of a full-time student.

(2) A dual enrollment student who attends an activity or a portion of the school day is subject to the administrative scheduling and teacher discretion of the public school.

(3)(a) A dual enrollment student with a disability may participate as a dual enrollment student consistent with law, this rule and 34 CFR 300.450 through 300.455.

(b) A public school that enrolls a dual enrollment student shall prepare an IEP for a student described in Subsection (3)(a) prior to the student's participation in dual enrollment using comparable procedures to those required for identifying and evaluating public school students.

(c) A student with a disability seeking dual enrollment is entitled to services for the time, or for the number of courses, the student is enrolled in the public school, based on the decision of the student's IEP team.

(d) Decisions about the scheduling and manner of services provided is the responsibility of the enrolling public school and school district personnel.

(e) A school or a school district is not prohibited from providing a service to a student who is not enrolled full time

in excess of those required by this section.

KEY: public education, dual enrollment
December 8, 2016 **Art X Sec 3**
Notice of Continuation October 14, 2016 **53E-3-501(1)(b)(i)**
53E-3-401(401)
53G-6-702

R277. Education, Administration.
R277-444. Distribution of Money to Arts and Science Organizations.
R277-444-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of the public school system with the Board;

(b) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities; and

(c) Section 53E-3-501, which directs the Board to establish rules and standards for the public schools, including curriculum and instruction requirements.

(2) The purpose of this rule is to provide for the distribution of money appropriated by the state to an arts or science organization that:

(a) provides an educational service to a student or teacher; and

(b) facilitates a student developing and using the knowledge, skills, and appreciation defined in an arts or science core standard.

R277-444-2. Definitions.

(1) "Arts organization" means a professional artistic organization that provides an educational service related to dance, music, drama, art, visual art, or media art in the state.

(2) "City" has the same meaning as that term is defined in Subsection 10-1-104(1).

(3) "Community" means the group of persons that have an interest or involvement in the education of a person in kindergarten through grade 12, including:

(a) a student, parent, teacher, and administrator; and

(b) an association or council that represents a person described in Subsection (2)(a).

(4) "Core standard" means a standard:

(a) established by the Board in Rule R277-700 as required by Section 53E-3-501; and

(b) that defines the knowledge and skills a student should have in kindergarten through grade 12 to enable a student to be prepared for college or workforce training.

(5) "Cost effectiveness" means:

(a) maximization of the educational potential of the resources available through the organization; and

(b) not using money received through a program for the necessary maintenance and operational costs of the organization.

(6) "Educational service" means an in-depth instructional workshop, demonstration, presentation, performance, residency, tour, exhibit, teacher professional development, side-by-side mentoring, or hands-on activity that:

(a) relates to an arts or science core standard; and

(b) takes place in a public school, charter school, professional venue, or a facility.

(7) "Educational soundness" means an educational service that:

(a) is designed for the community and grade level being served, including a suggested preparatory activity and a follow-up activity that are relevant to a core standard;

(b) features literal interaction of a student or teacher with an artist or scientist;

(c) focuses on a specific core standard; and

(d) shows continuous improvement guided by analysis of an evaluative tool.

(8) "Fiscal agent" means a city that:

(a) is designated by an organization as described in Subsection R277-444-4(5); and

(b) acts on behalf of an organization to perform financial or compliance duties.

(9) "Hands-on activity" means an activity that includes active involvement of a student with an artist or scientist, ideally with material provided by the organization.

(10) "Informal Science Education Enhancement program" or "iSEE program" means a program described in Section R277-444-7 for which a science organization may apply to receive money appropriated by the state.

(11) "Organization" means:

(a) a nonprofit corporation organized under:

(i) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act; or

(ii) Section 501(c)(3), Internal Revenue Code; and

(b)(i) an arts organization; or

(ii) a science organization.

(12) "Procedural efficiency" means the organization delivers the educational service at the lowest cost possible.

(13) "Professional excellence" means the organization:

(a) has been juried or reviewed, based on criteria for artistic or scientific excellence, by a panel of recognized and qualified critics in the appropriate discipline;

(b) has received a recognition of excellence through an award, a prize, a grant, a commission, or an invitation to participate in a recognized series of presentations in a well-known venue;

(c) includes a recognized and qualified professional in the appropriate discipline who has created an artistic or scientific project or composition specifically for the organization to present; or

(d) any combination of criteria described in Subsections (13)(a) through (c).

(14) "Professional outreach programs in the schools program" or "POPS program" means a program described in Section R277-444-7 for which an arts organization may apply to receive money appropriated by the state.

(15)(a) "Program" means the system through which the Board grants money appropriated by the state to an organization to enable the organization to provide its expertise and resources through an educational service in the teaching of a core standard.

(b) "Program" includes:

(i) the Provisional program;

(ii) the POPS program;

(iii) the iSEE program;

(iv) the Science Enhancement program;

(v) the Integrated Student and New Facility Learning program; and

(vi) the Subsidy program.

(16) "Science organization" means a professional science organization that provides a science-related educational service in the state.

R277-444-3. Program Application.

(1) If the state appropriates money for a program, an organization may apply to receive money from a program:

(a) on an application form provided by the Superintendent; and

(b) by May 30 of the fiscal year immediately prior to the fiscal year in which the organization is to receive the money.

(2) The application shall include:

(a) documentation that the organization is:

(i) a non-profit corporation that has existed at least three consecutive years prior to the date of the application;

(ii) an arts organization or a science organization that has attained professional excellence in the discipline; and

(iii) fiscally responsible;

(b) a description of the matching funds required by Subsection R277-444-4(3); and

(c) an educational service plan, which describes:

(i) the educational service that the organization will use

the program money to provide; and

(ii) a plan to creatively and effectively provide the educational service.

(3)(a) The Superintendent shall evaluate an application with community representatives and make a recommendation on the application to the Board at the Board's August meeting.

(b) The Board shall approve or deny an application based on:

(i) whether the organization meets the requirements of this rule; and

(ii) how well the organization's educational service plan meets the purpose of this rule.

R277-444-4. Grant General Provisions and Disbursement.

(1)(a) The Superintendent shall make a recommendation to the Board at the Board's August meeting on the grant amount for an organization based on:

(i) the annual appropriation for a program;

(ii) the grant amount an organization received in a previous fiscal year, if any;

(iii) an organization's year-end report, if any; and

(iv) how well the organization's educational service plan meets the purpose of this rule relative to the other organizations participating in the program.

(b) If the state reduces the amount of money appropriated for a program from the previous fiscal year, the Board may use its discretion to allocate the money among the organizations participating in the program.

(2)(a) The Superintendent shall notify an organization of the grant amount by August 30.

(b)(i) The Superintendent shall disburse the money to an organization after an organization submits a request for reimbursement on a form provided on the USOE website.

(ii) An organization shall submit a reimbursement form on or before July 10 for an expense incurred by an organization through the implementation of an educational service plan.

(3) An organization that receives money from a program shall have equal matching money from another source to support its delivery of an educational service.

(4)(a) Except as provided by Subsection (4)(b), an organization may not charge the school, teacher, or student a fee for the educational service for which the organization receives program money.

(b) An organization that receives money from the Subsidy program may charge a fee for an educational service.

(5)(a) An organization may designate a city as the organization's fiscal agent if:

(i) the city's governing body oversees and monitors the organization and fiscal agent's compliance with program requirements;

(ii) the city complies with board rules;

(iii) the city and the organization use program money for required purposes described in this rule; and

(iv) the city and the organization have an agreement or contract in place regarding the designation of the city as the organization's fiscal agent.

(b) A city fiscal agent may not use program money:

(i) for the city's general administrative purposes; or

(ii) to fund administrative costs to act as the organization's fiscal agent.

(6) A scientist, artist, or entity hired or sponsored by an organization to provide an educational service shall comply with the procedures and requirements of this rule.

R277-444-5. Year-end Report - Evaluation -- Accountability -- Variations.

(1)(a) An organization that receives money from a program shall submit a year-end report to the Superintendent by July 10.

(b) The year-end report shall include:

(i) documentation of the organization's non-profit status;

(ii) a budget expenditure report and income source report using a form provided by the Superintendent, including a report and accounting of matching funds and a fee charged, if any, for an educational service;

(iii) a record of the dates and places of all educational services rendered, the number of hours of educational service per LEA, school, and classroom, as applicable, with the number of students and teachers served, including:

(A) documentation of the schools that have been offered an opportunity to receive an educational service over a three year period, to the extent possible and consistent with the organization's plan;

(B) documentation of collaboration with the Superintendent and the community in planning the educational service, including the content, a preparatory activity, and a follow-up activity that are relevant to a core standard;

(C) a brief description of the educational service provided through the program, and if requested, copies of any material developed; and

(D) a description of how the educational service contributed to a student developing and using the knowledge, skills, and appreciation defined in an arts or science core standard;

(iv) a summary of the organization's evaluation of:

(A) cost-effectiveness;

(B) procedural efficiency;

(C) collaborative practices;

(D) educational soundness; and

(E) professional excellence; and

(v) a description of the resultant goal or plan for continued evaluation and improvement.

(2) The Superintendent may visit an organization to evaluate the effectiveness and preparation of the organization:

(a) before the Board approves an application;

(b) before disbursing money; and

(c) during an educational service.

(3)(a) In addition to the year-end report required by Subsection (1), the Superintendent may require an evaluation or an audit procedure from an organization demonstrating use of money consistent with state law and this rule.

(b) If the Board finds that an organization did not use money received from a program consistent with state law and this rule, the Board may:

(i) reduce or eliminate the grant to the organization in the current fiscal year;

(ii) deny an organization's participation in a program in a future fiscal year; or

(iii) impose any other consequence the Board deems necessary to ensure the proper use of public funds.

(4)(a) An organization may not deviate from the approved educational service plan for which the organization receives money unless:

(i) the organization submits a written request for variation to the Superintendent;

(ii) the organization receives approval from the Superintendent for the variation; and

(iii) the variation is consistent with state law and this rule.

(b) An organization shall describe the nature and justification for a variation approved under Subsection (4)(a) in a year-end report.

(5) The Superintendent shall ensure that participating LEAs receive educational services in a balanced and comprehensive manner over a three year period.

R277-444-6. Provisional Program Requirements.

(1) Through the Provisional program, the Board may grant an organization money to enable the organization to:

(a) further develop an educational service that is sound;

(b) increase the number of students or teachers who receive an educational service; or

(c) expand the geographical location in which the educational service is delivered.

(2) The Board may grant money from the Provisional program to an organization for one year.

(3) An organization may apply for a grant each year for up to five years if the organization demonstrates an increase in the educational service between the year-end report and the proposed educational service plan described in the application.

R277-444-7. POPS and iSEE Program Requirements.

(1)(a) Through the POPS program, the Board may grant money to an arts organization to provide an educational service state-wide.

(b) Through the iSEE program, the Board may grant money to a science organization to provide an educational service state-wide.

(c) A grant from the POPS program or iSEE program is on-going, subject to the review required by Subsection (4).

(2)(a) An arts organization may apply for the POPS program and a science organization may apply for the iSEE program if the organization:

(i) has successfully participated in the Provisional program for three consecutive years in which the state appropriates money to the Provisional program;

(ii) has educational staff and the capacity to deliver an educational service state-wide; and

(iii) demonstrates during participation in the Provisional program:

(A) the quality and improvement of an educational service; and

(B) fiscal responsibility.

(b) An organization shall submit a letter of intent to transition from the Provisional program to the POPS program or the iSEE program to the Superintendent by October 1 of the calendar year immediately before the calendar year in which the organization submits the application for the POPS program or the iSEE program.

(3) An organization that receives money from the POPS program or iSEE program may not receive money from the Provisional program or the Subsidy program in the same fiscal year.

(4)(a) At least once every four years, the Superintendent shall review and evaluate all organizations' participation in the POPS program and the iSEE program, which may include:

(i) evaluation of an educational service plan, year-end report, reimbursement form, or audit; and

(ii) attendance at an educational service or a site visit.

(b) The Superintendent shall:

(i) report to the Board the results of the review and evaluation; and

(ii) make a recommendation to the Board regarding an organization's continued participation in the program based on how well the organization fulfills the purpose of this rule.

R277-444-8. Science Enhancement Program Requirements.

(1)(a) Through the Science Enhancement program, the Board may grant money to a science organization to provide a teacher with resources materials or professional development related to a science core standard.

(b) A grant from the Science Enhancement program is on-going, subject to the review required by Subsection (4).

(2) A science organization that participates in the iSEE program may apply for the Science Enhancement program.

(3) The Board may approve an application to participate in the Science Enhancement program if the science organization demonstrates a likely increase in:

(a) the number of teachers or students the organization serves; or

(b) the quality or quantity of the resource materials or professional development the organization delivers.

(4)(a) At least once every four years, the Superintendent shall review and evaluate all organizations' participation in the Science Enhancement program, which may include evaluation of the resource materials, professional development plan, year-end report, reimbursement form, or audit.

(b) The Superintendent shall:

(i) report to the Board the results of the review and evaluation; and

(ii) make a recommendation to the Board regarding an organization's continued participation in the Science Enhancement program based on how well the organization fulfills the purpose of this rule.

R277-444-9. Integrated Student and New Facility Learning Program Requirements.

(1) Through the Integrated Student and New Facility Learning program, the Board may grant money to a science organization to enable the science organization to provide an educational service integrated with the science organization's new or significantly re-designed capital facility.

(2) An science organization that participates in the iSEE program may apply for the Integrated Student and New Facility Learning program.

(3) The Board shall determine the length of the grant and how often the Superintendent shall review and evaluate an organization's continued participation in the program.

(4) The science organization may use the money to:

(a) develop an educational service integrated with the capital facility; and

(b) cover its costs associated with increasing the number of students who visit the capital facility.

(5) The Superintendent may not disburse money until the science organization completes the capital facility.

R277-444-10. Subsidy Program Requirements.

(1)(a) Through the Subsidy program, the Board may grant money to an organization that provides a valuable education service but does not qualify for participation in another program.

(b) A grant from the Subsidy program is on-going, subject to the review required by Subsection (5).

(2)(a) An organization may apply to receive money through the Subsidy program if the organization has successfully participated in the Provisional program for three consecutive years in which the state appropriated money to the Provisional program.

(b) An organization shall submit a letter of intent to transition from the Provisional program to the Subsidy program to the Superintendent by October 1 of the calendar year immediately before the calendar year in which the organization submits the application for the Subsidy program.

(3)The Board may approve an application to participate in the Subsidy program if the Board finds the organization:

(a) has successfully provided a valuable educational service during its participation in the Provisional program; and

(b) does not meet the requirements to participate in the POPS program or iSEE program because the organization:

(i) delivers an educational service regionally instead of state-wide; or

(ii) charges a fee for an educational service.

(4) An organization that receives money from the Subsidy program may not receive money from the another program in the same fiscal year.

(5)(a) At least once every four years, the Superintendent shall review and evaluate all organizations' participation in the Subsidy program, which may include:

(i) evaluation of an educational service plan, year-end report, reimbursement form, or audit; and

(ii) attendance at an educational service or a site visit.

(b) The Superintendent shall:

(i) report to the Board the results of the review and evaluation; and

(ii) make a recommendation to the Board regarding an organization's continued participation in the Subsidy program based on how well the organization fulfills the purpose of this rule.

KEY: arts, science, core standards

December 1, 2015	**Art X Sec 3**
Notice of Continuation August 13, 2015	**53E-3-401(4)**
	53E-3-501

R277. Education, Administration.
R277-445. Classifying Small Schools as Necessarily Existent.
R277-445-1. 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 53F-2-304(3), which requires the Board to adopt rules that:

(i) govern the approval of necessarily existent small schools consistent with state law; and

(ii) ensure that districts are not building secondary schools in close proximity to one another where economy and efficiency would be better served by one school meeting the needs of secondary students in a designated geographical area; 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)(a) The purpose of this rule is to specify the standards by which the Board classifies schools as necessarily existent, which qualifies the schools for additional funding.

R277-445-2. Definitions.

(1) "ADM" means average daily membership derived from end-of-year data.

(2) "Weighted Pupil Unit" or "WPU" means the basic unit used to calculate the amount of state funds a school district may receive.

R277-445-3. Standards.

(1) A school may be classified as necessarily existent if the school's ADM does not exceed:

(a) 160 for elementary schools, including kindergarten at a weighting of .55 per average daily membership;

(b) 300 for one or two-year secondary schools;

(c) 450 for three-year secondary schools;

(d) 500 for four-year secondary schools; or

(e) 600 for six-year secondary schools.

(2) In addition to the requirements of Subsection (1), one-way bus travel over Board approved bus routes for any student from the assigned school to the nearest school within the district of the same type shall require:

(a) students in kindergarten through grade six to travel more than 45 minutes; or

(b) students in grades seven through twelve to travel more than one hour and 15 minutes.

(3) Notwithstanding Subsection (2), the Superintendent may classify a school that meets the criteria of Subsection (1), as necessarily existent if:

(a) the school is in a district which has been consolidated to the maximum extent possible, and activities in cooperation with neighboring districts within or across county boundaries are appropriately combined;

(b) there is evidence acceptable to the Superintendent of increased growth in the school sufficient to take it out of the small school classification within a period of three years, provided that.

(i) the Superintendent may only classify the school as necessarily existent until its ADM surpasses the size standard for small schools of the same type;

(ii) the Superintendent shall annually compare the school's ADM to the school's projected ADM to determine increases or decreases in enrollment;

(iii) if the assessment for the first or second year shows the increase in the school's ADM is less than 80 percent of the projected annual increase, the school shall no longer be classified as necessarily existent;

(c) the Superintendent determines that consolidation may result in undesirable social, cultural, and economic changes in the community, and:

(i) the school has a safe and educationally adequate school facility with a life expectancy of at least ten years, as judged, at least every five years, by the Superintendent after consultation with the district; or

(ii)(A) the district would incur construction costs by combining a school seeking necessarily existent small school status with an existing school and such construction and land costs would exceed the insurance replacement value of the exiting school by 30 percent;

(B) the existing school has a life expectancy of at least ten years; but

(C) In the event that the ADM from the school seeking necessarily existent small school status under Subsection (3)(c)(ii), when combined with the ADM at the existing school exceed criteria in Subsection (1), the Superintendent may not classify the existing school as necessarily existent; or

(d) the school does not qualify under Subsections (3)(a) through (c), and removal of the necessarily existent status would result in capital costs that the school district cannot meet within three years when utilizing all funds available from local, state, or federal sources.

(4) The Superintendent may not recognize a school with less than six grades as a necessarily existent small school if its is feasible in terms of school plant to consolidate the school into a larger school, which, if consolidated, would meet the criteria of Subsection (1) and (2).

(5) If the Superintendent determines that a secondary complex or attendance area meets the criteria of necessarily existent when analyzed on a 7-12 grade basis, the Superintendent shall not invalidate the qualifying status as a result of a reorganization pattern by a district.

(6)(a) In accordance with Subsection 53G-6-305(3)(b)(ii), the Superintendent shall use Necessarily Existent Small Schools Program funds to cover out-of-state tuition reimbursements under Rule R277-421.

(b) Any prior year funding balance in the Necessarily Existent Small Schools Program shall be distributed by the Superintendent in the current year using a formula that considers the tax effort of a local board of education.

(7)(a) A school district shall utilize additional WPU funds allocated for necessarily existent small schools for programs at the school for which the units were allocated.

(b) Funds allocated under this rule shall supplement and not supplant other funds allocated to schools by the local board of education.

(8) The Superintendent shall classify a school after consultation with the district and in accordance with applicable state statutes and Board rules.

KEY: school enrollment, educational facilities

September 21, 2017	**Art X Sec 3**
Notice of Continuation July 19, 2017	**53E-3-401(4)**
	53F-2-304(1)

R277. Education, Administration.
R277-454. Construction Management of School Building Projects.
R277-454-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "CM" means an individual designated as a construction manager. The CM may be an architect, engineer, general contractor, or other professional consultant. It may also be an entity which is referred to as a construction management firm. The CM works as the agent of the owner of the construction project. The CM, at the discretion of the owner, may assist in the development and implementation of any or all of the predesign, design, bidding, construction, and occupancy stages of the construction project. The CM is responsible for the effective, orderly, and acceptable completion of the construction project.

C. "Construction management" means a contractual and professional working relationship between the owner of a construction project and a CM.

D. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

R277-454-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests 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 53E-3-705 which requires the Board to prepare an annual school plant capital outlay report of all LEAs, which includes information on the number and size of building projects completed and under construction.

B. The purpose of this rule is to specify the standards local boards of education shall follow in using construction management for school construction projects.

R277-454-3. Standards.

A. A construction management contract shall clearly specify the duties of the CM with respect to the building project.

B. An LEA shall bid each component part of the building project in accordance with advertising, public opening, performance bond, payment bond, and other statutory requirements.

KEY: educational facilities, education finance
November 8, 2012 Art X Sec 3
Notice of Continuation September 13, 2017 53E-3-401(4)
53E-3-705

R277. Education, Administration.
R277-459. Teacher Supplies and Materials Appropriation.
R277-459-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Classroom teacher" definition criteria:

(1) Eligible teachers shall be in a permanent teacher position filled by one teacher or two or more job-sharing teachers employed by a school district, the Utah Schools for the Deaf and the Blind, or charter schools.

(2) Eligible teachers are licensed personnel, and paid on a school district's salary schedule or a charter school's salary schedule.

(3) Teachers shall be employed for an entire contract period.

(4) The teacher's primary responsibility shall be to provide instructional or a combination of instructional and counseling services to students in public schools.

C. "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. All information contained in an individual's CACTUS file is available to the individual, but is classified private or protected under Section 63G-2-302 or 305 and is accessible only to specific designated individuals.

D. "Field trip" means a district, or school authorized excursion for educational purposes.

E. "LEA" means 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.

F. "Teaching supplies and materials" means both consumable and nonconsumable items that are used for educational purposes by teachers in classroom activities and may include such items as:

(1) paper, pencils, workbooks, notebooks, supplementary books and resources;

(2) laboratory supplies, e.g. photography materials, chemicals, paints, bulbs (both light and flower), thread, needles, bobbins, wood, glue, sandpaper, nails and automobile parts;

(3) laminating supplies, chart paper, art supplies, and mounting or framing materials;

(4) The definition of teaching supplies and materials should be broadly construed in so far as the materials are used by the teacher for instructional purposes or to protect the health of teachers in instructional or lab settings, or in conjunction with field trips.

G. "USOE" means the Utah State Office of Education.

R277-459-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which gives general control and supervision of the public school system to the Board, by Subsection 53E-3-501(1)(b) which directs the Board to establish rules and minimum standards for school programs, and by state legislation which provides a designated appropriation for teacher supplies and materials.

B. The purpose of this rule is to distribute money through LEAs to classroom teachers for school materials, supplies, field trips, and purposes or equipment that protect the health of teachers in instructional or lab settings or in conjunction with field trips.

R277-459-3. Distribution of Funds.

A. The Board may distribute funds to LEAs based on data submitted to the CACTUS database.

B. LEAs shall distribute funds for classroom supplies consistent with the amounts for salary schedule steps and teaching assignments as appropriated.

C. Individual teachers shall designate the uses for their allocations consistent with the criteria of this rule. LEAs and other eligible schools may develop policies, procedures and timelines to facilitate the intent of the appropriation.

D. Each LEA shall ensure that each eligible individual has the opportunity to receive the proportionate share of the appropriation. If the appropriation is not sufficient to provide each teacher the full amount allowed by law, teachers on salary steps one through three shall receive the full amount allowed with the remaining money apportioned to all other teachers.

E. If a teacher has not spent or committed to spend the individual allocation by April 1, the school or LEA may make the excess funds available to other teachers or may reserve the money for use by eligible teachers the following year.

F. These funds shall supplement, not supplant, existing funds for identified purposes.

G. These funds shall be accounted for by the LEA or eligible school using state and school district procurement and accounting policies.

H. The funds and supplies purchased with the funds are the property of the LEA.

(1) Employees do not personally own materials purchased with designated public funds.

(2) An LEA may by policy allow individual teachers to use supply funds to protect teacher health with consumable materials that may not be able to be reused by the school.

R277-459-4. Other Provisions.

A. LEAs shall allow, but not require, teachers to jointly use their allocations.

B. LEAs may carry over these funds, if necessary.

KEY: teachers, supplies

June 8, 2015	**Art X Sec 3**
Notice of Continuation May 1, 2015	**53E-3-501(1)(b)**

R277. Education, Administration.
R277-460. Distribution of Substance Abuse Prevention Account.
R277-460-1. 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 53G-10-405, which directs the Board to adopt rules providing for instruction on the harmful effects of controlled substances;

(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; and

(d) Section 51-9-405, which provides for funds from the Substance Abuse Prevention Account to be allocated to the Board for:

(i) substance abuse prevention and education;

(ii) substance abuse prevention training for teachers and administrators; and

(iii) LEA programs to supplement, not supplant, existing local prevention efforts in cooperation with local substance abuse authorities.

(2) The purpose of this rule is to provide for the distribution of the Board's share of the money from the Substance Abuse Prevention Account.

R277-460-2. Definitions.

(1) "Educational materials" means visual and auditory media, curricula, textbooks, and other disposable or non-disposable items that enhance student understanding of the subject matter.

(2) "Local substance abuse authority" means the person or group designated by the Legislature as the county authority to receive public funds for substance abuse prevention and treatment.

(3) "Substance abuse prevention education activities and intervention" means proactive educational activities designed to eliminate any illegal use of controlled substances.

R277-460-3. Fund Allocations.

(1) Before making the distributions described in Subsections (2) and (3), the Superintendent shall retain sufficient substance abuse prevention funds to pay for the salary, benefits, and indirect costs of a program administrator at a salary level to be determined by the Superintendent and support staff costs for the program administrator.

(2) After the allocation of substance abuse prevention funds is retained as described in Subsection (1), the Superintendent may use up to 45% to:

(a) purchase educational materials to support and supplement existing substance abuse prevention efforts;

(b) encourage and support statewide substance abuse prevention training for school district and charter school teachers and administrators; and

(c) promote substance abuse prevention in the classroom.

(3) At least 55% of the substance abuse prevention funds remaining after the allocation described in Subsection (1) shall be distributed to LEAs for use by the LEAs or individual schools within the LEA based on application.

R277-460-4. Applications.

(1) The Superintendent shall develop an application for LEAs that are interested in applying for substance abuse prevention funds available as described in this R277-460.

(2) An LEA shall submit the LEA's application to the specialist designated by the Superintendent.

(3)(a) Substance abuse prevention funds shall be distributed to LEAs based on funds available from the Substance Abuse Prevention Account.

(b) The Superintendent shall describe the available funding amounts in the Board application described in Subsection (1).

(4) An LEA's application for substance abuse prevention funds shall include the following:

(a) the applicant's intention to collaborate with the local substance abuse authority and community groups, including shared plans and strategies for substance abuse prevention education, activities, and intervention;

(b) the applicant's plan for professional development on substance abuse;

(c) the use of funds to implement applicant's plan;

(d) teacher reports of classroom implementation and plans for classroom monitoring visits;

(e) applicant's enhancement of substance abuse curriculum with additional substance abuse activities and strategies; and

(f) applicant's implementation of substance abuse curriculum with school-based behavioral/health or coordinated school health initiatives.

R277-460-5. Limitations on Funds.

(1) The Superintendent and LEAs shall use substance abuse prevention funds exclusively for purposes set forth in Section 51-9-405.

(2) Transfer of funds between line items or the extension of project completion dates may be made only with prior written approval of the Superintendent.

(3) An LEA may not use funds received under this R277-460 to supplant:

(a) funds currently available to the LEA; or

(b) funds available from other state or local sources.

R277-460-6. Evaluation and Reports.

(1) An applicant that receives substance abuse prevention funds shall provide the Superintendent with a year-end report on or before July 1 of the fiscal year in which the award was made.

(2) The year-end report described in Subsection (1) shall include:

(a) an expenditure report;

(b) a narrative description of activities funded; and

(c) an action research or data project report.

(3) The Superintendent may require additional evaluation or audit procedures from an award recipient to demonstrate the use of funds consistent with the law and Board rules.

(4) The Superintendent shall annually report the following information to the Board's Finance Committee:

(a) the number of LEAs receiving substance abuse prevention funds;

(b) a summary of the LEAs' use of program funds; and

(c) a description of how the Superintendent is using the funds described in Subsections R277-460-3(1) and (2).

KEY: public schools, substance abuse prevention

August 7, 2017	**Art X Sec 3**
Notice of Continuation June 6, 2017	**53G-10-405**
	51-9-405

R277. Education, Administration.
R277-462. Comprehensive Counseling and Guidance Program.
R277-462-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Comprehensive Counseling and Guidance Program" or "Program" means the organization of resources to meet the priority needs of students and inform and involve parents or guardians through four delivery system components:

(1) school guidance curriculum which means providing guidance content to all students in a systemic way;

(2) individual student planning which means individualized education and career planning, including student college and career planning with all students;

(3) responsive services and dropout prevention component designed to meet the immediate concerns of certain students; and

(4) system support component which addresses management of the Program and the needs of the school system itself.

C. "Comprehensive Counseling and Guidance Steering and Advisory Committee" means representatives designated by the USOE comprised of school district counseling supervisors, school district career and technical education directors, PTA, the school counselor professional association, practicing school counselors, and others designated by the USOE.

D. "Counselor to student ratio" means licensed school counselors full time equivalent (FTE), or percentage thereof, who by license and assignment are identified as school counselors for secondary students on October 1 of each year compared to the secondary student enrollment on October 1 of each year.

E. "Direct services" means time spent on the school guidance curriculum, individual student planning, including SEOP/Plan for College and Career Readiness, and responsive services/dropout prevention activities meeting students' identified needs as discerned by students, school personnel and parents or guardians consistent with LEA policy.

F. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

G. "School counselor" means an educator licensed as a school counselor in the state of Utah consistent with R277-506 and assigned to provide counseling and information to students to make appropriate educational and career choices.

H. "Secondary school" means a school providing services to students in grades 7-12.

I. "Secondary student" means a student in grades 7-12.

J. "SEOP/Plan for College and Career Readiness" means a student education occupation plan. An SEOP/Plan for College and Career Readiness is a developmentally organized intervention process that includes:

(1) a written plan, updated annually, for a secondary student's (grades 7-12) education and occupational preparation;

(2) all Board, local board and local charter board graduation requirements;

(3) evidence of parent or guardian, student, and school representative involvement annually;

(4) attainment of approved workplace skill competencies, including job placement when appropriate; and

(5) identification of post secondary goals and approved sequence of courses.

K. "Student achievement" means academic performance, career development, multi cultural/global citizenship, personal/social development, continued student engagement in learning, attendance, SEOP/Plan for College and Career Readiness outcomes and other measures of adequate yearly progress.

L. "USOE" means the Utah State Office of Education.

M. "Utah Career and Technical Education Consortium" means representatives of nine Career and Technical Education Regional Planning Areas.

N. "WPU" means weighted pupil unit, the basic unit used to calculate the amount of state funds for which an LEA is eligible.

R277-462-2. 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-2-304(2)(b) which directs local boards to develop policies for the implementation of student SEOP/Plan for College and Career Readiness, and by Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule establishes standards and procedures for entities applying for funds appropriated for Comprehensive Counseling and Guidance Programs administered by the Board.

C. This rule establishes counselor to student ratios as a requirement for all secondary schools.

D. This rule establishes provisions for LEAs not meeting the minimum counselor to student ratios.

E. This rule directs that LEA and building level policies and practices shall free licensed school counselors for appropriate identified activities with secondary students.

R277-462-3. Comprehensive Counseling and Guidance Program Approval and Qualifying Criteria.

A. Comprehensive Counseling and Guidance disbursement criteria:

(1) In order to qualify for Comprehensive Counseling and Guidance Program funds, secondary schools shall implement SEOP/Plan for College and Career Readiness policies and practices, consistent with Sub53E-2-304(2)(b), local board or charter school governing board policies, and the school improvement plans developed for AdvancED Accreditation and required under Section 53G-7-1204.

(2) Consistent with the Utah Model for Comprehensive Counseling and Guidance: K-12 Programs, the USOE shall designate to each LEA secondary school, that has a USOE-approved school counseling program, a WPU base for the first 400 students as determined by the October 1 enrollment of the previous fiscal year. The USOE shall also designate a per student allotment, as funds are available, for each additional student beyond 400, capping at a maximum 1200 students, if the local Program maintains Program criteria and ratios required in R277-462-5.

(3) The USOE shall give priority for funding to grades nine through twelve for career and technical education programs including the Comprehensive Counseling and Guidance Program and any remaining funds to grades seven and eight for the schools which meet Comprehensive Counseling and Guidance Program standards. The USOE shall distribute funds directed to grades seven and eight according to the formula under R277-462-3A(2) following the distribution of funds for grades nine through twelve.

(4) The USOE shall integrate the LEA Comprehensive Counseling and Guidance Program into the mission of the schools consistently with the AdvancED Accreditation process as defined in R277-410, Accreditation of Schools. School counselors shall provide evidence that the Comprehensive Counseling and Guidance Program contributes to student achievement included in the local school improvement plan.

(5) Secondary schools shall qualify for Comprehensive

Counseling and Guidance Program funds through participation in a regular schedule of on-site reviews by the USOE Comprehensive Counseling and Guidance Program specialist in the formal process and team members determined by the LEA's authorizing agency during the interim review process. The USOE shall schedule the on-site review process for secondary schools as defined in R277-410 which shall take place at a minimum every six years with three year interim reviews, in a format determined by the LEA authorizing agency. Successful on-site reviews of the Comprehensive Counseling and Guidance Program shall indicate a balance of activities consistent with Program models and goals in individual student planning, guidance curriculum, responsive services and system support.

(6) If a charter school requires assistance from a school district in conducting the charter school's on-site review, the charter school shall negotiate that payment.

(7) The USOE shall distribute Comprehensive Counseling and Guidance Program funds to LEAs for secondary schools that have completed a regular schedule of on-site reviews and that meet all of the following criteria:

(a) Approval of the Comprehensive Counseling and Guidance Program by the local board of education or charter school governing board and on-going communication with the local or governing board regarding Program goals and outcomes supported by data;

(b) Regular participation of guidance team members in USOE sponsored Comprehensive Counseling and Guidance training;

(c) Adequate resources and support for guidance facilities, material, equipment, clerical support, and school improvement processes;

(d) Evidence that eighty-five percent of aggregate counselors' time is devoted to DIRECT service to students through a balanced program of individual planning, school guidance curriculum, and responsive services consistent with the results of the school needs data;

(e) Communication, collaboration, and coordination within the feeder system regarding the Comprehensive Counseling and Guidance Program;

(f) School-wide student/parent/teacher needs assessment data for the Comprehensive Counseling and Guidance Program gathered and analyzed at least every three years;

(g) Structures and processes to ensure effective Program management including advisory/steering committees functioning effectively, school counselors working as Program leaders, and the Comprehensive Counseling and Guidance Program contributing to school improvement teams;

(h) Available responsive services to address the immediate concerns and identified needs of students through an education-oriented and programmatic approach; services should compliment and coordinate with existing school programs, families, and school and community resources;

(i) Delivery to students of a developmental and sequential school guidance curriculum in harmony with content standards identified in the Utah model for the Comprehensive Counseling and Guidance Program. A school/LEA shall set priorities for Guidance curriculum consistent with the results of the school needs assessment process;

(j) Assistance for students in career development, including awareness and exploration, job seeking and finding skills, and post high school placement;

(k) Facilitation by school counselors of SEOP/Plan for College and Career Readiness, both as a process and a product;

(l) Involvement of parents/guardians in all available Comprehensive Counseling and Guidance Program steering/advisory committees; and

(m) Program elements that are designed to recognize and address the needs of diverse students.

B. All LEA governing boards that receive Comprehensive Counseling and Guidance Program funds shall provide written certification that all Program standards are met by each school consistent with USOE cycles and using USOE forms.

(1) All LEAs receiving Comprehensive Counseling and Guidance Program funds shall provide school-based data projects demonstrating program or intervention effectiveness as required by the USOE.

(2) School counselors shall not devote significant time to non-school counseling activities, including test coordination and assessment, and other activities inconsistent with the Program.

R277-462-4. Student Education Occupation Planning in a Plan for College and Career Readiness.

A. Secondary schools that receive Comprehensive Counseling and Guidance funds shall complete a written SEOP/Plan for College and Career Readiness for all students.

B. Parents/guardians shall sign plans.

C. Students shall complete four year plans at the beginning of their seventh grade year.

D. Students' schools shall maintain plans.

E. Students' course registration and class changes shall be consistent with their written SEOP/Plan for College and Career Readiness.

F. Schools shall implement students' SEOP/Plan for College and Career Readiness process consistent with the policies and goals of the LEAs' Comprehensive Counseling and Guidance Program models. The student, student's parent/guardian and school personnel shall cooperatively develop the SEOP/Plan for College and Career Readiness during the first two years in which the student is enrolled in grades 7-12 in the LEA. The implementation for the SEOP/Plan for College and Career Readiness shall include the following conferences:

(1) 7th and 8th grades: minimally one individual and one group conference during the two years;

(2) 9th and 10th grades: minimally one individual conference and one group conference during the two years;

(3) 11th and 12th grades: minimally one individual conference and one group conference during the two years; and

(4) other meetings, as necessary.

R277-462-5. School Counselor to Student Ratios.

A. All LEAs shall certify to the USOE by October 1 annually:

(1) the full time equivalent licensed school counselors employed and assigned to each school;

(2) that secondary school counselor to secondary student ratios at the LEA level are one (counselor) to 350 (students) or better; and

(3) that variations requiring less than a .25 full time equivalent licensed school counselor shall be permitted at the school level.

B. June 1 annually, LEAs not meeting the ratio required under R277-462-5A(2), shall submit to the Board a plan to be approved for meeting established ratios in a reasonable time frame to continue to receive Comprehensive Counseling and Guidance Program and Minimum School Program funding.

C. LEAs that do not satisfy required counselor to student ratios shall receive reasonable notice and reasonable time periods and opportunities to explain and remedy the failure to comply.

D. As additional funds for Comprehensive Counseling and Guidance Programs become available, the Board may

require LEAs to have lower counselor to student ratios, following notice to LEAs. **53E-3-401(4)**

R277-462-6. Use of Comprehensive Counseling and Guidance Program Funds.

A. LEAs shall satisfy all provisions of R277-462 including established counselor to student ratios, in order to receive Comprehensive Counseling and Guidance Program funds.

B. LEAs shall use funds for students in grades 7-12.

C. LEAs may use funds to provide a school guidance curriculum.

D. LEAs may use funds to provide student activities that support the SEOP/Plan for College and Career Readiness process.

E. LEAs may use funds for personnel costs including clerical positions that support the SEOP/Plan for College and Career Readiness process.

F. LEAs may use funds for Career Center equipment or materials such as computers, media equipment, computer software, occupational information, SEOP/Plan for College and Career Readiness folders or educational information.

G. LEAs may use funds for professional development for personnel involved in the Comprehensive Counseling and Guidance Program.

H. LEAs may use funds for the expenses of extended days or years which are required to run the Program.

I. LEAs may use funds for classroom guidance curriculum materials.

J. LEAs may use funds to pay for at least one secondary school counselor, per school, per year for membership in the American School Counselor Association (ASCA) to facilitate accessing research and resources for effective Program implementation and effective student interventions and outcomes.

K. LEAs shall not use funds to supplant current or existing personnel or programs.

L. The USOE may use no more than two percent of the total Comprehensive Counseling and Guidance Program funding to provide SEOP/Plan for College and Career Readiness development and Program management.

R277-462-7. Variances, Accountability and Reporting.

A. New schools that are created from schools that have AdvancED accreditation and USOE Comprehensive Counseling and Guidance Program approval may qualify for Comprehensive Counseling and Guidance Program funding under this rule in the schools' first year of operation.

B. New LEA schools not meeting the requirements of R277-462-5A may receive Comprehensive Counseling and Guidance Program funding following two years of planning, training and Program implementation.

C. USOE Data Gathering

(1) The USOE shall gather data annually in October from LEAs regarding the number and assignments of school counselors.

(2) The USOE shall use the data to determine LEA compliance with this rule, including required ratios.

D. The USOE shall monitor the Program statewide and prepare an annual report for the Legislature and the Board including data and compliance information.

E. LEAs shall certify on an annual basis that previously qualified schools continue to meet the Program criteria and provide the USOE with data and information on the Program upon request.

KEY: public education, counselors
August 7, 2014 Art X Sec 3
Notice of Continuation June 10, 2014 53E-2-304(2)(b)

R277. Education, Administration.
R277-468. Parent/Guardian Review of Public Education Curriculum and Review of Complaint Process.
R277-468-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Instructional materials" means systematically arranged content in text or digital format which may be used within the state curriculum framework for grade levels or courses of study by students in public schools including text books, workbooks, computer software, online or Internet courses, CDs or DVDs and multiple forms of communication media. Such materials may be used by students or teachers or both as principal sources of study to cover any portion of the grade level or course. These materials:

(1) shall be designed for student use;

(2) may be accompanied by or contain teaching guides and study helps;

(3) shall include all text books, workbooks and student materials and supplements necessary for a student to fully participate in coursework; and

(4) shall be high quality, research-based and prove to be effective in supporting student learning.

C. "LEA" means 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. "Parent or guardian" means the individual that establishes the residency of the child under Sections 53G-6-302, 53G-6-303, or 53G-6-402 or another applicable Utah guardianship provision.

E. "Primary instructional materials" means comprehensive or basal Core textbook or integrated instructional program for which a publisher seeks a recommendation for Core subjects as outlined in Sections R277-700-4, 5 or 6.

R277-468-2. 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, Subsections 53E-3-401(1)(b) and (c) which require the Board to establish rules regarding competency levels, graduation requirements, school accreditation, curriculum and instruction requirements, and school libraries, and Subsection 53E-3-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to direct LEAs, consistent with the Board's responsibility to involve parents in the adoption and review of LEA primary instructional materials to support Utah Core Standards, and to include parents in reviewing complaints specific to primary curriculum materials.

R277-468-3. LEA Board Responsibilities.

A. Each LEA shall involve parents who have students who attend LEA schools and instructional staff in the consideration of LEA-purchased instructional materials.

B. Each LEA shall include parents in reviewing complaints specific to primary curriculum materials.

C. LEAs may seek assistance from parent organizations or associations or other groups to recruit and select parent members for materials and complaint reviews.

R277-468-4. USOE Responsibilities.

A. The USOE shall develop and make readily available to LEAs suggestions for effective parent participation in the instructional materials review process and the complaint review process.

B. The USOE shall assist LEAs in policy development, upon request and to the extent of resources available.

KEY: parent/guardian, committees, curriculum, complaints
March 10, 2015 **Art X Sec 3**
53E-3-401(1)(b)
53E-3-401(1)(c)
53E-3-401(3)

R277. Education, Administration.
R277-502. Educator Licensing and Data Retention.
R277-502-1. 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) Section 53E-6-201, which gives the Board power to issue licenses.

(2) This rule specifies the types of license levels and license areas of concentration available and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah.

(3) This rule also provides a process and criteria for educators whose licenses have lapsed to return to the teaching profession.

R277-502-2. Definitions.

(1) "Accredited school" means a public or private school that:

(a) meets standards essential for the operation of a quality school program; and

(b) has received formal approval through a regional accrediting association.

(2) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" means the electronic file maintained on all licensed Utah educators including information such as:

(a) personal directory information;

(b) educational background;

(c) endorsements;

(d) employment history; and

(e) a record of disciplinary action taken against the educator.

(3) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(4) "Letter of Authorization" means a designation given to an individual employed by an LEA for one year authorizing the individual to teach in a public school, such as:

(a) an out-of-state candidate; or

(b) an individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license; or

(c) an individual who has not completed necessary endorsement requirements.

(5)(a) "License areas of concentration" means designations to licenses obtained by completing a Board-approved educator preparation program or an alternative preparation program in a specific area of educational studies to include the following:

(i) Early Childhood (k-3);

(ii) Elementary (k-6);

(iii) Elementary (1-8);

(iv) Middle (5-9), only for licenses issued before 1988;

(v) Secondary (6-12);

(vi) Administrative/Supervisory (k-12);

(vii) Career and Technical Education;

(viii) School Counselor;

(ix) School Psychologist;

(x) School Social Worker;

(xi) Special Education (k-12);

(xii) Deaf Education

(xiii) Preschool Special Education (Birth-Age 5);

(xiv) Communication Disorders;

(xv) Speech-Language Pathologist; and

(xvi) Speech-Language Technician.

(b) License areas of concentration may also bear endorsements relating to subjects or specific assignments.

(6)(a) "License endorsement" or "endorsement" means a specialty field or area earned through completing required course work established by the Superintendent or through demonstrated competency approved by the Superintendent.

(b) An endorsement shall be listed on a professional educator license indicating the specific qualifications of the holder.

(7) "Licensing Jurisdiction" means the designated educator licensing authority in any foreign country or state of the United States of America and the Department of Defense Education Activity (DoDEA).

(8) "Professional learning plan" means a plan developed by an educator in collaboration with the educator's supervisor, consistent with R277-500, which details appropriate professional learning activities for the purpose of renewing the educator's license.

(9) "Renewal" means reissuing or extending the length of a license consistent with R277-500.

(10) "State Approved Endorsement Program" or "SAEP" means a plan developed between the Superintendent and a licensed educator to direct the completion of endorsement requirements by the educator consistent with Section R277-520-11.

R277-502-3. Program Approval and Requirements.

(1) The Superintendent shall accept educator license recommendations from educator preparation programs that have applied for Board approval and have met the requirements described in this Rule R277-502 and the Standards for Program Approval established in:

(a) Rule R277-504;

(b) Rule R277-505; or

(c) Rule R277-506.

(2) The Superintendent may establish deadlines and uniform forms and procedures for all aspects of program approval.

(3) To be approved for license recommendation an educator preparation program shall:

(a) have a physical location in Utah where students attend classes or if the program provides only online instruction:

(i) have the program's primary headquarters located in Utah; and

(ii) be licensed to do business in Utah through the Utah Department of Commerce;

(b) include requirements designed to ensure that the educator meets the Utah Effective Educator Standards established in R277-530;

(c) include requirements, if the program offers content endorsement preparation, that are, at minimum, equivalent to the competency requirements for the endorsement as established by the Superintendent;

(d) establish entry requirements, approved by the Superintendent, that are designed to ensure that only high quality individuals enter the licensure program, which include measures of:

(i) previous academic success;

(ii) disposition for employment in an educational setting; and

(iii) basic skills in reading, writing, and mathematics; and

(e) include a student teaching or intern experience that meets the requirements detailed in Rules R277-504, R277-505, and R277-506.

(4) The Superintendent shall work with Board-approved educator preparation programs, LEAs, and other stakeholders to establish standards for pedagogical performance

assessments that will be required under Rule R277-501 no later than January 1, 2019.

(5) The Superintendent shall lead the approval review for any Board-approved educator preparation program seeking to maintain or receive program approval.

(6) The Superintendent shall be responsible for:

(a) observing and monitoring the approval review process;

(b) reviewing subject specific programs to determine if the program meets state standards for licensure in specific areas;

(c) reviewing program procedures to ensure that Board requirements for licensure are followed; and

(d) reviewing licensure candidate files to determine if the program followed Board requirements for licensure.

(7) After completion of the approval review site visit, a Board-approved educator preparation program, working with the Superintendent, shall prepare and submit a program approval request for consideration by the Board that includes:

(a) a program summary;

(b) approval review findings;

(c) program areas of distinction;

(d) program enrollment; and

(e) program goals and direction.

(8) If the program approval request is approved by the Board, the program shall be considered Board-approved until the next scheduled approval review visit.

(9)(a) Notwithstanding Subsection 8, the Superintendent may place a program on probation for:

(i) failure to meet program requirements detailed in applicable Board rules; and

(ii) submission of inadequate or incomplete information in a report required under this R277-502.

(b) The Board may revoke its approval of a probationary program that fails to meet probationary requirements with at least one year's notice.

(10) If a new educator preparation program seeks Board approval or a previously Board-approved educator preparation program seeks approval for additional license area preparation and endorsements, the program shall submit an application to the Superintendent including:

(a) information detailing the exact license areas of concentration and endorsements that the program intends to award;

(b) detailed requirement information, including required course lists, course descriptions, and course syllabi for all courses that will be required as part of a program;

(c) detailed information showing how the program will ensure that the educator satisfies all standards in the Utah Effective Educator Standards established in Rule R277-530 and Professional Educator Standards established in Rule R277-515;

(d) information about program timelines and anticipated enrollment.

(11) The Board shall approve or deny applications for new educator preparation programs.

(12)(a) The Superintendent shall review and approve or deny applications from previously Board-approved educator preparation programs desiring Board approval for additional license areas and endorsements.

(b) The Superintendent may grant preliminary approval pending Utah State Board of Regents approval of a new program if the program is within a public institution.

(13) An educator preparation program seeking Board approval may apply to the Board for probationary approval for a maximum of three years contingent on the completion of the approval process.

(14) A Board-approved educator preparation program shall submit an annual report to the Superintendent by July 1 of each year, which shall include the following:

(a) student enrollment counts designated by anticipated license area of concentration and endorsement and disaggregated by gender and ethnicity;

(b) information explaining any significant changes to program requirements or content;

(c) the program's response to areas of concern or areas of focus identified by the Superintendent; and

(d) information regarding any program-determined areas of concern or areas of focus and the program's planned response.

(15) The Superintendent shall provide reporting criteria to Board-approved educator preparation programs regarding the annual report and designated areas of concern or focus by January 31 annually.

(16) An individual that completes a Board-approved educator preparation program may be recommended for licensure within five years of program completion if the individual meets current licensing requirements.

(17)(a) If five years have passed since an individual completed a Board-approved preparation program, the individual may be recommended for licensure following review by the individual program.

(b) The preparation program officials shall determine whether any content or pedagogy requirement previously met meets current program standards and if additional requirements are necessary to recommend licensure.

(c) The individual shall complete all requirements established by program officials before receiving a license recommendation from the program.

R277-502-4. License Levels, Procedures, and Periods of Validity.

(1)(a) The Superintendent shall recommend an individual to the Board for a Level 1 license if the individual:

(i) is recommended by a Board-approved educator preparation program or approved alternative preparation program; or

(ii) possesses a valid professional educator license from another state.

(b) An LEA and Board-approved educator preparation program shall cooperate in preparing candidates for a Level 1 license and may use joint resources to assist candidates in preparation for licensing.

(c) A Board-approved educator preparation program may only issue a recommendation if the individual has satisfactorily completed the programs of study required for the preparation of educators and has met licensing standards in the license areas of concentration for which the individual is recommended.

(2) A Level 1 license is valid for three years unless suspended or revoked for cause by the Board.

(3) A license applicant who has received or completed license preparation activities or coursework inconsistent with this rule may present compelling information and documentation for review and approval by the Superintendent to satisfy the licensing requirements.

(4) If an educator has taught for three years in a K-12 public education system in Utah, the Superintendent may only recommend renewal of a Level 1 license if:

(a) the employing LEA has requested a one year extension consistent with Section R277-522-4; or

(b) the individual has continuous experience as a speech language pathologist in a clinical setting.

(5) The Superintendent shall recommend a Level 1 licensee to the Board for a Level 2 license upon:

(a) satisfaction of all Board requirements for the Level 2 license; and

(b) the recommendation of the employing LEA.

(6) An LEA shall make a recommendation under Subsection (5)(b), prior to the expiration of the educator's Level 1 license and following:

(a) the completion of three years of successful, professional growth and educator experience;

(b) satisfaction of all requirements of Rule R277-522; and

(c) any additional requirements imposed by the employing LEA.

(7) A Level 2 license shall be valid for five years unless suspended or revoked for cause by the Board.

(8) A Level 2 license may be renewed for successive five year periods consistent with Rule R277-500.

(9) The Superintendent shall recommend a Level 2 licensee to the Board for a Level 3 license who:

(a) has current National Board Certification;

(b) has a doctorate in education in a field related to a content area in a unit of the public education system or an accredited private school; or

(c) holds a Speech-Language Pathology area of concentration and has a current American Speech-Language Hearing Association certification.

(10) A Level 3 license is valid for seven years unless suspended or revoked for cause by the Board.

(11) A Level 3 license may be renewed for successive seven year periods consistent with Rule R277-500.

(12) The Superintendent may establish deadlines and uniform forms and procedures for all aspects of licensing.

(13)(a) All licenses expire on June 30 of the year of expiration and may be renewed any time after January of the same year.

(b) Responsibility for license renewal rests solely with the licensee.

R277-502-5. Professional Educator License Areas of Concentration, and Endorsements and Under-Qualified Employees.

(1) Unless excepted under rules of the Board, to be employed in a public school in a capacity covered by a license area of concentration set forth in Subsection R277-502-2(6)(a), a person shall hold a valid license issued by the Board in the respective license area of concentration.

(2) An educator who is licensed and holds the appropriate license area of concentration but who is working out of the educator's endorsement area, shall:

(a) submit an SAEP to complete the requirements of an endorsement to the Superintendent; or

(b) request, along with the educator's employing LEA, a letter of authorization from the Board if the educator has not completed requirements for an area of concentration or endorsement.

(3)(a) A letter of authorization issued under Subsection (2)(b) is valid for one year.

(b) An educator may receive no more than three Letters of Authorization throughout the educator's employment in Utah schools.

(c) The Superintendent may recommend an exception to the limitation in Subsection (3)(b) on a case by case basis following specific approval of the request by the educator's employing LEA governing board.

(d) A letters of authorization approved prior to the 2000-2001 school year shall not be counted towards the limit in Subsection (3)(b).

(e) If an educator's letter of authorization expires before the individual is approved for licensing, the educator falls into under-qualified status.

(4) A licensed educator may receive an endorsement to indicate qualification in a subject or content area.

(a) An LEA shall recognize a STEM endorsement as a minimum of 16 semester hours of university credit toward lane change on the LEA's salary schedule.

(b) The Superintendent shall determine the courses and experiences necessary for a STEM endorsement.

(c) The Superintendent shall determine which content area endorsements qualify as STEM endorsements.

(5) An endorsement is not valid for employment purposes without a current license and license area of concentration.

R277-502-6. Returning Educator Relicensure.

(1) A previously licensed educator with an expired license may renew an expired license upon satisfaction of the following:

(a) Completion of a criminal background check including review of any criminal offenses and clearance in accordance with Rule R277-214;

(b) Employment by an LEA;

(c) Completion of a one-year professional learning plan developed jointly by the educator's school principal or charter school director and the returning educator consistent with R277-500 that also considers the following:

(i) previous successful public school teaching experience;

(ii) formal educational preparation;

(iii) period of time between last public teaching experience and the present;

(iv) school goals for student achievement within the employing school and the educator's role in accomplishing those goals;

(v) returning educator's professional abilities, as determined by a formal discussion and observation process completed within the first 30 days of employment; and

(vi) completion of additional necessary professional development for the educator.

(d) Filing of the professional learning plan within 30 days of hire;

(e) Successful completion of required Board-approved exams for licensure;

(f) Satisfactory experience as determined by the LEA with a trained mentor; and

(g) Submission to the Superintendent of the completed and signed Return to Original License Level Application, available on the Board website prior to June 30 of the school year in which the educator seeks to return.

(2) A returning educator is eligible for renewal of an educator license following completion of a professional learning plan notwithstanding the license renewal point requirements of Section R277-500-3.

(3)(a) A returning educator who previously held a Level 2 or Level 3 license under this rule shall receive a Level 1 license during the first year of employment following renewal of an expired license.

(b) Upon completion of the requirements listed in Subsection (1) and a satisfactory LEA evaluation, the employing LEA may recommend the educator's return to Level 2 or Level 3 licensure.

(4) A returning educator who taught less than three consecutive years in a public or accredited private school shall complete the requirements of Rule R277-522 before being recommended by an LEA to move from a Level 1 to Level 2 license.

R277-502-7. Professional Educator Licenses Issued by Licensing Jurisdictions Outside of Utah.

(1) The Superintendent shall review applications for a Utah educator license for individuals holding educator licenses issued by licensing jurisdictions outside of Utah to determine if the applicant has met the requirements for a Utah

license under this rule and Rule R277-503.

(2) The Superintendent shall accept scores from an applicant that meet the Utah standard for passing on assessments from licensing jurisdictions outside of Utah that utilize the same assessment as Utah as meeting the assessment requirements of Rule R277-503.

(3) The Superintendent shall accept scores from an applicant on reasonably equivalent content knowledge or pedagogical assessments utilized by licensing jurisdictions outside of Utah that meet the passing standard of that jurisdiction as meeting the requirements of Rules R277-503 and R277-522.

(4) The Superintendent shall accept demonstrations of content knowledge and pedagogical competencies for specific license areas or endorsements from an applicant that are utilized by licensing jurisdictions outside of Utah and reasonably equivalent to Utah competencies.

(5) Individuals with 4 or more years of successful experience in a public or accredited private school under a standard license issued by a licensing jurisdiction outside of Utah shall be considered to have met both the content knowledge and pedagogical assessment requirements for a Utah license under this rule, Rule R277-503, and Rule R277-522.

KEY: professional competency, educator licensing

May 8, 2018	**Art X Sec 3**
Notice of Continuation July 19, 2017	**53E-6-201**
	53E-3-401

R277. Education, Administration.
R277-508. Employment of Substitute Teachers.
R277-508-1. 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-3-501(1)(a), which directs the Board to make rules regarding the qualifications of educators and ancillary personnel providing direct student services.

(2) The purpose of this rule is to establish eligibility requirements and employment procedures for substitute teachers.

R277-508-2. Definitions.

(1) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" means the electronic file maintained on all licensed Utah educators, which includes:

(a) personal directory information;

(b) educational background;

(c) endorsements;

(d) employment history;

(e) professional development information; and

(f) a record of disciplinary action taken against the educator.

(2) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(3) "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in a Utah public school.

(4) "Substitute teacher" means an individual employed to take the place of a regular teacher who is temporarily absent.

R277-508-4. Hiring Priorities and Eligibility.

(1) An LEA shall give first priority in hiring substitute teachers to those who hold a valid license in the subject matter they will be teaching as a substitute.

(2) An LEA shall give second priority in hiring substitute teachers to persons who have a valid license in a field commonly taught in public schools.

(3) An LEA shall give third priority in hiring substitute teachers to persons with a college degree.

(3) An LEA shall evaluate prospective substitute teachers to ensure that they are capable of managing a class and carrying out the instructional program.

(4) A person seeking employment as a substitute teacher shall furnish evidence as requested from the hiring LEA that the person is physically and mentally fit to work.

(5)(a) An LEA may not employ any individual as a substitute teacher whose license has been revoked or is currently suspended by the Board or the licensing entity of another jurisdiction.

R277-508-5. Employment Procedures.

(1) An LEA shall establish policies for hiring substitute teachers, which shall include a requirement:

(a) that the LEA's staff obtain verification from CACTUS that an applicant's license has not been revoked or suspended; and

(b) for substitute teachers to have criminal background checks consistent with Rule R277-516.

(2) An LEA shall have a policy, which includes:

(a) periodic evaluation of substitute teachers; and

(b) a salary schedule to pay substitute teachers according to their training, experience, and competency.

(3) A regular teacher shall have lesson plans immediately available for use by substitute teachers.

(4) A student teacher may substitute in a class consistent with the instructions and policies from the higher education institution which the student attends.

A paraprofessional may substitute in a class consistent with LEA policies.

KEY: teachers, professional competency, school personnel
May 8, 2018 **Art X Sec 3**
Notice of Continuation April 2, 2018 **53E-3-501(1)(a)**
53E-3-401

R277. Education, Administration.
R277-521. National Board Certification Reimbursement.
R277-521-1. 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) Section 53F-5-202, which requires the Board to make rules to specify procedures and timelines for reimbursing educators for the cost to attain or renew a National Board certification.

(2) The purpose of this rule is to specify procedures and timelines for reimbursing educators for the cost to attain or renew a National Board certification.

R277-521-2. Definitions.

(1) "Eligible educator" means an educator who holds a current National Board certification attained or renewed:

(a) after July 1, 2016; and

(b) while employed as an educator by an LEA in Utah.

(2) "Local education agency" or "LEA" means:

(a) a school district;

(b) a charter school; or

(c) the Utah Schools for the Deaf and the Blind.

(3) "National Board certification" means the same as that term is defined in Section 53E-6-102.

R277-521-3. Application Procedures.

(1) The Superintendent shall establish and maintain an online application system for National Board certification reimbursements.

(2) To receive reimbursement for the costs an eligible educator paid to attain or renew a National Board certification, an eligible educator shall submit an application through the application system established under Subsection (1).

(3)(a) The Superintendent shall annually determine the number of eligible educators based on legislative appropriations and costs associated with obtaining national board certification.

(b) The Superintendent shall reimburse eligible educators on a first come, first served basis.

(4) The Superintendent may not reimburse an eligible educator for costs incurred in obtaining or renewing national board certification that were previously paid or reimbursed to the educator by a third party.

KEY: eligible educators, National Board certification
May 8, 2018 **Art X Sec 3**
53E-3-401(4)
53F-5-202

R277. Education, Administration.
R277-532. Local Board Policies for Evaluation of Non-Licensed Public Education Employees (Classified Employees).
R277-532-1. 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) Section 53G-11-504, which directs the Board to develop rules requiring that school districts evaluate non-licensed public education employees.

(2) 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.

R277-532-2. Definitions.

"Non-licensed public education employee" or "classified employee" means a school district employee who is working in a position that does not require a Utah educator license.

R277-532-3. School District Policies.

(1) A school district shall adopt policies for non-licensed public education employees, including:

(a) policies for evaluation and dismissal consistent with minimum standards of:

(i) Sections 53G-11-504 through 53G-11-505; and

(ii) Sections 53G-11-512 through 53G-11-517; and

(b) policies for due process and the termination of non-licensed public education employees consistent with Sections 53G-11-512 through 53G-11-515;

(c) evaluation procedures with the following components:

(i) the annual evaluation of non-licensed public education employees;

(ii) the use of appropriate tools for non-licensed public education employee evaluations;

(iii) non-licensed public education employee evaluation criteria tied to specific non-licensed job descriptions or assignments;

(iv) the administration of the evaluation by the school principal, an appropriate administrator or the principal's or administrator's designee; and

(v) an appeals process that allows non-licensed public education employees to appeal procedural violations of the evaluation process.

(2) School district evaluation policies for non-licensed public education employees may include additional components beyond those specified in Subsection (1).

(3) A school district's policies may exclude temporary or part-time non-licensed public education employees from performance evaluations, as provided in Subsection 53G-11-504(2).

KEY: policies, evaluations, non-licensed public education employees

May 8, 2018	**Art X, Sec 3**
Notice of Continuation April 2, 2018	**53E-3-401**
	53G-11-504

R277. Education, Administration.
R277-609. Standards for LEA Discipline Plans and Emergency Safety Interventions.
R277-609-1. 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) Subsection 53E-3-501(1)(b)(v), which requires the Board to establish rules concerning discipline and control;

(d) Section 53E-3-509, which requires the Board to adopt rules that require a local school board or governing board of a charter school to enact gang prevention and intervention policies for all schools within the board's jurisdiction;

(e) Section 53G-8-702, which requires the Board to adopt rules regarding training programs for school principals and school resource officers; and

(f) Section 53G-8-202, which directs local school boards and charter school governing boards to adopt conduct and discipline policies and directs the Board to develop model policies to assist local school boards and charter school governing boards.

(2)(a) The purpose of this rule is to outline requirements for school discipline plans and policies.

(b) An LEA's written policies shall include provisions to develop, implement, and monitor the policies for the use of emergency safety interventions in all schools and for all students within each LEA's jurisdiction.

R277-609-2. Definitions.

(1) "Discipline" includes:

(a) imposed discipline; and

(b) self-discipline.

(2) "Disruptive student behavior" includes:

(a) the grounds for suspension or expulsion described in Section 53G-8-205; and

(b) the conduct described in Subsection 53G-8-209(2)(b).

(3)(a) "Emergency safety intervention" means the use of seclusionary time out or physical restraint when a student presents an immediate danger to self or others.

(b) An "emergency safety intervention" is not for disciplinary purposes.

(4) "Functional Behavior Assessment" or "FBA" means a systematic process of identifying problem behaviors and the events that reliably predict occurrence and non-occurrence of those behaviors and maintain the behaviors across time.

(5) "Immediate danger" means the imminent danger of physical violence or aggression towards self or others, which is likely to cause serious physical harm.

(6) "Imposed discipline" means a code of conduct prescribed for the highest welfare of the individual and of the society in which the individual lives.

(7) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(8) "Physical restraint" means personal restriction that immobilizes or reduces the ability of an individual to move the individual's arms, legs, body, or head freely.

(9) "Plan" means an LEA and school-wide written model for prevention and intervention addressing student behavior management and discipline procedures for students.

(10) "Program" means an instructional or behavioral program, including a program:

(a) provided by contract private providers under the direct supervision of public school staff;

(b) that receives public funding; or

(c) for which the Board has regulatory authority.

(11) "Policy" means standards and procedures that include:

(a) the provisions of Section 53G-8-202 and additional standards, procedures, and training adopted in an open meeting by a local board of education or charter school board that:

(i) defines hazing, bullying, and cyber-bullying;

(ii) prohibits hazing and bullying;

(iii) requires annual discussion and training designed to prevent hazing, bullying, cyber-bullying, discipline, and emergency safety interventions, among school employees and students; and

(iv) provides for enforcement through employment action or student discipline.

(12) "Qualifying minor" means a school-age minor who:

(a) is at least nine years old; or

(b) turns nine years old at any time during the school year.

(13) "Restorative justice program" means the same as that term is defined in Section 53G-8-211.

(14) "School" means any public elementary or secondary school or charter school.

(15) "School board" means:

(a) a local school board; or

(b) a local charter board.

(16) "School employee" means:

(a) a school teacher;

(b) a school staff member;

(c) a school administrator; or

(d) any other person employed, directly or indirectly, by an LEA.

(17) "Seclusionary time out" means that a student is:

(a) placed in a safe enclosed area by school personnel in accordance with the requirements of Rules R392-200 and R710-4;

(b) purposefully isolated from adults and peers; and

(c) prevented from leaving, or reasonably believes that the student will be prevented from leaving, the enclosed area.

(18) "Section 504 accommodation plan," required by Section 504 of the Rehabilitation Act of 1973, means a plan designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(19) "Self-Discipline" means a personal system of organized behavior designed to promote self-interest while contributing to the welfare of others.

(20) "Student with a qualifying offense" means a qualifying minor who committed an alleged class C misdemeanor, infraction, status offense on school property, or truancy.

R277-609-3. Incorporation of Least Restricted Behavioral Interventions (LRBI) Technical Assistance Manual by Reference.

(1) This rule incorporates by reference the LRBI Technical Assistance Manual, dated September 2015, which provides guidance and information in creating successful behavioral systems and supports within Utah's public schools that:

(a) promote positive behaviors while preventing negative or risky behaviors; and

(b) create a safe learning environment that enhances all student outcomes.

(2) A copy of the manual is located at:

(a) https://www.schools.utah.gov/file/d6715b0b-9125-4132-86d3-179d8629a895; and

(b) the Utah State Board of Education.

R277-609-4. LEA Responsibility to Develop Plans.

(1) An LEA or school shall develop and implement a board approved comprehensive LEA plan or policy for student and classroom management, and school discipline.

(2) An LEA shall include administration, instruction and support staff, students, parents, community council, and other community members in policy development, training, and prevention implementation so as to create a community sense of participation, ownership, support, and responsibility.

(3) A plan described in Subsection (1) shall include:

(a) the definitions of Section 53G-8-210;

(b) written standards for student behavior expectations, including school and classroom management;

(c) effective instructional practices for teaching student expectations, including:

(i) self-discipline;

(ii) citizenship;

(iii) civic skills; and

(iv) social skills;

(d) systematic methods for reinforcement of expected behaviors;

(e) uniform and equitable methods for correction of student behavior;

(f) uniform and equitable methods for at least annual school level data-based evaluations of efficiency and effectiveness;

(g) an ongoing staff development program related to development of:

(i) student behavior expectations;

(ii) effective instructional practices for teaching and reinforcing behavior expectations;

(iii) effective intervention strategies; and

(iv) effective strategies for evaluation of the efficiency and effectiveness of interventions;

(h) procedures for ongoing training of appropriate school personnel in:

(i) crisis intervention training;

(ii) emergency safety intervention professional development; and

(iii) LEA policies related to emergency safety interventions consistent with evidence-based practice;

(i) policies and procedures relating to the use and abuse of alcohol and controlled substances by students;

(j) policies and procedures, consistent with requirements of Rule R277-613, related to:

(i) bullying;

(ii) cyber-bullying;

(iv) hazing; and

(v) retaliation;

(k) policies and procedures for the use of emergency safety interventions for all students consistent with evidence-based practices including prohibition of:

(i) physical restraint, subject to the requirements of Section R277-609-5, except when the physical restraint is allowed as described in Subsection 53G-8-302(2);

(ii) prone, or face-down, physical restraint;

(iii) supine, or face-up, physical restraint;

(iv) physical restraint that obstructs the airway of a student or adversely affects a student's primary mode of communication;

(v) mechanical restraint, except:

(A) protective or stabilizing restraints;

(B) restraints required by law, including seatbelts or any other safety equipment when used to secure students during transportation; and

(C) any device used by a law enforcement officer in carrying out law enforcement duties;

(vi) chemical restraint, except as:

(A) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under State law, for the standard treatment of a student's medical or psychiatric condition; and

(B) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under state law;

(vii) seclusionary time out, subject to the requirements of Section R277-609-5, except when a student presents an immediate danger of serious physical harm to self or others; and

(viii) for a student with a disability, emergency safety interventions written into a student's IEP, as a planned intervention, unless:

(A) school personnel, the family, and the IEP team agree less restrictive means which meet circumstances described in Section R277-608-5 have been attempted;

(B) a FBA has been conducted; and

(C) a positive behavior intervention plan based on data analysis has been written into the plan and implemented.

(l) direction for dealing with bullying and disruptive students;

(m) direction for schools to determine the range of behaviors and establish the continuum of administrative procedures that may be used by school personnel to address student behavior, including students who engage in disruptive student behaviors as described in Section 53G-8-210;

(n) identification, by position, of an individual designated to issue notices of disruptive and bullying student behavior;

(o) identification of individuals who shall receive notices of disruptive and bullying student behavior;

(p) a requirement to provide for documentation of an alleged class B misdemeanor or a nonperson class A misdemeanor prior to referral of students with an alleged class B misdemeanor or a nonperson class A misdemeanor to juvenile court;

(q) strategies to provide for necessary adult supervision;

(R) a requirement that policies be clearly written and consistently enforced;

(s) notice to employees that violation of this rule may result in employee discipline or action;

(t) gang prevention and intervention policies in accordance with Subsection 53E-3-509(1);

(u) provisions that account for an individual LEA's or school's unique needs or circumstances, including:

(i) the role of law enforcement;

(ii) emergency medical services; and

(iii) a provision for publication of notice to parents and school employees of policies by reasonable means; and

(iv) a plan for referral for a student with a qualifying office to alternative school-related interventions, including:

(A) a mobile crisis outreach team, as defined in Section 78A-6-105;

(B) a receiving center operated by the Division of Juvenile Justice Services in accordance with Section 62A-7-104;

(C) a youth court; or

(v) a comparable restorative justice program.

(4) A plan described in Subsection (1) may include:

(a) the provisions of Subsection 53E-3-509(2); and

(b) a plan for training administrators and school resource officers in accordance with Section 53G-8-702.

R277-609-5. Physical Restraint and Seclusionary Time Out.

(1) When used consistently with an LEA plan under Subsection R277-609-4(1);

(a) a physical restraint must be immediately terminated when:

(i) a student is no longer an immediate danger to self or others; or

(ii) a student is in severe distress; and

(b) the use of physical restraint shall be for the minimum time necessary to ensure safety and a release criteria, as outlined in LEA policies, must be implemented.

(2) If a public education employee physically restrains a student, the school or the public education employee shall immediately notify:

(a) the student's parent or guardian; and

(b) school administration.

(3) A public education employee may not use physical restraint on a student for more than 30 minutes.

(4) In addition to the notice described in Subsection (2), if a public education employee physically restrains a student for more than fifteen minutes, the school or the public education employee shall immediately notify:

(a) the student's parent or guardian; and

(b) school administration.

(5) An LEA may not use physical restraint as a means of discipline or punishment.

(6) If a public education employee uses seclusionary time out, the public education employee shall:

(a) use the minimum time necessary to ensure safety;

(b) use release criteria as outlined in LEA policies;

(c) ensure that any door remains unlocked;

(d) maintain the student within line of sight of the public education employee;

(e) use the seclusionary time out consistent with the LEA's plan described in Section R277-609-4; and

(f) ensure that the enclosed area meets the fire and public safety requirements described in R392-200 and R710-4.

(7) If a student is placed in seclusionary time out, the school or the public education employee shall immediately notify:

(a) the student's parent or guardian; and

(b) school administration.

(8) A public education employee may not place a student in a seclusionary time out for more than 30 minutes.

(9) In addition to the notice described in Subsection (7), if a public education employee places a student in seclusionary time out for more than fifteen minutes, the school or the public education employee shall immediately notify:

(a) the student's parent or guardian; and

(b) school administration.

(10) Seclusionary time out may only be used for maintaining safety.

(11) A public education employee may not use seclusionary time out as a means of discipline or punishment.

R277-609-6. Implementation.

(1) An LEA shall implement strategies and policies consistent with the LEA's plan required in Section R277-609-4.

(2) An LEA shall develop, use and monitor a continuum of intervention strategies to assist students, including students whose behavior in school falls repeatedly short of reasonable expectations, by teaching student behavior expectations, reinforcing student behavior expectations, re-teaching behavior expectations, followed by effective, evidence-based interventions matched to student needs prior to administrative referral.

(3) An LEA shall implement positive behavior interventions and supports as part of the LEA's continuum of behavior interventions strategies.

(4) Nothing in state law or this rule restricts an LEA from implementing policies to allow for suspension of students of any age consistent with due process requirements and consistent with all requirements of the Individuals with Disabilities Education Act 2004.

R277-609-7. LEA Emergency Safety Intervention (ESI Committees.

(1) An LEA shall establish an Emergency Safety Intervention (ESI) Committee before September 1, 2015.

(2) The LEA ESI Committee:

(a) shall include:

(i) at least two administrators;

(ii) at least one parent or guardian of a student enrolled in the LEA, appointed by the LEA; and

(iii) at least two certified educational professionals with behavior training and knowledge in both state rules and LEA discipline policies;

(b) shall meet often enough to monitor the use of emergency safety intervention in the LEA;

(c) shall determine and recommend professional development needs; and

(d) shall develop policies for local dispute resolution processes to address concerns regarding disciplinary actions.

R277-609-8. LEA Reporting.

(1) An LEA shall have procedures for the collection, maintenance, and periodic review of documentation or records of the use of emergency safety interventions at schools within the LEA.

(2) The Superintendent shall define the procedures for the collection, maintenance, and review of records described in Subsection (1).

(3) An LEA shall provide documentation of any school, program or LEA's use of emergency safety interventions to the Superintendent annually.

(4)(a) An LEA shall submit all required UTREx discipline incident data elements to the Superintendent no later than June 30, 2018.

(b) Beginning in the 2018-19 school year, an LEA shall submit all required UTREx discipline incident data elements as part of the LEA's daily UTREx submission.

R277-609-9. Special Education Exception(s) to this Rule.

(1) An LEA shall have in place, as part of its LEA special education policies, procedures, or practices, criteria and steps for using emergency safety interventions consistent with state and federal law.

(2) The Superintendent shall periodically review:

(a) all LEA special education behavior intervention plans, procedures, or manuals; and

(b) emergency safety intervention data as related to IDEA eligible students in accordance with Utah's Program Improvement and Planning System.

R277-609-10. Parent/Guardian Notification and Court Referral.

(1) LEA policies shall provide procedures for qualifying minors and their parents to participate in decisions regarding consequences for disruptive student behavior.

(2) An LEA shall establish policies that:

(a) provide notice to parents and information about resources available to assist a parent in resolving the parent's school-age minors' disruptive behavior;

(b) provide for notices of disruptive behavior to be issued by schools to qualifying minors and parents consistent with:

(i) numbers of disruptions and timelines in accordance with Section 53G-8-210;

(ii) school resources available;

(iii) cooperation from the appropriate juvenile court in accessing student school records, including:

(A) attendance;

(B) grades;

(C) behavioral reports; and

(D) other available student school data; and

(iv) provide due process procedures for minors and parents to contest allegations and citations of disruptive student behavior.

(3)(a) When a crisis situation occurs that requires the use of an emergency safety intervention to protect the student or others from harm, a school shall notify the LEA and the student's parent or guardian as soon as possible and no later than the end of the school day.

(b) In addition to the notice described in Subsection (3)(a), if a crisis situation occurs for more than fifteen minutes, the school shall immediately notify:

(i) the student's parent or guardian; and

(ii) school administration.

(d) A notice described in Subsection (3)(a) shall be documented within student information systems (SIS) records.

(4)(a) A school shall provide a parent or guardian with a copy of any notes or additional documentation taken during a crisis situation upon request of the parent or guardian.

(b) Within 24 hours of a crisis situation, a school shall notify a parent or guardian that the parent or guardian may request a copy of any notes or additional documentation taken during a crisis situation.

(c) A parent or guardian may request a time to meet with school staff and administration to discuss a crisis situation.

R277-609-11. Model Policies.

(1) The Superintendent shall develop, review regularly, and provide to LEA boards model policies to address disruptive student behavior and appropriate consequences.

(2) The Superintendent shall provide technical assistance to LEAs in developing and implementing policies and training employees in the appropriate use of physical force and emergency safety interventions to the extent of resources available.

R277-609-12. LEA Compliance.

If an LEA fails to comply with this rule, the Superintendent may withhold funds in accordance with Rule R277-114 or impose any other sanction authorized by law.

KEY: disciplinary actions, disruptive students, emergency safety interventions

May 8, 2018 **Art X Sec 3**

Notice of Continuation October 14, 2016 **53E-3-401(4)**

53E-3-501(1)(b)(v)

53E-3-509

53G-8-202

53G-8-702

R277. Education, Administration.
R277-614. Athletes and Students with Head Injuries.
R277-614-1. Definitions.

A. "Agent" means a coach, teacher, school employee, representative or volunteer under Section 26-53-102(1).

B. "Board" means the Utah State Board of Education.

C. "Free play" means unstructured student play, games and field days during school hours.

D. "LEA" means a public school or a public charter school.

E. "Parent" means a parent or legal guardian of student for whom LEA is responsible.

F. "Physical education class" means a structured secondary school class period that includes an adult supervisor.

G. "Sporting event" means activities listed under Section 26-53-102(5) and includes games, classes, tryouts and activities that take place during the regular school day of public schools and activities sponsored by the public schools with exclusions provided in Section 26-53-102(5)(b).

H. "Traumatic head injury" means any of the signs, observed or self-reported, listed under Section 26-53-102(6).

I. "USOE" means the Utah State Office of Education.

R277-614-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution X, Section 3 which vests general control and supervision in the Board, by 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 direct LEAs under the general control and supervision of the Utah State Board of Education to adopt and enforce a head injury policy for students participating in sporting events as defined in the law, including notification to parents of the policy and receipt from parents of signed statements that parents understand and will support the LEA in the enforcement of the policy.

R277-614-3. Board and USOE Responsibilities.

A. The Board directs all LEAs to develop, pass, post on the LEAs' websites and make available to parents a traumatic head injury policy that meets the requirements of Section 26-53.

B. The USOE shall, in consultation with Utah State Risk Management, provide a model policy for LEAs to use in developing their policies. The model policy shall be available on the USOE website.

C. The USOE shall provide model forms for LEAs to use to inform parents of LEA policies and obtain parent signatures documenting the parents' understanding of and willingness to adhere to LEA policies.

D. The USOE shall provide professional development, as needed and to the extent of funds available, to assist LEAs with training to identify students' traumatic head injuries, to provide notice to parents and to comply with the law.

R277-614-4. LEA Responsibilities.

A. All LEAs are identified as amateur sports organizations for purposes of Section 26-53 and shall meet all requirements of the law.

B. All LEAs shall maintain a traumatic head injury policy for students:

(1) participating in physical education classes, excluding free play under Section 26-53-102(5)(b)(iii), offered by the LEA; and

(2) participating in extracurricular activities sponsored by the LEA or statewide athletic associations or both groups jointly.

C. An LEA's policy shall include:

(1) direction to agents to remove a student from a sporting event if the student is suspected of sustaining a concussion or a traumatic head injury;

(2) the prohibition of a student's continued participation until the student is evaluated by a trained qualified health care professional;

(3) a written statement from a trained health care provider clearing the student to resume participation in a sporting event;

(4) adequate training for agents, consistent with their involvement and responsibility for supervising students in sporting events, about traumatic head injuries and response to suspected student injuries, consistent with the law; and

(5) notice at least annually to parents of students who participate in sporting events, including parents' signatures, of an LEA's traumatic head injury policy.

D. An LEA shall post its policy on a district/school or charter school website where the information will be readily accessible to the public and to parents.

KEY: athletes, head injuries
July 8, 2013 **Art X Sec 3**
Notice of Continuation May 11, 2018 **53A-1-401(3)**

R277. Education, Administration.
R277-746. Driver Education Programs for Utah Schools.
R277-746-1. 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 53G-10-502(4), which directs the Board to prescribe rules for driver education classes in the public schools.

(2) The purpose of this rule is to incorporate by reference the Board's Driver Education manual, which specifies standards and procedures for local school districts conducting automobile driver education.

R277-746-2. Incorporation by Reference of Driver Education Manual.

(1) This rule incorporates by reference Driver Education for Utah High Schools - Organization, Administration and Standards, Revised February 2018, which outlines statutory requirements and Board procedures for administering an automobile driver education program.

(2) A copy of the manual is located at:

(a) https://www.schools.utah.gov/curr/drivered; and

(b) the offices of the Utah State Board of Education.

KEY: driver education
May 8, 2018 53G-10-502(4)
Notice of Continuation April 2, 2018 53E-3-401(4)

R277. Education, Administration.
R277-751. Special Education Extended School Year (ESY).
R277-751-1. 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;

(c) Subsection 53E-3-501(1)(c)(vi)(A), which directs the Board to adopt rules regarding services to students with disabilities.

(2) The purpose of this rule is to specify the standards for the special education ESY.

R277-751-2. Definitions.

(1)(a) "Extended school year" or "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.

(b) ESY services shall meet the standards of Part B of the IDEA and Board special education rules.

(2) "ESY services" means the individualized education program provided by the school to a student with a disability during the ESY.

(3) "FAPE" means a free appropriate public education, which:

(a) includes special education and related services that are provided at public expense, under public supervision and direction, and without charge;

(b) meets the standards of the Board and Part B of the IDEA;

(c) includes preschool, elementary school, secondary school, and may include post-secondary education in Utah; and

(d) is provided in conformity with an IEP that meets the requirements of Part B of the IDEA and Board special education rules.

(4) "IEP team" means a group of individuals that is responsible for developing, reviewing, and revising an IEP for a student with a disability.

(5) "LEA" includes, for the purposes of this rule, the Utah Schools for the Deaf and the Blind.

(6)(a) "Procedural safeguards" means the procedural rights designed to protect the rights of students with disabilities and their parents.

(b) "Procedural safeguards are defined in IDEA and Board special education rules, and include a parent's right to:

(i) participate in meetings;

(ii) review educational records;

(iii) request an independent educational evaluation;

(iv) receive written prior notice of actions proposed or refused by an LEA; and

(v) consent to evaluations and special education services.

(c) "Procedural safeguards" also include dispute resolution options.

(7) "Recoupment means recover of basic behavioral or academic patterns, or both, or skills, specified in an IEP, to a level demonstrated prior to the interruption of educational programming.

(8) "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, specified in an IEP, which occurs as a result of an interruption in educational programming.

(9) "Student with a disability" means a student who meets eligibility criteria for special education and related services, as defined in the Board special education rules.

R277-751-3. Determining Eligibility.

(1) A student is eligible for ESY if the student's IEP team has determined, based upon a review of multiple data sources and factors that the student:

(a) is eligible under Board special education rules and Part B of the IDEA; and

(b) requires an ESY to receive a FAPE.

(2) A student's IEP shall reflect the student's IEP team's decision regarding need for ESY services.

(a) An LEA shall provide a student's parents with written prior notice of the LEA's proposal or refusal to provide ESY services.

(b) A student's IEP team shall determine the appropriate ESY services for an eligible student, 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.

(1) 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.

(2) LEAs may not limit ESY to:

(a) particular categories of disabilities;

(b) particular ages; or

(c) particular grade levels of students.

(3) An LEA may not unilaterally limit the type, amount, or duration of ESY services provided for students.

(4) An LEA may not limit data consideration by IEP teams exclusively to an analysis of regression and recoupment.

(5) An LEA shall ensure that:

(a) an ESY student receives services in the least restrictive environment; and

(b) ESY teachers and paraprofessionals meet Board licensing rules.

R277-751-5. Division of Responsibilities.

(1) The Superintendent shall:

(a) conduct LEA program administrative reviews, such as Utah Program Improvement Planning System or "UPIPS" monitoring;

(b) require student attendance and membership accountability;

(c) provide technical assistance to LEAs;

(d) collect data on:

(i) the number, disabilities, and levels of students served;

(ii) the types of program delivery models used;

(iii) costs of the ESY services in LEAs; and

(iv) program effectiveness.

(e) develop guidelines for LEAs.

(2) An LEA shall:

(a) establish LEA procedures which are in accordance with Board rules;

(b) provide professional development and on-site visits to assure that Board and LEA procedures are appropriately understood and implemented;

(c) establish timelines to accomplish the purposes of this rule;

(d) analyze LEA needs, reported by professionals, for ESY services for individual, eligible students;

(e) determine LEA ESY services parameters based upon data received from educators on individual, eligible students, including:

(i) the personnel required to provide special education and related services;

(ii) location of services; and

(iii) budget specifications;

(f) ensure parents and professionals have received information about dispute resolution procedures for the appeal of ESY eligibility decisions and ESY services parameters; and

(g) implement processes to collect program effectiveness data.

KEY: exceptional children, extended school year
May 8, 2018 Art X Sec 3
Notice of Continuation April 2, 2018 53-3-401(4)
53E-3-501(1)(c)(vi)(A)

R307. Environmental Quality, Air Quality.
R307-101. General Requirements.
R307-101-1. Foreword.

Chapter 19-2 and the rules adopted by the Air Quality Board constitute the basis for control of air pollution sources in the state. These rules apply and will be enforced throughout the state, and are recommended for adoption in local jurisdictions where environmental specialists are available to cooperate in implementing rule requirements.

National Ambient Air Quality Standards (NAAQS), National Standards of Performance for New Stationary Sources (NSPS), National Prevention of Significant Deterioration of Air Quality (PSD) standards, and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) apply throughout the nation and are legally enforceable in Utah.

R307-101-2. Definitions.

Except where specified in individual rules, definitions in R307-101-2 are applicable to all rules adopted by the Air Quality Board.

"Actual Emissions" means the actual rate of emissions of a pollutant from an emissions unit determined as follows:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operations. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emission unit, other than an electric utility steam generating unit specified in (4), which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(4) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the director, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the director if the director determines such a period to be more representative of normal source post-change operations.

"Acute Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Air pollutant" means a substance that qualifies as an air pollutant as defined in 42 U.S.C. Sec. 7602.

"Air Pollutant Source" means private and public sources of emissions of air pollutants.

"Air Pollution" means the presence of an air pollutant in the ambient air in such quantities and duration and under conditions and circumstances, that are injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property as determined by the standards, rules and regulations adopted by the Air Quality Board (Section 19-2-104).

"Allowable Emissions" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the emission limitation established pursuant to R307-401-8.

"Ambient Air" means that portion of the atmosphere, external to buildings, to which the general public has access. (Section 19-2-102(4)).

"Appropriate Authority" means the governing body of any city, town or county.

"Atmosphere" means the air that envelops or surrounds the earth and includes all space outside of buildings, stacks or exterior ducts.

"Authorized Local Authority" means a city, county, city-county or district health department; a city, county or combination fire department; or other local agency duly designated by appropriate authority, with approval of the state Department of Health; and other lawfully adopted ordinances, codes or regulations not in conflict therewith.

"Board" means Air Quality Board. See Section 19-2-102(8)(a).

"Breakdown" means any malfunction or procedural error, to include but not limited to any malfunction or procedural error during start-up and shutdown, which will result in the inoperability or sudden loss of performance of the control equipment or process equipment causing emissions in excess of those allowed by approval order or Title R307.

"BTU" means British Thermal Unit, the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

"Calibration Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is the same known upscale value.

"Carbon Adsorption System" means a device containing adsorbent material (e.g., activated carbon, aluminum, silica gel), an inlet and outlet for exhaust gases, and a system for the proper disposal or reuse of all VOC adsorbed.

"Carcinogenic Hazardous Air Pollutant" means any hazardous air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Chargeable Pollutant" means any regulated air pollutant except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated or established by Title VI of the Act, Stratospheric Ozone Protection;

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act, Prevention of Accidental Releases.

"Chronic Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Clean Air Act" means federal Clean Air Act as found in 42 U.S.C. Chapter 85.

"Clean Coal Technology" means any technology,

including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean Coal Technology Demonstration Project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Clearing Index" means an indicator of the predicted rate of clearance of ground level pollutants from a given area. This number is provided by the National Weather Service.

"Coating" means a material that can be applied to a substrate and which cures to form a continuous solid film for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, caulks, maskants, inks, and temporary protective coatings.

"Commence" as applied to construction of a major source or major modification means that the owner or operator has all necessary pre-construction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Composite vapor pressure" means the sum of the partial pressures of the compounds defined as VOCs.

"Condensable PM2.5" means material that is vapor phase at stack conditions, but which condenses and/or reacts upon cooling and dilution in the ambient air to form solid or liquid particulate matter immediately after discharge from the stack.

"Compliance Schedule" means a schedule of events, by date, which will result in compliance with these regulations.

"Construction" means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of a source which would result in a change in actual emissions.

"Control Apparatus" means any device which prevents or controls the emission of any air pollutant directly or indirectly into the outdoor atmosphere.

"Department" means Utah State Department of Environmental Quality. See Section 19-1-103(1).

"Director" means the Director of the Division of Air Quality. See Section 19-1-103(1).

"Division" means the Division of Air Quality.

"Electric Utility Steam Generating Unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emission" means the act of discharge into the atmosphere of an air pollutant or an effluent which contains or may contain an air pollutant; or the effluent so discharged into the atmosphere.

"Emissions Information" means, with reference to any source operation, equipment or control apparatus:

(1) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics related to air quality of any air pollutant which has been emitted by the source operation, equipment, or control apparatus;

(2) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air pollutant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

(3) A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

"Emission Limitation" means a requirement established by the Board, the director or the Administrator, EPA, which limits the quantity, rate or concentration of emission of air pollutants on a continuous emission reduction including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction (Section 302(k)).

"Emissions Unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

"Enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan and R307, any permit requirements established pursuant to 40 CFR 52.21 or R307-401.

"EPA" means Environmental Protection Agency.

"EPA Method 9" means 40 CFR Part 60, Appendix A, Method 9, "Visual Determination of Opacity of Emissions from Stationary Sources," and Alternate 1, "Determination of the opacity of emissions from stationary sources remotely by LIDAR."

"Executive Director" means the Executive Director of the Utah Department of Environmental Quality. See Section 19-1-103(2).

"Existing Installation" means an installation, construction of which began prior to the effective date of any regulation having application to it.

"Facility" means machinery, equipment, structures of any part or accessories thereof, installed or acquired for the primary purpose of controlling or disposing of air pollution. It does not include an air conditioner, fan or other similar device for the comfort of personnel.

"Filterable PM2.5" means particles with an aerodynamic diameter equal to or less than 2.5 micrometers that are directly emitted by a source as a solid or liquid at stack or release conditions and can be captured on the filter of a stack test train.

"Fireplace" means all devices both masonry or factory built units (free standing fireplaces) with a hearth, fire chamber or similarly prepared device connected to a chimney which provides the operator with little control of combustion air, leaving its fire chamber fully or at least partially open to the room. Fireplaces include those devices with circulating systems, heat exchangers, or draft reducing doors with a net thermal efficiency of no greater than twenty percent and are used for aesthetic purposes.

"Fugitive Dust" means particulate, composed of soil and/or industrial particulates such as ash, coal, minerals, etc., which becomes airborne because of wind or mechanical disturbance of surfaces. Natural sources of dust and fugitive emissions are not fugitive dust within the meaning of this definition.

"Fugitive Emissions" means emissions from an installation or facility which are neither passed through an air cleaning device nor vented through a stack or could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food, including wastes attendant thereto.

"Gasoline" means any petroleum distillate, used as a fuel for internal combustion engines, having a Reid vapor pressure of 4 pounds or greater.

"Hazardous Air Pollutant (HAP)" means any pollutant listed by the EPA as a hazardous air pollutant in conformance with Section 112(b) of the Clean Air Act. A list of these pollutants is available at the Division of Air Quality.

"Household Waste" means any solid or liquid material normally generated by the family in a residence in the course of ordinary day-to-day living, including but not limited to garbage, paper products, rags, leaves and garden trash.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

"Installation" means a discrete process with identifiable emissions which may be part of a larger industrial plant. Pollution equipment shall not be considered a separate installation or installations.

"LPG" means liquified petroleum gas such as propane or butane.

"Maintenance Area" means an area that is subject to the provisions of a maintenance plan that is included in the Utah state implementation plan, and that has been redesignated by EPA from nonattainment to attainment of any National Ambient Air Quality Standard.

(a) The following areas are considered maintenance areas for ozone:

(i) Salt Lake County, effective August 18, 1997; and

(ii) Davis County, effective August 18, 1997.

(b) The following areas are considered maintenance areas for carbon monoxide:

(i) Salt Lake City, effective March 22, 1999;

(ii) Ogden City, effective May 8, 2001; and

(iii) Provo City, effective January 3, 2006.

(c) The following areas are considered maintenance areas for PM10:

(i) Salt Lake County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015; and

(ii) Utah County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015; and

(iii) Ogden City, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015.

(d) The following area is considered a maintenance area for sulfur dioxide: all of Salt Lake County and the eastern portion of Tooele County above 5600 feet, effective on the date that EPA approves the maintenance plan that was adopted by the Board on January 5, 2005.

"Major Modification" means any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant. A net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone. Within Salt Lake and Davis Counties or any nonattainment area for ozone, a net emissions increase that is significant for nitrogen oxides shall be considered significant for ozone. Within areas of nonattainment for PM10, a significant net emission increase for any PM10 precursor is also a significant net emission increase for PM10. A physical change or change in the method of operation shall not include:

(1) routine maintenance, repair and replacement;

(2) use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(3) use of an alternative fuel by reason of an order or rule under section 125 of the federal Clean Air Act;

(4) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(5) use of an alternative fuel or raw material by a source:

(a) which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition; or

(b) which the source is otherwise approved to use;

(6) an increase in the hours of operation or in the production rate unless such change would be prohibited under any enforceable permit condition;

(7) any change in ownership at a source

(8) the addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the director determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(a) when the director has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Clean Air Act, if any, and

(b) the director determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(9) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) the Utah State Implementation Plan; and

(b) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Major Source" means, to the extent provided by the federal Clean Air Act as applicable to R307:

(1) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

(a) any source located in a nonattainment area for carbon monoxide which emits, or has the potential to emit, carbon monoxide in the amounts outlined in Section 187 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 187 of the federal Clean Air Act; or

(b) any source located in Salt Lake or Davis Counties or in a nonattainment area for ozone which emits, or has the potential to emit, VOC or nitrogen oxides in the amounts outlined in Section 182 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in

Section 182 of the federal Clean Air Act; or

(c) any source located in a nonattainment area for PM10 which emits, or has the potential to emit, PM10 or any PM10 precursor in the amounts outlined in Section 189 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 189 of the federal Clean Air Act.

(2) any physical change that would occur at a source not qualifying under subpart 1 as a major source, if the change would constitute a major source by itself;

(3) the fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of these R307 rules whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);
(b) Kraft pulp mills;
(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum or reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants (furnace process);
(p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants;
(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;
(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

"Modification" means any planned change in a source which results in a potential increase of emission.

"National Ambient Air Quality Standards (NAAQS)" means the allowable concentrations of air pollutants in the ambient air specified by the Federal Government (Title 40, Code of Federal Regulations, Part 50).

"Net Emissions Increase" means the amount by which the sum of the following exceeds zero:

(1) any increase in actual emissions from a particular physical change or change in method of operation at a source; and

(2) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. For purposes of determining a "net emissions increase":

(a) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences; and the date that the increase from the particular change occurs.

(b) An increase or decrease in actual emissions is creditable only if it has not been relied on in issuing a prior approval for the source which approval is in effect when the increase in actual emissions for the particular change occurs.

(c) An increase or decrease in actual emission of sulfur dioxide, nitrogen oxides or particulate matter which occurs before an applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM10 emissions will be used to evaluate this increase or decrease.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(iv) It has not been relied on in issuing any permit under R307-401 nor has it been relied on in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"New Installation" means an installation, construction of which began after the effective date of any regulation having application to it.

"Nonattainment Area" means an area designated by the Environmental Protection Agency as nonattainment under Section 107, Clean Air Act for any National Ambient Air Quality Standard. The designations for Utah are listed in 40 CFR 81.345.

"Offset" means an amount of emission reduction, by a source, greater than the emission limitation imposed on such source by these regulations and/or the State Implementation Plan.

"Opacity" means the capacity to obstruct the transmission of light, expressed as percent.

"Open Burning" means any burning of combustible materials resulting in emission of products of combustion into ambient air without passage through a chimney or stack.

"Owner or Operator" means any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.

"PSD" Area means an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the federal Clean Air Act.

"PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by an EPA reference or equivalent method.

"PM2.5 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM2.5, and has been identified in the applicable implementation plan for PM2.5 as significant for the purpose of developing control measures. Specifically, PM2.5 precursors include SO2, NOx, and VOC.

"PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as

measured by an EPA reference or equivalent method.

"PM10 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM10.

"Part 70 Source" means any source subject to the permitting requirements of R307-415.

"Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. (Subsection 19-2-103(4)).

"Pollution Control Project" means any activity or project at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(1) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(2) An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including, but not limited to natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions;

(3) A permanent clean coal technology demonstration project conducted under Title II, sec. 101(d) of the Further Continuing Appropriations Act of 1985 (sec. 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(4) A permanent clean coal technology demonstration project that constitutes a repowering project.

"Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Primary PM2.5" means the sum of filterable PM2.5 and condensable PM2.5.

"Process Level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process Rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the emission inventory at the time of enactment;

(2) Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and

(4) Is otherwise in compliance with the requirements of the Clean Air Act.

"Reasonable Further Progress" means annual incremental reductions in emission of an air pollutant which are sufficient to provide for attainment of the NAAQS by the date identified in the State Implementation Plan.

"Refuse" means solid wastes, such as garbage and trash.

"Regulated air pollutant" means any of the following:

(a) Nitrogen oxides or any volatile organic compound;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, Stratospheric Ozone Protection;

(e) Any pollutant subject to a standard promulgated under Section 112, Hazardous Air Pollutants, or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including any of the following:

(i) Any pollutant subject to requirements under Section 112(j) of the Act, Equivalent Emission Limitation by Permit. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act;

(ii) Any pollutant for which the requirements of Section 112(g)(2) of the Act (Construction, Reconstruction and Modification) have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

"Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(1) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(2) The director shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 409 of the Clean Air Act.

"Representative Actual Annual Emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of unit, (or a different consecutive two-year period within 10 years after that change, where the director determines that such period is more representative of source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the director shall:

(1) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State of Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

"Residence" means a dwelling in which people live, including all ancillary buildings.

"Residential Solid Fuel Burning" device means any residential burning device except a fireplace connected to a chimney that burns solid fuel and is capable of, and intended for use as a space heater, domestic water heater, or indoor cooking appliance, and has an air-to-fuel ratio less than 35-to-1 as determined by the test procedures prescribed in 40 CFR 60.534. It must also have a useable firebox volume of less than 6.10 cubic meters or 20 cubic feet, a minimum burn rate less than 5 kilograms per hour or 11 pounds per hour as determined by test procedures prescribed in 40 CFR 60.534, and weigh less than 800 kilograms or 362.9 pounds. Appliances that are described as prefabricated fireplaces and are designed to accommodate doors or other accessories that would create the air starved operating conditions of a residential solid fuel burning device shall be considered as such. Fireplaces are not included in this definition for solid fuel burning devices.

"Road" means any public or private road.

"Salvage Operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself.

Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Fugitive emissions and fugitive dust from the source or modification are not considered secondary emissions.

"Secondary PM2.5" means particles that form or grow in mass through chemical reactions in the ambient air well after dilution and condensation have occurred. Secondary PM2.5 is usually formed at some distance downwind from the source.

"Significant" means:

(1) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide: 100 ton per year (tpy);

Nitrogen oxides: 40 tpy;

Sulfur dioxide: 40 tpy;

PM10: 15 tpy;

PM2.5: 10 tpy;

Particulate matter: 25 tpy;

Ozone: 40 tpy of volatile organic compounds;

Lead: 0.6 tpy.

"Solid Fuel" means wood, coal, and other similar organic material or combination of these materials.

"Solvent" means organic materials which are liquid at standard conditions (Standard Temperature and Pressure) and which are used as dissolvers, viscosity reducers, or cleaning agents.

"Source" means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act and which is located on one or more continuous or adjacent properties and which is under the control of the same person or persons under common control. A building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (US Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Standards of Performance for New Stationary Sources" means the Federally established requirements for performance and record keeping (Title 40 Code of Federal Regulations, Part 60).

"State" means Utah State.

"Temporary" means not more than 180 calendar days.

"Temporary Clean Coal Technology Demonstration Project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Utah State Implementation Plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Threshold Limit Value - Ceiling (TLV-C)" means the airborne concentration of a substance which may not be exceeded, as adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Threshold Limit Value - Time Weighted Average (TLV-TWA)" means the time-weighted airborne concentration of a substance adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Total Suspended Particulate (TSP)" means minute separate particles of matter, collected by high volume sampler.

"Toxic Screening Level" means an ambient concentration of an air pollutant equal to a threshold limit value - ceiling (TLV- C) or threshold limit value -time weighted average (TLV-TWA) divided by a safety factor.

"Trash" means solids not considered to be highly flammable or explosive including, but not limited to clothing, rags, leather, plastic, rubber, floor coverings, excelsior, tree leaves, yard trimmings and other similar materials.

"VOC content" means the weight of VOC per volume of material and is calculated by the following equation in gram/liter (or alternately in pound/gallon, or pound/pound):

Grams of VOC per Liter of Material = Ws - Ww - Wes / Vm

Where:

Ws = weight of volatile organic compounds
Ww = weight of water
Wes = weight of exempt compounds
Vm = volume of material

"Volatile Organic Compound (VOC)" means VOC as defined in 40 CFR 51.100(s), effective as of the date referenced in R307-101-3, is hereby adopted and incorporated by reference.

"Waste" means all solid, liquid or gaseous material, including, but not limited to, garbage, trash, household refuse, construction or demolition debris, or other refuse including that resulting from the prosecution of any business, trade or industry.

"Zero Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is zero.

R307-101-3. Version of Code of Federal Regulations Incorporated by Reference.

Except as specifically identified in an individual rule, the version of the Code of Federal Regulations (CFR) incorporated throughout R307 is dated July 1, 2017.

KEY: air pollution, definitions
May 23, 2018 19-2-104(1)(a)
Notice of Continuation May 8, 2014

R307. Environmental Quality, Air Quality.
R307-210. Standards of Performance for New Stationary Sources.
R307-210-1. Standards of Performance for New Stationary Sources.

The provisions of 40 Code of Federal Regulations (CFR) Part 60, effective on July 1, 2017, except for Subparts Cb, Cc, Cd, Ce, BBBB, DDDD, and HHHH, are incorporated by reference into these rules with the exception that references in 40 CFR to "Administrator" shall mean "director" unless by federal law the authority referenced is specific to the Administrator and cannot be delegated.

KEY: air pollution, stationary sources, new source review
May 23, 2018 19-2-104(3)(q)
Notice of Continuation May 12, 2016 19-2-108

R307. Environmental Quality, Air Quality.
R307-214. National Emission Standards for Hazardous Air Pollutants.
R307-214-1. Pollutants Subject to Part 61.

The provisions of Title 40 of the Code of Federal Regulations (40 CFR) Part 61, National Emission Standards for Hazardous Air Pollutants, effective as of July 1, 2017, are incorporated into these rules by reference. For pollutant emission standards delegated to the State, references in 40 CFR Part 61 to "the Administrator" shall refer to the director.

R307-214-2. Sources Subject to Part 63.

The provisions listed below of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories, effective as of July 1, 2017, are incorporated into these rules by reference. References in 40 CFR Part 63 to "the Administrator" shall refer to the director, unless by federal law the authority is specific to the Administrator and cannot be delegated.

(1) 40 CFR Part 63, Subpart A, General Provisions.

(2) 40 CFR Part 63, Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with 42 U.S.C. 7412(g) and (j).

(3) 40 CFR Part 63, Subpart F, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.

(4) 40 CFR Part 63, Subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

(5) 40 CFR Part 63, Subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.

(6) 40 CFR Part 63, Subpart I, National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

(7) 40 CFR Part 63, Subpart J, National Emission Standards for Polyvinyl Chloride and Copolymers Production.

(8) 40 CFR Part 63, Subpart L, National Emission Standards for Coke Oven Batteries.

(9) 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.

(10) 40 CFR Part 63, Subpart N, National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

(11) 40 CFR Part 63, Subpart O, National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations.

(12) 40 CFR Part 63, Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.

(13) 40 CFR Part 63, Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).

(14) 40 CFR Part 63, Subpart T, National Emission Standards for Halogenated Solvent Cleaning.

(15) 40 CFR Part 63, Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.

(16) 40 CFR Part 63, Subpart AA, National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing.

(17) 40 CFR Part 63, Subpart BB, National Emission Standards for Hazardous Air Pollutants for Phosphate Fertilizer Production.

(18) 40 CFR Part 63, Subpart CC, National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.

(19) 40 CFR Part 63, Subpart DD, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(20) 40 CFR Part 63, Subpart EE, National Emission Standards for Magnetic Tape Manufacturing Operations.

(21) 40 CFR Part 63, Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities.

(22) 40 CFR Part 63, Subpart HH, National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production.

(23) 40 CFR Part 63, Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations.

(24) 40 CFR Part 63, Subpart KK, National Emission Standards for the Printing and Publishing Industry.

(25) 40 CFR Part 63, Subpart MM, National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.

(26) 40 CFR Part 63, Subpart OO, National Emission Standards for Tanks - Level 1.

(27) 40 CFR Part 63, Subpart PP, National Emission Standards for Containers.

(28) 40 CFR Part 63, Subpart QQ, National Emission Standards for Surface Impoundments.

(29) 40 CFR Part 63, Subpart RR, National Emission Standards for Individual Drain Systems.

(30) 40 CFR Part 63, Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (Generic MACT).

(31) 40 CFR Part 63, Subpart TT, National Emission Standards for Equipment Leaks- Control Level 1 (Generic MACT).

(32) 40 CFR Part 63, Subpart UU, National Emission Standards for Equipment Leaks-Control Level 2 Standards (Generic MACT).

(33) 40 CFR Part 63, Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators.

(34) 40 CFR Part 63, Subpart WW, National Emission Standards for Storage Vessels (Tanks)-Control Level 2 (Generic MACT).

(35) 40 CFR Part 63, Subpart XX, National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.

(36) 40 CFR Part 63, Subpart YY, National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic MACT.

(37) 40 CFR Part 63, Subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants.

(38) 40 CFR Part 63, Subpart DDD, National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.

(39) 40 CFR Part 63, Subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.

(40) 40 CFR Part 63, Subpart GGG, National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production.

(41) 40 CFR Part 63, Subpart HHH, National Emission Standards for Hazardous Air Pollutants for Natural Gas Transmission and Storage.

(42) 40 CFR Part 63, Subpart III, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.

(43) 40 CFR Part 63, Subpart JJJ, National Emission Standards for Hazardous Air Pollutants for Group IV Polymers and Resins.

(44) 40 CFR Part 63, Subpart LLL, National Emission Standards for Hazardous Air Pollutants for Portland Cement Manufacturing Industry.

(45) 40 CFR Part 63, Subpart MMM, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.

(46) 40 CFR Part 63, Subpart NNN, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.

(47) 40 CFR Part 63, Subpart OOO, National Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production (Resin III).

(48) 40 CFR Part 63, Subpart PPP, National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production.

(49) 40 CFR Part 63, Subpart QQQ, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelters.

(50) 40 CFR Part 63, Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.

(51) 40 CFR Part 63, Subpart TTT, National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.

(52) 40 CFR Part 63, Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

(53) 40 CFR Part 63, Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.

(54) 40 CFR Part 63, Subpart AAAA, National Emission Standards for Hazardous Air Pollutants for Municipal Solid Waste Landfills.

(55) 40 CFR Part 63, Subpart CCCC, National Emission Standards for Manufacturing of Nutritional Yeast.

(56) 40 CFR Part 63, Subpart DDDD, National Emission Standards for Hazardous Air Pollutants for Plywood and Composite Wood Products.

(57) 40 CFR Part 63, Subpart EEEE, National Emission Standards for Hazardous Air Pollutants for Organic Liquids Distribution (non-gasoline).

(58) 40 CFR Part 63, Subpart FFFF, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing.

(59) 40 CFR Part 63, Subpart GGGG, National Emission Standards for Vegetable Oil Production; Solvent Extraction.

(60) 40 CFR Part 63, Subpart HHHH, National Emission Standards for Wet-Formed Fiberglass Mat Production.

(61) 40 CFR Part 63, Subpart IIII, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Automobiles and Light-Duty Trucks.

(62) 40 CFR Part 63, Subpart JJJJ, National Emission Standards for Hazardous Air Pollutants for Paper and Other Web Surface Coating Operations.

(63) 40 CFR Part 63, Subpart KKKK, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Metal Cans.

(64) 40 CFR Part 63, Subpart MMMM, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.

(65) 40 CFR Part 63, Subpart NNNN, National Emission Standards for Large Appliances Surface Coating Operations.

(66) 40 CFR Part 63, Subpart OOOO, National Emission Standards for Hazardous Air Pollutants for Fabric Printing, Coating and Dyeing Surface Coating Operations.

(67) 40 CFR Part 63, Subpart PPPP, National Emissions Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.

(68) 40 CFR Part 63, Subpart QQQQ, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Wood Building Products.

(69) 40 CFR Part 63, Subpart RRRR, National Emission Standards for Hazardous Air Pollutants for Metal Furniture Surface Coating Operations.

(70) 40 CFR Part 63, Subpart SSSS, National Emission Standards for Metal Coil Surface Coating Operations.

(71) 40 CFR Part 63, Subpart TTTT, National Emission Standards for Leather Tanning and Finishing Operations.

(72) 40 CFR Part 63, Subpart UUUU, National Emission Standards for Cellulose Product Manufacturing.

(73) 40 CFR Part 63, Subpart VVVV, National Emission Standards for Boat Manufacturing.

(74) 40 CFR Part 63, Subpart WWWW, National Emissions Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production.

(75) 40 CFR Part 63, Subpart XXXX, National Emission Standards for Tire Manufacturing.

(76) 40 CFR Part 63, Subpart YYYY, National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.

(77) 40 CFR Part 63, Subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.

(78) 40 CFR Part 63, Subpart AAAAA, National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.

(79) 40 CFR Part 63, Subpart BBBBB, National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.

(80) 40 CFR Part 63, Subpart CCCCC, National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.

(81) 40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.

(82) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.

(83) 40 CFR Part 63, Subpart FFFFF, National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing.

(84) 40 CFR Part 63, Subpart GGGGG, National Emission Standards for Hazardous Air Pollutants for Site Remediation.

(85) 40 CFR Part 63, Subpart HHHHH, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Coating Manufacturing.

(86) 40 CFR Part 63, Subpart IIIII, National Emission Standards for Hazardous Air Pollutants for Mercury Emissions from Mercury Cell Chlor-Alkali Plants.

(87) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.

(88) 40 CFR Part 63, Subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.

(89) 40 CFR Part 63, Subpart LLLLL, National

Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing.

(90) 40 CFR Part 63, Subpart MMMMM, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Fabrication Operations.

(91) 40 CFR Part 63, Subpart NNNNN, National Emission Standards for Hazardous Air Pollutants for Hydrochloric Acid Production.

(92) 40 CFR Part 63, Subpart PPPPP, National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands.

(93) 40 CFR Part 63, Subpart QQQQQ, National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.

(94) 40 CFR Part 63, Subpart RRRRR, National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing.

(95) 40 CFR Part 63, Subpart SSSSS, National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.

(96) 40 CFR Part 63, Subpart TTTTT, National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining.

(97) 40 CFR Part 63, Subpart UUUUU, National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-Fired Electric Utility Steam Generating Units.

(98) 40 CFR Part 63, Subpart WWWWW, National Emission Standards for Hospital Ethylene Oxide Sterilizers.

(99) 40 CFR Part 63, Subpart YYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities.

(100) 40 CFR Part 63, Subpart ZZZZZ, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources.

(101) 40 CFR Part 63 Subpart BBBBBB National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities

(102) 40 CFR Part 63 Subpart CCCCCC National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.

(103) 40 CFR Part 63, Subpart DDDDDD, National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources.

(104) 40 CFR Part 63, Subpart EEEEEE, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources.

(105) 40 CFR Part 63, Subpart FFFFFF, National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources.

(106) 40 CFR Part 63, Subpart GGGGGG, National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources--Zinc, Cadmium, and Beryllium.

(107) 40 CFR Part 63, Subpart JJJJJJ, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources.

(108) 40 CFR Part 63, Subpart LLLLLL, National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources.

(109) 40 CFR Part 63, Subpart MMMMMM, National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources.

(110) 40 CFR Part 63, Subpart NNNNNN, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds.

(111) 40 CFR Part 63, Subpart OOOOOO, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources.

(112) 40 CFR Part 63, Subpart PPPPPP, National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources.

(113) 40 CFR Part 63, Subpart QQQQQQ, National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources.

(114) 40 CFR Part 63, Subpart RRRRRR, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources.

(115) 40 CFR Part 63, Subpart SSSSSS, National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources.

(116) 40 CFR Part 63, Subpart VVVVVV, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources.

(117) 40 CFR Part 63, Subpart TTTTTT, National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources.

(118) 40 CFR Part 63, Subpart WWWWWW, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations.

(119) 40 CFR Part 63, Subpart XXXXXX, National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.

(120) 40 CFR Part 63, Subpart YYYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities.

(121) 40 CFR Part 63, Subpart ZZZZZZ, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries.

(122) 40 CFR Part 63, Subpart AAAAAAA, National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing.

(123) 40 CFR Part 63, Subpart BBBBBBB, National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry.

(124) 40 CFR Part 63, Subpart CCCCCCC, National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing.

(125) 40 CFR Part 63, Subpart DDDDDDD, National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing.

(126) 40 CFR Part 63, Subpart EEEEEEE, National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category.

KEY: air pollution, hazardous air pollutant, MACT, NESHAP
May 23, 2018 19-2-104(1)(a)
Notice of Continuation September 8, 2017

R307. Environmental Quality, Air Quality.
R307-510. Oil and Gas Industry: Natural Gas Engine Requirements.
R307-510-1. Purpose.

R307-510 establishes control requirements for stationary engines associated with well sites.

R307-510-2. Definitions.

"Site hp" means the total horse power rating of all engines within the boundaries of the source.

R307-510-3. Applicability.

(1) R307-510 applies to each natural gas-fired engine at a well site as defined in 40 CFR 60.5430a, Subpart OOOOa Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution, that began operations, installed new engines, or made modifications to existing engines after January 1, 2016.

(2) R307-510 shall apply to centralized tank batteries, as defined in R307-506-2.

(3) R307-510 does not apply to a natural gas-fired engine that is subject to an approval order issued under R307-401-8.

R307-510-4. Engine Requirements.

(1) Regardless of construction, reconstruction, or modification date, each stationary engine at a well site shall comply with the emission standards listed in Table 1 when the engine is installed, relocated, or modified.

Table 1

Maximum Engine hp	Emission Standards in (g/hp-hr)			
	NO_x	CO	VOC	$HC+NO_x$
Equal or greater than 25 hp and < 100 hp	-	4.85	-	2.83
Equal or greater than 100 hp	1.0	2.0	0.7	-

(2) The owner or operator shall either:

(a) purchase a certified stationary internal combustion engine as defined in 40 CFR 60.4248, or

(b) conduct an initial performance test according to 40 CFR 60.4244.

(3) Each engine shall vent exhaust gases vertically unrestricted with the following stack height requirements:

(a) For site hp ratings of 306 or greater, each engine shall have an attached stack height of no less than 10 feet.

(b) For site hp ratings of 151 to 305 hp, each engine shall have an attached stack height of no less than 8 feet.

(c) For site hp ratings of 150 hp or less, there are no stack height requirements on engines.

R307-510-5. Recordkeeping.

For each engine on site, the owner or operator shall maintain records of the engine certification or initial performance test for the period of time the engine is on the well site.

KEY: air pollution, oil, gas
March 5, 2018 19-2-104(1)(a)

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-262. Hazardous Waste Generator Requirements.
R315-262-1. General -- Terms Used in this Part.

(a) As used in Rule R315-262:

(1) "Condition for exemption" means any requirement in Sections R315-262-14, R315-262-15, R315-262-16, R315-262-17, R315-262-70, or Sections R315-262-200 through R315-262-216 or Sections R315-262-230 through R315-262-233 that states an event, action, or standard that shall occur or be met in order to obtain an exemption from any applicable requirement in Rule R315-124, R315-264 through R315-268, and R315-270, or from any requirement for notification under section 3010 of RCRA.

(2) "Independent requirement" means a requirement of Rule R315-262 that states an event, action, or standard that shall occur or be met; and that applies without relation to, or irrespective of, the purpose of obtaining a conditional exemption from storage facility permit, interim status, and operating requirements under Sections R315-262-14, R315-262-15, R315-262-16, R315-262-17, or Sections R315-262-200 through R315-262-216 or Sections R315-262-230 through R315-262-233.

R315-262-10. General -- Purpose, Scope, and Applicability.

(a) The regulations in Rule R315-262 establish standards for generators of hazardous waste as defined by Section R315-260-10.

(1) A person who generates a hazardous waste as defined by Rule R315-261 is subject to all the applicable independent requirements in the sections listed below:

(i) Independent requirements of a very small quantity generator.

(A) Subsections R315-262-11(a) through (d) Hazardous waste determination and recordkeeping; and

(B) Section R315-262-13 Generator category determination.

(ii) Independent requirements of a small quantity generator.

(A) Section R315-262-11 Hazardous waste determination and recordkeeping;

(B) Section R315-262-13 Generator category determination;

(C) Section R315-262-18 EPA identification numbers and re-notification for small quantity generators and large quantity generators;

(D) Sections R315-262-20 through R315-262-27--Manifest requirements applicable to small and large quantity generators;

(E) Sections R315-262-30 through R315-262-34--Pre-transport requirements applicable to small and large quantity generators;

(F) Section R315-262-40 Recordkeeping;

(G) Section R315-262-44 Recordkeeping for small quantity generators; and

(H) Sections R315-262-80 through R315-262-89--Transboundary movements of hazardous waste for recovery or disposal.

(iii) Independent requirements of a large quantity generator.

(A) Section R315-262-11 Hazardous waste determination and recordkeeping;

(B) Section R315-262-13 Generator category determination;

(C) Section R315-262-18 EPA identification numbers and re-notification for small quantity generators and large quantity generators;

(D) Sections R315-262-20 through R315-262-27--Manifest requirements applicable to small and large quantity generators;

(E) Sections R315-262-30 through R315-262-34--Pre-transport requirements applicable to small and large quantity generators;

(F) Sections R315-262-40 through R315-262-44--Recordkeeping and reporting applicable to small and large quantity generators, except Section R315-262-44; and

(G) Sections R315-262-80 through R315-262-89--Transboundary movements of hazardous waste for recovery or disposal.

(2) A generator that accumulates hazardous waste on site is a person that stores hazardous waste; such generator is subject to the applicable requirements of Rule R315-124, R315-264 through R315-266, R315-270 and section 3010 of RCRA, unless it is one of the following:

(i) A very small quantity generator that meets the conditions for exemption in Section R315-262-14;

(ii) A small quantity generator that meets the conditions for exemption in Sections R315-262-15 and R315-262-16; or

(iii) A large quantity generator that meets the conditions for exemption in Sections R315-262-15 and R315-262-17.

(3) A generator shall not transport, offer its hazardous waste for transport, or otherwise cause its hazardous waste to be sent to a facility that is not a designated facility, as defined in Section R315-260-10, or not otherwise authorized to receive the generator's hazardous waste.

(b) Determining generator category. A generator shall use Section R315-262-13 to determine which provisions of Rule R315-262 are applicable to the generator based on the quantity of hazardous waste generated per calendar month.

(c) Reserved.

(d) Any person who exports or imports hazardous wastes shall comply with Section R315-262-18 and Sections R315-262-80 through R315-262-89.

(e) Any person who imports hazardous waste into the United States shall comply with the standards applicable to generators established in Rule R315-262.

(f) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of Section R315-262-70 is not required to comply with other standards in Rule R315-262 or Rules R315- 270, 264, 265, or 268 with respect to such pesticides.

(1) A generator's violation of an independent requirement is subject to penalty and injunctive relief under Sections 19-6-112 and 19-6-113.

(2) A generator's noncompliance with a condition for exemption in Rule R315-262 is not subject to penalty or injunctive relief under Sections 19-6-112 and 19-6-113 as a violation of a Rule R315-262 condition for exemption. Noncompliance by any generator with an applicable condition for exemption from storage permit and operations requirements means that the facility is a storage facility operating without an exemption from the permit, interim status, and operations requirements in Rules R315-124, R315-264 through R315-266, and R315-270, and the notification requirements of section 3010 of RCRA. Without an exemption, any violations of such storage requirements are subject to penalty and injunctive relief under Sections 19-6-112 and 19-6-113.

(h) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility shall comply with the generator standards established in Rule R315-262.

Note 1: The provisions of Section R315-262-34 are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of Section R315-262-34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

Note 2: A generator who treats, stores, or disposes of hazardous waste on-site shall comply with the applicable standards and permit requirements set forth in Rules R315-264, 265, 266, 268, and 270.

(i) Reserved.

(j) Reserved.

(k) Reserved.

(l) The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of Sections R315-262-200 through R315-262-216 are not subject to, for purposes of Subsection R315-262-10(l), the terms "laboratory" and "eligible academic entity" shall have the meaning as defined in Section R315-262-200:

(1) The independent requirements of Section R315-262-11 or the regulations in Section R315-262-15 for large quantity generators and small quantity generators, except as provided in Sections R315-262-200 through R315-262-216, and

(2) The conditions of Section R315-262-14, for very small quantity generators, except as provided in Sections R315-262-200 through R315-262-216.

(m) Generators of lamps, as defined in Section R315-273-9, using a drum-top crusher, as defined in Section R315-273-9, shall meet the requirements of Subsection R315-273-13(d)(3), except for the registration requirement; and Subsections R315-273-13(d)(4) and (5).

Note: A generator who treats, stores, or disposes of hazardous waste on-site shall comply with the applicable standards and permit requirements set forth in Rules R315-264, R315-265, R315-266, R315-268, and R315-270.

R315-262-11. General -- Hazardous Waste Determination and Recordkeeping.

A person who generates a solid waste, as defined in Section R315-261-2, shall make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable regulations. A hazardous waste determination is made using the following steps:

(a) The hazardous waste determination for each solid waste shall be made at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste such that the hazardous classification of the waste may change.

(b) A person shall determine whether the solid waste is excluded from regulation under Section R315-261-4.

(c) If the waste is not excluded under Section R315-261-4, the person shall then use knowledge of the waste to determine whether the waste meets any of the listing descriptions under Sections R315-261-30 through R315-261-35. Acceptable knowledge that may be used in making an accurate determination as to whether the waste is listed may include waste origin, composition, the process producing the waste, feedstock, and other reliable and relevant information. If the waste is listed, the person may file a delisting petition under Sections R315-260-20 and R315-260-22 to demonstrate to the Director that the waste from this particular site or operation is not a hazardous waste.

(d) The person then shall also determine whether the waste exhibits one or more hazardous characteristics as identified in Sections R315-261-20 through R315-261-24 by following the procedures in Subsections R315-262-11(d)(1) or (2), or a combination of both.

(1) The person shall apply knowledge of the hazard characteristic of the waste in light of the materials or the processes used to generate the waste. Acceptable knowledge may include process knowledge, for example, information about chemical feedstocks and other inputs to the production process; knowledge of products, by-products, and intermediates produced by the manufacturing process; chemical or physical characterization of wastes; information on the chemical and physical properties of the chemicals used or produced by the process or otherwise contained in the waste; testing that illustrates the properties of the waste; or other reliable and relevant information about the properties of the waste or its constituents. A test other than a test method set forth in Sections R315-261-20 through R315-261-24, or an equivalent test method approved by the Director under Section R315-260-21, may be used as part of a person's knowledge to determine whether a solid waste exhibits a characteristic of hazardous waste. However, such tests do not, by themselves, provide definitive results. Persons testing their waste shall obtain a representative sample of the waste for the testing, as defined at Section R315-260-10.

(2) When available knowledge is inadequate to make an accurate determination, the person shall test the waste according to the applicable methods set forth in Sections R315-261-20 through R315-261-24 or according to an equivalent method approved by the Director under Section R315-260-21 and in accordance with the following:

(i) Persons testing their waste shall obtain a representative sample of the waste for the testing, as defined at Section R315-260-10.

(ii) Where a test method is specified in Sections R315-261-20 through R315-261-24, the results of the regulatory test, when properly performed, are definitive for determining the regulatory status of the waste.

(e) If the waste is determined to be hazardous, the generator shall refer to Rules R315-261, R315-264, R315-265, R315-266, R315-268, and R315-273 for other possible exclusions or restrictions pertaining to management of the specific waste.

(f) Recordkeeping for small and large quantity generators. A small or large quantity generator shall maintain records supporting its hazardous waste determinations, including records that identify whether a solid waste is a hazardous waste, as defined by Section R315-261-3. Records shall be maintained for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. These records shall comprise the generator's knowledge of the waste and support the generator's determination, as described at Subsections R315-262-11(c) and (d). The records shall include, but are not limited to, the following types of information: The results of any tests, sampling, waste analyses, or other determinations made in accordance with this section; records documenting the tests, sampling, and analytical methods used to demonstrate the validity and relevance of such tests; records consulted in order to determine the process by which the waste was generated, the composition of the waste, and the properties of the waste; and records which explain the knowledge basis for the generator's determination, as described at Subsection R315-262-11(d)(1). The periods of record retention referred to in Subsection R315-262-11(2)(f) are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Director.

(g) Identifying hazardous waste numbers for small and large quantity generators. If the waste is determined to be hazardous, small quantity generators and large quantity generators shall identify all applicable EPA hazardous waste numbers, EPA hazardous waste codes, in Sections R315-261-20 through R315-261-24 and R315-261-30 through R315-261-35. Prior to shipping the waste off site, the generator also shall mark its containers with all applicable EPA

hazardous waste numbers, EPA hazardous waste codes, according to Section R315-262-32.

R315-262-13. General -- Generator Category Determination.

A generator shall determine its generator category. A generator's category is based on the amount of hazardous waste generated each month and may change from month to month. This section sets forth procedures to determine whether a generator is a very small quantity generator, a small quantity generator, or a large quantity generator for a particular month, as defined in Section R315-260-10.

(a) Generators of either acute hazardous waste or non-acute hazardous waste. A generator who either generates acute hazardous waste or non-acute hazardous waste in a calendar month shall determine its generator category for that month by doing the following:

(1) Counting the total amount of hazardous waste generated in the calendar month;

(2) Subtracting from the total any amounts of waste exempt from counting as described in Subsections R315-262-13(c) and (d); and

(3) Determining the resulting generator category for the hazardous waste generated using Table 1 below.

(b) Generators of both acute and non-acute hazardous wastes. A generator who generates both acute hazardous waste and non-acute hazardous waste in the same calendar month shall determine its generator category for that month by doing the following:

(1) Counting separately the total amount of acute hazardous waste and the total amount of non-acute hazardous waste generated in the calendar month;

(2) Subtracting from each total any amounts of waste exempt from counting as described in Subsections R315-262-13(c) and (d);

(3) Determining separately the resulting generator categories for the quantities of acute and non-acute hazardous waste generated using Table 1 below; and

(4) Comparing the resulting generator categories from Subsection R315-262-13(b)(3) and applying the more stringent generator category to the accumulation and management of both non-acute hazardous waste and acute hazardous waste generated for that month.

TABLE 1 to Section R315-262-13

Generator Categories Based on Quantity of Waste Generated in a Calendar Month

Quantity of acute hazardous waste generated in a calendar month	Quantity of non-acute hazardous waste generated in a calendar month	Quantity of residues from a cleanup of acute hazardous waste generated in a calendar month	Generator category
>1kg	Any amount	Any amount	Large quantity generator
Any amount	> or = 1,000kg	Any amount	Large quantity generator
Any amount	Any Amount	>100kg	Large quantity generator
< or = 1 kg	>100 kg and < 1,000 kg	< or = 100 kg	Small quantity Generator
< or = 1 kg	< or = 100 kg	< or = 100 kg	Very small quantity generator

(c) When making the monthly quantity-based determinations required by Rule R315-262, the generator shall include all hazardous waste that it generates, except hazardous waste that:

(1) Is exempt from regulation under Subsections R315-261-4(c) through (f), 261-6(a)(3), R315-261-7(a)(1), or Section R315-261-8;

(2) Is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in Section R315-260-10;

(3) Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under Subsection R315-261-6(c)(2);

(4) Is used oil managed under the requirements of Subsection R315-261-6(a)(4) and R315-15;

(5) Is spent lead-acid batteries managed under the requirements of Section R315-266-80;

(6) Is universal waste managed under Section R315-261-9 and Rule R315-273;

(7) Is a hazardous waste that is an unused commercial chemical product, listed in Sections R315-261-30 through R315-261-35 or exhibiting one or more characteristics in Sections R315-261-20 through R315-261-24, that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to Section R315-262-213. For purposes of this provision, the term eligible academic entity shall have the meaning as defined in Section R315-262-200; or

(8) Is managed as part of an episodic event in compliance with the conditions of Sections R315-262-230 through R315-262-233.

(d) In determining the quantity of hazardous waste generated in a calendar month, a generator need not include:

(1) Hazardous waste when it is removed from on-site accumulation, so long as the hazardous waste was previously counted once;

(2) Hazardous waste generated by on-site treatment (including reclamation) of the generator's hazardous waste, so long as the hazardous waste that is treated was previously counted once; and

(3) Hazardous waste spent materials that are generated, reclaimed, and subsequently reused on site, so long as such spent materials have been previously counted once.

(e) Based on the generator category as determined under Section R315-262-13, the generator shall meet the applicable independent requirements listed in Section R315-262-10. A generator's category also determines which of the provisions of Sections R315-262-14, R315-262-15, R315-262-16 or R315-262-17 shall be met to obtain an exemption from the storage facility permit, interim status, and operating requirements when accumulating hazardous waste.

(f) Mixing hazardous wastes with solid wastes

(1) Very small quantity generator wastes.

(i) Hazardous wastes generated by a very small quantity generator may be mixed with solid wastes. Very small quantity generators may mix a portion or all of its hazardous waste with solid waste and remain subject to Section R315-262-14 even though the resultant mixture exceeds the quantity limits identified in the definition of very small quantity generator at Section R315-260-10, unless the mixture exhibits one or more of the characteristics of hazardous waste identified in Sections R315-261-20 through R315-261-24.

(ii) If the resulting mixture exhibits a characteristic of hazardous waste, this resultant mixture is a newly-generated hazardous waste. The very small quantity generator shall count both the resultant mixture amount plus the other hazardous waste generated in the calendar month to determine whether the total quantity exceeds the very small quantity generator calendar month quantity limits identified in the definition of generator categories found in Section R315-260-

10. If so, to remain exempt from the permitting, interim status, and operating standards, the very small quantity generator shall meet the conditions for exemption applicable to either a small quantity generator or a large quantity generator. The very small quantity generator shall also comply with the applicable independent requirements for either a small quantity generator or a large quantity generator.

(iii) If a very small quantity generator's wastes are mixed with used oil, the mixture is subject to Rule R315-15. Any material produced from such a mixture by processing, blending, or other treatment is also regulated under Rule R315-15.

(2) Small quantity generator and large quantity generator wastes.

(i) Hazardous wastes generated by a small quantity generator or large quantity generator may be mixed with solid waste. These mixtures are subject to the following: the mixture rule in Subsections R315-261-3(a)(2)(iv), (b)(2) and (3), and (g)(2)(i); the prohibition of dilution rule at Subsection R315-268-3(a); the land disposal restriction requirements of Section R315-268-40 if a characteristic hazardous waste is mixed with a solid waste so that it no longer exhibits the hazardous characteristic; and the hazardous waste determination requirement at Section R315-262-11.

(ii) If the resulting mixture is found to be a hazardous waste, this resultant mixture is a newly-generated hazardous waste. A small quantity generator shall count both the resultant mixture amount plus the other hazardous waste generated in the calendar month to determine whether the total quantity exceeds the small quantity generator calendar monthly quantity limits identified in the definition of generator categories found in Section R315-260-10. If so, to remain exempt from the permitting, interim status, and operating standards, the small quantity generator shall meet the conditions for exemption applicable to a large quantity generator. The small quantity generator shall also comply with the applicable independent requirements for a large quantity generator.

R315-262-14. General -- Conditions For Exemption for a Very Small Quantity Generator.

(a) Provided that the very small quantity generator meets all the conditions for exemption listed in Section R315-262-14, hazardous waste generated by the very small quantity generator is not subject to the requirements of Rules R315-124, 262 (except Sections R315-262-10 through R315-262-14) through R315-268, and R315-270, and the notification requirements of section 3010 of RCRA and the very small quantity generator may accumulate hazardous waste on site without complying with such requirements. The conditions for exemption are as follows:

(1) In a calendar month the very small quantity generator generates less than or equal to the amounts specified in the definition of "very small quantity generator" in Section R315-260-10;

(2) The very small quantity generator complies with Subsections R315-262-11(a) through (d);

(3) If the very small quantity generator accumulates at any time greater than 1 kilogram (2.2 lbs) of acute hazardous waste or 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e), all quantities of that acute hazardous waste are subject to the following additional conditions for exemption:

(i) Such waste is held on site for no more than 90 days beginning on the date when the accumulated wastes exceed the amounts provided in Subsection R315-262-14(a)(3); and

(ii) The conditions for exemption in Subsections R315-262-17(a) through (g).

(4) If the very small quantity generator accumulates at any time 1,000 kilograms (2,200 lbs) or greater of non-acute hazardous waste, all quantities of that hazardous waste are subject to the following additional conditions for exemption:

(i) Such waste is held on site for no more than 180 days, or 270 days, if applicable, beginning on the date when the accumulated waste exceed the amounts provided in Subsection R315-262-14(a)(4);

(ii) The quantity of waste accumulated on site never exceeds 6,000 kilograms (13,200 lbs); and

(iii) The conditions for exemption in Subsections R315-262-16(b)(2) through (f).

(5) A very small quantity generator that accumulates hazardous waste in amounts less than or equal to the limits in Subsections R315-262-14(a)(3) and (4) shall either treat or dispose of its hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under Rule R315-270;

(ii) In interim status under Rules R315-265 and 270;

(iii) Authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR 271;

(iv) Permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to Rules R315-301 through R315-320;

(v) Permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit, is subject to the requirements in Rules R315-301 through R315-320 or 40 CFR 257.5 through 257.30;

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation;

(vii) For universal waste managed under Rule R315-273, a universal waste handler or destination facility subject to the requirements of Rule R315-273;

(viii) A large quantity generator under the control of the same person as the very small quantity generator, provided the following conditions are met:

(A) The very small quantity generator and the large quantity generator are under the control of the same person as defined in Section R315-260-10. "Control," for the purposes of Subsection R315-262-14(a)(5)(viii), means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person as defined in Section R315-260-10 shall not be deemed to "control" such generators.

(B) The very small quantity generator marks its container(s) of hazardous waste with:

(1) The words ``Hazardous Waste'' and

(2) An indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the

National Fire Protection Association code 704.

(b) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(c) A very small quantity generator experiencing an episodic event may generate and accumulate hazardous waste in accordance with Sections R315-262-230 through 233 in lieu of Sections R315-262-15, 16, and 17.

R315-262-15. General -- Satellite Accumulation Area Regulations for Small and Large Quantity Generators.

(a) A generator may accumulate as much as 55 gallons of non-acute hazardous waste and/or either one quart of liquid acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) or 1 kg (2.2 lbs) of solid acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with the requirements of Rules R315-124, R315-264 through R315-266, and R315-270, provided that all of the conditions for exemption in Section R315-262-15 are met. A generator may comply with the conditions for exemption in Section R315-262-15 instead of complying with the conditions for exemption in Subsection R315-262-16(b) or 17(a), except as required in Subsections R315-262-15(a)(7) and (8). The conditions for exemption for satellite accumulation are:

(1) If a container holding hazardous waste is not in good condition, or if it begins to leak, the generator shall immediately transfer the hazardous waste from this container to a container that is in good condition and does not leak, or immediately transfer and manage the waste in a central accumulation area operated in compliance with Subsections R315-262-16(b) or 17(a).

(2) The generator shall use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired.

(3) Special standards for incompatible wastes.

(i) Incompatible wastes, or incompatible wastes and materials, (see appendix V of 40 CFR 265 for examples) shall not be placed in the same container, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(ii) Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material (see appendix V of 40 CFR 265 for examples), unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(iii) A container holding a hazardous waste that is incompatible with any waste or other materials accumulated nearby in other containers shall be separated from the other materials or protected from them by any practical means.

(4) A container holding hazardous waste shall be closed at all times during accumulation, except:

(i) When adding, removing, or consolidating waste; or

(ii) When temporary venting of a container is necessary:

(A) For the proper operation of equipment, or

(B) To prevent dangerous situations, such as build-up of extreme pressure.

(5) A generator shall mark or label its container with the following:

(i) The words ``Hazardous Waste'' and

(ii) An indication of the hazards of the contents, examples include, but are not limited to:

(A) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(B) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(C) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(D) a chemical hazard label consistent with the National Fire Protection Association code 704.

(6) A generator who accumulates either acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) or non-acute hazardous waste in excess of the amounts listed in Subsection R315-262-15(a) at or near any point of generation shall do the following:

(i) Comply within three consecutive calendar days with the applicable central accumulation area regulations in Subsection R315-262-16(b) or 17(a), or

(ii) Remove the excess from the satellite accumulation area within three consecutive calendar days to either:

(A) A central accumulation area operated in accordance with the applicable regulations in Subsection R315-262-16(b) or 17(a);

(B) An on-site interim status or permitted treatment, storage, or disposal facility, or

(C) An off-site designated facility; and

(iii) During the three-consecutive-calendar-day period the generator shall continue to comply with Subsections R315-262-15(a)(1) through (5). The generator shall mark or label the container(s) holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(7) All satellite accumulation areas operated by a small quantity generator shall meet the preparedness and prevention regulations of Subsection R315-262-16(b)(8) and emergency procedures at Subsection R315-262-16(b)(9).

(8) All satellite accumulation areas operated by a large quantity generator shall meet the Preparedness, Prevention and Emergency Procedures in Sections R315-262-250 through R315-262-265.

(b) Reserved.

R315-262-16. General -- Conditions for Exemption for a Small Quantity Generator that Accumulates Hazardous Waste.

A small quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of Rules R315-124, R315-264 through R315-266, and R315-270, or the notification requirements of section 3010 of RCRA, provided that all the conditions for exemption listed in Section R315-262-16 are met:

(a) Generation. The generator generates in a calendar month no more than the amounts specified in the definition of ``small quantity generator'' in Section R315-260-10.

(b) Accumulation. The generator accumulates hazardous waste on site for no more than 180 days, unless in compliance with the conditions for exemption for longer accumulation in Subsections R315-262-16(d) and (e). The following accumulation conditions also apply:

(1) Accumulation limit. The quantity of hazardous waste accumulated on site never exceeds 6,000 kilograms (13,200 pounds);

(2) Accumulation of hazardous waste in containers.

(i) Condition of containers. If a container holding hazardous waste is not in good condition, or if it begins to leak, the small quantity generator shall immediately transfer the hazardous waste from this container to a container that is in good condition, or immediately manage the waste in some other way that complies with the conditions for exemption of

Section R315-262-16.

(ii) Compatibility of waste with container. The small quantity generator shall use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired.

(iii) Management of containers.

(A) A container holding hazardous waste shall always be closed during accumulation, except when it is necessary to add or remove waste.

(B) A container holding hazardous waste shall not be opened, handled, or accumulated in a manner that may rupture the container or cause it to leak.

(iv) Inspections. At least weekly, the small quantity generator shall inspect central accumulation areas. The small quantity generator shall look for leaking containers and for deterioration of containers caused by corrosion or other factors. See Subsection R315-262-16(b)(2)(i) for remedial action required if deterioration or leaks are detected.

(v) Special conditions for accumulation of incompatible wastes.

(A) Incompatible wastes, or incompatible wastes and materials, (see appendix V of 40 CFR 265 for examples) shall not be placed in the same container, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(B) Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material (see appendix V of 40 CFR 265 for examples), unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(C) A container accumulating hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

(3) Accumulation of hazardous waste in tanks.

(i) Reserved.

(ii) A small quantity generator of hazardous waste shall comply with the following general operating conditions:

(A) Treatment or accumulation of hazardous waste in tanks shall comply with 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1.

(B) Hazardous wastes or treatment reagents shall not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life.

(C) Uncovered tanks shall be operated to ensure at least 60 centimeters (2 feet) of freeboard, unless the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system, or a diversion structure (e.g., standby tank) with a capacity that equals or exceeds the volume of the top 60 centimeters (2 feet) of the tank.

(D) Where hazardous waste is continuously fed into a tank, the tank shall be equipped with a means to stop this inflow (e.g., waste feed cutoff system or by-pass system to a stand-by tank).

(iii) Except as noted in Subsection R315-262-16(b)(3)(iv), a small quantity generator that accumulates hazardous waste in tanks shall inspect, where present:

(A) Discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order;

(B) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;

(C) The level of waste in the tank at least once each operating day to ensure compliance with Subsection R315-262-16(b)(3)(ii)(C);

(D) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and

(E) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation). The generator shall remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.

(iv) A small quantity generator accumulating hazardous waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, shall inspect at least weekly, where applicable, the areas identified in Subsections R315-262-16(b)(3)(iii)(A) through (E). Use of the alternate inspection schedule shall be documented in the generator's operating record. This documentation shall include a description of the established workplace practices at the generator.

(v) Reserved.

(vi) A small quantity generator accumulating hazardous waste in tanks shall, upon closure of the facility, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures. At closure, as throughout the operating period, unless the small quantity generator can demonstrate, in accordance with Subsection R315-261-3(c) or (d), that any solid waste removed from its tank is not a hazardous waste, then it shall manage such waste in accordance with all applicable provisions of Rules R315-262, R315-263, R315-265, and R315-268.

(vii) A small quantity generator shall comply with the following special conditions for accumulation of ignitable or reactive waste:

(A) Ignitable or reactive waste shall not be placed in a tank, unless:

(I) The waste is treated, rendered, or mixed before or immediately after placement in a tank so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under Section R315-261-21 or R315-261-23 and 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with; or

(II) The waste is accumulated or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(III) The tank is used solely for emergencies.

(B) A small quantity generator which treats or accumulates ignitable or reactive waste in covered tanks shall comply with the buffer zone requirements for tanks contained in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code" (1977 or 1981), incorporated by reference, see Section R315-260-11.

(C) A small quantity generator shall comply with the following special conditions for incompatible wastes:

(I) Incompatible wastes, or incompatible wastes and materials, (see 40 CFR 265 appendix V for examples) shall not be placed in the same tank, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(II) Hazardous waste shall not be placed in an unwashed

tank that previously held an incompatible waste or material, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(4) Accumulation of hazardous waste on drip pads. If the waste is placed on drip pads, the small quantity generator shall comply with the following:

(i) 40 CFR 265.440 through 265.445, which is incorporated by reference in Section R315-265-1, except 265.445(c);

(ii) The small quantity generator shall remove all wastes from the drip pad at least once every 90 days. Any hazardous wastes that are removed from the drip pad at least once every 90 days are then subject to the 180-day accumulation limit in Subsections R315-262-16(b) and Section R315-262-15 if hazardous wastes are being managed in satellite accumulation areas prior to being moved to the central accumulation area; and

(iii) The small quantity generator shall maintain on site at the facility the following records readily available for inspection:

(A) A written description of procedures that are followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

(5) Accumulation of hazardous waste in containment buildings. If the waste is placed in containment buildings, the small quantity generator shall comply with of 40 CFR 265.1100 through 265.1102, which is incorporated by reference in Section R315-265-1. The generator shall label its containment buildings with the words "Hazardous Waste" in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons on site and also in a conspicuous place provide an indication of the hazards of the contents, examples include, but are not limited to, the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic; hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding; a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704. The generator shall also maintain:

(i) The professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101, which is incorporated by reference in Section R315-265-1. This certification shall be in the generator's files prior to operation of the unit; and

(ii) The following records by use of inventory logs, monitoring equipment, or any other effective means:

(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that the generator is consistent with maintaining the 90 day limit, and documentation that the procedures are complied with; or

(B) Documentation that the unit is emptied at least once every 90 days.

(C) Inventory logs or records with the above information shall be maintained on site and readily available for inspection.

(6) Labeling and marking of containers and tanks.

(i) Containers. A small quantity generator shall mark or label its containers with the following:

(A) The words "Hazardous Waste";

(B) An indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704; and

(C) The date upon which each period of accumulation begins clearly visible for inspection on each container.

(ii) Tanks. A small quantity generator accumulating hazardous waste in tanks shall do the following:

(A) Mark or label its tanks with the words "Hazardous Waste";

(B) Mark or label its tanks with an indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704;

(C) Use inventory logs, monitoring equipment, or other records to demonstrate that hazardous waste has been emptied within 180 days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of hazardous waste entering the tank daily exit the tank within 180 days of first entering; and

(D) Keep inventory logs or records with the above information on site and readily available for inspection.

(7) Land disposal restrictions. A small quantity generator shall comply with all the applicable requirements under Rule R315-268.

(8) Preparedness and prevention.

(i) Maintenance and operation of facility. A small quantity generator shall maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

(ii) Required equipment. All areas where hazardous waste is either generated or accumulated shall be equipped with the items in Subsections R315-262-16(b)(8)(ii)(A) through (D), unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below or the actual waste generation or accumulation area does not lend itself for safety reasons to have a particular kind of equipment specified below. A small quantity generator may determine the most appropriate locations to locate equipment necessary to prepare for and respond to emergencies.

(A) An internal communications or alarm system capable of providing immediate emergency instruction, voice or signal, to facility personnel;

(B) 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;

(C) 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

(D) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(iii) Testing and maintenance of equipment. All 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.

(iv) Access to communications or alarm system.

(A) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access, e.g., direct or unimpeded 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 under Subsection R315-262-16(a)(8)(ii).

(B) In the event there is just one employee on the premises while the facility is operating, the employee shall have immediate access, e.g., direct or unimpeded 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 under Subsection R315-262-16(a)(8)(ii).

(v) Required aisle space. The small quantity generator 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.

(vi) Arrangements with local authorities.

(A) The small quantity generator shall attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility. Arrangements may be made with the Local Emergency Planning Committee, if it is determined to be the appropriate organization with which to make arrangements.

(I) A small quantity generator attempting to make arrangements with its local fire department shall determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals.

(II) As part of this coordination, the small quantity generator shall attempt to make arrangements, as necessary, to familiarize the above organizations with the layout of the facility, the properties of hazardous waste 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 as well as the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

(III) Where more than one police or fire department might respond to an emergency, the small quantity generator shall attempt to make arrangements designating primary emergency authority to a specific fire or police department, and arrangements with any others to provide support to the primary emergency authority.

(B) A small quantity generator shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This documentation shall include documentation in the operating record that either confirms such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made.

(C) A facility possessing 24-hour response capabilities may seek a waiver from the authority having jurisdiction (AHJ) over the fire code within the facility's state or locality as far as needing to make arrangements with the local fire department as well as any other organization necessary to respond to an emergency, provided that the waiver is documented in the operating record.

(9) Emergency procedures. The small quantity generator complies with the following conditions for those areas of the generator facility where hazardous waste is generated and accumulated:

(i) At all times there shall be at least one employee either on the 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 specified in Subsection R315-262-16(b)(9)(iv). This employee is the emergency coordinator.

(ii) The small quantity generator shall post the following information next to telephones or in areas directly involved in the generation and accumulation of hazardous waste:

(A) The name and emergency telephone number of the emergency coordinator;

(B) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(C) The telephone number of the fire department, unless the facility has a direct alarm.

(iii) The small quantity generator shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(iv) The emergency coordinator or his designee shall respond to any emergencies that arise. The applicable responses are as follows:

(A) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(B) In the event of a spill, the small quantity generator is responsible for containing the flow of hazardous waste to the extent possible, and as soon as is practicable, cleaning up the hazardous waste and any contaminated materials or soil. Such containment and cleanup can be conducted either by the small quantity generator or by a contractor on behalf of the small quantity generator;

(C) In the event of a fire, explosion, or other release that could threaten human health outside the facility or when the small quantity generator has knowledge that a spill has reached surface water, the small quantity generator shall immediately notify the National Response Center, using their 24-hour toll free number 800/424-8802 and the state environmental incident reporting program at 801/536-0200 or after hours at 801/536-4123. The report shall include the following information:

(I) The name, address, and U.S. EPA identification number of the small quantity generator;

(II) Date, time, and type of incident, e.g., spill or fire;

(III) Quantity and type of hazardous waste involved in the incident;

(IV) Extent of injuries, if any; and

(V) Estimated quantity and disposition of recovered materials, if any.

(c) Transporting over 200 miles. A small quantity generator who shall transport its waste, or offer its waste for transportation, over a distance of 200 miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on site for 270 days or less without a permit or without having interim status provided that the generator complies with the conditions of Subsection R315-262-16(b).

(d) Accumulation time limit extension. A small quantity

generator who accumulates hazardous waste for more than 180 days (or for more than 270 days if it shall transport its waste, or offer its waste for transportation, over a distance of 200 miles or more) is subject to the requirements of Rules R315-264, R315-265, R315-268, and R315-270 unless it has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by the Director if hazardous wastes shall remain on site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Director on a case-by-case basis.

(e) Rejected load. A small quantity generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of Section R315-264-72 or 40 CFR 265.72, which is incorporated by reference in R315-265-1, may accumulate the returned waste on site in accordance with Subsections R315-262-16(a)-(d). Upon receipt of the returned shipment, the generator shall:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

(f) A small quantity generator experiencing an episodic event may accumulate hazardous waste in accordance with Sections R315-262-230 through R315-262-233 in lieu of Section R315-262-17.

R315-262-17. General -- Conditions for Exemption for a Large Quantity Generator that Accumulates Hazardous Waste.

A large quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of Rules R315-124, R315-264 through R315-266, and R315-270, or the notification requirements of section 3010 of RCRA, provided that all of the following conditions for exemption are met:

(a) Accumulation. A large quantity generator accumulates hazardous waste on site for no more than 90 days, unless in compliance with the accumulation time limit extension or F006 accumulation conditions for exemption in Subsections R315-262-17(b) through (e). The following accumulation conditions also apply:

(1) Accumulation of hazardous waste in containers. If the hazardous waste is placed in containers, the large quantity generator shall comply with the following:

(i) Air emission standards. The applicable requirements of 40 CFR 265.1030 through 265.1035, 265.1050 through 265.1064, and 265.1080 through 265.1090, which are incorporated by reference in Section R315-265-1;

(ii) Condition of containers. If a container holding hazardous waste is not in good condition, or if it begins to leak, the large quantity generator shall immediately transfer the hazardous waste from this container to a container that is in good condition, or immediately manage the waste in some other way that complies with the conditions for exemption of this section;

(iii) Compatibility of waste with container. The large quantity generator shall use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired;

(iv) Management of containers.

(A) A container holding hazardous waste shall always be closed during accumulation, except when it is necessary to add or remove waste.

(B) A container holding hazardous waste shall not be opened, handled, or stored in a manner that may rupture the container or cause it to leak.

(v) Inspections. At least weekly, the large quantity generator shall inspect central accumulation areas. The large quantity generator shall look for leaking containers and for deterioration of containers caused by corrosion or other factors. See Subsection R315-262-17(a)(1)(ii) for remedial action required if deterioration or leaks are detected.

(vi) Special conditions for accumulation of ignitable and reactive wastes.

(A) Containers holding ignitable or reactive waste shall be located at least 15 meters (50 feet) from the facility's property line unless a written approval is obtained from the authority having jurisdiction over the local fire code allowing hazardous waste accumulation to occur within this restricted area. A record of the written approval shall be maintained as long as ignitable or reactive hazardous waste is accumulated in this area.

(B) The large quantity generator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste shall be separated and protected from sources of ignition or reaction including but not limited to the following: Open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition, e.g., from heat-producing chemical reactions, and radiant heat. While ignitable or reactive waste is being handled, the large quantity generator shall confine smoking and open flame to specially designated locations. "No Smoking" signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(vii) Special conditions for accumulation of incompatible wastes.

(A) Incompatible wastes, or incompatible wastes and materials, see appendix V of 40 CFR 265 for examples, shall not be placed in the same container, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(B) Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material, see appendix V of 40 CFR 265 for examples, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(C) A container holding a hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

(2) Accumulation of hazardous waste in tanks. If the waste is placed in tanks, the large quantity generator shall comply with the applicable requirements of 40 CFR 265.190 through 265.202, except 265.197(c) of Closure and post-closure care and 265.200, Waste analysis and trial tests, as well as the applicable requirements of 265.1030 through 265.1035, 265.1050 through 265.1064, and 265.1080 through 265.1090, which are incorporated by reference in Section R315-265-1.

(3) Accumulation of hazardous waste on drip pads. If the hazardous waste is placed on drip pads, the large quantity generator shall comply with the following:

(i) 40 CFR 265.440 through 265.445, which are incorporated by reference in Section R315-265-1;

(ii) The large quantity generator shall remove all wastes from the drip pad at least once every 90 days. Any hazardous wastes that are removed from the drip pad are then subject to the 90-day accumulation limit in Subsection R315-262-17(a) and Section R315-262-15, if the hazardous wastes are being managed in satellite accumulation areas prior to being moved

to a central accumulation area; and

(iii) The large quantity generator shall maintain on site at the facility the following records readily available for inspection:

(A) A written description of procedures that are followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

(4) Accumulation of hazardous waste in containment buildings. If the waste is placed in containment buildings, the large quantity generator shall comply with 40 CFR 265.1100 through 265.1102, which are incorporated by reference in Section R315-265-1. The generator shall label its containment building with the words "Hazardous Waste" in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons on site, and also in a conspicuous place provide an indication of the hazards of the contents, examples include, but are not limited to, the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding; a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704. The generator shall also maintain:

(i) The professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101, which is incorporated by reference in Section R315-265-1. This certification shall be in the generator's files prior to operation of the unit; and

(ii) The following records by use of inventory logs, monitoring equipment, or any other effective means:

(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that the generator is consistent with respecting the 90 day limit, and documentation that the procedures are complied with; or

(B) Documentation that the unit is emptied at least once every 90 days.

(C) Inventory logs or records with the above information shall be maintained on site and readily available for inspection.

(5) Labeling and marking of containers and tanks.

(i) Containers. A large quantity generator shall mark or label its containers with the following:

(A) The words "Hazardous Waste";

(B) An indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704; and

(C) The date upon which each period of accumulation begins clearly visible for inspection on each container.

(ii) Tanks. A large quantity generator accumulating hazardous waste in tanks shall do the following:

(A) Mark or label its tanks with the words "Hazardous Waste";

(B) Mark or label its tanks with an indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704;

(C) Use inventory logs, monitoring equipment or other records to demonstrate that hazardous waste has been emptied within 90 days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of hazardous waste entering the tank daily exit the tank within 90 days of first entering; and

(D) Keep inventory logs or records with the above information on site and readily available for inspection.

(6) Emergency procedures. The large quantity generator complies with the standards in Section R315-262-250 through R315-262-265, Preparedness, Prevention and Emergency Procedures for Large Quantity Generators.

(7) Personnel training.

(i)(A) Facility personnel shall successfully complete a program of classroom instruction, online training, e.g., computer-based or electronic, or on-the-job training that teaches them to perform their duties in a way that ensures compliance with this part. The large quantity generator shall ensure that this program includes all the elements described in the document required under Subsection R315-262-17(a)(7)(iv).

(B) This program shall be directed by a person trained in hazardous waste management procedures, and shall include instruction which teaches facility personnel hazardous waste management procedures, including contingency plan implementation, relevant to the positions in which they are employed.

(C) At a minimum, the training program shall be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

(I) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

(II) Key parameters for automatic waste feed cut-off systems;

(III) Communications or alarm systems;

(IV) Response to fires or explosions;

(V) Response to ground-water contamination incidents; and

(VI) Shutdown of operations.

(D) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the large quantity generator is not required to provide separate emergency response training pursuant to Section R315-262-17, provided that the overall facility training meets all the conditions of exemption in Section R315-262-17.

(ii) Facility personnel shall successfully complete the program required in Subsection R315-262-17(a)(7)(i) within six months after the date of their employment or assignment to the facility, or to a new position at the facility, whichever is

later. Employees shall not work in unsupervised positions until they have completed the training standards of Subsection R315-262-17(a)(7)(i).

(iii) Facility personnel shall take part in an annual review of the initial training required in Subsection R315-262-17(a)(7)(i).

(iv) The large quantity generator shall maintain the following documents and records at the facility:

(A) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(B) A written job description for each position listed under Subsection R315-262-17(a)(7)(iv)(A). This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but shall include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position;

(C) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under Subsection R315-262-17(a)(7)(iv)(A);

(D) Records that document that the training or job experience, required under Subsections R315-262-17(a)(7)(i), (ii), and (iii), has been given to, and completed by, facility personnel.

(v) Training records on current personnel shall be kept until closure of the facility. Training records on former employees shall be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

(8) Closure. A large quantity generator accumulating hazardous wastes in containers, tanks, drip pads, and containment buildings, prior to closing a unit at the facility, or prior to closing the facility, shall meet the following conditions:

(i) Notification for closure of a waste accumulation unit. A large quantity generator shall perform one of the following when closing a waste accumulation unit:

(A) Place a notice in the operating record within 30 days after closure identifying the location of the unit within the facility; or

(B) Meet the closure performance standards of Subsection R315-262-17(a)(8)(iii) for container, tank, and containment building waste accumulation units or Subsection R315-262-17(a)(8)(iv) for drip pads and notify the Director following the procedures in Subsection R315-262-17(a)(8)(ii)(B) for the waste accumulation unit. If the waste accumulation unit is subsequently reopened, the generator may remove the notice from the operating record.

(ii) Notification for closure of the facility.

(A) Notify the Director using EPA form 8700-12 no later than 30 days prior to closing the facility.

(B) Notify the Director using EPA form 8700-12 within 90 days after closing the facility that it has complied with the closure performance standards of Subsection R315-262-17(a)(8)(iii) or (iv). If the facility cannot meet the closure performance standards of Subsection R315-262-17(a)(8)(iii) or (iv), notify the Director using EPA form 8700-12 that it will close as a landfill under 40 CFR 265.310, which is incorporated by reference in Section R315-265-1, in the case of a container, tank or containment building unit(s), or for a facility with drip pads, notify using EPA form 8700-12 that it will close under the standards of 40 CFR 265.445(b), which is incorporated by reference in Section R315-265-1.

(C) A large quantity generator may request additional time to clean close, but it shall notify the Director using EPA form 8700-12 within 75 days after the date provided in Subsection R315-262-17(a)(8)(ii)(A) to request an extension and provide an explanation as to why the additional time is required.

(iii) Closure performance standards for container, tank systems, and containment building waste accumulation units.

(A) At closure, the generator shall close the waste accumulation unit or facility in a manner that:

(I) Minimizes the need for further maintenance by controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, the post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere,

(II) Removes or decontaminates all contaminated equipment, structures and soil and any remaining hazardous waste residues from waste accumulation units including containment system components (pads, liners, etc.), contaminated soils and subsoils, bases, and structures and equipment contaminated with waste, unless Subsection R315-261-3(d) applies.

(III) Any hazardous waste generated in the process of closing either the generator's facility or unit(s) accumulating hazardous waste shall be managed in accordance with all applicable standards of Rules R315-262, R315-263, R315-265 and R315-268, including removing any hazardous waste contained in these units within 90 days of generating it and managing these wastes in a hazardous waste permitted treatment, storage and disposal facility or interim status facility.

(IV) If the generator demonstrates that any contaminated soils and wastes cannot be practicably removed or decontaminated as required in Subsection R315-262-17(a)(8)(ii)(A)(II), then the waste accumulation unit is considered to be a landfill and the generator shall close the waste accumulation unit and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (40 CFR 265.310, which is incorporated by reference in Section R315-265-1). In addition, for the purposes of closure, post-closure, and financial responsibility, such a waste accumulation unit is then considered to be a landfill, and the generator shall meet all of the requirements for landfills specified in 40 CFR 265.110 through 265.121 and 265.140 through 265.148, which are incorporated by reference in Section R315-265-1.

(iv) Closure performance standards for drip pad waste accumulation units. At closure, the generator shall comply with the closure requirements of Subsections R315-262-17(a)(8)(ii) and (a)(8)(iii)(A)(I) and (III), and 40 CFR 265.445(a) and (b), which are incorporated by reference in Section R315-265-1.

(v) The closure requirements of Subsection R315-262-17(a)(8) do not apply to satellite accumulation areas.

(9) Land disposal restrictions. The large quantity generator complies with all applicable requirements under Rule R315-268.

(b) Accumulation time limit extension. A large quantity generator who accumulates hazardous waste for more than 90 days is subject to the requirements of Rules R315-124, R315-264 through R315-266, R315-268, and R315-270 and the notification requirements of section 3010 of RCRA, unless it has been granted an extension to the 90-day period. Such extension may be granted by the Director if hazardous wastes shall remain on site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Director on a case-by-case basis.

(c) Accumulation of F006. A large quantity generator who also generates wastewater treatment sludges from

electroplating operations that meet the listing description for the EPA hazardous waste number F006, may accumulate F006 waste on site for more than 90 days, but not more than 180 days without being subject to Rules R315-124, R315-264 through R315-266 and R315-270, and the notification requirements of section 3010 of RCRA, provided that it complies with all of the following additional conditions for exemption:

(1) The large quantity generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering F006 or otherwise released to the environment prior to its recycling;

(2) The F006 waste is legitimately recycled through metals recovery;

(3) No more than 20,000 kilograms of F006 waste is accumulated on site at any one time; and

(4) The F006 waste is managed in accordance with the following:

(i)(A) If the F006 waste is placed in containers, the large quantity generator shall comply with the applicable conditions for exemption in Subsection R315-262-17(a)(1); and/or

(B) If the F006 is placed in tanks, the large quantity generator shall comply with the applicable conditions for exemption of Subsection R315-262-17(a)(2); and/or

(C) If the F006 is placed in containment buildings, the large quantity generator shall comply with 40 CFR 265.1100 through 265.1102, which are incorporated by reference in Section R315-265-1, and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101, which is incorporated by reference in Section R315-265-1, in the facility's files prior to operation of the unit. The large quantity generator shall maintain the following records:

(I) A written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the large quantity generator is complying with the procedures; or

(II) Documentation that the unit is emptied at least once every 180 days.

(ii) The large quantity generator is exempt from all the requirements in 40 CFR 265.110 through 265.121 and 265.140 through 265.148, which are incorporated by reference in Section R315-265-1, except for those referenced in Subsection R315-262-17(a)(8).

(iii) The date upon which each period of accumulation begins is clearly marked and shall be clearly visible for inspection on each container;

(iv) While being accumulated on site, each container and tank is labeled or marked clearly with:

(A) The words "Hazardous Waste"; and

(B) An indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704.

(v) The large quantity generator complies with the requirements in Subsection R315-262-17(a)(6) and (7).

(d) F006 transported over 200 miles. A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, and who shall transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on site for more than 90 days, but not more than 270 days without being subject to Rules R315-124, R315-264 through R315-266, R315-270, and the notification requirements of section 3010 of RCRA, if the large quantity generator complies with all of the conditions for exemption of Subsections R315-262-17(c)(1) through (4).

(e) F006 accumulation time extension. A large quantity generator accumulating F006 in accordance with Subsections R315-262-17(c) and (d) who accumulates F006 waste on site for more than 180 days, or for more than 270 days if the generator shall transport this waste, or offer this waste for transportation, over a distance of 200 miles or more, or who accumulates more than 20,000 kilograms of F006 waste on site is an operator of a storage facility and is subject to the requirements of Rules R315-124, R315-264, R315-265, and R315-270, and the notification requirements of section 3010 of RCRA, unless the generator has been granted an extension to the 180-day, or 270-day if applicable, period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by the Director if F006 waste shall remain on site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste shall remain on site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Director on a case-by-case basis.

(f) Consolidation of hazardous waste received from very small quantity generators. Large quantity generators may accumulate on site hazardous waste received from very small quantity generators under control of the same person, as defined in Section R315-260-10, without a storage permit or interim status and without complying with the requirements of Rules R315-124, R315-264 through R315-266, R315-268, and R315-270, and the notification requirements of section 3010 of RCRA, provided that they comply with the following conditions. "Control," for the purposes of this section, means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person shall not be deemed to "control" such generators.

(1) The large quantity generator notifies the Director at least thirty (30) days prior to receiving the first shipment from a very small quantity generator(s) using EPA Form 8700-12; and

(i) Identifies on the form the name(s) and site address(es) for the very small quantity generator(s) as well as the name and business telephone number for a contact person for the very small quantity generator(s); and

(ii) Submits an updated Site ID form (EPA Form 8700-12) within 30 days after a change in the name or site address for the very small quantity generator.

(2) The large quantity generator maintains records of shipments for three years from the date the hazardous waste was received from the very small quantity generator. These records shall identify the name, site address, and contact information for the very small quantity generator and include a description of the hazardous waste received, including the quantity and the date the waste was received.

(3) The large quantity generator complies with the independent requirements identified in Subsection R315-262-10(a)(1)(iii) and the conditions for exemption in Subsection R315-262-17(f) for all hazardous waste received from a very small quantity generator. For purposes of the labeling and

marking regulations in Subsection R315-262-17(a)(5), the large quantity generator shall label the container or unit with the date accumulation started, i.e., the date the hazardous waste was received from the very small quantity generator. If the large quantity generator is consolidating incoming hazardous waste from a very small quantity generator with either its own hazardous waste or with hazardous waste from other very small quantity generators, the large quantity generator shall label each container or unit with the earliest date any hazardous waste in the container was accumulated on site.

(g) Rejected load. A large quantity generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of Sections R315-264-72 or 40 CFR 265.72, which is incorporated by reference in Section R315-265-1, may accumulate the returned waste on site in accordance with Subsections R315-262-17(a) and (b). Upon receipt of the returned shipment, the generator shall:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

R315-262-18. General -- EPA Identification Numbers and Re-Notification for Small Quantity Generators and Large Quantity Generators.

(a) A generator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Director.

(b) A generator who has not received an EPA identification number shall obtain one by applying to the Director using EPA Form 8700-12. Upon receiving the request the Director will assign an EPA identification number to the generator.

(c) A generator shall not offer its hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

(d) Re-notification.

(1) A small quantity generator shall re-notify the Director starting in 2021 and every four years thereafter using EPA Form 8700-12. This re-notification shall be submitted by September 1st of each year in which re-notifications are required.

(2) A large quantity generator shall re-notify the Director by March 1 of each even-numbered year thereafter using EPA Form 8700-12. A large quantity generator may submit this re-notification as part of its Biennial Report required under Section R315-262-41.

(e) A recognized trader shall not arrange for import or export of hazardous waste without having received an EPA identification number from the Director.

R315-262-20. Manifest Requirements Applicable to Small and Large Quantity Generators -- General Requirements.

(a)(1) A generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, shall prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A, according to the instructions included in the appendix to Rule R315-262.

(2) Reserved.

(3) Electronic manifest. In lieu of using the manifest form specified in Subsection R315-262-20(a)(1), a person required to prepare a manifest under Subsection R315-262-20(a)(1) may prepare and use an electronic manifest, provided that the person:

(i) Complies with the requirements in Section R315-262-24 for use of electronic manifests, and

(ii) Complies with the requirements of 40 CFR 3.10 for the reporting of electronic documents to EPA.

(b) A generator shall designate on the manifest one facility which is permitted to handle the waste described on the manifest.

(c) A generator may also designate on the manifest one alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(d) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator shall either designate another facility or instruct the transporter to return the waste.

(e) The requirements of Section R315-262-20 through 27 do not apply to hazardous waste produced by generators of greater than 100 kg but less than 1000 kg in a calendar month where:

(1) The waste is reclaimed under a contractual agreement pursuant to which:

(i) The type of waste and frequency of shipments are specified in the agreement;

(ii) The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and

(2) The generator maintains a copy of the reclamation agreement in his files for a period of at least three years after termination or expiration of the agreement.

(f) The requirements of Sections R315-262-20 through 27 and Subsection R315-262-32(b) do not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. Notwithstanding Subsection R315-263-10(a), the generator or transporter shall comply with the requirements for transporters set forth in Sections R315-263-30 and 31 in the event of a discharge of hazardous waste on a public or private right-of-way.

R315-262-21. Manifest Requirements Applicable to Small and Large Quantity Generators -- Manifest Tracking Numbers, Manifest Printing, and Obtaining Manifests.

(a)(1) A registrant may not print, or have printed, the manifest for use of distribution unless it has received approval from the EPA Director of the Office of Resource Conservation and Recovery to do so under Subsection R315-262-21(c) and (e).

(2) The approved registrant is responsible for ensuring that the organizations identified in its application are in compliance with the procedures of its approved application and the requirements of Section R315-262-21. The registrant is responsible for assigning manifest tracking numbers to its manifests.

(b) A registrant shall submit an initial application to the EPA Director of the Office of Resource Conservation and Recovery that contains the following information:

(1) Name and mailing address of registrant;

(2) Name, telephone number and email address of contact person;

(3) Brief description of registrant's government or business activity;

(4) EPA identification number of the registrant, if applicable;

(5) Description of the scope of the operations that the registrant plans to undertake in printing, distributing, and using its manifests, including:

(i) A description of the printing operation. The description should include an explanation of whether the registrant intends to print its manifests in-house, i.e., using its own printing establishments, or through a separate, i.e., unaffiliated, printing company. If the registrant intends to use a separate printing company to print the manifest on its behalf, the application shall identify this printing company and discuss how the registrant will oversee the company. If this includes the use of intermediaries, e.g., prime and subcontractor relationships, the role of each shall be discussed. The application shall provide the name and mailing address of each company. It also shall provide the name and telephone number of the contact person at each company.

(ii) A description of how the registrant will ensure that its organization and unaffiliated companies, if any, comply with the requirements of Section R315-262-21. The application shall discuss how the registrant will ensure that a unique manifest tracking number will be pre-printed on each manifest. The application shall describe the internal control procedures to be followed by the registrant and unaffiliated companies to ensure that numbers are tightly controlled and remain unique. In particular, the application shall describe how the registrant will assign manifest tracking numbers to its manifests. If computer systems or other infrastructure will be used to maintain, track, or assign numbers, these should be indicated. The application shall also indicate how the printer will pre-print a unique number on each form, e.g., crash or press numbering. The application also shall explain the other quality procedures to be followed by each establishment and printing company to ensure that all required print specifications are consistently achieved and that printing violations are identified and corrected at the earliest practicable time.

(iii) An indication of whether the registrant intends to use the manifests for its own business operations or to distribute the manifests to a separate company or to the general public, e.g., for purchase.

(6) A brief description of the qualifications of the company that will print the manifest. The registrant may use readily available information to do so, e.g., corporate brochures, product samples, customer references, documentation of ISO certification, so long as such information pertains to the establishments or company being proposed to print the manifest.

(7) Proposed unique three-letter manifest tracking number suffix. If the registrant is approved to print the manifest, the registrant shall use this suffix to pre-print a unique manifest tracking number on each manifest.

(8) A signed certification by a duly authorized employee of the registrant that the organizations and companies in its application will comply with the procedures of its approved application and the requirements of Section R315-262-21 and that it will notify the EPA Director of the Office of Resource Conservation and Recovery of any duplicated manifest tracking numbers on manifests that have been used or distributed to other parties as soon as this becomes known.

(c) EPA shall review the application submitted under Subsection R315-262-21(b) and either approve it or request additional information or modification before approving it.

(d)(1) Upon EPA approval of the application under Subsection R315-262-21(c), EPA shall provide the registrant an electronic file of the manifest, continuation sheet, and manifest instructions and ask the registrant to submit three fully assembled manifests and continuation sheet samples, except as noted in Subsection R315-262-21(d)(3). The registrant's samples shall meet all of the specifications in Subsection R315-262-21(f) and be printed by the company that will print the manifest as identified in the application approved under Subsection R315-262-21(c).

(2) The registrant shall submit a description of the manifest samples as follows:

(i) Paper type, i.e., manufacturer and grade of the manifest paper;

(ii) Paper weight of each copy;

(iii) Ink color of the manifest's instructions. If screening of the ink was used, the registrant shall indicate the extent of the screening; and

(iv) Method of binding the copies.

(3) The registrant need not submit samples of the continuation sheet if it will print its continuation sheet using the same paper type, paper weight of each copy, ink color of the instructions, and binding method as its manifest form samples.

(e) EPA shall evaluate the forms and either approve the registrant to print them as proposed or request additional information or modification to them before approval. EPA shall notify the registrant of its decision by mail. The registrant cannot use or distribute its forms until EPA approves them. An approved registrant shall print the manifest and continuation sheet according to its application approved under Subsection R315-262-21(c) and the manifest specifications in Subsection R315-262-21(f). It also shall print the forms according to the paper type, paper weight, ink color of the manifest instructions and binding method of its approved forms.

(f) Paper manifests and continuation sheets shall be printed according to the following specifications:

(1) The manifest and continuation sheet shall be printed with the exact format and appearance as EPA Forms 8700-22 and 8700-22A, respectively. However, information required to complete the manifest may be pre-printed on the manifest form.

(2) A unique manifest tracking number assigned in accordance with a numbering system approved by EPA shall be pre-printed in Item 4 of the manifest. The tracking number shall consist of a unique three-letter suffix following nine digits.

(3) The manifest and continuation sheet shall be printed on 81/2 x 11-inch white paper, excluding common stubs, e.g., top- or side-bound stubs. The paper shall be durable enough to withstand normal use.

(4) The manifest and continuation sheet shall be printed in black ink that can be legibly photocopied, scanned, or faxed, except that the marginal words indicating copy distribution shall be printed with a distinct ink color or with another method; e.g., white text against black background in text box, or, black text against grey background in text box; that clearly distinguishes the copy distribution notations from the other text and data entries on the form.

(5) The manifest and continuation sheet shall be printed as six-copy forms. Copy-to-copy registration shall be exact within 1/32 nd of an inch. Handwritten and typed impressions on the form shall be legible on all six copies. Copies shall be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use.

(6) Each copy of the manifest and continuation sheet shall indicate how the copy shall be distributed, as follows:

(i) Page 1, top copy: "Designated facility to destination State, if required".

(ii) Page 2: "Designated facility to generator State, if required".

(iii) Page 3: "Designated facility to generator".

(iv) Page 4: "Designated facility's copy".

(v) Page 5: "Transporter's copy".

(vi) Page 6 (bottom copy): "Generator's initial copy".

(7) The instructions in the appendix to Rule R315-262 shall appear legibly on the back of the copies of the manifest and continuation sheet as provided in Subsection R315-262-21(f). The instructions shall not be visible through the front of the copies when photocopied or faxed.

(i) Manifest EPA Form 8700-22.

(A) The "Instructions for Generators" on Copy 6;

(B) The "Instructions for International Shipment Block" and "Instructions for Transporters" on Copy 5; and

(C) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy 4.

(ii) Manifest EPA Form 8700-22A.

(A) The "Instructions for Generators" on Copy 6;

(B) The "Instructions for Transporters" on Copy 5; and

(C) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy 4.

(g)(1) A generator may use manifests printed by any source so long as the source of the printed form has received approval from EPA to print the manifest under Subsections R315-262-21(c) and (e). A registered source may be a:

(i) State agency;

(ii) Commercial printer;

(iii) Hazardous waste generator, transporter or TSDF; or

(iv) Hazardous waste broker or other preparer who prepares or arranges shipments of hazardous waste for transportation.

(2) A generator shall determine whether the generator state or the consignment state for a shipment regulates any additional wastes, beyond those regulated Federally, as hazardous wastes under these states' authorized programs. Generators also shall determine whether the consignment state or generator state requires the generator to submit any copies of the manifest to these states. In cases where the generator shall supply copies to either the generator's state or the consignment state, the generator is responsible for supplying legible photocopies of the manifest to these states.

(h)(1) If an approved registrant would like to update any of the information provided in its application approved under Subsection R315-262-21(c), e.g., to update a company phone number or name of contact person, the registrant shall revise the application and submit it to the EPA Director of the Office of Resource Conservation and Recovery, along with an indication or explanation of the update, as soon as practicable after the change occurs. The Agency either shall approve or deny the revision. If the Agency denies the revision, it shall explain the reasons for the denial, and it shall contact the registrant and request further modification before approval.

(2) If the registrant would like a new tracking number suffix, the registrant shall submit a proposed suffix to the EPA Director of the Office of Resource Conservation and Recovery, along with the reason for requesting it. The Agency shall either approve the suffix or deny the suffix and provide an explanation why it is not acceptable.

(3) If a registrant would like to change the paper type, paper weight, ink color of the manifest instructions, or binding method of its manifest or continuation sheet subsequent to approval under Subsection R315-262-21(e), then the registrant shall submit three samples of the revised form for EPA review and approval. If the approved registrant would like to use a new printer, the registrant shall submit three manifest samples printed by the new printer, along with a brief description of the printer's qualifications to print the manifest. EPA shall evaluate the manifests and either approve the registrant to print the forms as proposed or request additional information or modification to them before approval. EPA shall notify the registrant of its decision by mail. The registrant cannot use or distribute its revised forms until EPA approves them.

(i) If, subsequent to its approval under Subsection R315-262-21(e), a registrant typesets its manifest or continuation sheet instead of using the electronic file of the forms provided by EPA, it shall submit three samples of the manifest or continuation sheet to the registry for approval. EPA shall evaluate the manifests or continuation sheets and either approve the registrant to print them as proposed or request additional information or modification to them before approval. EPA shall notify the registrant of its decision by mail. The registrant cannot use or distribute its typeset forms until EPA approves them.

(j) EPA may exempt a registrant from the requirement to submit form samples under Subsection R315-262-21(d) or (h)(3) if the Agency is persuaded that a separate review of the registrant's forms would serve little purpose in informing an approval decision; e.g., a registrant certifies that it will print the manifest using the same paper type, paper weight, ink color of the instructions and binding method of the form samples approved for some other registrant. A registrant may request an exemption from EPA by indicating why an exemption is warranted.

(k) An approved registrant shall notify EPA by phone or email as soon as it becomes aware that it has duplicated tracking numbers on any manifests that have been used or distributed to other parties.

(l) If, subsequent to approval of a registrant under Subsection R315-262-21(e), EPA becomes aware that the approved paper type, paper weight, ink color of the instructions, or binding method of the registrant's form is unsatisfactory, EPA shall contact the registrant and require modifications to the form.

(m)(1) EPA may suspend and, if necessary, revoke printing privileges if we find that the registrant:

(i) Has used or distributed forms that deviate from its approved form samples in regard to paper weight, paper type, ink color of the instructions, or binding method; or

(ii) Exhibits a continuing pattern of behavior in using or distributing manifests that contain duplicate manifest tracking numbers.

(2) EPA shall send a warning letter to the registrant that specifies the date by which it shall come into compliance with the requirements. If the registrant does not come in compliance by the specified date, EPA shall send a second letter notifying the registrant that EPA has suspended or revoked its printing privileges. An approved registrant shall provide information on its printing activities to EPA if requested.

R315-262-22. Manifest Requirements Applicable to Small and Large Quantity Generators -- Number of Copies.

The manifest consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one copy each for their records and another copy to be returned to the generator.

R315-262-23. Manifest Requirements Applicable to Small and Large Quantity Generators -- Use of the Manifest.

(a) The generator shall:

(1) Sign the manifest certification by hand; and

(2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

(3) Retain one copy, in accordance with Subsection R315-262-40(a).

(b) The generator shall give the transporter the remaining copies of the manifest.

(c) For shipments of hazardous waste within Utah solely by water, bulk shipments only, the generator shall send three

copies of the manifest dated and signed in accordance with Section R315-262-23 to the owner or operator of the designated facility or the last water, bulk shipment, transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(d) For rail shipments of hazardous waste within Utah which originate at the site of generation, the generator shall send at least three copies of the manifest dated and signed in accordance with Section R315-262-23 to:

(1) The next non-rail transporter, if any; or

(2) The designated facility if transported solely by rail; or

(3) The last rail transporter to handle the waste in the United States if exported by rail.

(e) For shipments of hazardous waste to a designated facility in an authorized State which has not yet obtained federal authorization to regulate that particular waste as hazardous, the generator shall assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

Note: See Subsections R315-263-20(e) and (f) for special provisions for rail or water, bulk shipment, transporters.

(f) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are returned to the generator by the designated facility, following the procedures of Subsections R315-264-72(f) or 40 CFR 265.72(f), which is adopted by reference in Section R315-265-1; the generator shall:

(1) Sign either:

(i) Item 20 of the new manifest if a new manifest is used for the returned shipment; or

(ii) Item 18c of the original manifest if the original manifest is used for the returned shipment;

(2) Provide the transporter a copy of the manifest;

(3) Within 30 days of delivery of the rejected shipment or container residues contained in non-empty containers, send a copy of the manifest to the designated facility that returned the shipment to the generator; and

(4) Retain at the generator's site a copy of each manifest for at least three years from the date of delivery.

R315-262-24. Manifest Requirements Applicable to Small and Large Quantity Generators -- Use of the Electronic Manifest.

(a) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with Subsection R315-262-20(a)(3), and used in accordance with Section R315-262-24 in lieu of EPA Forms 8700-22 and 8700-22A are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

(1) Any requirement in these regulations to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of Section R315-262-25.

(2) Any requirement in these regulations to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by submission to the system.

(3) Any requirement in these regulations for a generator to keep or retain a copy of each manifest is satisfied by retention of a signed electronic manifest in the generator's account on the national e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or Utah inspector.

(4) No generator may be held liable for the inability to produce an electronic manifest for inspection under Section R315-262-24 if the generator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the generator bears no responsibility.

(b) A generator may participate in the electronic manifest system either by accessing the electronic manifest system from its own electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the generator's site by the transporter who accepts the hazardous waste shipment from the generator for off-site transportation.

(c) Restriction on use of electronic manifests. A generator may prepare an electronic manifest for the tracking of hazardous waste shipments involving any RCRA hazardous waste only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the electronic manifest system.

(d) Requirement for one printed copy. To the extent the Hazardous Materials regulation on shipping papers for carriage by public highway requires shippers of hazardous materials to supply a paper document for compliance with 49 CFR 177.817, a generator originating an electronic manifest shall also provide the initial transporter with one printed copy of the electronic manifest.

(e) Special procedures when electronic manifest is unavailable. If a generator has prepared an electronic manifest for a hazardous waste shipment, but the electronic manifest system becomes unavailable for any reason prior to the time that the initial transporter has signed electronically to acknowledge the receipt of the hazardous waste from the generator, then the generator shall obtain and complete a paper manifest and if necessary, a continuation sheet (EPA Forms 8700-22 and 8700-22A) in accordance with the manifest instructions in the appendix to Rule R315-262, and use these paper forms from this point forward in accordance with the requirements of Section R315-262-23.

(f) Special procedures for electronic signature methods undergoing tests. If a generator has prepared an electronic manifest for a hazardous waste shipment, and signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the generator shall also sign with an ink signature the generator/offeror certification on the printed copy of the manifest provided under Subsection R315-262-24(d).

(g) Imposition of user fee. A generator who is a user of the electronic manifest may be assessed a user fee by EPA for the origination of each electronic manifest. EPA shall maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to Rule R315-262.

R315-262-25. Manifest Requirements Applicable to Small and Large Quantity Generators -- Electronic Manifest Signatures.

Electronic signature methods for the e-Manifest system shall:

(a) Be a legally valid and enforceable signature under applicable EPA and other Federal requirements pertaining to electronic signatures; and

(b) Be a method that is designed and implemented in a manner that EPA considers to be as cost-effective and

practical as possible for the users of the manifest.

R315-262-27. Manifest Requirements Applicable to Small and Large Quantity Generators -- Waste Minimization Certification.

A generator who initiates a shipment of hazardous waste shall certify to one of the following statements in Item 15 of the uniform hazardous waste manifest:

(a) "I am a large quantity generator. I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment;" or

(b) "I am a small quantity generator. I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."

R315-262-30. Pre-Transport Requirements Applicable to Small and Large Quantity Generators -- Packaging.

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall package the waste in accordance with the applicable Department of Transportation regulations on packaging under 49 CFR parts 173, 178, and 179.

R315-262-31. Pre-Transport Requirements Applicable to Small and Large Quantity Generators -- Labeling.

Before transporting or offering hazardous waste for transportation off-site, a generator shall label each package in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR part 172.

R315-262-32. Pre-Transport Requirements Applicable to Small and Large Quantity Generators -- Marking.

(a) Before transporting or offering hazardous waste for transportation off-site, a generator shall mark each package of hazardous waste in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR part 172;

(b) Before transporting hazardous waste or offering hazardous waste for transportation off site, a generator shall mark each container of 119 gallons or less used in such transportation with the following words and information in accordance with the requirements of 49 CFR 172.304:

(1) HAZARDOUS WASTE-Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

(2) Generator's Name and Address ____.

(3) Generator's EPA Identification Number ____.

(4) Manifest Tracking Number ____.

(5) EPA Hazardous Waste Number(s) ____.

(c) A generator may use a nationally recognized electronic system, such as bar coding, to identify the EPA Hazardous Waste Number(s), as required by Subsection R315-262-32(b)(5) or paragraph (d).

(d) Lab packs that will be incinerated in compliance with Subsection R315-268-42(c) are not required to be marked with EPA Hazardous Waste Number(s), except D004, D005, D006, D007, D008, D010, and D011, where applicable.

R315-262-33. Pre-Transport Requirements Applicable to Small and Large Quantity Generators -- Placarding.

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 CFR part 172, subpart F.

R315-262-35. Pre-Transport Requirements Applicable to Small and Large Quantity Generators -- Liquids in Landfills Prohibition.

The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited. Prior to disposal in a hazardous waste landfill, liquids shall meet additional requirements as specified in Sections R315-264-314 and 40 CFR 265.314, which is incorporated by reference in Section R315-265-1.

R315-262-40. Recordkeeping and Reporting Applicable to Small and Large Quantity Generators -- Recordkeeping.

(a) A generator shall keep a copy of each manifest signed in accordance with Subsection R315-262-23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy shall be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

(b) A generator shall keep a copy of each Biennial Report and Exception Report for a period of at least three years from the due date of the report.

(c) A generator shall follow Subsection R315-262-11(f) for recordkeeping requirements for documenting hazardous waste determinations.

(d) The periods or retention referred to in Section R315-262-40 are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Director.

(e) Records maintained in accordance with Section R315-262-40 and any other records which the Director deems necessary to determine quantities and disposition of hazardous waste or other determinations, test results, or waste analyses made in accordance with R315-262-11 shall be available for inspection by any duly authorized officer, employee or representative of the Department or the Director as provided in R315-260-5 for a period of at least three years from the date the waste was last sent to on-site or off-site treatment, storage, or disposal facilities.

R315-262-41. Recordkeeping and Reporting Applicable to Small and Large Quantity Generators -- Biennial Report for Large Quantity Generators.

(a) A generator who is a large quantity generator for at least one month of an odd-numbered year, reporting year, who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States shall complete and submit EPA Form 8700-13 A/B to the Director by March 1 of the following even-numbered year and shall cover generator activities during the previous year.

(b) Any generator who is a large quantity generator for at least one month of an odd-numbered year (reporting year) who treats, stores, or disposes of hazardous waste on site shall complete and submit EPA Form 8700-13 A/B to the Director by March 1 of the following even-numbered year covering those wastes in accordance with the provisions of Rules R315-264, R315-265, R315-266, and R315-270. This requirement also applies to large quantity generators that receive hazardous waste from very small quantity generators pursuant to Subsection R315-262-17(f).

(c) Exports of hazardous waste to foreign countries are not required to be reported on the Biennial Report form. A separate annual report requirement is set forth at Subsection R315-262-83(g) for hazardous waste exporters.

R315-262-42. Recordkeeping and Reporting Applicable to Small and Large Quantity Generators -- Exception Reporting.

(a)(1) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) in a calendar month, who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter shall contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) in a calendar month, shall submit an Exception Report to the Director if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report shall include:

(i) A legible copy of the manifest for which the generator does not have confirmation of delivery;

(ii) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

(b) A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter shall submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the Director.

Note: The submission to the Director need only be a handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received.

(c) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are forwarded to an alternate facility by a designated facility using a new manifest, following the procedures of Subsections R315-264-72(e)(1) through (6) or 40 CFR 265.72(e)(1) through (6), which are adopted by reference; the generator shall comply with the requirements of Subsections R315-262-42(a) or (b), as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of Subsection R315-262-42(a) or (b) for a shipment forwarding such waste to an alternate facility by a designated facility:

(1) The copy of the manifest received by the generator shall have the handwritten signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility, and

(2) The 35/45/60-day timeframes begin the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

R315-262-43. Recordkeeping and Reporting Applicable to Small and Large Quantity Generators -- Additional Reporting.

The Director, as he deems necessary, may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in Rule R315-261.

R315-262-44. Recordkeeping and Reporting Applicable to Small and Large Quantity Generators -- Recordkeeping for Small Quantity Generators.

A small quantity generator is subject only to the following independent requirements in Sections R315-262-40 through R315-262-43:

(a) Subsection R315-262-40(a), (c), and (d), recordkeeping;

(b) Subsection R315-262-42(b), exception reporting; and

(c) Section R315-262-43, additional reporting.

R315-262-50. Exports of Hazardous Waste -- Applicability.

Sections R315-262-50 through 58 establish requirements applicable to exports of hazardous waste. Except to the extent Section R315-262-58 provides otherwise, a primary exporter of hazardous waste shall comply with the special requirements of Sections R315-262-50 through 58 and a transporter transporting hazardous waste for export shall comply with applicable requirements of Rule R315-263. Section R315-262-58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, treatment, storage and disposal of hazardous waste for shipments between the United States and those countries.

R315-262-51. Exports of Hazardous Waste -- Definitions.

In addition to the definitions set forth at Section R315-260-10, the following definitions apply to Sections R315-262-50 through 58:

Consignee means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste will be sent.

EPA Acknowledgement of Consent means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment. Primary Exporter means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Sections R315-262-20 through 25 and 27 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

Receiving country means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal, except short-term storage incidental to transportation. Transit country means any foreign country, other than a receiving country, through which a hazardous waste is transported.

R315-262-52. Exports of Hazardous Waste -- General Requirements.

Exports of hazardous waste are prohibited except in compliance with the applicable requirements of Sections R315-262-50 through 58 and Rule R315-263. Exports of hazardous waste are prohibited unless:

(a) Notification in accordance with Section R315-262-53 has been provided;

(b) The receiving country has consented to accept the hazardous waste;

(c) A copy of the EPA Acknowledgment of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest; or shipping paper for exports by water, bulk shipment.

(d) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the

EPA Acknowledgment of Consent.

R315-262-53. Exports of Hazardous Waste -- Notification of Intent to Export.

(a) A primary exporter of hazardous waste shall notify EPA of an intended export before such waste is scheduled to leave the United States. A complete notification should be submitted sixty days before the initial shipment is intended to be shipped off site. This notification may cover export activities extending over a twelve month or lesser period. The notification shall be in writing, signed by the primary exporter, and include the following information:

(1) Name, mailing address, telephone number and EPA ID number of the primary exporter;

(2) By consignee, for each hazardous waste type:

(i) A description of the hazardous waste and the EPA hazardous waste number, from Sections R315-261-20 through 24, and R315-261-30 through 35, U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste as identified in 49 CFR parts 171 through 177;

(ii) The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported.

(iii) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700-22);

(iv) All points of entry to and departure from each foreign country through which the hazardous waste will pass;

(v) A description of the means by which each shipment of the hazardous waste will be transported; e.g., mode of transportation vehicle, air, highway, rail, water, etc.; type(s) of container, drums, boxes, tanks, etc.;

(vi) A description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country, e.g., land or ocean incineration, other land disposal, ocean dumping, recycling;

(vii) The name and site address of the consignee and any alternate consignee; and

(viii) The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there;

(b) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export.".

(c) Except for changes to the telephone number in Subsection R315-262-53(a)(1), changes to Subsection R315-262-53(a)(2)(v) and decreases in the quantity indicated pursuant to Subsection R315-262-53(a)(2)(iii) when the conditions specified on the original notification change, including any exceedance of the estimate of the quantity of hazardous waste specified in the original notification, the primary exporter shall provide EPA with a written renotification of the change. The shipment cannot take place until consent of the receiving country to the changes, except for changes to Subsection R315-262-53(a)(2)(viii) and in the ports of entry to and departure from transit countries pursuant to Subsection R315-262-53(a)(2)(iv), has been obtained and the primary exporter receives an EPA Acknowledgment of Consent reflecting the receiving country's consent to the changes.

(d) Upon request by EPA, a primary exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(e) In conjunction with the Department of State, EPA shall provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of Subsection R315-262-53(a). Where a claim of confidentiality is asserted with respect to any notification information required by Subsection R315-262-53(a), EPA may find the notification not complete until any such claim is resolved in accordance with Section R315-260-2.

(f) Where the receiving country consents to the receipt of the hazardous waste, EPA shall forward an EPA Acknowledgment of Consent to the primary exporter for purposes of Subsection R315-262-54(h). Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA shall notify the primary exporter in writing. EPA shall also notify the primary exporter of any responses from transit countries.

R315-262-54. Exports of Hazardous Waste -- Special Manifest Requirements.

A primary exporter shall comply with the manifest requirements of Sections R315-262-20 through 23 except that:

(a) In lieu of the name, site address and EPA ID number of the designated permitted facility, the primary exporter shall enter the name and site address of the consignee;

(b) In lieu of the name, site address and EPA ID number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee.

(c) In the International Shipments block, the primary exporter shall check the export box and enter the point of exit, city and State, from the United States.

(d) The following statement shall be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA Acknowledgment of Consent";

(e) The primary exporter may obtain the manifest from any source that is registered with the U.S. EPA as a supplier of manifests (e.g., states, waste handlers, and/or commercial forms printers).

(f) The primary exporter shall require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies, as defined in Subsection R315-264-72(a), between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.

(g) In lieu of the requirements of Subsection R315-262-20(d), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter shall:

(1) Renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with Subsection R315-262-53(c) and obtain an EPA Acknowledgment of Consent prior to delivery; or

(2) Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and

(3) Instruct the transporter to revise the manifest in accordance with the primary exporter's instructions.

(h) The primary exporter shall attach a copy of the EPA

Acknowledgment of Consent to the shipment to the manifest which shall accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter shall provide the transporter with an EPA Acknowledgment of Consent which shall accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter shall attach the copy of the EPA Acknowledgment of Consent to the shipping paper.

(i) The primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the U.S. Customs official at the point the hazardous waste leaves the United States in accordance with Subsection R315-263-20(g)(4).

R315-262-55. Exports of Hazardous Waste -- Exception Reports.

In lieu of the requirements of Section R315-262-42, a primary exporter shall file an exception report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:

(a) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five days from the date it was accepted by the initial transporter;

(b) Within ninety days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the consignee that the hazardous waste was received;

(c) The waste is returned to the United States.

R315-262-56. Exports of Hazardous Waste -- Annual Reports.

(a) Primary exporters of hazardous waste shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. Such reports shall include the following:

(1) The EPA identification number, name, and mailing and site address of the exporter;

(2) The calendar year covered by the report;

(3) The name and site address of each consignee;

(4) By consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number, from Sections R315-261-20 through 24 and R315-261-30 through 35, DOT hazard class, the name and US EPA ID number, where applicable, for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification;

(5) Except for hazardous waste produced by exporters of greater than 100 kg but less than 1000 kg in a calendar month, unless provided pursuant to Section R315-262-41, in even numbered years:

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(ii) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.

(6) A certification signed by the primary exporter which states: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(b) Annual reports submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered reports should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004.

R315-262-57. Exports of Hazardous Waste -- Recordkeeping.

(a) For all exports a primary exporter shall:

(1) Keep a copy of each notification of intent to export for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(2) Keep a copy of each EPA Acknowledgment of Consent for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(3) Keep a copy of each confirmation of delivery of the hazardous waste from the consignee for at least three years from the date the hazardous waste was accepted by the initial transporter; and

(4) Keep a copy of each annual report for a period of at least three years from the due date of the report.

(b) The periods of retention referred to in Section R315-262-57 are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

R315-262-58. Exports of Hazardous Waste -- International Agreements.

(a) Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to or from designated Member countries of the Organization for Economic Cooperation and Development (OECD) as defined in Subsection R315-262-58(a)(1) for purposes of recovery is subject to Sections R315-262-80 through 89. The requirements of Sections R315-262-50 through 58 and R315-262-60 do not apply to such exports and imports. A waste is considered hazardous under U.S. national procedures if the waste meets the Federal definition of hazardous waste in Section R315-261-3 and is subject to either the manifesting requirements Sections R315-262-20 through 25 and 27, the universal waste management standards of Rule R315-273, the export requirements in the spent lead-acid battery management standards of Section R315-266-80.

(1) For the purposes of Sections R315-262-80 through 89, the designated OECD Member countries consist of Australia, Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Republic of Korea, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

(2) For the purposes of Sections R315-262-80 through 89, Canada and Mexico are considered OECD Member countries only for the purpose of transit.

(b) Any person who exports hazardous waste to or imports hazardous waste from: A designated OECD Member country for purposes other than recovery; e.g., incineration, disposal; Mexico, for any purpose; or Canada, for any purpose, remains subject to the requirements of Sections

R315-262-50 through 58 and 60, and is not subject to the requirements of Sections R315-262-80 through 89.

R315-262-60. Imports of Hazardous Waste.

(a) Any person who imports hazardous waste from a foreign country into the United States shall comply with the requirements of Rule R315-262.

(b) When importing hazardous waste, a person shall meet all the requirements of Section R315-262-20 for the manifest except that:

(1) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number shall be used.

(2) In place of the generator's signature on the certification statement, the U.S. importer or his agent shall sign and date the certification and obtain the signature of the initial transporter.

(c) A person who imports hazardous waste may obtain the manifest form from any source that is registered with the U.S. EPA as a supplier of manifests; e.g., states, waste handlers, and/or commercial forms printers.

(d) In the International Shipments block, the importer shall check the import box and enter the point of entry, city and State, into the United States.

(e) The importer shall provide the transporter with an additional copy of the manifest to be submitted by the receiving facility to U.S. EPA in accordance with Subsections R315-264-71(a)(3) and 40 CFR 265.71(a)(3), which is adopted by reference.

R315-262-70. Farmers.

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in Rule R315-262 or other standards in Rules R315-264, R315-265, R315-268, or R315-270 for those wastes provided he triple rinses each emptied pesticide container in accordance with Subsection R315-261-7(b)(3) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

R315-262-80. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- Applicability.

(a) The requirements of Sections R315-262-80 through 89 apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in Subsection R315-262-58(a)(1). A waste is considered hazardous under U.S. national procedures if the waste:

(1) Meets the Federal definition of hazardous waste in Section R315-261-3; and

(2) Is subject to either the manifesting requirements Sections R315-262-20 through 25 and 27, the universal waste management standards of Rule R315-273, the export requirements in the spent lead-acid battery management standards of Section R315-266-80.

(b) Any person; exporter, importer, or recovery facility operator; who mixes two or more wastes, including hazardous and non-hazardous wastes, or otherwise subjects two or more wastes, including hazardous and non-hazardous wastes, to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under Sections R315-262-80 through 89.

R315-262-81. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- Definitions.

The following definitions apply to Sections R315-262-80 through 89.

Competent authority means the regulatory authority or authorities of concerned countries having jurisdiction over transboundary movements of wastes destined for recovery operations.

Countries concerned means the OECD Member countries of export or import and any OECD Member countries of transit.

Country of export means any designated OECD Member country listed in Subsection R315-262-58(a)(1) from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated.

Country of import means any designated OECD Member country listed in Subsection R315-262-58(a)(1) to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.

Country of transit means any designated OECD Member country listed in Subsections R315-262-58(a)(1) and (a)(2) other than the country of export or country of import across which a transboundary movement of hazardous wastes is planned or takes place.

Exporter means the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the wastes and who proposes transboundary movement of the hazardous wastes for the ultimate purpose of submitting them to recovery operations. When the United States (U.S.) is the country of export, exporter is interpreted to mean a person domiciled in the United States.

Importer means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the country of import.

OECD area means all land or marine areas under the national jurisdiction of any OECD Member country listed in Section R315-262-58. When the regulations refer to shipments to or from an OECD Member country, this means OECD area.

OECD means the Organization for Economic Cooperation and Development.

Recognized trader means a person who, with appropriate authorization of countries concerned, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transboundary movements of wastes destined for recovery operations.

Recovery facility means a facility which, under applicable domestic law, is operating or is authorized to operate in the country of import to receive wastes and to perform recovery operations on them.

Recovery operations means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses, which include:

R1 Use as a fuel (other than in direct incineration) or other means to generate energy.

R2 Solvent reclamation/regeneration.

R3 Recycling/reclamation of organic substances which are not used as solvents.

R4 Recycling/reclamation of metals and metal compounds.

R5 Recycling/reclamation of other inorganic materials.

R6 Regeneration of acids or bases.

R7 Recovery of components used for pollution abatement.

R8 Recovery of components used from catalysts.

R9 Used oil re-refining or other reuses of previously

used oil.

R10 Land treatment resulting in benefit to agriculture or ecological improvement.

R11 Uses of residual materials obtained from any of the operations numbered R1-R10.

R12 Exchange of wastes for submission to any of the operations numbered R1-R11.

R13 Accumulation of material intended for any operation numbered R1-R12.

Transboundary movement means any movement of wastes from an area under the national jurisdiction of one OECD Member country to an area under the national jurisdiction of another OECD Member country.

R315-262-82. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- General Conditions.

(a) Scope. The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and by the national procedures of the United States, as defined in Subsection R315-262-80(a). The OECD Green and Amber lists are incorporated by reference in Subsection R315-262-89(d).

(1) Listed wastes subject to the Green control procedures.

(i) Green wastes that are not considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a) are subject to existing controls normally applied to commercial transactions.

(ii) Green wastes that are considered hazardous under U.S. national procedures as defined in Section R315-262-80(a) are subject to the Amber control procedures set forth in Sections R315-262-80 through 89.

(2) Listed wastes subject to the Amber control procedures.

(i) Amber wastes that are considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a) are subject to the Amber control procedures set forth in Sections R315-262-80 through 89.

(ii) Amber wastes that are considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), are subject to the Amber control procedures in the United States, even if they are imported to or exported from a designated OECD Member country listed in Subsection R315-262-58(a)(1) that does not consider the waste to be hazardous. In such an event, the responsibilities of the Amber control procedures shift as provided:

(A) For U.S. exports, the United States shall issue an acknowledgement of receipt and assume other responsibilities of the competent authority of the country of import.

(B) For U.S. imports, the U.S. recovery facility/importer and the United States shall assume the obligations associated with the Amber control procedures that normally apply to the exporter and country of export, respectively.

(iii) Amber wastes that are not considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), but are considered hazardous by an OECD Member country are subject to the Amber control procedures in the OECD Member country that considers the waste hazardous. All responsibilities of the U.S. importer/exporter shift to the importer/exporter of the OECD Member country that considers the waste hazardous unless the parties make other arrangements through contracts. Note to Subsection R315-262-82(a)(2): Some wastes subject to the Amber control procedures are not listed or otherwise identified as hazardous under RCRA, and therefore are not subject to the Amber control procedures of Sections R315-262-80 through 89. Regardless of the status of the waste under RCRA, however, other Federal environmental statutes, e.g., the Toxic Substances Control Act, restrict certain waste imports or exports. Such restrictions continue to apply with regard to Sections R315-262-80 through 89.

(3) Procedures for mixtures of wastes.

(i) A Green waste that is mixed with one or more other Green wastes such that the resulting mixture is not considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a) shall be subject to the Green control procedures, provided the composition of this mixture does not impair its environmentally sound recovery. Note to Subsection R315-262-82(a)(3)(i): The regulated community should note that some OECD Member countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.

(ii) A Green waste that is mixed with one or more Amber wastes, in any amount, de minimis or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a) are subject to the Amber control procedures, provided the composition of this mixture does not impair its environmentally sound recovery. Note to Subsection R315-262-82(a)(3)(ii): The regulated community should note that some OECD Member countries may require, by domestic law, that a mixture of a Green waste and more than a de minimis amount of an Amber waste or a mixture of two or more Amber wastes be subject to the Amber control procedures.

(4) Wastes not yet assigned to an OECD waste list are eligible for transboundary movements, as follows:

(i) If such wastes are considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), such wastes are subject to the Amber control procedures.

(ii) If such wastes are not considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), such wastes are subject to the Green control procedures.

(b) General conditions applicable to transboundary movements of hazardous waste:

(1) The waste shall be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country;

(2) The transboundary movement shall be in compliance with applicable international transport agreements; and

Note to Subsection R315-262-82(b)(2): These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADNR (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).

(3) Any transit of waste through a non-OECD Member country shall be conducted in compliance with all applicable international and national laws and regulations.

(c) Provisions relating to re-export for recovery to a third country:

(1) Re-export of wastes subject to the Amber control procedures from the United States, as the country of import, to a third country listed in Subsection R315-262-58(a)(1) may occur only after an exporter in the United States provides notification to and obtains consent from the competent authorities in the third country, the original country of export, and any transit countries. The notification shall comply with the notice and consent procedures in Section R315-262-83 for all countries concerned and the original country of export. The competent authorities of the original country of export, as well as the competent authorities of all other countries concerned have thirty days to object to the proposed movement.

(i) The thirty day period begins once the competent authorities of both the initial country of export and new

country of import issue Acknowledgements of Receipt of the notification.

(ii) The transboundary movement may commence if no objection has been lodged after the thirty day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.

(2) In the case of re-export of Amber wastes to a country other than those listed in Subsection R315-262-58(a)(1), notification to and consent of the competent authorities of the original OECD Member country of export and any OECD Member countries of transit is required as specified in Subsection R315-262-82(c)(1), in addition to compliance with all international agreements and arrangements to which the first importing OECD Member country is a party and all applicable regulatory requirements for exports from the first country of import.

(d) Duty to return or re-export wastes subject to the Amber control procedures. When a transboundary movement of wastes subject to the Amber control procedures cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover the waste in an environmentally sound manner in the country of import, the waste shall be returned to the country of export or re-exported to a third country. The provisions of Subsection R315-262-82(c) apply to any shipments to be re-exported to a third country. The following provisions apply to shipments to be returned to the country of export as appropriate:

(1) Return from the United States to the country of export: The U.S. importer shall inform EPA at the specified address in Subsection R315-262-83(b)(1)(i) of the need to return the shipment. EPA shall then inform the competent authorities of the countries of export and transit, citing the reason(s) for returning the waste. The U.S. importer shall complete the return within ninety days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the U.S. importer.

(2) Return from the country of import to the United States: The U.S. exporter shall provide for the return of the hazardous waste shipment within ninety days from the time the country of import informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter shall submit an exception report to EPA in accordance with Subsection R315-262-87(b).

(e) Duty to return wastes subject to the Amber control procedures from a country of transit. When a transboundary movement of wastes subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover these wastes in an environmentally sound manner, the waste shall be returned to the country of export. The following provisions apply as appropriate:

(1) Return from the United States, as country of transit, to the country of export: The U.S. transporter shall inform EPA at the specified address in Subsection R315-262-83(b)(1)(i) of the need to return the shipment. EPA shall then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter shall complete the return within ninety days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries.

(2) Return from the country of transit to the United States, as country of export: The U.S. exporter shall provide for the return of the hazardous waste shipment within ninety days from the time the competent authority of the country of transit informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter shall submit an exception report to EPA in accordance with Subsection R315-262-87(b).

(f) Requirements for wastes destined for and received by R12 and R13 facilities. The transboundary movement of wastes destined for R12 and R13 operations shall comply with all Amber control procedures for notification and consent as set forth in Section R315-262-83 and for the movement document as set forth in Section R315-262-84. Additional responsibilities of R12/R13 facilities include:

(1) Indicating in the notification document the foreseen recovery facility or facilities where the subsequent R1-R11 recovery operation takes place or may take place.

(2) Within three days of the receipt of the wastes by the R12/R13 recovery facility or facilities, the facility(ies) shall return a signed copy of the movement document to the exporter and to the competent authorities of the countries of export and import. The facility(ies) shall retain the original of the movement document for three years.

(3) As soon as possible, but no later than thirty (30) days after the completion of the R12/R13 recovery operation and no later than one calendar year following the receipt of the waste, the R12 or R13 facility(ies) shall send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. Washington, DC 20460, by mail, e-mail without digital signature followed by mail, or fax followed by mail.

(4) When an R12/R13 recovery facility delivers wastes for recovery to an R1-R11 recovery facility located in the country of import, it shall obtain as soon as possible, but no later than one calendar year following delivery of the waste, a certification from the R1-R11 facility that recovery of the wastes at that facility has been completed. The R12/R13 facility shall promptly transmit the applicable certification to the competent authorities of the countries of import and export, identifying the transboundary movements to which the certification pertain.

(5) When an R12/R13 recovery facility delivers wastes for recovery to an R1-R11 recovery facility located:

(i) In the initial country of export, Amber control procedures apply, including a new notification;

(ii) In a third country other than the initial country of export, Amber control procedures apply, with the additional provision that the competent authority of the initial country of export shall also be notified of the transboundary movement.

(g) Laboratory analysis exemption. The transboundary movement of an Amber waste is exempt from the Amber control procedures if it is in certain quantities and destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery operations. The quantity of such waste shall be determined by the minimum quantity reasonably needed to perform the analysis in each particular case adequately, but in no case exceed twenty-five kilograms. Waste destined for laboratory analysis shall still be appropriately packaged and labeled.

R315-262-83. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- Notification and Consent.

(a) Applicability. Consent shall be obtained from the

competent authorities of the relevant OECD countries of import and transit prior to exporting hazardous waste destined for recovery operations subject to Sections R315-262-80 through 89. Hazardous wastes subject to the Amber control procedures are subject to the requirements of Subsection R315-262-83(b); and wastes not identified on any list are subject to the requirements of Subsection R315-262-83(c).

(b) Amber wastes. Exports of hazardous wastes from the United States as described in Subsection R315-262-80(a) that are subject to the Amber control procedures are prohibited unless the notification and consent requirements of Subsections R315-262-83(b)(1) or (b)(2) are met.

(1) Transactions requiring specific consent:

(i) Notification. At least forty-five days prior to commencement of each transboundary movement, the exporter shall provide written notification in English of the proposed transboundary movement to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification shall include all of the information identified in Subsection R315-262-83(d). In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes, and are to be sent periodically to the same recovery facility by the same exporter, the exporter may submit one general notification of intent to export these wastes in multiple shipments during a period of up to one year. Even when a general notification is used for multiple shipments, each shipment still shall be accompanied by its own movement document pursuant to Section R315-262-84.

(ii) Tacit consent. If no objection has been lodged by any countries concerned; i.e., exporting, importing, or transit; to a notification provided pursuant to Subsection R315-262-83(b)(1)(i) within thirty days after the date of issuance of the Acknowledgement of Receipt of notification by the competent authority of the country of import, the transboundary movement may commence. Tacit consent expires one calendar year after the close of the thirty day period; renotification and renewal of all consents is required for exports after that date.

(iii) Written consent. If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than thirty days, the transboundary movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one calendar year after the date of that country's consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.

(2) Transboundary movements to facilities pre-approved by the competent authorities of the importing countries to accept specific wastes for recovery:

(i) Notification. The exporter shall provide EPA a notification that contains all the information identified in Subsection R315-262-83(d) in English, at least ten days in advance of commencing shipment to a pre-approved facility. The notification shall indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in Subsection R315-262-83(b)(1)(i). This information shall be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words "OECD Export Notification-Pre-approved Facility" prominently displayed on the envelope. General notifications that cover multiple shipments as described in Subsection R315-262-83(b)(1)(i) may cover a period of up to three years. Even when a general notification is used for multiple shipments, each shipment still shall be accompanied by its own movement document pursuant to Section R315-262-84.

(ii) Exports to pre-approved facilities may take place after the elapse of seven working days from the issuance of an Acknowledgement of Receipt of the notification by the competent authority of the country of import unless the exporter has received information indicating that the competent authority of any countries concerned objects to the shipment.

(c) Wastes not covered in the OECD Green and Amber lists. Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists, incorporated by reference in Subsection R315-262-89(d), but which are considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), are subject to the notification and consent requirements established for the Amber control procedures in accordance with Subsection R315-262-83(b). Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists incorporated by reference in Subsection R315-262-89(d), and are not considered hazardous under U.S. national procedures as defined by Subsection R315-262-80(a) are subject to the Green control procedures.

(d) Notifications submitted under Section R315-262-83 shall include the information specified in Subsections R315-262-83(d)(1) through (d)(14):

(1) Serial number or other accepted identifier of the notification document;

(2) Exporter name and EPA identification number, if applicable, address, telephone, fax numbers, and e-mail address;

(3) Importing recovery facility name, address, telephone, fax numbers, e-mail address, and technologies employed;

(4) Importer name, if not the owner or operator of the recovery facility, address, telephone, fax numbers, and e-mail address; whether the importer will engage in waste exchange recovery operation R12 or waste accumulation recovery operation R13 prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;

(5) Intended transporter(s) and/or their agent(s); address, telephone, fax, and e-mail address;

(6) Country of export and relevant competent authority, and point of departure;

(7) Countries of transit and relevant competent authorities and points of entry and departure;

(8) Country of import and relevant competent authority, and point of entry;

(9) Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;

(10) Date(s) foreseen for commencement of transboundary movement(s);

(11) Means of transport envisaged;

(12) Designation of waste type(s) from the appropriate OECD list incorporated by reference in Subsection R315-262-89(d), description(s) of each waste type, estimated total quantity of each, RCRA waste code, and the United Nations number for each waste type;

(13) Specification of the recovery operation(s) as defined in Section R315-262-81.

(14) Certification/Declaration signed by the exporter that states:

I certify that the above information is complete and

correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement.

Name:

Signature:

Date:

Note to Subsection R315-262-83(d)(14): The United States does not currently require financial assurance for these waste shipments. However, U.S. exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.

(e) Certificate of Recovery. As soon as possible, but no later than thirty days after the completion of recovery and no later than one calendar year following receipt of the waste, the U.S. recovery facility shall send a certificate of recovery to the exporter and to the competent authorities of the countries of export and import by mail, e-mail without a digital signature followed by mail, or fax followed by mail. The certificate of recovery shall include a signed, written and dated statement that affirms that the waste materials were recovered in the manner agreed to by the parties to the contract required under Section R315-262-85.

R315-262-84. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- Movement Document.

(a) All U.S. parties subject to the contract provisions of Section R315-262-85 shall ensure that a movement document meeting the conditions of Subsection R315-262-84(b) accompanies each transboundary movement of wastes subject to the Amber control procedures from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or sorted by the importer prior to shipment to the final recovery facility, except as provided in Subsections R315-262-84(a)(1) and (2).

(1) For shipments of hazardous waste within the United States solely by water, bulk shipments only, the generator shall forward the movement document with the manifest to the last water, bulk shipment, transporter to handle the waste in the United States if exported by water, in accordance with the manifest routing procedures at Subsection R315-262-23(c).

(2) For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator shall forward the movement document with the manifest, in accordance with the routing procedures for the manifest in Subsection R315-262-23(d), to the next non-rail transporter, if any, or the last rail transporter to handle the waste in the United States if exported by rail.

(b) The movement document shall include all information required under Section R315-262-83, for notification, as well as the following Subsection R315-262-84(b)(1) through (b)(7):

(1) Date movement commenced;

(2) Name; if not exporter, address; telephone; fax numbers; and e-mail of primary exporter;

(3) Company name and EPA ID number of all transporters;

(4) Identification; license, registered name or registration number; of means of transport, including types of packaging envisaged;

(5) Any special precautions to be taken by transporter(s);

(6) Certification/declaration signed by the exporter that no objection to the shipment has been lodged, as follows:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement, and that:

1. All necessary consents have been received; or

2. The shipment is directed to a recovery facility within the OECD area and no objection has been received from any of the countries concerned within the thirty day tacit consent period; or

3. The shipment is directed to a recovery facility pre-approved for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the countries concerned.

Delete sentences that are not applicable

Name:

Signature:

Date:

(7) Appropriate signatures for each custody transfer, e.g., transporter, importer, and owner or operator of the recovery facility.

(c) Exporters also shall comply with the special manifest requirements of Subsections R315-262-54(a), (b), (c), (e), and (i) and importers shall comply with the import requirements of Section R315-262-60.

(d) Each U.S. person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility shall sign the movement document; e.g., transporter, importer, and owner or operator of the recovery facility.

(e) Within three working days of the receipt of imports subject to Sections R315-262-80 through 89, the owner or operator of the U.S. recovery facility shall send signed copies of the movement document to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to the competent authorities of the countries of export and transit. If the concerned U.S. recovery facility is a R12/R13 recovery facility as defined under Section R315-262-81, the facility shall retain the original of the movement document for three years.

R315-262-85. Contracts.

(a) Transboundary movements of hazardous wastes subject to the Amber control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements, when the movement occurs between parties controlled by the same corporate or legal entity. Such contracts or equivalent arrangements shall be executed by the exporter and the owner or operator of the recovery facility, and shall specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of Section R315-262-85 only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

(b) Contracts or equivalent arrangements shall specify the name and EPA ID number, where available, of Subsections R315-262-85(b)(1) through (b)(4):

(1) The generator of each type of waste;

(2) Each person who will have physical custody of the wastes;

(3) Each person who will have legal control of the wastes; and

(4) The recovery facility.

(c) Contracts or equivalent arrangements shall specify which party to the contract will assume responsibility for alternate management of the wastes if their disposition cannot be carried out as described in the notification of intent to

export. In such cases, contracts shall specify that:

(1) The person having actual possession or physical control over the wastes will immediately inform the exporter and the competent authorities of the countries of export and import and, if the wastes are located in a country of transit, the competent authorities of that country; and

(2) The person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of wastes and, as the case may be, shall provide the notification for re-export.

(d) Contracts shall specify that the importer will provide the notification required in Subsection R315-262-82(c) prior to the re-export of controlled wastes to a third country.

(e) Contracts or equivalent arrangements shall include provisions for financial guarantees, if required by the competent authorities of any countries concerned, in accordance with applicable national or international law requirements.

Note to Subsection R315-262-85(e): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, transporters or importers may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(f) Contracts or equivalent arrangements shall contain provisions requiring each contracting party to comply with all applicable requirements of Sections R315-262-80 through 89.

(g) Upon request by EPA, U.S. exporters, importers, or recovery facilities shall submit to EPA copies of contracts, chain of contracts, or equivalent arrangements, when the movement occurs between parties controlled by the same corporate or legal entity. Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) shall be treated as confidential and shall be disclosed by EPA only as provided in 40 CFR 260.2.

Note to Subsection R315-262-85(g): Although the United States does not require routine submission of contracts at this time, the OECD Decision allows Member countries to impose such requirements. When other OECD Member countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, EPA shall request the required information; absent submission of such information, some OECD Member countries may deny consent for the proposed movement.

R315-262-86. Provisions Relating to Recognized Traders.

(a) A recognized trader who takes physical custody of a waste and conducts recovery operations, including storage prior to recovery, is acting as the owner or operator of a recovery facility and shall be so authorized in accordance with all applicable Federal laws.

(b) A recognized trader acting as an exporter or importer for transboundary shipments of waste shall comply with all the requirements of Sections R315-262-80 through 89 associated with being an exporter or importer.

R315-262-87. Reporting and Recordkeeping.

(a) Annual reports. For all waste movements subject to Sections R315-262-80 through 89, persons, e.g., exporters, recognized traders, who meet the definition of primary exporter in Section R315-262-51 or who initiate the movement documentation under Section R315-262-84 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. If the primary exporter or the person who initiates the movement document under Section R315-262-84 is required to file an annual report for waste exports that are not covered under Sections R315-262-80 through 89, he may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD Member countries is contained in a separate section. Such reports shall include all of the following Sections R315-262-87(a)(1) through (a)(6) specified as follows:

(1) The EPA identification number, name, and mailing and site address of the exporter filing the report;

(2) The calendar year covered by the report;

(3) The name and site address of each final recovery facility;

(4) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number, from Sections R315-261-20 through 24 or R315-262-30 through 35, designation of waste type(s) and applicable waste code(s) from the appropriate OECD waste list incorporated by reference in Subsection R315-262-89(d), DOT hazard class, the name and U.S. EPA identification number, where applicable, for each transporter used, the total amount of hazardous waste shipped pursuant to Sections R315-262-80 through 89, and number of shipments pursuant to each notification;

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100kg but less than 1,000kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to Section R315-262-41:

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and

(ii) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(6) A certification signed by the person acting as primary exporter or initiator of the movement document under Section R315-262-84 that states:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(b) Exception reports. Any person who meets the definition of primary exporter in Section R315-262-51 or who initiates the movement document under Section R315-262-84 shall file an exception report in lieu of the requirements of Section R315-262-42, if applicable, with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:

(1) He has not received a copy of the RCRA hazardous waste manifest, if applicable, signed by the transporter

identifying the point of departure of the waste from the United States, within forty-five days from the date it was accepted by the initial transporter;

(2) Within ninety days from the date the waste was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the hazardous waste was received;

(3) The waste is returned to the United States.

(c) Recordkeeping.

(1) Persons who meet the definition of primary exporter in Section R315-262-51 or who initiate the movement document under Section R315-262-84 shall keep the following records in Subsections R315-262-87(c)(1)(i) through (c)(1)(iv):

(i) A copy of each notification of intent to export and all written consents obtained from the competent authorities of countries concerned for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(ii) A copy of each annual report for a period of at least three years from the due date of the report;

(iii) A copy of any exception reports and a copy of each confirmation of delivery, i.e., movement document, sent by the recovery facility to the exporter for at least three years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable; and

(iv) A copy of each certificate of recovery sent by the recovery facility to the exporter for at least three years from the date that the recovery facility completed processing the waste shipment.

(2) The periods of retention referred to in Section R315-262-87 are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

R315-262-89. OECD Waste Lists.

(a) General. For the purposes of Sections R315-262-80 through 89, a waste is considered hazardous under U.S. national procedures, and hence subject to Sections R315-262-80 through 89, if the waste:

(1) Meets the Federal definition of hazardous waste in Section R315-261-3; and

(2) Is subject to either Sections R315-262-20 through 25 and 27, the universal waste management standards of Rule R315-273, the export requirements in the spent lead-acid battery management standards of Section R315-266-80.

(b) If a waste is hazardous under Subsection R315-262-89(a), it is subject to the Amber control procedures, regardless of whether it appears in Appendix 4 of the OECD Decision, as defined in Section R315-262-81.

(c) The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in Section R315-262-82.

(d) The OECD waste lists, as set forth in Annex B ("Green List") and Annex C ("Amber List") (collectively "OECD waste lists") of the 2009 "Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations," are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of the approval and a notice of any change in these materials shall be published in the Federal Register. The materials are available for inspection at: the U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004 (Docket # EPA-HQ-RCRA-2005-0018) or at the National Archives and Records Administration (NARA), and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F-75775 Paris Cedex 16, France. For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal-register/cfr/ibr-locations.html. To contact the EPA Docket Center Public Reading Room, call (202) 566-1744. To contact the OECD, call +33 (0) 1 45 24 81 67.

R315-262-200. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Definitions for Sections R315-262-200 through R315-262-216.

(a) The following definitions apply to Sections R315-262-200 through 216:

(1) "College/University" means a private or public, post-secondary, degree-granting, academic institution, that is accredited by an accrediting agency listed annually by the U.S. Department of Education.

(2) "Eligible academic entity" means a college or university, or a non-profit research institute that is owned by or has a formal written affiliation agreement with a college or university, or a teaching hospital that is owned by or has a formal written affiliation agreement with a college or university.

(3) "Formal written affiliation agreement for a non-profit research institute" means a written document that establishes a relationship between institutions for the purposes of research and/or education and is signed by authorized representatives, as defined by Section R315-260-10, from each institution. A relationship on a project-by-project or grant-by-grant basis is not considered a formal written affiliation agreement. A formal written affiliation agreement for a teaching hospital means a master affiliation agreement and program letter of agreement, as defined by the Accreditation Council for Graduate Medical Education, with an accredited medical program or medical school.

(4) Laboratory means an area owned by an eligible academic entity where relatively small quantities of chemicals and other substances are used on a non-production basis for teaching or research, or diagnostic purposes at a teaching hospital, and are stored and used in containers that are easily manipulated by one person. Photo laboratories, art studios, and field laboratories are considered laboratories. Areas such as chemical stockrooms and preparatory laboratories that provide a support function to teaching or research laboratories, or diagnostic laboratories at teaching hospitals, are also considered laboratories.

(5) "Laboratory clean-out" means an evaluation of the inventory of chemicals and other materials in a laboratory that are no longer needed or that have expired and the subsequent removal of those chemicals or other unwanted materials from the laboratory. A clean-out may occur for several reasons. It may be on a routine basis, e.g., at the end of a semester or academic year, or as a result of a renovation, relocation, or change in laboratory supervisor/occupant. A regularly scheduled removal of unwanted material as required by Section R315-262-208 does not qualify as a laboratory clean-out.

(6) "Laboratory worker" means a person who handles chemicals and/or unwanted material in a laboratory and may include, but is not limited to, faculty, staff, post-doctoral fellows, interns, researchers, technicians, supervisors/managers, and principal investigators. A person does not need to be paid or otherwise compensated for his/her work in the laboratory to be considered a laboratory worker.

Undergraduate and graduate students in a supervised classroom setting are not laboratory workers.

(7) "Non-profit research institute" means an organization that conducts research as its primary function and files as a non-profit organization under the tax code of 26 U.S.C. 501(c)(3).

(8) "Reactive acutely hazardous unwanted material" means an unwanted material that is one of the acutely hazardous commercial chemical products listed in Subsection R315-261-33(e) for reactivity.

(9) "Teaching hospital" means a hospital that trains students to become physicians, nurses or other health or laboratory personnel.

(10) "Trained professional" means a person who has completed the applicable RCRA training requirements of 40 CFR 265.16, which is incorporated by reference in Section R315-265-1, for large quantity generators, or is knowledgeable about normal operations and emergencies in accordance with Subsection R315-262-17 for small quantity generators and very small quantity generators. A trained professional may be an employee of the eligible academic entity or may be a contractor or vendor who meets the requisite training requirements.

(11) "Unwanted material" means any chemical, mixtures of chemicals, products of experiments or other material from a laboratory that is no longer needed, wanted or usable in the laboratory and that is destined for hazardous waste determination by a trained professional. Unwanted materials include reactive acutely hazardous unwanted materials and materials that may eventually be determined not to be solid waste pursuant to Section R315-261-2, or a hazardous waste pursuant to Section R315-261-3. If an eligible academic entity elects to use another equally effective term in lieu of "unwanted material," as allowed by Subsection R315-262-206(a)(1)(i), the equally effective term has the same meaning and is subject to the same requirements as "unwanted material" under Section R315-262-200 through 216.

(12) "Working container" means a small container, i.e., two gallons or less, that is in use at a laboratory bench, hood, or other work station, to collect unwanted material from a laboratory experiment or procedure.

R315-262-201. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Applicability of Sections R315-262-200 through R315-262-216.

(a) Large quantity generators and small quantity generators. Sections R315-262-200 through R315-262-216 provides alternative requirements to the requirements in Sections R315-262-11 and R315-262-15 for the hazardous waste determination and accumulation of hazardous waste in laboratories owned by eligible academic entities that choose to be subject to Sections R315-262-200 through R315-262-216, provided that they complete the notification requirements of Section R315-262-203.

(b) Very small quantity generators. Sections R315-262-200 through R315-262-216 provide alternative requirements to the conditional exemption in Section R315-262-14 for the accumulation of hazardous waste in laboratories owned by eligible academic entities that choose to be subject to Sections R315-262-200 through R315-262-216, provided that they complete the notification requirements of Section R315-262-203.

R315-262-202. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Sections R315-262-200 through R315-262-216 are Optional.

(a) Large quantity generators and small quantity generators. Eligible academic entities have the option of complying with Sections R315-262-200 through R315-262-216 with respect to its laboratories, as an alternative to complying with the requirements of Section R315-262-11 and Section R315-262-15.

(b) Very small quantity generators. Eligible academic entities have the option of complying with Sections R315-262-200 through 216 with respect to laboratories, as an alternative to complying with the conditional exemption of Section R315-262-14.

R315-262-203. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- How an Eligible Academic Entity Indicates it will be Subject to the Requirements of Sections R315-262-200 through R315-262-216.

(a) An eligible academic entity shall notify the Director in writing, using the RCRA Subtitle C Site Identification Form, EPA Form 8700-12, that it is electing to be subject to the requirements of Sections R315-262-200 through R315-262-216 for all the laboratories owned by the eligible academic entity under the same EPA Identification Number. An eligible academic entity that is a very small quantity generator and does not have an EPA Identification Number shall notify that it is electing to be subject to the requirements of Sections R315-262-200 through R315-262-216 for all the laboratories owned by the eligible academic entity that are on-site, as defined by Section R315-260-10. An eligible academic entity shall submit a separate notification, Site Identification Form, for each EPA Identification Number, or site, for very small quantity generators, that is electing to be subject to the requirements of Sections R315-262-200 through R315-262-216, and shall submit the Site Identification Form before it begins operating under Sections R315-262-200 through R315-262-216.

(b) When submitting the Site Identification Form, the eligible academic entity shall, at a minimum, fill out the following fields on the form:

(1) Reason for Submittal.

(2) Site EPA Identification Number, except for very small quantity generators.

(3) Site Name.

(4) Site Location Information.

(5) Site Land Type.

(6) North American Industry Classification System (NAICS) Code(s) for the Site.

(7) Site Mailing Address.

(8) Site Contact Person.

(9) Operator and Legal Owner of the Site.

(10) Type of Regulated Waste Activity.

(11) Certification.

(c) An eligible academic entity shall keep a copy of the notification on file at the eligible academic entity for as long as its laboratories are subject to Sections R315-262-200 through R315-262-216.

(d) A teaching hospital that is not owned by a college or university shall keep a copy of its formal written affiliation agreement with a college or university on file at the teaching hospital for as long as its laboratories are subject to Sections R315-262-200 through R315-262-216.

(e) A non-profit research institute that is not owned by a college or university shall keep a copy of its formal written affiliation agreement with a college or university on file at the non-profit research institute for as long as its laboratories are subject to Sections R315-262-200 through R315-262-216.

R315-262-204. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities - How an Eligible Academic Entity Indicates It Will Withdraw from the Requirements of Sections R315-262-200 Through 216.

(a) An eligible academic entity shall notify the Director in writing, using the RCRA Subtitle C Site Identification Form (EPA Form 8700-12), that it is electing to no longer be subject to the requirements of Sections R315-262-200 through R315-262-216 for all the laboratories owned by the eligible academic entity under the same EPA Identification Number and that it will comply with the requirements of Sections R315-262-11 and R315-262-15 for small quantity generators and large quantity generators. An eligible academic entity that is a very small quantity generator and does not have an EPA Identification Number shall notify that it is withdrawing from the requirements of Sections R315-262-200 through R315-262-216 for all the laboratories owned by the eligible academic entity that are on-site and that it will comply with the conditional exemption in Section R315-262-14. An eligible academic entity shall submit a separate notification, Site Identification Form, for each EPA Identification Number, or site, for very small quantity generators, that is withdrawing from the requirements of Sections R315-262-200 through R315-262-216 and shall submit the Site Identification Form before it begins operating under the requirements of Sections R315-262-11 and R315-262-15 for small quantity generators and large quantity generators, or Section R315-262-14 for very small quantity generators.

(b) When submitting the Site Identification Form, the eligible academic entity shall, at a minimum, fill out the following fields on the form:

(1) Reason for Submittal.

(2) Site EPA Identification Number, except for very small quantity generators.

(3) Site Name.

(4) Site Location Information.

(5) Site Land Type.

(6) North American Industry Classification System (NAICS) Code(s) for the Site.

(7) Site Mailing Address.

(8) Site Contact Person.

(9) Operator and Legal Owner of the Site.

(10) Type of Regulated Waste Activity.

(11) Certification.

(c) An eligible academic entity shall keep a copy of the withdrawal notice on file at the eligible academic entity for three years from the date of the notification.

R315-262-205. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities Summary of the Requirements of Sections R315-262-200 through R315-262-216.

An eligible academic entity that chooses to be subject to Sections R315-262-200 through 216 is not required to have interim status or a RCRA Part B permit for the accumulation of unwanted material and hazardous waste in its laboratories, provided the laboratories comply with the provisions of Sections R315-262-200 through 216 and the eligible academic entity has a Laboratory Management Plan (LMP) in accordance with Section R315-262-214 that describes how the laboratories owned by the eligible academic entity will comply with the requirements of Sections R315-262-200 through 216.

R315-262-206. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Labeling and Management Standards for Containers of Unwanted Material in the Laboratory.

An eligible academic entity shall manage containers of unwanted material while in the laboratory in accordance with the requirements in Section R315-262-206.

(a) Labeling: Label unwanted material as follows:

(1) The following information shall be affixed or attached to the container:

(i) The words "unwanted material" or another equally effective term that is to be used consistently by the eligible academic entity and that is identified in Part I of the Laboratory Management Plan, and

(ii) Sufficient information to alert emergency responders to the contents of the container. Examples of information that would be sufficient to alert emergency responders to the contents of the container include, but are not limited to:

(A) The name of the chemical(s),

(B) The type or class of chemical, such as organic solvents or halogenated organic solvents.

(2) The following information may be affixed or attached to the container, but shall at a minimum be associated with the container:

(i) The date that the unwanted material first began accumulating in the container, and

(ii) Information sufficient to allow a trained professional to properly identify whether an unwanted material is a solid and hazardous waste and to assign the proper hazardous waste code(s), pursuant to Section R315-262-11. Examples of information that would allow a trained professional to properly identify whether an unwanted material is a solid or hazardous waste include, but are not limited to:

(A) The name and/or description of the chemical contents or composition of the unwanted material, or, if known, the product of the chemical reaction,

(B) Whether the unwanted material has been used or is unused,

(C) A description of the manner in which the chemical was produced or processed, if applicable.

(b) Management of Containers in the Laboratory. An eligible academic entity shall properly manage containers of unwanted material in the laboratory to assure safe storage of the unwanted material, to prevent leaks, spills, emissions to the air, adverse chemical reactions, and dangerous situations that may result in harm to human health or the environment. Proper container management shall include the following:

(1) Containers are maintained and kept in good condition and damaged containers are replaced, overpacked, or repaired, and

(2) Containers are compatible with their contents to avoid reactions between the contents and the container; and are made of, or lined with, material that is compatible with the unwanted material so that the container's integrity is not impaired, and

(3) Containers shall be kept closed at all times, except:

(i) When adding, removing or bulking unwanted material, or

(ii) A working container may be open until the end of the procedure or work shift, or until it is full, whichever comes first, at which time the working container shall either be closed or the contents emptied into a separate container that is then closed, or

(iii) When venting of a container is necessary:

(A) For the proper operation of laboratory equipment, such as with in-line collection of unwanted materials from high performance liquid chromatographs; or

(B) To prevent dangerous situations, such as build-up of extreme pressure.

R315-262-207. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Training.

An eligible academic entity shall provide training to all individuals working in a laboratory at the eligible academic entity, as follows:

(a) Training for laboratory workers and students shall be commensurate with their duties so they understand the requirements in Sections R315-262-200 through 216 and can implement them.

(b) An eligible academic entity can provide training for laboratory workers and students in a variety of ways, including, but not limited to:

(1) Instruction by the professor or laboratory manager before or during an experiment; or

(2) Formal classroom training; or

(3) Electronic/written training; or

(4) On-the-job training; or

(5) Written or oral exams.

(c) An eligible academic entity that is a large quantity generator shall maintain documentation for the durations specified in 40 CFR 265.16(e), which is incorporated by reference in R315-265-1, demonstrating training for all laboratory workers that is sufficient to determine whether laboratory workers have been trained. Examples of documentation demonstrating training can include, but are not limited to, the following:

(1) Sign-in/attendance sheet(s) for training session(s); or

(2) Syllabus for training session; or

(3) Certificate of training completion; or

(4) Test results.

(d) A trained professional shall:

(1) Accompany the transfer of unwanted material and hazardous waste when the unwanted material and hazardous waste is removed from the laboratory, and

(2) Make the hazardous waste determination, pursuant to Subsections R315-262-11(a) through (d), for unwanted material.

R315-262-208. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Removing Containers of Unwanted Material from the Laboratory.

(a) Removing containers of unwanted material on a regular schedule. An eligible academic entity shall either:

(1) Remove all containers of unwanted material from each laboratory on a regular interval, not to exceed 12 months; or

(2) Remove containers of unwanted material from each laboratory within 12 months of each container's accumulation start date.

(b) The eligible academic entity shall specify in Part I of its Laboratory Management Plan whether it will comply with Subsection R315-262-208(a)(1) or (a)(2) for the regular removal of unwanted material from its laboratories.

(c) The eligible academic entity shall specify in Part II of its Laboratory Management Plan how it will comply with Subsection R315-262-208(a)(1) or (a)(2) and develop a schedule for regular removals of unwanted material from its laboratories.

(d) Removing containers of unwanted material when volumes are exceeded.

(1) If a laboratory accumulates a total volume of unwanted material, including reactive acutely hazardous unwanted material, in excess of 55 gallons before the regularly scheduled removal, the eligible academic entity shall ensure that all containers of unwanted material in the laboratory, including reactive acutely hazardous unwanted material:

(i) Are marked on the label that is associated with the container, or on the label that is affixed or attached to the container, if that is preferred, with the date that 55 gallons is exceeded; and

(ii) Are removed from the laboratory within 10 calendar days of the date that 55 gallons was exceeded, or at the next regularly scheduled removal, whichever comes first.

(2) If a laboratory accumulates more than 1 quart of liquid reactive acutely hazardous unwanted material or more than 1 kg (2.2 pounds) of solid reactive acutely hazardous unwanted material before the regularly scheduled removal, then the eligible academic entity shall ensure that all containers of reactive acutely hazardous unwanted material:

(i) Are marked on the label that is associated with the container, or on the label that is affixed or attached to the container, if that is preferred, with the date that 1 quart or 1 kg is exceeded; and

(ii) Are removed from the laboratory within 10 calendar days of the date that 1 quart or 1 kg was exceeded, or at the next regularly scheduled removal, whichever comes first.

R315-262-209. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Where and When to Make the Hazardous Waste Determination and Where to Send Containers of Unwanted Material Upon Removal from the Laboratory.

(a) Large quantity generators and small quantity generators-an eligible academic entity shall ensure that a trained professional makes a hazardous waste determination, pursuant to Section R315-262-11, for unwanted material in any of the following areas:

(1) In the laboratory before the unwanted material is removed from the laboratory, in accordance with Section R315-262-210;

(2) Within 4 calendar days of arriving at an on-site central accumulation area, in accordance with Section R315-262-211; and

(3) Within 4 calendar days of arriving at an on-site interim status or permitted treatment, storage or disposal facility, in accordance with Section R315-262-212.

(b) Very small quantity generators-An eligible academic entity shall ensure that a trained professional makes a hazardous waste determination, pursuant to Subsections R315-262-11(a) through (d), for unwanted material in the laboratory before the unwanted material is removed from the laboratory, in accordance with Section R315-262-210.

R315-262-210. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Making the Hazardous Waste Determination in the Laboratory Before the Unwanted Material is Removed from the Laboratory.

If an eligible academic entity makes the hazardous waste determination, pursuant to Section R315-262-11, for unwanted material in the laboratory, it shall comply with the following:

(a) A trained professional shall make the hazardous waste determination, pursuant to Subsections R315-262-11(a) through (d), before the unwanted material is removed from the laboratory.

(b) If an unwanted material is a hazardous waste, the eligible academic entity shall:

(1) Write the words "hazardous waste" on the container label that is affixed or attached to the container, before the hazardous waste may be removed from the laboratory; and

(2) Write the appropriate hazardous waste code(s) on the label that is associated with the container, or on the label that is affixed or attached to the container, if that is preferred, before the hazardous waste is transported off-site.

(3) Count the hazardous waste toward the eligible academic entity's generator status, pursuant to Section R315-262-13, in the calendar month that the hazardous waste determination was made.

(c) A trained professional shall accompany all hazardous waste that is transferred from the laboratory(ies) to an on-site central accumulation area or on-site interim status or permitted treatment, storage or disposal facility.

(d) When hazardous waste is removed from the laboratory:

(1) Large quantity generators and small quantity generators shall ensure it is taken directly from the laboratory(ies) to an on-site central accumulation area, or on-site interim status or permitted treatment, storage or disposal facility, or transported off-site.

(2) Very small quantity generators shall ensure it is taken directly from the laboratory(ies) to any of the types of facilities listed in Section R315-262-14.

(e) An unwanted material that is a hazardous waste is subject to all applicable hazardous waste regulations when it is removed from the laboratory.

R315-262-211. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities - Making the Hazardous Waste Determination at an On-Site Central Accumulation Area.

If an eligible academic entity makes the hazardous waste determination, pursuant to Section R315-262-11, for unwanted material at an on-site central accumulation area, it shall comply with the following:

(a) A trained professional shall accompany all unwanted material that is transferred from the laboratory(ies) to an on-site central accumulation area.

(b) All unwanted material removed from the laboratory(ies) shall be taken directly from the laboratory(ies) to the on-site central accumulation area.

(c) The unwanted material becomes subject to the generator accumulation regulations of Section R315-262-16 for small quantity generators or Section R315-262-17 for large quantity generators as soon as it arrives in the central accumulation area, except for the "hazardous waste" labeling conditions of Subsections R315-262-16(b)(6) and 17(a)(5).

(d) A trained professional shall determine, pursuant to Subsections R315-262-11(a) through (d), if the unwanted material is a hazardous waste within 4 calendar days of the unwanted materials' arrival at the on-site central accumulation area.

(e) If the unwanted material is a hazardous waste, the eligible academic entity shall:

(1) Write the words "hazardous waste" on the container label that is affixed or attached to the container, within 4 calendar days of arriving at the on-site central accumulation area and before the hazardous waste may be removed from the on-site central accumulation area, and

(2) Write the appropriate hazardous waste code(s) on the container label that is associated with the container, or on the label that is affixed or attached to the container, if that is preferred, before the hazardous waste may be treated or disposed of on-site or transported off-site, and

(3) Count the hazardous waste toward the eligible academic entity's generator category, pursuant to Section R315-262-13 in the calendar month that the hazardous waste determination was made, and

(4) Manage the hazardous waste according to all applicable hazardous waste regulations.

R315-262-212. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Making the Hazardous Waste Determination at an On-Site Interim Status or Permitted Treatment, Storage or Disposal Facility.

If an eligible academic entity makes the hazardous waste determination, pursuant to Section R315-262-11, for unwanted material at an on-site interim status or permitted treatment, storage or disposal facility, it shall comply with the following:

(a) A trained professional shall accompany all unwanted material that is transferred from the laboratory(ies) to an on-site interim status or permitted treatment, storage or disposal facility.

(b) All unwanted material removed from the laboratory(ies) shall be taken directly from the laboratory(ies) to the on-site interim status or permitted treatment, storage or disposal facility.

(c) The unwanted material becomes subject to the terms of the eligible academic entity's hazardous waste permit or interim status as soon as it arrives in the on-site treatment, storage or disposal facility.

(d) A trained professional shall determine, pursuant to Subsections R315-262-11(a) through (d), if the unwanted material is a hazardous waste within 4 calendar days of the unwanted materials' arrival at an on-site interim status or permitted treatment, storage or disposal facility.

(e) If the unwanted material is a hazardous waste, the eligible academic entity shall:

(1) Write the words "hazardous waste" on the container label that is affixed or attached to the container within 4 calendar days of arriving at the on-site interim status or permitted treatment, storage or disposal facility and before the hazardous waste may be removed from the on-site interim status or permitted treatment, storage or disposal facility, and

(2) Write the appropriate hazardous waste code(s) on the container label that is associated with the container, or on the label that is affixed or attached to the container, if that is preferred, before the hazardous waste may be treated or disposed on-site or transported off-site, and

(3) Count the hazardous waste toward the eligible academic entity's generator status, pursuant to Subsections R315-261-5(c) and (d) in the calendar month that the hazardous waste determination was made, and

(4) Manage the hazardous waste according to all applicable hazardous waste regulations.

R315-262-213. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Laboratory Clean-outs.

(a) One time per 12 month period for each laboratory, an eligible academic entity may opt to conduct a laboratory clean-out that is subject to all the applicable requirements of Sections R315-262-200 through 216, except that:

(1) If the volume of unwanted material in the laboratory exceeds 55 gallons, or 1 quart of liquid reactive acutely hazardous unwanted material or 1 kg of solid reactive acutely hazardous unwanted material, the eligible academic entity is not required to remove all unwanted materials from the laboratory within 10 calendar days of exceeding 55 gallons, or 1 quart of liquid reactive acutely hazardous unwanted material or 1 kg or solid reactive acutely hazardous unwanted material, as required by Section R315-262-208. Instead, the eligible academic entity shall remove all unwanted materials from the laboratory within 30 calendar days from the start of

the laboratory clean-out; and

(2) For the purposes of on-site accumulation, an eligible academic entity is not required to count a hazardous waste that is an unused commercial chemical product, listed in Sections R315-261-30 through R315-261-35 or exhibiting one or more characteristics in Sections R315-261-20 through R315-261-24, generated solely during the laboratory clean-out toward its hazardous waste generator category, pursuant to Section R315-262-13. An unwanted material that is generated prior to the beginning of the laboratory clean-out and is still in the laboratory at the time the laboratory clean-out commences shall be counted toward hazardous waste generator category, pursuant to Section R315-262-13, if it is determined to be hazardous waste; and

(3) For the purposes of off-site management, an eligible academic entity shall count all its hazardous waste, regardless of whether the hazardous waste was counted toward generator category under Subsection R315-262-213(a)(2), and if it generates more than 1 kg per month of acute hazardous waste or more than 100 kg per month of non-acute hazardous waste, i.e., the very small quantity generator limits as defined in Section R315-260-10, the hazardous waste is subject to all applicable hazardous waste regulations when it is transported off site; and

(4) An eligible academic entity shall document the activities of the laboratory clean-out. The documentation shall, at a minimum, identify the laboratory being cleaned out, the date the laboratory clean-out begins and ends, and the volume of hazardous waste generated during the laboratory clean-out. The eligible academic entity shall maintain the records for a period of three years from the date the clean-out ends; and

(b) For all other laboratory clean-outs conducted during the same 12-month period, an eligible academic entity is subject to all the applicable requirements of Sections R315-262-200 through 216, including, but not limited to:

(1) The requirement to remove all unwanted materials from the laboratory within 10 calendar days of exceeding 55 gallons, or 1 quart of reactive acutely hazardous unwanted material, as required by Section R315-262-208; and

(2) The requirement to count all hazardous waste, including unused hazardous waste, generated during the laboratory clean-out toward its hazardous waste generator category, pursuant to Section R315-262-13.

R315-262-214. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities Laboratory Management Plan.

An eligible academic entity shall develop and retain a written Laboratory Management Plan, or revise an existing written plan. The Laboratory Management Plan is a site-specific document that describes how the eligible academic entity will manage unwanted materials in compliance with Sections R315-262-200 through 216. An eligible academic entity may write one Laboratory Management Plan for all the laboratories owned by the eligible academic entity that have opted into Sections R315-262-200 through 216, even if the laboratories are located at sites with different EPA Identification Numbers. The Laboratory Management Plan shall contain two parts with a total of nine elements identified in Subsections R315-262-214(a) and (b). In Part I of its Laboratory Management Plan, an eligible academic entity shall describe its procedures for each of the elements listed in Subsection R315-262-214(a). An eligible academic entity shall implement and comply with the specific provisions that it develops to address the elements in Part I of the Laboratory Management Plan. In Part II of its Laboratory Management Plan, an eligible academic entity shall describe its best management practices for each of the elements listed in Subsection R315-262-214(b). The specific actions taken by an eligible academic entity to implement each element in Part II of its Laboratory Management Plan may vary from the procedures described in the eligible academic entity's Laboratory Management Plan, without constituting a violation of Sections R315-262-200 through 216. An eligible academic entity may include additional elements and best management practices in Part II of its Laboratory Management Plan if it chooses.

(a) The eligible academic entity shall implement and comply with the specific provisions of Part I of its Laboratory Management Plan. In Part I of its Laboratory Management Plan, an eligible academic entity shall:

(1) Describe procedures for container labeling in accordance with Subsection R315-262-206(a), as follows:

(i) Identifying whether the eligible academic entity will use the term "unwanted material" on the containers in the laboratory. If not, identify an equally effective term that will be used in lieu of "unwanted material" and consistently by the eligible academic entity. The equally effective term, if used, has the same meaning and is subject to the same requirements as "unwanted material."

(ii) Identifying the manner in which information that is "associated with the container" will be imparted.

(2) Identify whether the eligible academic entity will comply with Subsection R315-262-208(a)(1) or (a)(2) for regularly scheduled removals of unwanted material from the laboratory.

(b) In Part II of its Laboratory Management Plan, an eligible academic entity shall:

(1) Describe its intended best practices for container labeling and management, see the required standards at Section R315-262-206.

(2) Describe its intended best practices for providing training for laboratory workers and students commensurate with their duties, see the required standards at Subsection R315-262-207(a).

(3) Describe its intended best practices for providing training to ensure safe on-site transfers of unwanted material and hazardous waste by trained professionals, see the required standards at Subsection R315-262-207(d)(1).

(4) Describe its intended best practices for removing unwanted material from the laboratory, including:

(i) For regularly scheduled removals-Develop a regular schedule for identifying and removing unwanted materials from its laboratories, see the required standards at Subsections R315-262-208(a)(1) and (a)(2).

(ii) For removals when maximum volumes are exceeded:

(A) Describe its intended best practices for removing unwanted materials from the laboratory within 10 calendar days when unwanted materials have exceeded their maximum volumes, see the required standards at Subsection R315-262-208(d).

(B) Describe its intended best practices for communicating that unwanted materials have exceeded their maximum volumes.

(5) Describe its intended best practices for making hazardous waste determinations, including specifying the duties of the individuals involved in the process, see the required standards at Subsections R315-262-11(a) through (d) and Sections R315-262-209 through R315-262-212.

(6) Describe its intended best practices for laboratory clean-outs, if the eligible academic entity plans to use the incentives for laboratory clean-outs provided in Section R315-262-213, including:

(i) Procedures for conducting laboratory clean-outs, see the required standards at Subsections R315-262-213(a)(1)

through (3); and

(ii) Procedures for documenting laboratory clean-outs, see the required standards at Subsection R315-262-213(a)(4).

(7) Describe its intended best practices for emergency prevention, including:

(i) Procedures for emergency prevention, notification, and response, appropriate to the hazards in the laboratory; and

(ii) A list of chemicals that the eligible academic entity has, or is likely to have, that become more dangerous when they exceed their expiration date and/or as they degrade; and

(iii) Procedures to safely dispose of chemicals that become more dangerous when they exceed their expiration date and/or as they degrade; and

(iv) Procedures for the timely characterization of unknown chemicals.

(c) An eligible academic entity shall make its Laboratory Management Plan available to laboratory workers, students, or any others at the eligible academic entity who request it.

(d) An eligible academic entity shall review and revise its Laboratory Management Plan, as needed.

R315-262-215. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Unwanted Material that Is Not Solid or Hazardous Waste.

(a) If an unwanted material does not meet the definition of solid waste in Section R315-261-2, it is no longer subject to Sections R315-262-200 through 216 or to Rules R315-260 through 266, 268, or 270.

(b) If an unwanted material does not meet the definition of hazardous waste in Section R315-261-3, it is no longer subject to Sections R315-262-200 through 216 or to Rules R315-260 through 266, 268, or 270, but shall be managed in compliance with any other applicable regulations and/or conditions.

R315-262-216. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Non-Laboratory Hazardous Waste Generated at an Eligible Academic Entity.

An eligible academic entity that generates hazardous waste outside of a laboratory is not eligible to manage that hazardous waste under Sections R315-262-200 through 216; and

(a) Remains subject to the generator requirements of Sections R315-262-11 and R315-262-15 for large quantity generators and small quantity generators, if the hazardous waste is managed in a satellite accumulation area, and all other applicable generator requirements of Rule R315-262, with respect to that hazardous waste; or

(b) Remains subject to the conditional exemption of Section R315-262-14 for very small quantity generators, with respect to that hazardous waste.

R315-262-217. Appendix to Rule R315-262 -- Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and Their Instructions).

U.S. EPA Forms 8700-22 and Manifest Continuation Sheet (EPA Form 8700-22A) found in appendix to 40 CFR 262, 2015 edition, are incorporated and incorporated by reference.

Read all instructions before completing this form.

1. This form has been designed for use on a 12-pitch (elite) typewriter which is also compatible with standard computer printers; a firm point pen may also be used - press down hard.

2. Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to complete this form (FORM 8700-22) and, if necessary, the continuation sheet (FORM 8700-22A) for both inter- and intrastate transportation of hazardous waste.

Manifest 8700-22

The following statement shall be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: 30 minutes for generators, 10 minutes for transporters, and 25 minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing and transmitting the form. Any correspondence regarding the PRA burden statement for the manifest shall be sent to the Director of the Collection Strategies Division in EPA's Office of Information Collection at the following address: U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Do not send the completed form to this address.

I. Instructions for Generators

Manifest 8700-22

The following statement shall be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: 30 minutes for generators, 10 minutes for transporters, and 25 minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing and transmitting the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to: Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, Ariel Rios Building; 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Item 1. Generator's U.S. EPA Identification Number

Enter the generator's U.S. EPA twelve digit identification number, or the State generator identification number if the generator site does not have an EPA identification number.

Item 2. Page 1 of _

Enter the total number of pages used to complete this Manifest (i.e., the first page (EPA Form 8700-22) plus the number of Continuation Sheets (EPA Form 8700-22A), if any).

Item 3. Emergency Response Phone Number

Enter a phone number for which emergency response information can be obtained in the event of an incident during transportation. The emergency response phone number shall:

1. Be the number of the generator or the number of an agency or organization who is capable of and accepts responsibility for providing detailed information about the shipment;

2. Reach a phone that is monitored 24 hours a day at all times the waste is in transportation (including transportation related storage); and

3. Reach someone who is either knowledgeable of the hazardous waste being shipped and has comprehensive emergency response and spill cleanup/incident mitigation information for the material being shipped or has immediate access to a person who has that knowledge and information about the shipment.

Note: Emergency Response phone number information should only be entered in Item 3 when there is one phone number that applies to all the waste materials described in

Item 9b. If a situation (e.g., consolidated shipments) arises where more than one Emergency Response phone number applies to the various wastes listed on the manifest, the phone numbers associated with each specific material should be entered after its description in Item 9b.

Item 4. Manifest Tracking Number

This unique tracking number shall be pre-printed on the manifest by the forms printer.

Item 5. Generator's Mailing Address, Phone Number and Site Address

Enter the name of the generator, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator's telephone number. Note, the telephone number (including area code) should be the normal business number for the generator, or the number where the generator or his authorized agent may be reached to provide instructions in the event the designated and/or alternate (if any) facility rejects some or all of the shipment. Also enter the physical site address from which the shipment originates only if this address is different than the mailing address.

Item 6. Transporter 1 Company Name, and U.S. EPA ID Number

Enter the company name and U.S. EPA ID number of the first transporter who will transport the waste. Vehicle or driver information may not be entered here.

Item 7. Transporter 2 Company Name and U.S. EPA ID Number

If applicable, enter the company name and U.S. EPA ID number of the second transporter who will transport the waste. Vehicle or driver information may not be entered here.

If more than two transporters are needed, use a Continuation Sheet(s) (EPA Form 8700-22A).

Item 8. Designated Facility Name, Site Address, and U.S. EPA ID Number

Enter the company name and site address of the facility designated to receive the waste listed on this manifest. Also enter the facility's phone number and the U.S. EPA twelve digit identification number of the facility.

Item 9. U.S. DOT Description (Including Proper Shipping Name, Hazard Class or Division, Identification Number, and Packing Group)

Item 9a. If the wastes identified in Item 9b consist of both hazardous and nonhazardous materials, then identify the hazardous materials by entering an "X" in this Item next to the corresponding hazardous material identified in Item 9b.

If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person shall acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

Item 9b. Enter the U.S. DOT Proper Shipping Name, Hazard Class or Division, Identification Number (UN/NA) and Packing Group for each waste as identified in 49 CFR 172. Include technical name(s) and reportable quantity references, if applicable.

Note: If additional space is needed for waste descriptions, enter these additional descriptions in Item 27 on the Continuation Sheet (EPA Form 8700-22A). Also, if more than one Emergency Response phone number applies to the various wastes described in either Item 9b or Item 27, enter applicable Emergency Response phone numbers immediately following the shipping descriptions for those Items.

Item 10. Containers (Number and Type)

Enter the number of containers for each waste and the appropriate abbreviation from Table I (below) for the type of container.

TABLE I

Types of Containers

BA = Burlap, cloth, paper, or plastic bags.
CF = Fiber or plastic boxes, cartons, cases.
CM = Metal boxes, cartons, cases (including roll-offs).
CW = Wooden boxes, cartons, cases.
CY = Cylinders.
DF = Fiberboard or plastic drums, barrels, kegs.
DM = Metal drums, barrels, kegs.
DT = Dump truck.
DW = Wooden drums, barrels, kegs.
HG = Hopper or gondola cars.
TC = Tank cars.
TP = Portable tanks.
TT = Cargo tanks (tank trucks).

Item 11. Total Quantity

Enter, in designated boxes, the total quantity of waste. Round partial units to the nearest whole unit, and do not enter decimals or fractions. To the extent practical, report quantities using appropriate units of measure that will allow you to report quantities with precision. Waste quantities entered should be based on actual measurements or reasonably accurate estimates of actual quantities shipped. Container capacities are not acceptable as estimates.

Item 12. Units of Measure (Weight/Volume)

Enter, in designated boxes, the appropriate abbreviation from Table II (below) for the unit of measure.

TABLE II

Units of Measure

G = Gallons (liquids only).
K = Kilograms.
L = Liters (liquids only).
M = Metric Tons (1000 kilograms).
N = Cubic Meters.
P = Pounds.
T = Tons (2000 pounds).
Y = Cubic Yards.

Note: Tons, Metric Tons, Cubic Meters, and Cubic Yards should only be reported in connection with very large bulk shipments, such as rail cars, tank trucks, or barges.

Item 13. Waste Codes

Enter up to six federal and state waste codes to describe each waste stream identified in Item 9b. State waste codes that are not redundant with federal codes shall be entered here, in addition to the federal waste codes which are most representative of the properties of the waste.

Item 14. Special Handling Instructions and Additional Information.

1. Generators may enter any special handling or shipment-specific information necessary for the proper management or tracking of the materials under the generator's or other handler's business processes, such as waste profile numbers, container codes, bar codes, or response guide numbers. Generators also may use this space to enter additional descriptive information about their shipped materials, such as chemical names, constituent percentages, physical state, or specific gravity of wastes identified with volume units in Item 12.

2. This space may be used to record limited types of federally required information for which there is no specific space provided on the manifest, including any alternate facility designations; the manifest tracking number of the original manifest for rejected wastes and residues that are re-shipped under a second manifest; and the specification of PCB waste descriptions and PCB out-of-service dates required under 40 CFR 761.207. Generators, however, cannot be required to enter information in this space to meet state regulatory requirements.

Item 15. Generator's/Offeror's Certifications

1. The generator shall read, sign, and date the waste minimization certification statement. In signing the waste minimization certification statement, those generators who

have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of RCRA are also certifying that they have complied with the waste minimization requirements. The Generator's Certification also contains the required attestation that the shipment has been properly prepared and is in proper condition for transportation (the shipper's certification). The content of the shipper's certification statement is as follows: "I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked, and labeled/placarded, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent." When a party other than the generator prepares the shipment for transportation, this party may also sign the shipper's certification statement as the offeror of the shipment.

2. Generator or Offeror personnel may preprint the words, "On behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator/offeror certification, to indicate that the individual signs as the employee or agent of the named principal.

Note: All of the above information except the handwritten signature required in Item 15 may be pre-printed.

II. Instructions for International Shipment Block

Item 16. International Shipments

For export shipments, the primary exporter shall check the export box, and enter the point of exit (city and state) from the United States. For import shipments, the importer shall check the import box and enter the point of entry (city and state) into the United States.

III. Instructions for Transporters

Item 17. Transporters' Acknowledgments of Receipt

Enter the name of the person accepting the waste on behalf of the first transporter. That person shall acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt. Only one signature per transportation company is required. Signatures are not required to track the movement of wastes in and out of transfer facilities, unless there is a change of custody between transporters.

If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person shall acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

Note: Transporters carrying imports, who are acting as importers, may have responsibilities to enter information in the International Shipments Block. Transporters carrying exports may also have responsibilities to enter information in the International Shipments Block. See above instructions for Item 16.

IV. Instructions for Owners and Operators of Treatment, Storage, and Disposal Facilities

Item 18. Discrepancy

Item 18a. Discrepancy Indication Space

1. The authorized representative of the designated (or alternate) facility's owner or operator shall note in this space any discrepancies between the waste described on the Manifest and the waste actually received at the facility. Manifest discrepancies are: significant differences (as defined by Subsections R315-264-72(b) and 40 CFR 265.72(b)), which is incorporated by reference in Section R315-265-1, between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives, rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept, or container residues, which are residues that exceed the quantity limits for "empty" containers set forth in Subsection R315-261-7(b).

2. For rejected loads and residues (Subsections R315-264-72(d), (e), and (f), or CFR 265.72(d), (e), or (f)), which are incorporated by reference in Section R315-265-1, check the appropriate box if the shipment is a rejected load (i.e., rejected by the designated and/or alternate facility and is sent to an alternate facility or returned to the generator) or a regulated residue that cannot be removed from a container. Enter the reason for the rejection or the inability to remove the residue and a description of the waste. Also, reference the manifest tracking number for any additional manifests being used to track the rejected waste or residue shipment on the original manifest. Indicate the original manifest tracking number in Item 14, the Special Handling Block and Additional Information Block of the additional manifests.

3. Owners or operators of facilities located in unauthorized States (i.e., states in which the U.S. EPA administers the hazardous waste management program) who cannot resolve significant differences in quantity or type within 15 days of receiving the waste shall submit to their Regional Administrator a letter with a copy of the Manifest at issue describing the discrepancy and attempts to reconcile it (Subsections R315-264-72(c) and CFR 265.72(c), which is incorporated by reference in Section R315-265-1).

4. Owners or operators of facilities located in authorized States (i.e., those States that have received authorization from the U.S. EPA to administer the hazardous waste management program) should contact their State agency for information on where to report discrepancies involving "significant differences" to state officials.

Item 18b. Alternate Facility (or Generator) for Receipt of Full Load Rejections

Enter the name, address, phone number, and EPA Identification Number of the Alternate Facility which the rejecting TSDF has designated, after consulting with the generator, to receive a fully rejected waste shipment. In the event that a fully rejected shipment is being returned to the generator, the rejecting TSDF may enter the generator's site information in this space. This field is not to be used to forward partially rejected loads or residue waste shipments.

Item 18c. Alternate Facility (or Generator) Signature

The authorized representative of the alternate facility (or the generator in the event of a returned shipment) shall sign and date this field of the form to acknowledge receipt of the fully rejected wastes or residues identified by the initial TSDF.

Item 19. Hazardous Waste Report Management Method Codes

Enter the most appropriate Hazardous Waste Report Management Method code for each waste listed in Item 9. The Hazardous Waste Report Management Method code is to be entered by the first treatment, storage, or disposal facility (TSDF) that receives the waste and is the code that best describes the way in which the waste is to be managed when received by the TSDF.

Item 20. Designated Facility Owner or Operator Certification of Receipt (Except As Noted in Item 18a)

Enter the name of the person receiving the waste on behalf of the owner or operator of the facility. That person shall acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date of receipt or rejection where indicated. Since the Facility Certification acknowledges receipt of the waste except as noted in the Discrepancy Space in Item 18a, the certification should be signed for both waste receipt and waste rejection, with the rejection being noted and described in the space provided in Item 18a. Fully rejected wastes may be forwarded or returned

using Item 18b after consultation with the generator. Enter the name of the person accepting the waste on behalf of the owner or operator of the alternate facility or the original generator. That person shall acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date they received or rejected the waste in Item 18c. Partially rejected wastes and residues shall be re-shipped under a new manifest, to be initiated and signed by the rejecting TSDF as offeror of the shipment.

Instructions -- Continuation Sheet, U.S. EPA Form 8700-22A

Read all instructions before completing this form. This form has been designed for use on a 12-pitch (elite) typewriter; a firm point pen may also be used---press down hard.

This form shall be used as a continuation sheet to U.S. EPA Form 8700-22 if:

More than two transporters are to be used to transport the waste; or

More space is required for the U.S. DOT descriptions and related information in Item 9 of U.S. EPA Form 8700-22.

Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, or disposal facilities to use the uniform hazardous waste manifest (EPA Form 8700-22) and, if necessary, this continuation sheet (EPA Form 8700-22A) for both interstate and intrastate transportation.

Item 21. Generator's ID Number

Enter the generator's U.S. EPA twelve digit identification number or, the State generator identification number if the generator site does not have an EPA identification number.

Item 22. Page _---

Enter the page number of this Continuation Sheet.

Item 23. Manifest Tracking Number

Enter the Manifest Tracking number from Item 4 of the Manifest form to which this continuation sheet is attached.

Item 24. Generator's Name---

Enter the generator's name as it appears in Item 5 on the first page of the Manifest.

Item 25. Transporter---Company Name

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 3 Company Name. Also enter the U.S. EPA twelve digit identification number of the transporter described in Item 25.

Item 26. Transporter---Company Name

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 4 Company Name. Each Continuation Sheet can record the names of two additional transporters. Also enter the U.S. EPA twelve digit identification number of the transporter named in Item 26.

Item 27. U.S. D.O.T. Description Including Proper Shipping Name, Hazardous Class, and ID Number (UN/NA)

For each row enter a sequential number under Item 27b that corresponds to the order of waste codes from one continuation sheet to the next, to reflect the total number of wastes being shipped. Refer to instructions for Item 9 of the manifest for the information to be entered.

Item 28. Containers (No. And Type)

Refer to the instructions for Item 10 of the manifest for information to be entered.

Item 29. Total Quantity

Refer to the instructions for Item 11 of the manifest form.

Item 30. Units of Measure (Weight/Volume)

Refer to the instructions for Item 12 of the manifest form.

Item 31. Waste Codes

Refer to the instructions for Item 13 of the manifest form.

Item 32. Special Handling Instructions and Additional Information

Refer to the instructions for Item 14 of the manifest form.

Transporters

Item 33. Transporter - Acknowledgment of Receipt of Materials

Enter the same number of the Transporter as identified in Item 25. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 25. That person shall acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

Item 34. Transporter - Acknowledgment of Receipt of Materials

Enter the same number of the Transporter as identified in Item 26. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 26. That person shall acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

Owner and Operators of Treatment, Storage, or Disposal Facilities

Item 35. Discrepancy Indication Space

Refer to Item 18. This space may be used to more fully describe information on discrepancies identified in Item 18a of the manifest form.

Item 36. Hazardous Waste Report Management Method Codes

For each field here, enter the sequential number that corresponds to the waste materials described under Item 27, and enter the appropriate process code that describes how the materials will be processed when received. If additional continuation sheets are attached, continue numbering the waste materials and process code fields sequentially, and enter on each sheet the process codes corresponding to the waste materials identified on that sheet.

R315-262-230. Alternative Standards for Episodic Generation -- Applicability.

Sections R315-262-230 through 233 are applicable to very small quantity generators and small quantity generators as defined in Section R315-260-10.

R315-262-231. Alternative Standards for Episodic Generation -- Definitions for Sections R315-262-230 Through 233.

(a) "Episodic event" means an activity or activities, either planned or unplanned, that does not normally occur during generator operations, resulting in an increase in the generation of hazardous wastes that exceeds the calendar month quantity limits for the generator's usual category.

(b) "Planned episodic event" means an episodic event that the generator planned and prepared for, including regular maintenance, tank cleanouts, short-term projects, and removal of excess chemical inventory

(c) "Unplanned episodic event" means an episodic event that the generator did not plan or reasonably did not expect to occur, including production process upsets, product recalls, accidental spills, or "acts of nature," such as tornado, hurricane, or flood.

R315-262-232. Alternative Standards for Episodic

Generation -- Conditions for a Generator Managing Hazardous Waste from an Episodic Event.

(a) Very small quantity generator. A very small quantity generator may maintain its existing generator category for hazardous waste generated during an episodic event provided that the generator complies with the following conditions:

(1) The very small quantity generator is limited to one episodic event per calendar year, unless a petition is granted under Section R315-262-233;

(2) Notification. The very small quantity generator shall notify the Director no later than thirty (30) calendar days prior to initiating a planned episodic event using EPA Form 8700-12. In the event of an unplanned episodic event, the generator shall notify the Director within 72 hours of the unplanned event via phone, email, or fax and subsequently submit EPA Form 8700-12. The generator shall include the start date and end date of the episodic event, the reason(s) for the event, types and estimated quantities of hazardous waste expected to be generated as a result of the episodic event, and shall identify a facility contact and emergency coordinator with 24-hour telephone access to discuss the notification submittal or respond to an emergency in compliance with Subsection R315-262-16(b)(9)(i);

(3) EPA ID Number. The very small quantity generator shall have an EPA identification number or obtain an EPA identification number using EPA Form 8700-12;

(4) Accumulation. A very small quantity generator is prohibited from accumulating hazardous waste generated from an episodic event on drip pads and in containment buildings. When accumulating hazardous waste in containers and tanks the following conditions apply:

(i) Containers. A very small quantity generator accumulating in containers shall mark or label its containers with the following:

(A) The words "Episodic Hazardous Waste";

(B) An indication of the hazards of the contents, examples include:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704; and

(C) The date upon which the episodic event began, clearly visible for inspection on each container.

(ii) Tanks. A very small quantity generator accumulating episodic hazardous waste in tanks shall do the following:

(A) Mark or label the tank with the words "Episodic Hazardous Waste";

(B) Mark or label its tanks with an indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704;

(C) Use inventory logs, monitoring equipment or other records to identify the date upon which each episodic event begins; and

(D) Keep inventory logs or records with the above information on site and readily available for inspection.

(iii) Hazardous waste shall be managed in a manner that minimizes the possibility of a fire, explosion, or release of hazardous waste or hazardous waste constituents to the air, soil, or water;

(A) Containers shall be in good condition and compatible with the hazardous waste being accumulated therein. Containers shall be kept closed except to add or remove waste; and

(B) Tanks shall be in good condition and compatible with the hazardous waste accumulated therein. Tanks shall have procedures in place to prevent the overflow (e.g., be equipped with a means to stop inflow with systems such as a waste feed cutoff system or bypass system to a standby tank when hazardous waste is continuously fed into the tank). Tanks shall be inspected at least once each operating day to ensure all applicable discharge control equipment, such as waste feed cutoff systems, bypass systems, and drainage systems are in good working order and to ensure the tank is operated according to its design by reviewing the data gathered from monitoring equipment such as pressure and temperature gauges from the inspection.

(5) The very small quantity generator shall comply with the hazardous waste manifest provisions of Sections R315-262-20 through 27 when it sends its episodic event hazardous waste off site to a designated facility, as defined in Section R315-260-10.

(6) The very small quantity generator has up to sixty (60) calendar days from the start of the episodic event to manifest and send its hazardous waste generated from the episodic event to a designated facility, as defined in Section R315-260-10.

(7) Very small quantity generators shall maintain the following records for three (3) years from the end date of the episodic event:

(i) Beginning and end dates of the episodic event;

(ii) A description of the episodic event;

(iii) A description of the types and quantities of hazardous wastes generated during the event;

(iv) A description of how the hazardous waste was managed as well as the name of the designated facility that received the hazardous waste;

(v) Name(s) of hazardous waste transporters; and

(vi) An approval letter from the Director if the generator petitioned to conduct one additional episodic event per calendar year.

(b) Small quantity generators. A small quantity generator may maintain its existing generator category during an episodic event provided that the generator complies with the following conditions:

(1) The small quantity generator is limited to one episodic event per calendar year unless a petition is granted under Section R315-262-233;

(2) Notification. The small quantity generator shall notify the Director no later than thirty (30) calendar days prior to initiating a planned episodic event using EPA Form 8700-12. In the event of an unplanned episodic event, the small quantity generator shall notify the Director within 72 hours of the unplanned event via phone, email, or fax, and subsequently submit EPA Form 8700-12. The small quantity generator shall include the start date and end date of the episodic event and the reason(s) for the event, types and estimated quantities of hazardous wastes expected to be generated as a result of the episodic event, and identify a facility contact and emergency coordinator with 24-hour telephone access to discuss the notification submittal or respond to emergency;

(3) EPA ID Number. The small quantity generator shall have an EPA identification number or obtain an EPA identification number using EPA Form 8700-12; and

(4) Accumulation by small quantity generators. A small quantity generator is prohibited from accumulating hazardous wastes generated from an episodic event waste on drip pads and in containment buildings. When accumulating hazardous waste generated from an episodic event in containers and tanks, the following conditions apply:

(i) Containers. A small quantity generator accumulating episodic hazardous waste in containers shall meet the standards at Subsection R315-262-16(b)(2) and shall mark or label its containers with the following:

(A) The words "Episodic Hazardous Waste";

(B) An indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704; and

(C) The date upon which the episodic event began, clearly visible for inspection on each container.

(ii) Tanks. A small quantity generator accumulating episodic hazardous waste in tanks shall meet the standards at Subsection R315-262-16(b)(3) and shall do the following:

(A) Mark or label its tank with the words "Episodic Hazardous Waste";

(B) Mark or label its tanks with an indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704;

(C) Use inventory logs, monitoring equipment or other records to identify the date upon which each period of accumulation begins and ends; and

(D) Keep inventory logs or records with the above information on site and available for inspection.

(5) The small quantity generator shall treat hazardous waste generated from an episodic event on site or manifest and ship such hazardous waste off site to a designated facility (as defined by Section R315-260-10) within sixty (60) calendar days from the start of the episodic event.

(6) The small quantity generator shall maintain the following records for three (3) years from the end date of the episodic event:

(i) Beginning and end dates of the episodic event;

(ii) A description of the episodic event;

(iii) A description of the types and quantities of hazardous wastes generated during the event;

(iv) A description of how the hazardous waste was managed as well as the name of the designated facility (as defined by Section R315-260-10) that received the hazardous waste;

(v) Name(s) of hazardous waste transporters; and

(vi) An approval letter from the Director if the generator petitioned to conduct one additional episodic event per calendar year.

R315-262-233 Alternative Standards for Episodic Generation -- Petition to Manage One Additional Episodic Event Per Calendar Year.

(a) A generator may petition the Director for a second episodic event in a calendar year without impacting its generator category under the following conditions:

(1) If a very small quantity generator or small quantity generator has already held a planned episodic event in a calendar year, the generator may petition the Director for an additional unplanned episodic event in that calendar year within 72 hours of the unplanned event.

(2) If a very small quantity generator or small quantity generator has already held an unplanned episodic event in a calendar year, the generator may petition the Director for an additional planned episodic event in that calendar year.

(b) The petition shall include the following:

(1) The reason(s) why an additional episodic event is needed and the nature of the episodic event;

(2) The estimated amount of hazardous waste to be managed from the event;

(3) How the hazardous waste is to be managed;

(4) The estimated length of time needed to complete management of the hazardous waste generated from the episodic event - not to exceed sixty (60) days; and

(5) Information regarding the previous episodic event managed by the generator, including the nature of the event, whether it was a planned or unplanned event, and how the generator complied with the conditions.

(c) The petition shall be made to the Director in writing, either on paper or electronically.

(d) The generator shall retain written approval in its records for three (3) years from the date the episodic event ended.

R315-262-250. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Applicability.

The regulations of Sections R315-262-250 through 265 apply to those areas of a large quantity generator where hazardous waste is generated or accumulated on site.

R315-262-251. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Maintenance and Operation of Facility.

A large quantity generator shall maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

R315-262-252. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Required Equipment.

All areas deemed applicable by Section R315-262-250 shall be equipped with the items in Subsections R315-262-252(a) through (d) (unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below or the actual hazardous waste generation or accumulation area does not lend itself for safety reasons to have a particular kind of equipment specified below). A large quantity generator may determine the most appropriate locations within its facility to locate equipment necessary to prepare for and respond to emergencies:

(a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(b) 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;

(c) 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

(d) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

R315-262-253. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Testing and Maintenance of Equipment.

All 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.

R315-262-254. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Access to Communications or Alarm System.

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access (e.g., direct or unimpeded 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 under Section R315-262-252.

(b) In the event there is just one employee on the premises while the facility is operating, the employee shall have immediate access, e.g., direct or unimpeded 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 under Section R315-262-252.

R315-262-255. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Required Aisle Space.

The large quantity generator 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.

R315-262-256. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Arrangements with Local Authorities.

(a) The large quantity generator shall attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility. Arrangements may be made with the Local Emergency Planning Committee, if it is determined to be the appropriate organization with which to make arrangements.

(1) A large quantity generator attempting to make arrangements with its local fire department shall determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals.

(2) As part of this coordination, the large quantity generator shall attempt to make arrangements, as necessary, to familiarize the above organizations with the layout of the facility, the properties of the hazardous waste handled at the facility and associated hazards, places where personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes as well as the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(3) Where more than one police or fire department might respond to an emergency, the large quantity generator shall attempt to make arrangements designating primary emergency authority to a specific fire or police department, and arrangements with any others to provide support to the primary emergency authority.

(b) The large quantity generator shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This documentation shall include documentation in the operating record that either confirms such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made.

(c) A facility possessing 24-hour response capabilities may seek a waiver from the State Fire Marshal or locality as far as needing to make arrangements with the local fire department as well as any other organization necessary to respond to an emergency, provided that the waiver is documented in the operating record.

R315-262-260. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Purpose and Implementation of Contingency Plan.

(a) A large quantity generator 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 hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

R315-262-261. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Content of Contingency Plan.

(a) The contingency plan shall describe the actions facility personnel shall take to comply with Sections R315-262-260 and 265 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(b) If the generator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with some other emergency or contingency plan, it need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the standards of Rule R315-262. The generator may develop one contingency plan that meets all regulatory standards. The plan should be based on the National Response Team's Integrated Contingency Plan Guidance, "One Plan."

(c) The plan shall describe arrangements agreed to with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, local hospitals or, if applicable, the Local Emergency Planning Committee, pursuant to Section R315-262-256.

(d) The plan shall list names and emergency telephone numbers of all persons qualified to act as emergency coordinator (see Section R315-262-264), and 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. In situations where the generator facility has an emergency coordinator continuously on duty because it operates 24 hours per day, every day of the year, the plan may list the staffed position, e.g., operations manager, shift coordinator, shift operations supervisor, as well as an emergency telephone number that can be guaranteed to be answered at all times.

(e) 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.

(f) The plan shall include an evacuation plan for generator 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 hazardous waste or fires.

R315-262-262. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Copies of Contingency Plan.

A copy of the contingency plan and all revisions to the plan shall be maintained at the large quantity generator and:

(a) The large quantity generator shall submit a copy of the contingency plan and all revisions to all local emergency responders (i.e., police departments, fire departments, hospitals and State and local emergency response teams that may be called upon to provide emergency services). This document may also be submitted to the Local Emergency Planning Committee, as appropriate.

(b) A large quantity generator that first becomes subject to these provisions after May 30, 2017 or a large quantity generator that is otherwise amending its contingency plan shall at that time submit a quick reference guide of the contingency plan to the local emergency responders identified at Subsection R315-262-262(a) or, as appropriate, the Local Emergency Planning Committee. The quick reference guide shall include the following elements:

(1) The types/names of hazardous wastes in layman's terms and the associated hazard associated with each hazardous waste present at any one time, e.g., toxic paint wastes, spent ignitable solvent, corrosive acid;

(2) The estimated maximum amount of each hazardous waste that may be present at any one time;

(3) The identification of any hazardous wastes where exposure would require unique or special treatment by medical or hospital staff;

(4) A map of the facility showing where hazardous wastes are generated, accumulated and treated and routes for accessing these wastes;

(5) A street map of the facility in relation to surrounding businesses, schools and residential areas to understand how best to get to the facility and also evacuate citizens and workers;

(6) The locations of water supply, e.g., fire hydrant and its flow rate;

(7) The identification of on-site notification systems, e.g., a fire alarm that rings off site, smoke alarms; and

(8) The name of the emergency coordinator(s) and 7/24-hour emergency telephone number(s) or, in the case of a facility where an emergency coordinator is continuously on duty, the emergency telephone number for the emergency coordinator.

(c) Generators shall update, if necessary, their quick reference guides, whenever the contingency plan is amended and submit these documents to the local emergency responders identified at Subsection R315-262-262(a) or, as appropriate, the Local Emergency Planning Committee.

R315-262-263. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Amendment of Contingency Plan.

The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(a) Applicable regulations are revised;

(b) The plan fails in an emergency;

(c) The generator facility changes--in its design, construction, operation, maintenance, or other circumstances--in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;

(d) The list of emergency coordinators changes; or

(e) The list of emergency equipment changes.

R315-262-264. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Emergency Coordinator.

At all times, there shall be at least one employee either on the generator's 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 and implementing the necessary emergency procedures outlined in Section R315-262-265. Although responsibilities may vary depending on factors such as type and variety of hazardous waste(s) handled by the facility, as well as type and complexity of the facility, this emergency coordinator shall be thoroughly familiar with all aspects of the generator's contingency plan, all operations and activities at the facility, the location and characteristics of hazardous waste handled, the location of all records within the facility, and the facility's layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

R315-262-265. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Emergency Procedures.

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or designee when the emergency coordinator is on call) shall immediately:

(1) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(2) Notify appropriate state or local agencies with designated response roles if their help is needed.

(b) 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 the facility records or manifests and, if necessary, by chemical analysis.

(c) Concurrently, the emergency coordinator shall assess possible hazards to human health or 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.

(d) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the

facility, the emergency coordinator shall report the findings as follows:

(1) If the assessment indicates that evacuation of local areas may be advisable, the emergency coordinator shall immediately notify appropriate local authorities. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and

(2) The emergency coordinator shall immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center, using their 24-hour toll free number 800-424-8802, and the Division of Waste Management and Radiation Control at 801-536-0200 or after hours at 801-536-4123. The report shall include:

(i) Name and telephone number of reporter;

(ii) Name and address of the generator;

(iii) Time and type of incident (e.g., release, fire);

(iv) Name and quantity of material(s) involved, to the extent known;

(v) The extent of injuries, if any; and

(vi) The possible hazards to human health, or the environment, outside the facility.

(e) 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 hazardous waste at the generator's facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing released hazardous waste, and removing or isolating containers.

(f) If the generator stops operations 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.

(g) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the generator can demonstrate, in accordance with Subsections R315-261-3(c) or (d), that the recovered material is not a hazardous waste, then it is a newly generated hazardous waste that shall be managed in accordance with all the applicable requirements and conditions for exemption in Rules R315-262, 263, and 265.

(h) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(1) No hazardous waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(i) The generator 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 generator shall submit a written report on the incident to the Director. The report shall include:

(I) Name, address, and telephone number of the generator;

(II) Date, time, and type of incident, e.g., fire, explosion;

(III) Name and quantity of material(s) involved;

(IV) The extent of injuries, if any;

(V) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(VI) Estimated quantity and disposition of recovered material that resulted from the incident.

KEY: hazardous waste, generators

August 31, 2017 **19-6-105**
19-6-106

R317. Environmental Quality, Water Quality.
R317-1. Definitions and General Requirements.
R317-1-1. Definitions.

Note that some definitions are repeated from statute to provide clarity to readers.

"Assimilative Capacity" means the difference between the numeric criteria and the concentration in the waterbody of interest where the concentration is less than the criterion.

"Biological assessment" means an evaluation of the biological condition of a water body using biological surveys and other direct measurements of composition or condition of the resident living organisms.

"Biological criteria" means numeric values or narrative descriptions that are established to protect the biological condition of the aquatic life inhabiting waters that have been given a certain designated aquatic life use.

"Board" means the Utah Water Quality Board.

"BOD" means 5-day, 20 degrees C. biochemical oxygen demand.

"Body Politic" means the State or its agencies or any political subdivision of the State to include a county, city, town, improvement district, taxing district or any other governmental subdivision or public corporation of the State.

"Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, a wastewater disposal system or other point of disposal. It is synonymous with "house sewer".

"CBOD" means 5-day, 20 degrees C., carbonaceous biochemical oxygen demand.

"Challenging Party" means a Person who has or is seeking a permit in accordance with Title 19, Chapter 5, the Utah Water Quality Act and chooses to use the independent peer review process to challenge a Proposal as defined in Subsection 19-5-105.3(1)(a).

"COD" means chemical oxygen demand.

"Conflict of Interest" means a Person who has any financial or other interest which has the potential to negatively affect services to the Division or Challenging Party because it could impair the individual's objectivity or it could create an unfair competitive advantage for any Person or organization.

"Deep well" means a drinking water supply source which complies with all the applicable provisions of the State of Utah Public Drinking Water rules.

"Digested sludge" means sludge in which the volatile solids content has been reduced by at least 38% using a suitable biological treatment process.

"Director" means the Director of the Division of Water Quality.

"Division" means the Utah State Division of Water Quality.

"Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, and with such ground water, surface water, and storm water as may be present. It is synonymous with the term "sewage".

"Effluent" means the liquid discharge from any unit of a wastewater treatment works, including a septic tank.

"Existing Uses" means those uses actually attained in a water body on or after November 28, 1975, whether or not they are included in the water quality standards.

"Expert" means a person with technical expertise, knowledge, or skills in a subject matter of relevance to a specific water quality investigation, HISA, or Proposal including persons from other regulatory agencies, academia, or the private sector.

"Human-induced stressor" means perturbations directly or indirectly caused by humans that alter the components, patterns, and/or processes of an ecosystem.

"Human pathogens" means specific causative agents of disease in humans such as bacteria or viruses.

"Highly Influential Scientific Assessment (HISA)" means a Scientific Assessment developed by the Division or an external Person, that has material relevance to a decision by the Division, and the Director determines could have a significant financial impact on either the public or private sector or is novel, controversial, or precedent-setting, and is not a new or renewed permit issued to a Person.

"Independent Peer Review" means scientific review conducted on request from a Challenging Party in accordance with Section 19-5-105.3 and is a subcategory of Independent Scientific Review.

"Independent Scientific Review" means any technical or scientific review conducted by Experts in an area related to the material being reviewed who were not directly or indirectly involved with the development of the material to be reviewed and who do not have a real or perceived conflict of interest. When an Independent Peer Review is conducted, the conditions in Subsection 19-5-105.3(5) shall apply.

"Industrial wastes" means the liquid wastes from industrial processes as distinct from wastes derived principally from dwellings, business buildings, institutions and the like. It is synonymous with the term "industrial wastewater".

"Influent" means the total wastewater flow entering a wastewater treatment works.

"Great Salt Lake impounded wetland" means wetland ponds which have been formed by dikes or berms to control and retain the flow of freshwater sources in the immediate proximity of Great Salt Lake.

"Large underground wastewater disposal system" means the same type of device as an onsite wastewater system except that it is designed to handle more than 5,000 gallons per day of domestic wastewater, or wastewater that originates in multiple dwellings, commercial establishments, recreational facilities, schools, or any other underground wastewater disposal system not covered under the definition of an onsite wastewater system. The Division controls the installation of such systems.

"Onsite wastewater system" means an underground wastewater disposal system for domestic wastewater which is designed for a capacity of 5,000 gallons per day or less and is not designed to serve multiple dwelling units which are owned by separate owners except condominiums and twin homes. It usually consists of a building sewer, a septic tank and an absorption system.

"Operating Permit" is a State issued permit issued to any wastewater treatment works covered under Rules R317-3 or R317-5 with the following exceptions:

A. Any wastewater treatment permitted under Ground Water Quality Protection Rule R317-6.

B. Any wastewater treatment permitted under Underground Injection Control (UIC) Program Rule R317-7.

C. Any wastewater treatment permitted under Utah Pollutant Discharge Elimination System (UPDES) Rule R317-8.

D. Any wastewater treatment permitted under Approvals and Permits for a Water Reuse Project Rule R317-13.

E. Any wastewater treatment permitted by a Local Health Department under Onsite Wastewater Systems Rule R317-4.

"Person" means any individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. "Point source" means any discernible, confined and discrete conveyance including but

not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flow from irrigated agriculture.

"Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

"Proposal" means any science-based initiative proposed by the division on or after January 1, 2016, that would financially impact a Challenging Party and that would:

A. change water quality standards;

B. develop or modify total maximum daily load requirements;

C. modify wasteloads or other regulatory requirements for permits; or

D. change rules or other regulatory guidance. A Proposal is not an individual permit issued to a Person, nor is it a technology based limit applied in accordance with Effluent limitations, 33 U.S.C. Sec. 1311, National pollutant discharge elimination system, 33 U.S.C. Sec. 1342, and Information and guidelines, 33 U.S.C. Sec. 1314.

"Regulatory requirements" for permits means the methods or policies used by the Division to derive permit limits such as wasteload analyses, reasonable potential determinations, whole effluent toxicity policy, interim permitting guidance, antidegradation reviews, or Technology Based Nutrient Effluent Limit requirements.

"Scientific Assessment" means an evaluation of a body of credible scientific or technical knowledge that synthesizes scientific literature, data analysis and interpretation, and models, and includes any assumptions used to bridge uncertainties in the available information.

"Scientific basis" means empirical data or other scientific findings, conclusions, or assumptions used as the justification for a rule, regulatory guidance, or a regulatory tool.

"Scientifically necessary to protect the designated beneficial uses of a waterbody" as referenced in Subsection 19-5-105.3(8) means a Technology Based Nutrient Effluent Limit that under current and future growth projections, will:

A. prevent circumstances that would cause or contribute to an impairment of any designated or existing use in the receiving water or downstream water bodies based on Utah's water quality standards, Section R317-2-7; or

B. improve water quality conditions that are causing or contributing to any existing impairment in the receiving water or downstream water bodies, as defined by Utah's water quality standards, Section R317-2-7.

"Sewage" is synonymous with the term "domestic wastewater".

"Shallow well" means a well providing a source of drinking water which does not meet the requirements of a "deep well".

"Sludge" means the accumulation of solids which have settled from wastewater. As initially accumulated, and prior to treatment, it is known as "raw sludge".

"SS" means suspended solids.

"Technology Based Nutrient Effluent Limit" means maximum nutrient limitations based on the availability of technology to achieve the limitations, rather than based on a water quality standard or a total maximum daily load.

Total Maximum Daily Load (TMDL) means the maximum amount of a particular pollutant that a waterbody can receive and still meet state water quality standards, and an allocation of that amount to the pollutant's sources.

"Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing or holding wastes. (Section 19-5-102).

"TSS" means total suspended solids.

"Underground Wastewater Disposal System" means a system for underground disposal of domestic wastewater. It includes onsite wastewater systems and large underground wastewater disposal systems.

"Use Attainability Analysis" means a structured Scientific Assessment of the factors affecting the attainment of the uses specified in Section R317-2-6. The factors to be considered in such an analysis include the physical, chemical, biological, and economic use removal criteria as described in 40 CFR 131.10(g) (1-6).

"Wastes" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (Section 19-5-102).

"Wastewater" means sewage, industrial waste or other liquid substances which might cause pollution of waters of the state. Intercepted ground water which is uncontaminated by wastes is not included.

"Waters of the state" means all streams, lakes, ponds, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition (Section 19-5-102).

"Water Quality Based Effluent Limit (WQBEL)" means an effluent limitation that has been determined necessary to ensure that water quality standards in a receiving body of water will not be violated.

R317-1-2. General Requirements.

2.1 Water Pollution Prohibited. No person shall discharge wastewater or deposit wastes or other substances in violation of the requirements of these rules.

2.2 Construction Permit. No person shall make or construct any device for treatment or discharge of wastewater (including storm sewers) without first receiving a permit to do so from the Director or its authorized representative, except as provided herein.

A. Body Politic Required. A permit for construction of a new treatment works or a sewerage system, or modifications to an existing treatment works or sewerage system for multiple units under separate ownership will be issued only if the treatment works or sewerage system are under the sponsorship of a body politic as defined in R317-1-1.

B. Submission of Plans. Any person desiring a permit shall submit complete plans, specifications, and other pertinent documents covering the proposed construction to the Director for review. Liquid waste storage facilities at animal feeding operations must be designed and constructed in accordance with Table 2a - Criteria for Siting, Investigation, and Design of Liquid Waste Storage Facilities with a water depth greater than 2 feet; Table 2b - Criteria for Siting, Investigation, and Design of Liquid Waste Storage Facilities with a water depth of 2 feet or less; and Table 2c - Criteria for runoff ponds with a water depth of 2 feet of less

and a storage period less than 90 days annually, contained in the U.S.D.A. Natural Resource Conservation Service (NRCS) Conservation Practice Standard, Waste Storage Facility, Code 313, dated August 2006. This rule incorporates by reference Tables 2a, 2b, and 2c in the August 2006 U.S.D.A. NRCS Conservation Practice Standard, Waste Storage Facility, Code 313.

C. Review of Plans. The Division shall review said plans and specifications as to their adequacy of design for the intended purpose and shall require such changes as are found necessary to assure compliance with pertinent parts of these rules.

D. Approval of Plans. Issuance of a construction permit shall be construed as approval of plans for the purposes of authorizing release of federal or state funds allocated for planning or construction purposes.

E. Permit Expiration. Construction permits shall expire one year after date of issuance unless substantial and continuous construction is under way. Upon application, construction permits may be extended on an individual basis provided application for such extension is made prior to the permit expiration date.

F. Exceptions.

1. Wastewater facilities that discharge to an existing sewer system and serve only units that are under single ownership, or serve multiple units under separate ownership where the wastewater facilities are under the sponsorship of the public sewer system to which they discharge. This exception does not apply to pumping stations having the installed capacity in excess of 1 million gallons per day (3,785 cubic meters per day).

2. Onsite Wastewater Disposal Systems. Construction plans and specifications for onsite wastewater disposal systems shall be submitted to the local health authority having jurisdiction and need not be submitted to the Division. Such devices, in any case, shall be constructed in accordance with rules for onsite wastewater disposal systems adopted by the Water Quality Board. Compliance with the rules shall be determined by an on-site inspection by the appropriate health authority.

3. Small Animal Waste (Manure) Lagoons and Runoff Ponds. Construction plans and specifications for small animal waste lagoons as defined in R317-6 (permitted by rule for ground water permits) need not be submitted to the Division if the design is prepared or certified by the U.S.D.A. Natural Resources Conservation Service (NRCS) in accordance with criteria provided for in the Memorandum of Agreement between the Division and the NRCS, and the construction is inspected by the NRCS. Compliance with these rules shall be determined by on-site inspection by the NRCS.

2.3 Compliance with Water Quality Standards. No person shall discharge wastes into waters of the state except in compliance with these rules and under circumstances which assure compliance with water quality standards in R317-2.

2.4 Operation of Wastewater Treatment Works. Wastewater treatment works shall be so operated at all times as to produce effluents meeting all requirements of these rules and otherwise in a manner consistent with adequate protection of public health and welfare. Complete daily records shall be kept of the operation of wastewater treatment works covered under R317-3 on forms approved by the Division and a copy of such records shall be forwarded to the Division at monthly intervals.

R317-1-3. Requirements for Waste Discharges.

3.1 Compliance With Water Quality Standards.

All persons discharging wastes into any of the waters of the State shall provide the degree of wastewater treatment determined necessary to insure compliance with the requirements of Rule R317-2 Water Quality Standards, except that the Director may waive compliance with these requirements for specific criteria listed in Rule R317-2 where it is determined that the designated use is not being impaired or significant use improvement would not occur or where there is a reasonable question as to the validity of a specific criterion or for other valid reasons as determined by the Director.

3.2 Compliance With Secondary Treatment Requirements.

All persons discharging wastes from point sources into any of the waters of the State shall provide treatment processes which will produce secondary effluent meeting or exceeding the following effluent quality standards.

A. The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/L, nor shall the arithmetic mean exceed 35 mg/L during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the BOD values of effluent samples shall not be greater than 15% of the BOD values of influent samples collected in the same time period. As an alternative, if agreed to by the person discharging wastes, the following effluent quality standard may be established as a requirement of the discharge permit and must be met: The arithmetic mean of CBOD values determined on effluent samples collected during any 30-day period shall not exceed 20 mg/L nor shall the arithmetic mean exceed 30 mg/L during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the CBOD values of effluent samples shall not be greater than 15% of the CBOD values of influent samples collected in the same time period.

B. The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/L, nor shall the arithmetic mean exceed 35 mg/L during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the SS values of effluent samples shall not be greater than 15% of the SS values of influent samples collected in the same time period.

C. The geometric mean of total coliform and fecal coliform bacteria in effluent samples collected during any 30-day period shall not exceed either 2000 per 100 mL or 200 per 100 mL respectively, nor shall the geometric mean exceed 2500 per 100 mL or 250 per 100 mL respectively, during any 7-day period; or, the geometric mean of E. coli bacteria in effluent samples collected during any 30-day period shall not exceed 126 per 100 mL nor shall the geometric mean exceed 158 per 100 mL respectively during any 7-day period. Exceptions to this requirement may be allowed by the Director where domestic wastewater is not a part of the effluent and where water quality standards are not violated.

D. The effluent values for pH shall be maintained within the limits of 6.5 and 9.0.

E. Exceptions to the 85% removal requirements may be allowed where infiltration makes such removal requirements infeasible and where water quality standards are not violated.

F. The Director may allow exceptions to the requirements of Subsections R317-1-3.2.A, R317-1-3.2.B, and R317-1-3.2.D where the discharge will be of short duration and where there will be no significant detrimental effect on receiving water quality or downstream beneficial uses.

G. The Director may allow that the BOD5 and TSS effluent concentrations for discharging domestic wastewater lagoons shall not exceed 45 mg/L for a monthly average nor 65 mg/L for a weekly average provided the following criteria are met:

1. the lagoon system is operating within the organic and

hydraulic design capacity established by Rule R317-3;

2. the lagoon system is being properly operated and maintained;

3. the treatment system is meeting all other permit limits;

4. there are no significant or categorical industrial users (IU) defined by 40 CFR Part 403, unless it is demonstrated to the satisfaction of the Director that the IU is not contributing constituents in concentrations or quantities likely to significantly affect the treatment works; and

5. a Waste Load Allocation (WLA) indicates that the increased permit limits would not impair beneficial uses of the receiving stream.

3.3 Technology-based Limits for Controlling Phosphorus Pollution.

A. Technology-based Phosphorus Effluent Limits (TBPEL)

1. All non-lagoon treatment works discharging wastewater to surface waters of the state shall provide treatment processes which will produce effluent less than or equal to an annual mean of 1.0 mg/L for total phosphorus.

2. The TBPEL shall be achieved by January 1, 2020, or no later than January 1, 2025, after a variance has been granted under Subsection R317-1-3.3.C.1.e.

B. Discharging Lagoons -Phosphorus Loading Cap

1. No TBPEL will be instituted for discharging treatment lagoons. Instead, each discharging lagoon will be evaluated to determine the current annual average total phosphorus load measured in pounds per year based on monthly average flow rates and concentrations. Absent field data to determine these loads, and in case of intermittent discharging lagoons, the phosphorus load cap will be estimated by the Director.

2. A cap of 125% of the current annual total phosphorus load will be established and referred to as phosphorus loading cap. Once the lagoon's phosphorus loading cap has been reached, the owner of the facility will have five years to construct treatment processes or implement treatment alternatives to prevent the total phosphorus loading cap from being exceeded.

3. The load cap shall become effective July 1, 2018.

C. Variances for TBPEL and Phosphorus Loading Caps

1. The Director may authorize a variance to the TBPEL or phosphorus loading cap under any of the following conditions:

a. Where an existing TMDL has allocated a total phosphorus wasteload to a treatment works, no TBPEL or phosphorus loading cap, as applicable, will be applied.

b. If the owner of a discharging treatment works can demonstrate that imposing the TBPEL or phosphorus loading cap would result in an economic hardship, an alternative TBPEL or phosphorus loading cap that would not cause economic hardship may be applied. "Economic hardship" for a publicly owned treatment works is defined as sewer service costs that, as a result of implementing a TBPEL or phosphorus loading cap, would be greater than 1.4% of the median adjusted gross household income of the service area based on the latest information compiled by the Utah State Tax Commission, after inclusion of grants, loans, or other funding made available by the Utah Water Quality Board or other sources. The Director will consider other demonstrations of economic hardship on a case-by-case basis.

c. If the owner of a discharging treatment works can demonstrate that the TBPEL or phosphorus loading cap are clearly unnecessary to protect waters downstream from the point of discharge, no TBPEL or phosphorus loading cap will be applied.

d. If the owner of the discharging treatment works can demonstrate that a commensurate phosphorus reduction can be achieved in receiving waters using innovative alternative approaches such as water quality trading, seasonal offsets, effluent reuse, or land application.

e. Where the owner of a non-lagoon discharging treatment works demonstrates due diligence toward construction of a treatment facility designed to meet the TBPEL, the compliance date shall be no later than January 1, 2025.

2. All variances to TBPEL and phosphorus loading caps shall be revisited no more frequently than every five years, or when a substantive change in facility operations or a substantive facility upgrade occurs, to determine if the rationale used to justify the conditions in Subsection R317-1-3.3.C remains applicable.

3. For treatment works required to implement TBPEL or a phosphorus loading cap, the demonstration under Subsection R317-1-3.3.C must be made by January 1, 2018. Unless this demonstration is made, the owner of the discharging treatment works must proceed to implement the TBPEL or phosphorus loading cap, as applicable, in accordance with, respectively, Subsections R317-1-3.3.A and R317-1-3.3.B.

D. Facility Optimization to Remove Total Inorganic Nitrogen

1. If the owner of a discharging treatment works agrees to optimize the owner's facility, either through operational changes, a capital construction project, or both, to reduce effluent total inorganic nitrogen concentrations to a level agreeable to the Director, a waiver of up to ten years from meeting either water quality-based effluent limits or technology-based effluent limits for total inorganic nitrogen will be granted. This includes meeting any total inorganic nitrogen limit that may result from a TMDL or other water quality study that is specific to the receiving water of the treatment works.

2. The waiver period under this section would begin upon implementation of the optimization improvements or another date agreed to by the owner of the treatment works and the Director.

3. The elements of the waiver under this section will be identified in a compliance agreement that will be incorporated into the facility's UPDES permit.

4. The waiver identified under this section must be granted before January 1, 2020. Thereafter, no such waiver will be considered or granted.

E. Monitoring

1. All discharging treatment works are required to implement, at a minimum, monthly monitoring of:

a. influent for total phosphorus (as P) and total Kjeldahl nitrogen (as N) concentrations; and

b. effluent for total phosphorus and orthophosphate (as P), and ammonia, nitrate-nitrite, and total Kjeldahl nitrogen (as N).

2. The Director may authorize a variance to the monitoring requirements identified in Subsection R317-1-3.3.D.1.

3. All monitoring under Subsection R317-1-3.3.D shall be based on 24-hour composite samples by use of an automatic sampler or by combining a minimum of four grab samples collected at least two hours apart within a 24-hour period.

4. These monitoring requirements shall be self-implementing beginning July 1, 2015.

3.4 Pollutants In Diverted Water Returned To Stream.

A user of surface water diverted from waters of the State will not be required to remove any pollutants which such user has not added before returning the diverted flow to the original watercourse, provided there is no increase in concentration of pollutants in the diverted water. Should the

pollutant constituent concentration of the intake surface waters to a facility exceed the effluent limitations for such facility under a federal National Pollutant Discharge Elimination System permit or a permit issued pursuant to State authority, then the effluent limitations shall become equal to the constituent concentrations in the intake surface waters of such facility. This section does not apply to irrigation return flow.

R317-1-4. Utilization and Isolation of Domestic Wastewater Treatment Works Effluent.

4.1 Untreated Domestic Wastewater. Untreated domestic wastewater or effluent not meeting secondary treatment standards as defined by these rules shall be isolated from all public contact until suitably treated. Land disposal or land treatment of such wastewater or effluent may be accomplished by use of an approved total containment lagoon as defined in R317-3 or by such other treatment approved by the Director as being feasible and equally protective of human health and the environment.

4.2 Use of Secondary Effluent at Plant Site. Secondary effluent may be used at the treatment plant site in the following manner provided there is no cross-connection with a potable water system:

A. Chlorinator injector water for wastewater chlorination facilities, provided all pipes and outlets carrying the effluent are suitably labeled.

B. Water for hosing down wastewater clarifiers, filters and related units, provided all pipes and outlets carrying the effluent are suitably labeled.

C. Irrigation of landscaped areas around the treatment plant from which the public is excluded.

R317-1-5. Use of Industrial Wastewaters.

5.1 Use of industrial wastewaters (not containing human pathogens) shall be considered for approval by the Director based on a case-specific analysis of human health and environmental concerns.

R317-1-6. Disposal of Domestic Wastewater Treatment Works Sludge.

6.1 General. No person shall use, dispose, or otherwise manage sewage sludge through any practice for which pollutant limits, management practices, and operational standards for pathogens and vector attraction reduction requirements are established in 40 CFR 503, July 1, 1994, except in accordance with such requirements.

6.2 Permit. All treatment works producing, treating and disposing of sewage sludge must comply with applicable permit requirements at R317-3, 6 and 8.

6.3 Septic Tank Contents. The dumping or spreading of septic tank contents is prohibited except in conformance with 40 CFR 503 and R317-550-7.

6.4 Effective Date. Notwithstanding the effective date for incorporation by reference of 40 CFR 503 provided in R317-8-1.10(9), those portions of 40 CFR 503 specified in R317-1-6.1 and 6.3 are effective immediately.

R317-1-7. TMDLs.

The following TMDLs are approved by the Board and hereby incorporated by reference into these rules:

7.1 Middle Bear River -- February 23, 2010
7.2 Chalk Creek -- December 23, 1997
7.3 Otter Creek -- December 23, 1997
7.4 Little Bear River -- May 23, 2000
7.5 Mantua Reservoir -- May 23, 2000
7.6 East Canyon Creek -- September 14, 2010
7.7 East Canyon Reservoir -- September 14, 2010
7.8 Kents Lake -- September 1, 2000
7.9 LaBaron Reservoir -- September 1, 2000
7.10 Minersville Reservoir -- September 1, 2000
7.11 Puffer Lake -- September 1, 2000
7.12 Scofield Reservoir -- September 1, 2000
7.13 Onion Creek (near Moab) -- July 25, 2002
7.14 Cottonwood Wash -- September 9, 2002
7.15 Deer Creek Reservoir -- September 9, 2002
7.16 Hyrum Reservoir -- September 9, 2002
7.17 Little Cottonwood Creek -- September 9, 2002
7.18 Lower Bear River -- September 9, 2002
7.19 Malad River -- September 9, 2002
7.20 Mill Creek (near Moab) -- September 9, 2002
7.21 Spring Creek -- September 9, 2002
7.22 Forsyth Reservoir -- September 27, 2002
7.23 Johnson Valley Reservoir -- September 27, 2002
7.24 Lower Fremont River -- September 27, 2002
7.25 Mill Meadow Reservoir -- September 27, 2002
7.26 UM Creek -- September 27, 2002
7.27 Upper Fremont River -- September 27, 2002
7.28 Deep Creek -- October 9, 2002
7.29 Uinta River -- October 9, 2002
7.30 Pineview Reservoir -- December 9, 2002
7.31 Browne Lake -- February 19, 2003
7.32 San Pitch River -- November 18, 2003
7.33 Newton Creek -- June 24, 2004
7.34 Panguitch Lake -- June 24, 2004
7.35 West Colorado -- August 4, 2004
7.36 Silver Creek -- August 4, 2004
7.37 Upper Sevier River -- August 4, 2004
7.38 Lower and Middle Sevier River -- August 17,2004
7.39 Lower Colorado River -- September 20, 2004
7.40 Upper Bear River -- August 4, 2006
7.41 Echo Creek -- August 4, 2006
7.42 Soldier Creek -- August 4, 2006
7.43 East Fork Sevier River -- August 4, 2006
7.44 Koosharem Reservoir -- August 4, 2006
7.45 Lower Box Creek Reservoir -- August 4, 2006
7.46 Otter Creek Reservoir -- August 4, 2006
7.47 Thistle Creek -- July 9, 2007
7.48 Strawberry Reservoir -- July 9, 2007
7.49 Matt Warner Reservoir -- July 9, 2007
7.50 Calder Reservoir -- July 9, 2007
7.51 Lower Duchesne River -- July 9, 2007
7.52 Lake Fork River -- July 9, 2007
7.53 Brough Reservoir -- August 22, 2008
7.54 Steinaker Reservoir -- August 22, 2008
7.55 Red Fleet Reservoir -- August 22, 2008
7.56 Newcastle Reservoir -- August 22, 2008
7.57 Cutler Reservoir -- February 23, 2010
7.58 Pariette Draw -- September 28, 2010
7.59 Emigration Creek -- September 1, 2011
7.60 Jordan River -- June 27, 2012
7.61 Colorado River -- December 5, 2013
7.62 Echo Reservoir -- March 26, 2014
7.63 Rockport Reservoir -- March 26, 2014
7.64 Nine Mile Creek -- October 27, 2016
7.65 North Fork Virgin River -- May 23, 2018

R317-1-8. Penalty Criteria for Civil Settlement Negotiations.

8.1 Introduction. Section 19-5-115 of the Water Quality Act provides for penalties of up to $10,000 per day for violations of the act or any permit, rule, or order adopted under it and up to $25,000 per day for willful violations. Because the law does not provide for assessment of administrative penalties, the Attorney General initiates legal proceedings to recover penalties where appropriate.

8.2 Purpose And Applicability. These criteria outline the principles used by the State in civil settlement

negotiations with water pollution sources for violations of the UWPCA and/or any permit, rule or order adopted under it. It is designed to be used as a logical basis to determine a reasonable and appropriate penalty for all types of violations to promote a more swift resolution of environmental problems and enforcement actions.

To guide settlement negotiations on the penalty issue, the following principles apply: (1) penalties should be based on the nature and extent of the violation; (2) penalties should at a minimum, recover the economic benefit of noncompliance; (3) penalties should be large enough to deter noncompliance; and (4) penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

In determining whether a civil penalty should be sought, the State will consider the magnitude of the violations; the degree of actual environmental harm or the potential for such harm created by the violation(s); response and/or investigative costs incurred by the State or others; any economic advantage the violator may have gained through noncompliance; recidivism of the violator; good faith efforts of the violator; ability of the violator to pay; and the possible deterrent effect of a penalty to prevent future violations.

8.3 Penalty Calculation Methodology. The statutory maximum penalty should first be calculated, for comparison purposes, to determine the potential maximum penalty liability of the violator. The penalty which the State seeks in settlement may not exceed this statutory maximum amount.

The civil penalty figure for settlement purposes should then be calculated based on the following formula: CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL CONSIDERATIONS

PENALTY: Violations are grouped into four main penalty categories based upon the nature and severity of the violation. A penalty range is associated with each category. The following factors will be taken into account to determine where the penalty amount will fall within each range:

A. History of compliance or noncompliance. History of noncompliance includes consideration of previous violations and degree of recidivism.

B. Degree of willfulness and/or negligence. Factors to be considered include how much control the violator had over and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew of the legal requirements which were violated, and degree of recalcitrance.

C. Good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State.

Category A - $7,000 to $10,000 per day. Violations with high impact on public health and the environment to include:

1. Discharges which result in documented public health effects and/or significant environmental damage.

2. Any type of violation not mentioned above severe enough to warrant a penalty assessment under category A.

Category B - $2,000 to $7,000 per day. Major violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Discharges which likely caused or potentially would cause (undocumented) public health effects or significant environmental damage.

2. Creation of a serious hazard to public health or the environment.

3. Illegal discharges containing significant quantities or concentrations of toxic or hazardous materials.

4. Any type of violation not mentioned previously which warrants a penalty assessment under Category B.

Category C - $500 to $2,000 per day. Violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Significant excursion of permit effluent limits.

2. Substantial non-compliance with the requirements of a compliance schedule.

3. Substantial non-compliance with monitoring and reporting requirements.

4. Illegal discharge containing significant quantities or concentrations of non toxic or non hazardous materials.

5. Any type of violation not mentioned previously which warrants a penalty assessment under Category C.

Category D - up to $500 per day. Minor violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Minor excursion of permit effluent limits.

2. Minor violations of compliance schedule requirements.

3. Minor violations of reporting requirements.

4. Illegal discharges not covered in Categories A, B and C.

5. Any type of violations not mentioned previously which warrants a penalty assessment under category D.

ADJUSTMENTS: The civil penalty shall be calculated by adding the following adjustments to the penalty amount determined above: 1) economic benefit gained as a result of non-compliance; 2) investigative costs incurred by the State and/or other governmental levels; 3) documented monetary costs associated with environmental damage.

ECONOMIC AND LEGAL CONSIDERATIONS: An adjustment downward may be made or a delayed payment schedule may be used based on a documented inability of the violator to pay. Also, an adjustment downward may be made in consideration of the potential for protracted litigation, an attempt to ascertain the maximum penalty the court is likely to award, and/or the strength of the case.

8.4 Mitigation Projects. In some exceptional cases, it may be appropriate to allow the reduction of the penalty assessment in recognition of the violator's good faith undertaking of an environmentally beneficial mitigation project. The following criteria should be used in determining the eligibility of such projects:

A. The project must be in addition to all regulatory compliance obligations;

B. The project preferably should closely address the environmental effects of the violation;

C. The actual cost to the violator, after consideration of tax benefits, must reflect a deterrent effect;

D. The project must primarily benefit the environment rather than benefit the violator;

E. The project must be judicially enforceable;

F. The project must not generate positive public perception for violations of the law.

8.5 Intent Of Criteria/Information Requests. The criteria and procedures in this section are intended solely for the guidance of the State. They are not intended, and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the State.

8.6 Expedited Settlement Offer (ESO). Only enforcement cases classified as Category C or Category D violations may qualify for an ESO in lieu of the penalty process found in Subsection R317-1-8.3 Penalty Calculation Methodology. Except in cases where recidivism has been established by a pattern of non-compliance, an ESO may be used when violations are readily identifiable, readily correctable, and do not cause significant harm to human health or the environment.

A. A violator is not compelled to sign an ESO. If the violator does not sign the ESO, then the penalty will be recalculated according to Subsection R317-1-8.3.

B. The violator has 30 days total from receipt of the ESO to sign and return the ESO to the division. If the violator signs the ESO, then the violator must comply with its conditions within 15 days after receipt of the final ESO signed by the director, or as otherwise designated in the ESO. If the violator signs the ESO they agree to waive:

1. the right to contest the findings and specified penalty amount;

2. the opportunity for an administrative hearing pursuant to Section 19-1-301; and

3. the opportunity for judicial review.

C. Deficiency Form. A deficiency form is used to list the violations and corresponding penalties. Multiple violations at a site are totaled providing a final penalty commensurate with the extent of non-compliance. Penalties developed for the list of program violations on the deficiency form should be estimated at about 60% of the penalty as calculated in Subsection R317-1-8.3.

R317-1-9. Electronic Submissions and Electronic Signatures.

(a) Pursuant to the authority of Utah Code Ann. Subsection 46-4-501(a), the submission of Discharge Monitoring Reports and related information may be conducted electronically through the EPA's NetDMR program, provided the requirements of subsection (b) are met.

(b) A person may submit Discharge Monitoring Reports and related information only after (1) completion of a Subscriber Agreement in a form designated by the Director to ensures that all requirements of 40 CFR 3, EPA's Cross - Media Electronic Reporting Regulation (CROMERR) are met; and (2) completion of subsequent steps specified by EPA's CROMERR, including setting up a subscriber account.

(c) The Subscriber Agreement will continue until terminated by its own terms, until modified by mutual consent or until terminated with 60 days written notice by any party.

(d) Any person who submits a Discharge Monitoring Report or related information under the NetDMR program, and who electronically signs the report or related information, is, by providing an electronic signature, making the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

R317-1-10. Independent Scientific Review.

10.1 Applicability.

A. Independent Scientific Review may be used to solicit formal evaluations from outside Experts on the strengths and weaknesses of the scientific basis used to support any new Division Proposal or Highly Influential Scientific Assessment (HISA).

B. Independent Peer Reviews for permits shall be limited to modifications to wasteloads used in UPDES discharge permits, or the scientific basis of any other modification to a regulatory requirement used in developing permit limits. Review of individual permits shall follow existing adjudicative processes that govern their issuance or renewal in accordance with Subsection 19-5-105.3(1)(c)(iii).

C. The Director shall initiate an Independent Scientific Review when one of the following conditions is met:

1. A Challenging Party requests an Independent Peer Review on the scientific basis of a Division Proposal under Section 19-5-105.3 and provides the information described in Subsection R317-1-10.3.C.

2. The Director makes a determination that a new Scientific Assessment is a Highly Influential Scientific Assessment (HISA) and that sufficient resources are available to support an Independent Scientific Review.

D. Implementing an Independent Scientific Review or an Independent Peer Review does not affect any applicable public comment or public hearing requirements for any Proposal or other action considered during such a review. If a proposal or other action that is subject to a public comment or public hearing requirement is changed after a comment period has begun or hearing has been held, DEQ shall provide a new opportunity for comment or a new hearing, as appropriate. See also Subsection R317-1-10.4.D.

10.2 Independent Scientific Review process.

A. Independent Scientific Reviews shall be conducted in general accordance with the guidance contained in the United States Environmental Protection Agency's Science and Technology Policy Council Peer Review Handbook 4th Edition.

B. Independent Scientific Reviews shall entail development of a scope of work for review; selection of independent Experts; management of the Independent Scientific Reviews; submission by Experts of findings and recommendations; development of a Division response to review findings; finalization of the Proposal or HISA; and publication for public comment.

1. The Director shall prepare a scope of work that defines the objectives of an Independent Scientific Review and provide instructions for the Experts. The Director shall also prepare a schedule for the review. In the case of an Independent Peer Review the Director will seek and incorporate input from the Challenging Party into the development of the scope of work.

a. The scope of work shall include several components:

i. A summary of the Proposal or HISA under consideration and reasons for the review.

ii. The specific charge questions that articulate the issues, areas of concern, or advice sought through the Independent Scientific Review process. Charge questions shall generally focus on the degree of confidence, certainty, and major data gaps with respect to the interpretation or application of the scientific basis of a proposed rule, regulatory guidance, or regulatory tool.

iii. A compilation of data, reports or other scientific information that has a material influence on the scientific basis of the Proposal or HISA under review.

iv. A statement of qualifications and expertise required for Experts that will be considered in conducting the Independent Scientific Review.

v. Other important instructions to Experts such as reporting expectations or communication protocols.

vi. A schedule for accomplishing the review.

b. The scope of work shall be made available for public comment for a minimum of 30 days and no more than 60 days to help identify missing data or missing elements of the charge questions. In the event of a condition which poses hazard to human health or the environment that may increase significantly during a review period, a shorter period may be specified. The Director shall prepare a response to any comments that are received and shall refine the scope of work, as appropriate, before sending the scope of work to the Experts.

2. The Director shall select Experts to conduct Independent Scientific Reviews using the following criteria:

a. Experts shall be selected who have demonstrated expertise in scientific disciplines that are relevant to the

scientific basis of the Proposal or HISA.

b. Experts shall not have a conflict of interest that could jeopardize their objectivity or impartiality.

c. An Independent Scientific Review shall be conducted by at least three independent Experts. Additional Experts may be asked to conduct reviews, as needed, to fairly reflect the breadth of scientific perspectives or fields of knowledge related to the scientific basis under review. If the Independent Scientific Review is an Independent Peer Review, the conditions in Section 19-5-105.3 shall apply.

3. Management of Independent Scientific Reviews.

a. Management of Independent Scientific Reviews may be conducted by any of the following:

i. the Division;

ii. the United States Environmental Protection Agency;

iii. an independent contractor; or,

iv. an independent organization such as an editorial board of a relevant scientific journal, appropriate trade organization, or other research institute.

b. From the time they accept the invitation to participate in an Independent Scientific Review, Experts should avoid interaction with the Division, a challenging party, the general public or others that might create a real or perceived Conflict of Interest regarding the Proposal under review to ensure that Expert findings are independent and objective.

4. Compilation of Expert Findings.

a. Each Expert shall submit written comments that include responses to the charge questions and an evaluation of the scientific basis of the Proposal or HISA.

b. The Director shall charge Experts to identify in their written comments any areas of scientific uncertainty or major data gaps that have a reasonable likelihood of altering material provisions of a Proposal or HISA, including descriptions of the nature of the uncertainty, estimates of the relative extent of this uncertainty, and any recommendations for resolving areas of uncertainty.

10.3 Special provisions for Independent Peer Reviews conducted in accordance with Section 19-5-105.3.

A. On request from a Challenging Party, the Director shall conduct an Independent Peer Review of the scientific basis of a Proposal made by the Division on or after January 1, 2016, provided that the following conditions are met:

1. A Challenging Party requests the review, in writing, during the public comment period on a Proposal.

2. The Challenging Party agrees to fund the Independent Peer Review.

3. The Challenging Party provides the information described in Subsection R317-1-10.3.C.

4. The Challenging Party would be substantially impacted by the adoption of the Proposal.

B. Funding Independent Peer Reviews.

1. Costs associated with the peer reviews will be incurred by the Division and billed to the Challenging Party and may include management of the peer review process by an independent contractor agreed to by the Director and Challenging Party, honorariums provided to Experts to conduct the reviews, and expenses incurred by the Experts.

2. An estimate of projected costs for conducting an Independent Peer Review, including expenses identified in Subsection R317-1-10.3.B.1, shall be estimated by the Director and provided to the Challenging Party prior to finalization of contracts or other financial agreements with Experts.

3. If there is more than one Challenging Party to the scientific basis of a Proposal, the challenges will be consolidated for the Independent Peer Review. Those requesting the review will be responsible for the costs of the review and allocation of costs between parties.

C. The written request for an Independent Peer Review from a Challenging Party shall be included in the final scope of work and shall include the following as best determined by the Challenging Party:

1. An explanation of the specific scientific elements of the Proposal that the Challenging Party questions and an explanation of why these elements may not be scientifically defensible.

2. If the challenge involves review of whether a Technology Based Nutrient Effluent Limit is scientifically necessary, the Challenging Party should include an explanation of why the limits are or are not necessary, including consideration of:

a. all designated beneficial uses of the receiving water and the uses of downstream, hydrologically connected water bodies;

b. current conditions and projected future conditions with respect to wastewater effluent and receiving water quantity and quality; and

c. any other nutrient sources under current and projected future conditions that it is reasonable to believe may affect the same receiving water and downstream hydrologically connected water bodies.

3. Access to sources of data, reports or other information that can be used to establish a scientific basis to the challenge that the Challenging Party would like to be included as supporting materials in the scope of work.

4. Recommendations for qualified independent Experts, who do not have a conflict of interest and whom the Challenging Party would support as Experts based on their documented expertise in areas of relevance to the technical basis of the Proposal being challenged.

D. The Independent Scientific Review process specified in Subsection R317-1-10.2 shall be followed for Independent Peer Reviews conducted at the behest of a Challenging Party with the exception of several limitations outlined in this subsection that are needed to maintain consistency with Section 19-5-105.3.

1. An Independent Peer Review panel shall consist of at least three Experts who do not have direct association with the Division or Challenging Party in accordance with Subsection 19-5-105.3(1)(b)(iii)and shall be selected by both the Division and Challenging Party as described in Subsection 19-5-105.3(5).

2. The Director shall designate one member of the Independent Peer Review Panel to serve as a chair to develop and oversee the preparation of a final synthesis report. In the event that Experts are selected through Subsection 19-5-105.3(5)(c), then the mutually agreed upon member shall serve as the Independent Peer Review Panel chair.

3. Management of the Independent Peer Review process shall be conducted by an independent contractor, who does not have a conflict of interest with the Division or the Challenging Party.

4. Management responsibilities of Independent Peer Reviews include the following:

a. Estimation of appropriate honorariums for the Experts to complete their individual written reviews with consideration for the breadth of the review identified in the scope of work and volume of supporting materials including additional compensation for the Independent Peer Review Panel chair for overseeing and writing a final written report as described in Subsection R317-1-10.3.D.5.

b. Development of a work timeline and interim progress tracking to ensure timely completion of the Independent Peer Review process.

c. Development and oversight of contracts or other financial agreements with Experts or others identified as integral to the review process.

d. Facilitation of necessary communication among the

Division, Challenging Party and Experts throughout the review process, in a way that ensures all parties have access to any additional information, such as clarification to charge questions or charge questions that were not considered in development of the scope of work.

e. Regular progress updates to the Division and Challenging Party.

5. The Director shall charge the Independent Peer Review panel chair with development of a final written report, which:

a. is written by the chair after written independent reviews have been submitted by each Expert;

b. is reviewed by all members of the Independent Peer Review panel;

c. documents areas of consensus and dissention among Experts on elements of the scientific basis of the Proposal that Experts believe to have material influence of the Proposal under review;

d. provides a final recommendation from the Independent Peer Review panel on the scientific defensibility of the Division's Proposal, as specified in Subsection 19-5-105.3(7);

e. includes a determination of scientific necessity for any review that involves an evaluation of the application of a Technology Based Nutrient Effluent Limit; and

f. includes the Experts' written findings of the underlying rationale for making a determination that any element of the scientific basis of a Proposal is not scientifically defensible or is scientifically defensible with conditions, and any applicable and reasonable conditions to remedy their concerns.

E. To avoid inordinate delays in rulemaking or other regulatory decisions, Independent Peer Reviews must be completed within one year following appointment of the Independent Peer Review panel.

10.4 Use of Independent Scientific Review results.

A. The Director shall incorporate as needed recommendations and findings from the Experts in the finalization of the Proposal or HISA under review.

B. The Director shall document how the findings of the Experts were applied to the Proposal or HISA.

C. All materials associated with any review process shall be made available during the public comment period applicable to the HISA or Proposal under review, including:

1. the scope of work used to conduct the peer review;

2. the written independent findings from individual Experts;

3. summary reports that were developed after individual Expert reviews were submitted, if appropriate; and

4. the final decision of the Director and rationale for any modifications to the original agency Proposal or HISA in response to Independent Scientific Review findings and recommendations.

D. In the event that the Proposal or HISA under review does not have an established public comment process that occurs after the Independent Scientific Review Process, the Director shall make peer review material available for public comment for a minimum of 30-days and shall consider all substantive public comments prior to finalization of the Proposal or HISA.

E. The Director shall prepare a responsiveness summary that includes:

1. all substantive public comments related to the Independent Scientific Review,

2. the Director's response to public comments, and

3. any changes to the Proposal or HISA that were made in response to public comments.

F. Incorporation of the Director's decisions into existing Division processes.

1. If the Expert findings result in a decision by the Director to modify any element of any UPDES permit, this decision will be summarized in the Statement of Basis on the next issuance of the permit and all Independent Peer Review materials shall be made available as supporting documentation when the permit is published for public comment. If the Proposal is a wasteload or other regulatory requirements for a permit the results shall be incorporated into the proposed permit on which the wasteload is based.

2. If the Proposal under review is regarding the application of a Technology Based Nutrient Effluent Limit and the Independent Peer Review panel determines that the limit is not scientifically necessary, then this finding shall be included in the Statement of Basis in the new or renewed permit as a justification for not including Technology Based Nutrient Effluent Limits that would otherwise have been required. All materials associated with the Independent Peer Review shall be made available during the public comment period for this permit as support for this determination.

3. The decision to modify any permit element, based upon the results of an Independent Scientific Review, is not final until the permit is actually issued.

4. The decision to modify a rule, based upon the results of an Independent Scientific Review, is not final until the rule is actually modified.

KEY: TMDL, water pollution
May 24, 2018 19-5
Notice of Continuation August 30, 2017

R392. Health, Disease Control and Prevention, Environmental Services.
R392-100. Food Service Sanitation.
R392-100-1. Authority and Purpose.

(1) This rule is authorized by Sections 26-1-5, 26-1-30, and 26-15-2.

(2) This rule establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented.

R392-100-2. Definitions.

(1) "Food Cart" means a cart:

(a) that is not motorized; and

(b) that a vendor, standing outside of the frame of the cart, uses to prepare, sell, or serve food or beverages for immediate human consumption.

(2)(a) "Food Truck" means a fully encased food service establishment:

(i) on a motor vehicle or on a trailer that a motor vehicle pulls to transport; and

(ii) from which a food truck vendor, standing within the frame of the vehicle, prepares, cooks, sells, or serves food or beverages for immediate human consumption.

(b) "Food Truck" does not include a food cart or an ice cream truck.

(3) "Ice Cream Truck" means a fully encased food service establishment:

(a) on a motor vehicle or on a trailer that a motor vehicle pulls to transport;

(b) from which a vendor, from within the frame of the vehicle, serves prepackaged ice cream products;

(c) that attracts patrons by traveling through a residential area and signaling the truck's presence in the area, including by playing music; and

(d) that may stop the vehicle to serve packaged ice cream products at the signal of a patron.

R392-100-3. General Requirements.

(1) Food trucks as defined in this rule and in R392-102 are exempt from this rule. Food Trucks shall abide by R392-102.

R392-100-4. Incorporation by Reference.

(1) The Department incorporates by reference the following:

(a) Section 402 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 342.

(b) The 2013 version of the U.S. Public Health Service, Food and Drug Administration, Model Food Code ("Model Code"), Chapters 1 through 8, Annex 1 Parts 8-6 through 8-9, with the stated exceptions and amendments set out below.

(2) Exceptions to Incorporation. The following subsections of the Model Code are not incorporated into this rule:

(a) Subsection 5-203.15(B);

(b) Subsections 5-402.11(B), (C) and (D);

(c) Subsections 8-302.14(D) and (E);

(d) Subsection 8-304.11(K);

(e) Annex 1, Section 8-905.40;

(f) Annex 1, Subparagraphs 8-905.90(A)(1) and (2);

(g) Annex 1, Section 8-909-20;

(h) Annex 1, Subparagraphs 8-911.10(B)(1) and (2).

(3) The following amendments and additions to the Model Code shall be made. All other incorporated provisions remain the same.

(a) In section 1-201.10(B), Terms Defined, a specified definition is added or the definitions or its specific subsections set out in the definition are amended as follows:

(i) Core Item(1) is amended to read:

"(1) "Core Item" also referred to as "non-critical" means a provision in the Model Code that is not designated as a Priority Item or a Priority Foundation Item."

(ii) Food Establishment(2) is amended to add paragraph (C) to read:

"(2)(c) Catering operation which is a business entity that operates from a permitted food establishment that contracts with a client for food service to be provided to a client, the client's guests and/or customers at a different location. A catering operation may cook or perform final preparation of food at the service location. A catering operation does not include routine services offered at the same location, or meal that are individually purchased with the exception of cash bars."

(iii) A definition of Potentially Hazardous Food is added to read:

"Potentially Hazardous Food means the same as Time/Temperature Control for Safety Food."

(iv) Priority Item(1) is amended to read:

"(1) "Priority Item" also referred to as "critical 1" means a provision in the Model Code whose application contributes directly to the elimination, prevention or reduction to an acceptable level, hazards associated with food borne illness or injury and there is no provision that more directly controls the hazard."

(v) Priority Foundation Item(1) is amended to read:

"(1) "Priority Foundation Item" also referred to as "critical 2" means a provision in the Model Code whose application supports, facilitates or enables one or more Priority Items."

(b) After section 2-102.12, a new section is added to read: "2-102.13 Food Employee Training. Food managers shall be trained and certified as required under Chapter 26-15a, UCA and R392-101. Food employees shall be trained in food safety as required under Section 26-15-5 and shall hold a valid food handler's card issued by a local health department."

(c) Paragraph 3-201.16(A) is amended to read:

"(A) Except as specified in paragraph (B) of this section, mushroom species picked in the wild shall not be offered for sale or service by a food establishment."

(d) Section 3-501.17 is amended to include additional paragraph (H):

"(H) A date marking system that meets the criteria stated in paragraph (A) of this section shall use one of two types of date marks, and that date mark must be used consistently throughout the food establishment. The date mark will either be of the date:

(1) before which food must be used as specified in paragraph (A) or this section; or

(2) be the date of Day 1."

(e) Subparagraph 3-501.19(B)(2) is amended to read:

"(2) Only one time marking scheme may be used, and it must be used consistently throughout the food establishment. The food shall be marked with either:

(a) the time food is removed from temperature control; or

(b) the time before which the food shall be cooked and served at any temperature if ready-to-eat, or discarded."

(f) After Section 4-204-123 a new section is added to read:

"4-204.124 Restraint of Pressurized Containers.

Carbon dioxide, helium or other similar pressurized containers must be restrained or secured to prevent the tanks from falling over."

(g) Section 5-101.12, shall be amended to add: "The process shall be in accordance with the American Water Works Association (AWWA) C651-2005 for disinfection and testing."

(h) Section 5-202.13 is deleted and replaced to read:

"(A) Where the horizontal distance from the water supply inlet to an adjacent single wall or obstruction is greater than three times the diameter of the inlet, or greater than four times for intersecting walls, an air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 25 millimeters (1 inch).

(B) Where the horizontal distance from the water supply inlet to an adjacent single wall or obstruction is less than three times the diameter of the inlet, or less than four times for intersecting walls, and air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least three times the diameter of the water supply inlet and may not be less than 38 millimeters (1.5 inches)."

(i) Paragraph 5-203.15(A) is amended to read:

"(A) If not provided with an air gap as specified under Section 5-202.13, an American Society of Safety Engineers (ASSE) 1022 dual check valve with an intermediate vent shall be installed upstream from a carbonating device and downstream from any copper in the water supply."

(j) Paragraph 5-402.11(A) is amended to read:

"(A) A direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed."

(k) Section 8-103.10 Modifications and Waivers is amended to read:

"(A) The regulatory authority may grant a variance by modifying or waiving the requirements of this Code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under section 8-103.11 in its records for the food establishment.

(B) A copy of the variance or waiver issued by the regulatory authority and the documentation required in section 8-103.11 shall be provided to the Utah Department of Health, Office of Epidemiology, Environmental Sanitation Program within 5 working days of issuance.

(C) A variance or waiver intended for a food establishment which is of a chain with stores in more than one local health jurisdiction in the State must be approved by the Utah Department of Health prior to issuance."

(l) Section 8-103.11 is amended to add paragraph (D) to read:

"(D) In addition, a variance from section 3-301.11 may be issued only when:

(1) the variance is limited to a specific task or work station;

(2) the applicant has demonstrated good cause why section 3-301.11 cannot be met;

(3) suitable utensils are used to the fullest extent possible with ready-to-eat foods in the rest of the establishment; and

(4) the applicant can demonstrate active managerial control of this risk factor at all times."

(m) Paragraph 8-302.14(C) is amended to read:

"A statement specifying whether the food establishment is mobile or stationary and temporary or permanent."

(n) Paragraph 8-304.10(A) is amended to read:

"(A) Upon request, the regulatory authority shall provide a copy of the food service sanitation rule according to the policy of the local regulatory agency."

(o) Paragraph 8-401.10(A) is amended to read:

"(A) Except as specified in paragraphs (B) and (C) of this section, the regulatory authority shall inspect a food establishment at least once every 6 months and twice in a season for seasonal operations."

(p) Subparagraph 8-401.10(B)(2) is amended to read:

"(2) The food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction; or"

(q) Section 8-501.10 is amended to read:

"(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee; and

(C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703."

(r) Annex 1, Section 8-601.10 is amended to read:

"Due process and equal protection shall be afforded as required by law in all enforcement and regulatory actions."

(s) Annex 1, Section 8-801.30 is amended to read:

"Service is effective at the time the notice is served or when service is made as specified in Paragraph 8-801-20(B)."

(t) Annex 1, Section 8-903.10 is amended to read:

"8-903.10 Impoundment of Adulterated Food Products Authorized.

(A) The impoundment of adulterated food is authorized under Section 26-15-9, UCA.

(B) The regulatory authority may impound, by use of a hold order, any food product found in places where food or drink is handled, sold, or served to the public, but is found or is suspected of being adulterated and unfit for human consumption.

(C) Upon five days notice and a reasonable opportunity for a hearing to the interested parties, to condemn and destroy the same if deemed necessary for the protection of the public health.

(D) If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the regulatory authority may remove the food that is subject to the hold order to a place of safekeeping.

(E) Within the limits set in paragraphs (B), (C), and (D) of this section, the regulatory authority may impound, by use of a hold order, molluscan shellfish that are not tagged or labeled according to Paragraph 3-202.18(A) of this code. Other actions may be taken in accordance with Paragraph 3-202.18(B) of this code."

(u) Annex 1, Section 8-903.60 is amended to read:

"The regulatory authority may examine, sample, and test food in order to determine its compliance with this Code in section 8-402.11."

(v) Annex 1, Section 8-903.90 is amended to read:

"The regulatory authority shall issue a notice of release from a hold order and shall physically remove the hold tags, labels, or other identification from the food if the hold order is vacated."

(w) Annex 1 Section 8-904.30 heading is amended to read:

"8-904.30 Contents of the Summary Suspension Notice."

(x) Annex 1, Paragraph 8-905.10(A) is amended to read:

"(A) A person who receives a notice of hearing shall file a response within 10 calendar days from the date of service. Failure to respond may result in license suspension, license revocation, or other administrative penalties."

(y) Annex 1, Section 8-905.20 is amended to read:

"A response to a hearing notice or a request for a hearing as specified in section 8-905.10 shall be in written form and

contain the following:

(A) Response to a notice of hearing must include:

(1) An admission or denial of each allegation of fact;

(2) A statement as to whether the respondent waives the right to a hearing;

(3) A statement of defense, mitigation, or explanation concerning all claims; and

(4) A statement as to whether the respondent wishes to settle some or all of the claims made by the regulatory authority.

(B) A request for hearing must include:

(1) A statement of the issues of fact specified in section 8-905.30 paragraph (B) for which a hearing is requested; and

(2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

(C) Witnesses - In addition to the above requirements, if witnesses are requested, the response to a notice of hearing and a request for hearing must include the name, address, telephone number, and a brief statement of the expected testimony for each witness.

(D) Legal Representation - Legal counsel is allowed, but not required. All documents filed by the respondent must include the name, address, and telephone number of the respondent's legal counsel, if any."

(z) Annex 1, Subparagraph 8-905.50(A)(1) is amended to read:

"(1) Except as provided in paragraph (B) of this section, within 5 calendar days after receiving a written request for an appeal hearing from:"

(aa) Annex 1, Subparagraph 8-905.50(A)(2)is amended to read:

"(2) Within 30 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in section 8-905.10(C) or for matters as determined necessary by the regulatory authority."

(ab) Annex 1, Section 8-905.60 heading is amended to read:

"8-905.60 Notice of Hearing Contents."

(ac) Annex 1, Section 8-905.80 heading is amended to read:

"8-905.80 Expeditious and Impartial Hearing."

(ad) Annex 1, Section 8-905.90 heading is amended to read:

"8-905.90 Confidentiality of Hearing and Proceedings."

(ae) Annex 1, Paragraph 8-905.90(A) is amended to read:

"(A) Hearings will be open to the public unless compelling circumstances, such as the need to discuss a person's medical or mental health condition, a food establishment's trade secrets, or any other matter private or protected under federal or state law."

(af) Amend section 8-906.30 paragraph (B) to read:

"(B) Unless a party appeals to the head of the regulatory authority within 10 calendar days of the hearing or a lesser number of days specified by the hearing officer:"

(ag) Annex 1, Section 8-907.60 is amended to read:

"Documentary evidence may be received in the form of a copy or excerpt if provided to the hearing officer and opposing party prior to the hearing as ordered by the hearing officer."

(ah) Annex 1, Section 8-908.20 is amended to read:

"Respondents accepting a consent agreement waive their rights to a hearing on the matter, including judicial review."

(ai) Annex 1, Subparagraphs(B)(1) and (2) are deleted and Paragraph 8-911.10(B) is amended to read:

"(B) Any person who violates any provision of this rule may be assessed a civil penalty as provided in section 26-23-6, UCA."

(aj) Annex 1, Section 8-913.10 headline is amended to read:

"8-913.10 Petitions, Penalties, Contempt, and Continuing Violations."

(ak) Annex 1, Paragraph 8-913.10(B) is amended to read:

"In addition to any criminal fines and sentences imposed as specified in Paragraph 8-911.10, or to being enjoined as specified in Paragraph 8-912.10, a person who violates a provision of this code, any rule or regulation adopted in accordance with law related to food establishments within the scope of this code, or to any term, condition, or limitation of a permit issued as specified in Paragraphs 8-303.10 and 8-303.20 is subject to a civil penalty not exceeding $5,000."

(al) Annex 1, Section 8-913.10 is amended to add the paragraph (D) to read:

"(D) The adjudicative body, upon proper findings, shall assess violators a fee for each day the violation remains in contempt of its order."

R392-100-5. Construction Standards.

(1) All parts of the food establishment shall be designed, constructed, maintained, and operated to meet the requirements of Title 15A, State Construction and Fire Codes Act.

KEY: public health, food services, sanitation
May 18, 2018 26-1-30(2)
Notice of Continuation November 7, 2016 26-15-2

R392. Health, Disease Control and Prevention, Environmental Services.
R392-102. Food Truck Sanitation.
R392-102-1. Authority and Purpose.

(1) This rule is authorized under Sections 26-1-5, 26-1-30(9) and (23), 26-7-1, and 26-15-2.

(2) This rule requires a food truck operator to adhere to uniform statewide standards for constructing, operating, and maintaining a food truck in a manner that safeguards public health - including risk factors contributing to injury, sickness, death, and disability - and ensures that food is safe, unadulterated, and honestly presented when offered to the consumer.

(3) This rule establishes uniform standards for the regulation of food trucks, including the permitting process, plan reviews, inspections, construction, sanitary operations, and equipment requirements, which provide for the prevention and control of health hazards associated with food trucks that are likely to affect public health.

R392-102-2. Definitions.

(1) "Catering operation", as defined in this rule, means a food truck that contracts with a client for food service to be provided to the client or the client's guests or customers at a private event on private property. A catering operation does not include services routinely provided at the same location, or meals that are purchased individually by guests or customers.

(2) "Commissary" means a food service establishment permitted by a local health department according to Rule R392-100 to which a food truck operator may return regularly to perform functions necessary for sanitary operations including:

(a) food preparation and boarding onto the food truck;

(b) hot and cold holding of time/temperature controlled for safety (TCS) foods;

(c) storing and stocking of food, utensils, and equipment;

(d) disposal of solid and liquid wastes;

(e) equipment and utensil cleaning and sanitizing;

(f) vehicle cleaning;

(g) refilling of water tank(s) with potable water; and

(h) utilizing electrical power sources.

(3) "FDA Food Code" or "Food Code" means the most recent FDA Model Food Code as adopted by reference with amendments in Rule R392-100. When FDA Food Code is referenced in this rule, the term 'establishment' or 'food establishment' used in the FDA Food Code shall be synonymous with 'food truck' as defined in this rule.

(4) "Food cart" means:

(a) a cart that is not motorized; and

(b) that a vendor, standing outside of the frame of the cart, uses to prepare, sell, or serve food or beverages for immediate human consumption; or

(c) a motor vehicle that a vendor, standing outside of the frame of the vehicle, uses to sell or serve prepackaged food or beverages for human consumption.

(5) "Food processing plant" means a commercial operation inspected by a regulatory authority, such as the United States Department of Agriculture (USDA), U.S. Food and Drug Administration (FDA), or the Utah Department of Agriculture and Food (UDAF), that manufactures, packages, labels, or stores food for human consumption, and provides food for sale or distribution to other business entities such as food processing plants or food establishments. A food processing plant does not include a food establishment.

(6) "Food service establishment" means an operation that:

(a) stores, prepares, packages, serves, vends food directly to the consumer, or otherwise provides food for human consumption such as a restaurant; satellite or catered feeding location; and

(b) relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(7)(a) "Food truck" means a fully encased food service establishment:

(i) on a motor vehicle or on a trailer that a motor vehicle pulls to transport; and

(ii) from which a food truck vendor, standing within the frame of the vehicle, prepares, cooks, sells, or serves food or beverages for immediate human consumption.

(b) "Food Truck" does not include a food cart, a shaved ice establishment, or an ice cream truck.

(8) "Food truck operator" or "operator" means a person who owns, manages, or controls, or who has the duty to manage or control, the operation of a food truck.

(9) "Food truck employee" means a person working with unpackaged food, food equipment or utensils, or food contact surfaces in a food truck.

(10) "Ice cream truck" means a fully encased food service establishment:

(a) on a motor vehicle or on a trailer that a motor vehicle pulls to transport;

(b) from which a vendor, from within the frame of the vehicle, serves prepackaged ice cream products;

(c) that attracts patrons by traveling through a residential area and signaling the truck's presence in the area, including by playing music; and

(d) that may stop the vehicle to serve packaged ice cream products at the signal of a patron.

(11) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries and the nature, severity, and duration of the anticipated injury.

(12) "Local health department" has the same meaning as provided in Section 26A-1-102(5).

(13) "Local health officer" means the director of the jurisdictional local health department or a designated representative.

(14) "Person in charge" means the individual present at a food truck who is responsible for its operation at the time of the inspection.

(15) "Potentially hazardous food (PHF)" or "Time/temperature control for safety food (TCS)" has the same meaning as described in the FDA Food Code.

(16) "Primary permit" means a health permit issued by a local health department to operate a food truck within the jurisdiction of the local health department wherein the majority of the food truck's operations take place.

(17) "Sanitized" means the application of cumulative heat or chemicals on cleaned food, ice, or potable water contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

(18) "Shaved ice establishment" means a facility that would normally be classified as a food truck as defined in this rule that serves only shaved ice with flavored syrups and other toppings approved by the local health officer, and is operating from a fixed, single location without moving offsite throughout the entire operating season.

(19) "Secondary permit" means a health permit issued by a local health department to operate a food truck within the

jurisdiction of the local health department to a food truck operator who has a current primary permit from another local health department within the state.

R392-102-3. Commissary Requirements.

(1) No food or equipment may be stored at a home residence, storage unit, garage, or other unapproved structure.

(2) A food truck operator shall use a commissary unless exempted by the local health officer issuing a primary permit as described in Section R392-102-5.

(3) If a food truck commissary is required:

(a) The food truck operator shall use a commissary located within a local health jurisdiction approved by the local health department issuing the primary permit.

(b) The food truck operator must obtain a written, signed commissary agreement from the commissary operator, which shall be renewed annually, and any changes to the agreement shall be submitted to the local health department issuing the primary permit prior to the changes being implemented;

(c) The operator shall return the food truck to the commissary at a regular frequency, as determined and approved by the local health department issuing the primary permit;

(d) The operator must park the food truck at a location approved by the local health department issuing the primary permit at the end of daily operations;

(e) The operator shall document presence at the commissary on a log provided by the commissary operator according to the frequency determined and approved by the local health officer;

(i) The operator shall record the date, time in, time out, and initials.

(ii) The operator shall retain commissary records for one year, and shall make the records available for inspection by a local health officer upon request.

(f) The operator must have access to, and the ability to utilize:

(i) a 3-compartment sink and other approved warewashing equipment;

(ii) adequate hot and cold holding equipment as necessary for proper food storage;

(iii) a service sink with hot and cold water under pressure;

(iv) at least one handsink with pressurized hot and cold water that is conveniently located and used exclusively for hand washing;

(v) a conveniently located toilet room; and

(vi) approved methods and equipment to clean and sanitize food and non-food contact Surfaces with in the food truck.

(g) The food truck operator shall use a commissary which provides adequate space for the sanitary storage of food, equipment, utensils, linens, and single-service, or single-use articles; and

(h) The food truck operator shall use a commissary which has an electrical outlet available for food truck use, if needed, when parked at the commissary;

(i) An electrical installation intended for food truck use at a commissary shall comply with applicable codes and ordinances including the state electrical code.

(ii) Not more than one food truck shall be served by one electrical outlet at a time.

(4) If a commissary's operating permit is revoked or suspended, all associated primary and secondary food truck permits shall be invalidated until the operating permit is reinstated or the food truck operator obtains a new commissary agreement at an approved location, at which point the primary and secondary food truck permits shall be reinstated with the original expiration date.

R392-102-4. Food Truck Permit Requirements.

(1) A person shall not operate a food truck without a valid permit to operate issued by a local health department.

(2) A food truck operator shall only operate a food truck after:

(a) obtaining a temporary food establishment permit from a local health department when only operating at a fixed location for no more than 14 consecutive days; or

(b) obtaining an annual primary permit from the local health department wherein the majority of the food truck's operations will take place.

(3) In order to obtain a primary permit, a food truck operator shall:

(a) provide the following information to the local health department issuing the primary permit:

(i) name, title, contact information, and signature;

(ii) evidence of food safety manager certification as required in Subsection R392-102-4(19)

(iii) ownership status of the food truck (e.g. individual, partnership, corporation, etc.)

(iv) name of the food truck business or "dba";

(v) food truck license plate number;

(vi) a complete list of menu items if there has been a menu change or if it was not previously submitted with plans as required in Section R392-102-5;

(vii) a means whereby the local health department can determine the food truck's vending location or route as well as days and hours of food truck operation;

(viii) a copy of the written commissary agreement as described in Subsection R392-102-3(3)(b), unless exempted by the local health officer; and

(ix) documentation of an approved servicing area if the commissary is not properly equipped to provide potable water or electricity to, or to receive wastewater from a food truck; and shall

(b) pay a primary permit fee;

(c) submit plans for review as described in Section R392-102-5;

(d) complete necessary changes resulting from the review of plans, as required; and

(e) complete a pre-operational inspection, as described in Subsection R392-102-16(8).

(4) An issued primary permit shall include the following information:

(a) name of the issuing local health department;

(b) name of the permitted food truck, as provided on the application;

(c) license plate of the associated food truck;

(d) expiration date;

(e) permit tier designation as described in Subsection R392-102-4(5)(b); and

(f) the written words, "Primary Permit".

(5)(a) Primary and secondary permit fees shall be uniform statewide and may only be in an amount that reimburses the local health department for the cost of administering the food truck sanitation program.

(b) The local health department shall use a two-tier risk based assessment to determine an appropriate primary permit fee as follows:

(i) A primary permit shall be designated as "tier-one" when the food truck operator's menu includes fewer than three potentially hazardous foods, and when raw animal products are not included as a menu ingredient.

(ii) A primary permit shall be designated as "tier-two" when the food truck operator's menu includes three or more potentially hazardous foods, or when raw animal products are included as a menu ingredient.

(iii) The amount of a tier-one primary permit fee shall be reduced, as compared to a tier-two primary permit fee, to account for the lower regulatory burden.

(6) If an application for a primary permit is denied, the food truck operator may request information from a local health officer that includes:

(a) the specific reasons and rule citations for permit denial; and

(b) any actions the applicant must take to qualify for a primary permit.

(7) A food truck operator shall obtain a secondary permit before operating a food truck in any local health department jurisdiction other than the jurisdiction of the local health department that issued the primary permit as described in Subsection R392-102-4(2)(b).

(8) In order to obtain a secondary permit, a food truck operator shall:

(a) provide the following information to the local health department issuing the secondary permit:

(i) a copy of the primary permit;

(ii) a means whereby the local health department can determine the food truck's vending location or route as well as days and hours of food truck operation within the jurisdiction of the local health department issuing the secondary permit; and shall

(b) pay a secondary permit fee;

(9) An issued secondary permit shall contain the following information:

(a) name of the issuing local health department;

(b) name of the permitted food truck, as provided on the application;

(c) license plate of the associated food truck;

(d) expiration date which shall be the same as the expiration date printed on the primary permit provided by the food truck operator as required in Subsection R392-102-4(8)(a)(i); and

(e) the written words, "Secondary Permit".

(10)(a) A secondary permit fee shall only be in an amount that reimburses the local health department for the cost of permitting and inspecting the food truck.

(b) A secondary permit fee shall be no more than one-half of a tier-one primary permit fee, and shall be the same regardless of expiration date of the primary permit.

(11) A local health department issuing a secondary permit may not:

(a) impose any additional permit conditions or qualifications on a food truck operator; or

(b) require a plan review or a pre-operational inspection before issuing or renewing the permit.

(12) When acting as a catering operation, a food truck operator may operate in a health department jurisdiction other than the jurisdiction of the health department that issued the primary permit without obtaining either a secondary food truck permit or a temporary food service permit, and without additional inspections from the local health department.

(13)(a) A food truck operator shall comply with permitting requirements as stated in Subsection R392-102-4(3) when renewing a primary permit, and Subsection R392-102-4(8) when renewing a secondary permit.

(b) If a food truck operator elects to renew a primary permit and any secondary permits, it shall be the duty of the operator to renew within thirty calendar days before the expiration date of the current permit.

(14)(a) If a local health officer suspends a primary food truck permit, the local health officer shall notify other applicable local health departments regarding the enforcement actions taken. Any secondary permits issued by other local health departments shall be rendered invalid until the suspended primary permit is reinstated.

(b) If a local health officer suspends a secondary food truck permit, no other permits, whether primary or secondary, from other local health jurisdictions shall be affected.

(15) To reinstate a suspended permit, a food truck operator shall:

(a) complete a pre-operational inspection with the local health department that suspended the permit, as described in Subsection R392-102-16(8), which shows that the food truck is back in compliance with this rule; and

(b) pay an inspection fee.

(16) A food truck permit applied for or issued pursuant to this rule may be denied, suspended, or revoked by the local health officer for any of the following reasons:

(a) Failure of the application or plans to show that the food truck will be operated or maintained in accordance with the requirements of this rule;

(b) Submission of incorrect or false information in the application or plans;

(c) Failure to operate or maintain the food truck in accordance with the application, plans, and specifications approved by the local health department;

(d) Failure of the operator to allow the local health officer to conduct inspections as necessary to determine compliance with this rule;

(e) Failure of the operator to make the food truck available for inspection or to obtain an inspection according the frequency requirements detailed in Subsection R392-102(16)(9);

(f) Operation of the food truck in a way that causes or creates an imminent health hazard;

(g) Violation of any condition upon which the permit was issued; or

(h) Failure to pay a permit fee or inspection fee.

(17) A food truck operator shall post all issued health permits in a conspicuous location.

(18) A food truck permit may not be transferred from one food truck operator to another, from one food truck to another, or from one type of operation to another if the change affects the tier designation as specified in Subsection R392-102-4(5)(b) and the local health department that issued the primary permit has not approved the change.

(19) At least one food truck employee shall:

(a) be certified in food safety management according to the requirements of Rule R392-101, unless exempted by a local health officer according to the criteria listed in Subsection R392-101-8(2) and Section 26-15a-105; and

(b) maintain proof of certification available for review by the local health officer upon request.

(20)(a) All food truck employees shall be trained in food safety as required by Rule R392-103, and shall hold a valid food handler's permit issued by a local health department

(b) The operator shall maintain proof of food handler permit certification of employees and shall provide it to the local health officer upon request.

R392-102-5. Plan Review Requirements.

(1) A food truck operator shall submit to the local health department properly prepared plans and specifications for review and approval before:

(a) the construction of a food truck;

(b) the conversion of an existing vehicle or trailer to a food truck; or

(c) the remodeling of a food truck or a change of food truck type or change in foods served or food service operations which would necessitate a change in risk assessment as described in Subsection R392-102-4(5)(b).

(2) When applying for a primary permit for the first time, the operator of a newly constructed food truck, or food

truck in pre-construction shall submit plans to the local health department, which include at least the following:

(a) a complete list of intended menu items;

(b) anticipated volume of food to be stored, prepared, and sold or served;

(c) equipment cut sheets;

(d) plumbing schedule;

(e) mechanical schedule;

(f) dimensional floor plan;

(g) finish schedule for floors, walls, and ceilings;

(h) an equipment layout; and

(i) any additional information required by the local health officer.

(3) When applying for a primary permit for the first time, the operator of a retrofitted or existing food truck shall submit plans to the local health department, which may include the following:

(a) dimensional floor plan;

(b) an equipment layout, including the location of hand wash and food preparation sinks; and

(c) any additional information required by the local health officer.

(4)(a) Except when the food truck has undergone renovation or a change in ownership since the time of permit issuance, an additional plan review is not required before renewing a primary permit.

(b) When the food truck has undergone renovation or a change in ownership since the time of permit issuance, the operator shall comply with Subsection R392-102-5(3)

R392-102-6. Construction and Maintenance Requirements.

(1) Materials for indoor floor, wall, and ceiling surfaces of a food truck shall be:

(a) smooth, durable, and easily cleanable for areas where food is stored, prepared, held under temperature control, or served; and

(b) nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, servicing areas, and areas subject to flushing or spray cleaning methods.

(2) Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and be designed and constructed to allow easy cleaning and to facilitate maintenance.

(3) Exterior walls and roofs of a food truck shall be constructed of weather-resistant materials, and shall effectively protect the food truck interior from the entry of dust, debris, stormwater, insects, rodents, and other animals.

(4)(a) A food truck operator shall permanently display the business name on the exterior of the food truck in printed letters of at least four inches in height.

(b) The business name printed on the exterior of the food truck shall be the same as the business name or "dba" provided on the application required by Subsection R392-102-4(3)(a)(iv)

(5) Mats and duckboards shall be designed to be removable and easily cleanable.

(6) Physical facilities shall be maintained in good repair.

(7)(a) Physical facilities shall be cleaned as often as necessary to keep them clean.

(b) Except for cleaning that is necessary due to a spill or other accident, cleaning shall be done during periods when the least amount of food is exposed such as after closing.

(8) Equipment shall be maintained in a state of repair and condition that meets the requirements specified under Section R392-102-8.

(9) Except as specified in Subsection R392-102-6(10), a food truck operator shall protect outer openings of a food truck against the entry of insects and rodents by:

(a) tight-fitting windows; and

(b) closed, solid, tight-fitting doors.

(10) If the windows or doors of a food truck are kept open for ventilation or food service, the openings shall be protected against the entry of insects and rodents by:

(a) 16 mesh to 1 inch screens; or

(b) other effective means approved by the local health officer.

(11)(a) Light intensity within the interior of the food truck shall be:

(i) at least 540 lux (50 foot candles) at any surface where a food truck employee works with food or utensils;

(ii) at least 215 lux (20 foot candles):

(A) in a toilet room; and

(B) inside equipment such as reach-in and under-counter refrigerators; and

(iii) at least 108 lux (10 foot candles) at a distance of 30 inches (75 cm) above the floor in walk-in refrigeration units and dry food storage areas.

(b) Light bulbs located in the food truck shall be shielded, coated, or otherwise shatter-resistant.

(12) Living quarters and shower or bathing facilities are prohibited on a food truck.

(13)(a) A food truck shall have at least one handwashing sink provided with hot and cold running water.

(b) A local health department issuing a primary permit may require the installation of one or more handwashing sinks as necessary for their convenient use by employees in the following areas:

(i) food preparation, food dispensing, and warewashing areas; and

(ii) in a toilet room.

(14)(a) A food truck shall have a 3-compartment sink installed with hot and cold water under pressure for manually washing, rinsing, and sanitizing equipment and utensils unless exempted by the local health department issuing a primary permit.

(b) Unless exempted, a 3-compartment sink shall meet the following requirements:

(i) the food truck must have sufficient onboard water storage capacity to fill all sink compartments without depleting water storage needed for food truck operations such as handwashing; and

(ii) sink compartments shall be large enough to accommodate immersion of in-use utensils.

R392-102-7. Water and Wastewater Requirements.

(1) A food truck operator shall ensure that potable water is available to a food truck during all hours of operation through:

(a) an onboard potable water storage tank which shall hold a minimum of 30 gallons as measured down from the inlet; or

(b) piping, tubing, or hoses connected to an adjacent potable water source under pressure as approved by the local health officer.

(i) The water supply type described in Subsection R392-102-7(1)(b) is allowed only when the food truck is concurrently connected to a public sanitary sewer system in a manner approved by the local health officer.

(2)(a) The water source and system shall be of sufficient capacity to meet the peak water demands of the food truck.

(b) Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food truck.

(3) Materials that are used in the construction of a mobile water tank, food truck onboard water tank, and appurtenances shall be:

(a) safe;
(b) durable, corrosion resistant, and nonabsorbent;
(c) finished to have a smooth, easily cleanable surface; and
(d) designed and intended only for use with potable water.
(4) An onboard water tank shall be:
(a) enclosed from the filling inlet to the discharge outlet;
(b) sloped to an outlet that allows complete drainage of the tank; and
(c) used for conveying potable water and for no other purpose.
(5) If an onboard water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and be:
(a) flanged upward at least 13 mm (one-half inch); and
(b) equipped with a port cover assembly that is:
(i) provided with a gasket and a device for securing the cover in place, and
(ii) flanged to overlap the opening and sloped to drain.
(6) A fitting with "V" type threads on an onboard water tank inlet or outlet shall be allowed only when a hose is permanently attached.
(7) If provided, an onboard water tank vent shall terminate in a downward direction and shall be covered with:
(a) 16 mesh to 25.4 mm (16 mesh to 1 inch) screen or equivalent when the vent is in a protected area; or
(b) a protective filter when the vent is in an area that is not protected from windblown dirt and debris.
(8)(a) A water tank and its inlet and outlet shall be sloped to drain.
(b) A water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil, or grease.
(9)(a) A hose, pipe, or tube used for conveying potable water from a water tank shall be:
(i) safe;
(ii) durable, corrosion resistant, and nonabsorbent;
(iii) resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;
(iv) finished with a smooth interior surface;
(v) clearly and durably identified as to its use if not permanently attached; and
(vi) prohibited from use in any other service such as conveying wastewater or toxic chemicals.
(b) An operator shall only use a hose designed and intended to convey potable water when filling an onboard water tank as described in Subsection R392-102-7(1)
(10) A food truck operator shall install and maintain a filter that does not pass oil or oil vapors in the air supply line between the compressor and potable water supply system when compressed air is used to pressurize the water tank system.
(11)(a) A cap and keeper chain, closed cabinet, closed storage tube, or other protective cover or device approved by the local health officer shall be provided for a water inlet, outlet, and hose.
(b) The protective cover or device shall be used whenever the water tank or hose inlet and outlet fitting is not in use.
(12) A food truck's onboard water tank inlet shall be:
(a) 19.1 mm (three-fourths inch) in inner diameter or less; and
(b) provided with a hose connection of a size or type that will prevent its use for any other service.
(13) The operator shall flush and sanitize any water tank, pump, and hoses before placing into service after initial purchase, construction, repair, modification, and periods of nonuse of 30 days or more, and as often as necessary to maintain the equipment in clean and sanitary condition.
(14) A food truck operator shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.
(15)(a) A wastewater holding tank in a food truck shall be:
(i) sized 15 percent larger in capacity than the water supply tank; and
(ii) sloped to a drain that is 25 mm (1 inch) in inner diameter or greater, equipped with a shut-off valve.
(b) Subsection R392-102-7(15(a)(i) does not apply to a potable water tank that is used only for beverage service on a food truck and is not connected to a wastewater holding tank.
(16) Wastewater shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of wastewater transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to:
(a) Plumbing Code;
(b) The Utah Department of Environmental Quality, Division of Water Quality under Title R317;
(c) Local health department and municipal regulations; and
(d) the local sewer district having jurisdiction.
(17)(a) Wastewater and other liquid wastes shall be removed from a food truck at an approved commissary or a waste servicing area approved by the local health officer or by a wastewater transport vehicle in such a way that a public health hazard or nuisance is not created.
(b) A food truck operator shall thoroughly flush and drain a tank for liquid waste retention in a sanitary manner during the servicing operation.
(18) Wastewater or liquid waste conveyance lines that are not shielded to intercept drips shall be installed or located under food and food contact surfaces.
(19) The operator shall store potable water pipes, hoses, and tubes separately from wastewater pipes, hoses, and tubes in a manner that prevents cross contamination.

R392-102-8. Equipment Requirements.
(1) Materials that are used in the construction of utensils and equipment food contact surfaces of equipment may not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be:
(a) safe;
(b) durable, corrosion-resistant, and nonabsorbent;
(c) sufficient in weight and thickness to withstand repeated washing;
(d) finished to have a smooth, easily cleanable surface; and
(e) resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.
(2)(a) Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a corrosion-resistant, nonabsorbent, and smooth material.
(b) Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.
(3) Copper and copper alloys such as brass may not be used in contact with a food that has a pH below 6 such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator.
(4) Hot oil filtering equipment shall be readily accessible for filter replacement and cleaning of the filter and meet the requirements of Subsection R392-102-8(1).
(5) Galvanized metal may not be used for utensils and

food contact surfaces of equipment that are used in contact with acidic food.

(6) Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.

(7)(a) Except as specified in (b), (c), and (d) of this section, wood and wood wicker may not be used as a food-contact surface.

(b) Hard maple or an equivalently hard, close-grained wood may be used for:

(i) cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and

(ii) wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 110 degrees C (230 degrees F) or above.

(c) whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.

(d) If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:

(i) untreated wood containers; or

(ii) treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800 Preservatives for wood.

(8)(a) Multiuse food contact surfaces shall be:

(i) smooth;

(ii) free of breaks, open seams, cracks, chips, inclusions, pits, and similar imperfections;

(iii) free of sharp internal angles, corners, and crevices;

(iv) finished to have smooth welds and joints; and

(v) accessible for cleaning and inspection.

(9)(a) Equipment that is fixed in place because it is not easily movable shall be installed so that it is:

(i) spaced to allow access for cleaning along the sides, behind, and above the equipment;

(ii) spaced from adjoining equipment, walls, and ceilings a distance of not more than one millimeter or one thirty-second inch; or

(iii) sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage.

(b) counter-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:

(i) sealed; or

(ii) elevated on legs to provide not less than four inches of clearance.

(10) Floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at least a six inch (15 centimeter) clearance between the floor and the equipment.

(11) Exhaust ventilation hood systems in food preparation and warewashing areas including components such as hoods, fans, guards, and ducting shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens, and single-service and single-use articles.

(12) Filters or other grease extracting equipment shall be designed to be readily removable for cleaning and replacement if not designed to be cleaned in place.

(13) Drainboards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing. Sufficient space must be provided for storage of soiled and cleaned items that may accumulate during hours of operation, such as on drainboards, utensil racks, or tables.

(a) Soiled and clean items must be stored separately and in a manner that protects clean items from contamination.

(14) A plumbing fixture such as a handwashing sink or toilet shall be easily cleanable.

(15) Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity, and shall be capable of consistently maintaining food temperatures as specified under Section R392-102-12.

(a) The operator shall maintain an operational temperature-measuring device in each mechanically refrigerated unit.

(b) In a mechanically refrigerated or hot food storage unit, the sensor or thermometer shall be located to measure the ambient temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit.

(16) A food truck operator with a menu offering any potential hazardous foods shall equip the food truck with at least one readily accessible and properly calibrated food temperature measuring device.

(a) Food temperature measuring devices may not have sensors or stems constructed of glass unless the thermometer with a glass sensor or stem is encased in a shatterproof coating such a candy thermometer.

(b) Temperature measuring devices shall be easily readable.

(17) When manual warewashing of utensils or food-contact equipment is done on a food truck, the food truck operator shall provide a test kit or other device that accurately measures the concentration in mg/L of sanitizing solutions.

(a) If hot water is used for sanitization in manual warewashing operations in a food truck, the sanitizing compartment of the sink shall be:

(i) Designed with an integral heating device that is capable of maintaining water at a temperature not less than 171 degrees F; and

(ii) Provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.

(18)(a) Receptacles and waste handling units for refuse and recyclables and for use with materials containing food residue shall be durable, cleanable, insect- and rodent-resistant, leakproof, and nonabsorbent.

(b) Receptacles and waste handling units for refuse and recyclables used with materials containing food residue and used outside the food truck shall be:

(i) designed and constructed to have tight-fitting lids, doors, or covers; and

(ii) maintained in good repair.

(c) Refuse and recyclables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

(d) Receptacles and waste handling units for refuse and recyclables shall be kept covered inside the food truck:

(i) if the receptacles and units contain food residue and are not in continuous use, or

(ii) after they are filled.

(19) Refuse and recyclables shall be removed from the food truck premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

(20) A food truck operator shall furnish or equip a food truck with adequate electrical power to ensure uninterrupted service.

R392-102-9. Requirements for Cleaning Equipment and Utensils.

(1) Equipment food-contact surfaces and utensils shall be clean to sight and touch.

(2) The food-contact surfaces of cooking equipment and

pans shall be kept free of encrusted grease deposits and other soil accumulations.

(3) Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.

(4) Equipment food-contact surfaces and utensils shall be cleaned and sanitized:

(a) before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry;

(b) Each time there is a change from working with raw foods to working with ready-to-eat foods;

(c) Between uses with raw fruits and vegetables and with TCS food;

(d) Before using or storing a food temperature measuring device; and

(e) At any time during the operation when contamination may have occurred.

(f) Equipment food contact surfaces and utensils shall be cleaned throughout the day at least every four hours if used with TCS food.

(g) Utensils and equipment contacting food that is not TCS shall be cleaned:

(i) At any time when contamination may have occurred;

(ii) At least every 24 hours;

(iii) Before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers; and

(iv) In equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders, and water vending equipment:

(A) At a frequency specified by the manufacturer; or

(B) At a frequency necessary to preclude accumulation of soil or mold.

(5) The food-contact surfaces of cooking and baking equipment shall be cleaned at least every 24 hours. This section does not apply to hot oil cooking and filtering equipment.

(6) The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.

(7) Nonfood-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

(8) Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.

(9) The washing procedures selected shall be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.

(10) Washed utensils and equipment shall be rinsed, after cleaning and prior to sanitizing, so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent-sanitizer solution by using one of the following procedures:

(a) Use of a distinct, separate water rinse after washing and before sanitizing if using:

(i) A 3-compartment sink, or

(ii) Alternative manual warewashing equipment equivalent to a 3-compartment sink as approved by the local health department issuing the primary permit.

(11) Equipment food-contact surfaces and utensils shall be sanitized before use after cleaning. Sanitizers and sanitizing operations shall meet the requirements in Section R392-102-10.

(12) After cleaning and sanitizing, equipment and utensils shall be air-dried or used after adequate draining.

(13) Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.

(14)(a) Cloths in-use for wiping food spills from tableware and carry-out containers that occur as food is being served shall be:

(i) maintained dry; and

(ii) used for no other purpose.

(b) Cloths in-use for wiping counters and other equipment surfaces shall be:

(i) held between uses in a container of chemical sanitizer solution at a concentration specified under Subpart 4-501.114 of the FDA Food Code; and

(ii) laundered daily.

(c) Cloths in-use for wiping surfaces in contact with raw animal foods shall be kept separate from cloths used for other purposes.

(d) Dry wiping cloths and the chemical sanitizing solutions specified in Subsection R392-102-9(14) in which wet wiping cloths are held between uses shall be free of food debris and visible soil.

(e) Containers of chemical sanitizing solutions specified in Subsection R392-102-9(14)(b)(i) in which wet wiping cloths are held between uses shall be stored off the floor and used in a manner that prevents contamination of food, equipment, utensils, linens, single-service, or single-use articles.

(f) Single-use disposable sanitizer wipes shall be used in accordance with EPA-approved manufacturer's label use instructions.

(15) Soiled linens shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils, and single-service and single-use articles.

(16) Cleaned and sanitized equipment and utensils, laundered linens, and single-service and single-use articles shall be stored:

(a) in a clean, dry location;

(b) where they are not exposed to splash, dust, or other contamination; and

(c) at least six inches (15 cm) above the floor.

(17) Clean and sanitized equipment and utensils shall be stored as specified under Subsection R392-102-8(13) and shall be stored:

(a) in a self-draining position that allows air drying; and

(b) covered or inverted.

(18) The wash, rinse, and sanitize solutions shall be maintained clean.

(19) Single-service and single-use articles may not be reused.

(20) Raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form.

R392-102-10. Requirements for Sanitizing Equipment and Utensils.

(1) Chemical sanitizers, including chemical sanitizing solutions generated on-site, and other chemical antimicrobials applied to food-contact surfaces shall:

(a) Meet requirements specified in 40 CFR 180.940 and 40 CFR 180.2020; and

(b) Be used in accordance with the EPA-registered label use instructions.

(2) Chlorine sanitizer solutions shall have a minimum

concentration and temperature:
(a) of 25 to 49 mg/L at 120 degrees F,
(i) with an associated contact time of 10 seconds;
(b) of 50 to 99 mg/L at 100 degrees F, pH of 10 or less, or 75 degrees F, pH or 8 or less,
(i) with an associated contact time of 7 seconds; or
(c) of 100 mg/L at 55 degrees F,
(i) with an associated contact time of 10 seconds.
(3) Iodine sanitizing solutions shall have a:
(a) Minimum temperature of 68 degrees F;
(b) pH of 5.0 or less of a pH no higher than the level for which the manufacturer specifies the solution is effective;
(c) Concentration between 12.5 mg/L and 25 mg/L; and
(d) Contact time of at least 30 seconds.
(4) Quaternary ammonium compound solutions shall:
(a) Have a minimum temperature of 75 degrees F;
(b) Have a concentration as indicated by the manufacturer's use directions included in the labeling;
(c) Be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by the EPA-registered label use instructions; and
(d) Have a contact time of at least 30 seconds.
(5) Hot water sanitization, without the use of chemicals, shall be accomplished by:
(a) Manual immersion for at least 30 seconds in water held at a minimum temperature of 171 degrees F or higher;
(b) Being cycled through equipment which:
(i) the temperature of the sanitizing rinse as it enters the manifold may not be more than 194 degrees F or less than 165 degrees F for stationary racks or 180 degrees F for all other machines; and
(ii) achieves a utensil surface temperature of 160 degrees F as measured by an irreversible registering temperature indicator.

R392-102-11. Food Safety Requirements.
(1)(a) Food shall be safe, unadulterated, and honestly presented.
(b) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.
(c) Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.
(2) Food shall be obtained from sources that comply with Rule R392-100.
(3) Food prepared in a private home or any structure or dwelling designed, constructed, or intended for human occupancy shall not be used in a food truck or offered from a food truck for human consumption.
(4) Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.
(5) Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.
(6) Eggs that have not been specifically treated to destroy all viable Salmonellae shall be labeled to include safe handling instructions as specified in 21 CFR 101.17(h).
(a) Eggs shall be received clean and sound and shall not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified Rule R70-410.
(b) Egg products shall be obtained pasteurized.
(c) Pasteurized eggs or egg products shall be substituted for raw eggs in the preparation of foods such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages that are not cooked.
(i) Raw, unpasteurized eggs may be used in recipes that will not be cooked if the food truck has obtained a variance from the primary permit issuer, which variance is based on a commissary HACCP plan; and
(ii) The local health officer may revoke or suspend a permit and variance if the commissary HACCP plan is not being followed.
(7) Fluid milk and milk products shall be obtained from sources that comply with grade A standards as specified in Rule R70-310.
(8) Fish and molluscan shellfish that are received for sale or service shall be commercially and legally caught or harvested.
(a) Molluscan shellfish that are recreationally caught may not be received for sale or service.
(b) Molluscan shellfish, shucked shellfish and shellstock shall comply with 3-202.17, 3-202.18, 3-203.11, and 3-203.12 of the 2013 FDA Food Code as adopted in Rule R392-100.
(c) When received by a food truck, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock, or those with badly broken shells, shall be discarded.
(9) Mushroom species picked in the wild shall not be offered for sale or service by a food truck.
(10) If game animals are received for sale or service they shall meet the requirements of 3-201.17 of the 2013 FDA Food Code as adopted and amended in Rule R392-100.
(11) Ice for use as a food or a cooling medium shall be made from drinking water.
(12) Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.
(13) Ice may not be used as food after use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment.
(14) Food shall only contact surfaces of equipment and utensils that are cleaned and sanitized as specified in Sections R392-102-9 and R392-102-10 or single-service and single-use articles.
(a) Linens, such as cloth napkins, shall not be used in contact with food.
(15)(a) Except as specified in (b) and (c) of this subsection, food shall be protected from contamination by storing the food:
(i) in a clean, dry location;
(ii) where it is not exposed to splash, dust, or other contamination; and
(iii) at least six inches (15 cm) above the floor.
(b) Pressurized beverage containers and cased food in waterproof containers such as bottles or cans may be stored on a floor that is clean and not exposed to floor moisture.
(c) Food in packages and working containers may be stored less than six inches above the floor on case lot handling equipment, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods.
(16) Food shall not be stored:
(a) in toilet rooms;
(b) under sewer lines;
(c) under open stairwell;
(d) under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed; or
(e) under other sources of contamination.
(17) Food shall be protected from cross contamination by:
(a) separating raw animal foods during storage, preparation, holding, and display from:
(i) raw ready-to-eat food, and

(ii) cooked ready-to-eat food;

(b) Except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by:

(i) using separate equipment for each type; or

(ii) arranging each type of food in equipment so that cross contamination of one type with another is prevented; and

(iii) preparing each type of food at different times or in separate areas.

(c) Cleaning hermetically sealed containers of food of visible soil before opening;

(d) Protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;

(e) Storing and segregating damaged, spoiled, or recalled food in designated areas within the food truck that are separated from food, equipment, utensils, linens, and single-service and single-use articles.

(f) Separating fruits and vegetables before they are washed from ready-to-eat food.

(18) Food shall be protected from contamination that may result from a factor or source not specified in this section.

(19) Except for containers holding food that can be readily and unmistakably recognized such as dry pasta, working containers holding food or food ingredients that are removed from their original packages for use in the food truck, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar shall be identified with the common name of the food.

(20) Food shall be protected from contamination that may result from the addition of:

(a) unsafe or unapproved food or color additives; and

(b) unsafe or unapproved levels of approved food and color additives.

(21) An operator shall not:

(a) Apply sulfating agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B1; or

(b) Except for grapes, serve or sell food specified under the previous subsection (21)(a) of this section that is treated with sulfating agents before receipt by the food truck.

(22)(a) A food truck operator shall not prepare food on a food truck using "specialized processing methods" as described in the currently adopted FDA Food Code incorporated by reference in Rule R392-100. A food truck operator may not obtain a variance from a local health officer to use specialized processing methods on a food truck.

(b) A food truck operator shall remove time/temperature controlled for safety (TCS) food from reduced oxygen packaging before holding or storing the food in a temperature controlled environment on a food truck.

(23) Food shall be protected from contamination that may result from a factor or source not specified elsewhere in this rule.

R392-102-12. Food Temperature Requirements.

(1)(a) Refrigerated, potentially hazardous food shall be at a temperature of 5 degrees C (41 degrees F) or below when received at the food truck from a commissary or other approved source.

(b) Raw eggs shall be received at the food truck from a commissary or other approved source in refrigerated equipment that maintains an ambient air temperature of 7 degrees C (45 degrees F) or less.

(c) Potentially hazardous food that is cooked to a temperature and for a time specified under Subparts 3-401.11 to 3-401.13 of the FDA Food Code and received hot at the food truck from a commissary or other approved source shall be at a temperature of 57 degrees C (135 degrees F) or above.

(d) A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen at the food truck from a commissary or other approved source.

(e) Upon receipt at the food truck from a commissary or other approved source, potentially hazardous food shall be free of evidence of previous temperature abuse.

(2) Any food requiring cooking, freezing, or reheating before service shall be cooked, frozen, or reheated as required in Part 3-4 of the FDA Food Code.

(3) Stored frozen foods shall be maintained frozen. Commercially processed foods which are labeled to be kept frozen must be kept frozen until cooked or served.

(a) Commercially processed foods labeled to be kept frozen may be thawed under refrigeration at 41 degrees F or below in accordance with Subsection R392-102-12(4) if:

(i) Records are kept or date marking used indicating when the food entered refrigeration; and

(ii) Discarded seven days after entering the refrigerator.

(4) Any food requiring thawing shall be thawed as required in Subpart 3-501.13 of the FDA Food Code.

(5) Any food requiring cooling shall be cooled in the commissary as required in Subparts 3-501.14 and 3-501.15 of the FDA Food Code. The operator shall not cool cooked time/temperature control for safety (TCS) food on the food truck unless exempted by the local health officer issuing the primary permit.

(6) Except during preparation, cooking, or cooling time/temperature control for safety food (TCS) shall be maintained:

(a) at 57 degrees C (135 degrees F) or above, or

(b) at 5 degrees C (41 degrees F) or less.

(7)(a) Ready-to-eat, TCS food prepared and held for more than 24 hours at a temperature of 5 degrees C (41 degrees F) or less in a food truck shall be clearly marked to indicate the date or day by which the food shall be consumed, sold, or discarded, which date shall be a maximum of 7 days from the date of preparation, with the day of preparation being counted as Day 1.

(b) Ready-to-eat, TCS food prepared and packaged by a food processing plant and is opened and held for more than 24 hours at a temperature of 5 degrees C (41 degrees F) or less in a food truck,shall be clearly marked at the time the original container is opened in a food truck to indicate the date or day by which the food shall be consumed, sold, or discarded, with the day the original container is opened being counted as Day 1, and

(i) The day or date marked by the food truck may not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety.

(8) A refrigerated, ready-to-eat time/temperature control for safety food ingredient or a portion of a refrigerated, ready-to-eat, time/temperature control for safety food that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient.

(9) A food specified in Subsection R392-102-12(7) shall be discarded if it:

(a) exceeds the temperature and time combination specified in Subsection R392-102-12(7), except time that the product is frozen;

(b) is in a container or package that does not bear a date or day; or

(c) is appropriately marked with a date or day that exceeds a temperature and time combination as specified in Subsection R392-102-12(7).

R392-102-13. Poisonous or Toxic Materials.

(1) Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label.

(2) Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material.

(3) Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

(a) separating the poisonous or toxic materials by spacing or partitioning; and

(b) locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles.

(4) Only those poisonous or toxic materials that are required for the operation and maintenance of a food truck, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a food truck.

(5) Poisonous or toxic materials shall be:

(a) used according to:

(i) Rule R392-100 and local health department regulations,

(ii) manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment,

(iii) the conditions of certification for use of the pest control materials, and

(iv) additional conditions that may be established by the local health officer; and

(b) applied so that:

(i) a hazard to employees or other persons is not constituted, and

(ii) contamination including toxic residues due to drip, drain, fog, splash or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented. This is achieved by:

(A) removing the items,

(B) covering the items with impermeable covers, or

(C) taking other appropriate preventive actions, and

(D) cleaning and sanitizing equipment and utensils after the application.

(6) The food truck shall be maintained free of insects, rodents, and other pests. The presence of insects, rodents, and other pests shall be controlled to eliminate their presence on the food truck by:

(a) routinely inspecting incoming shipments of food and supplies;

(b) routinely inspecting the food truck for evidence of pests;

(c) using pest management methods, if pests are found, such as trapping devices, eliminating harborage, or other means of pest control.

(7) Restricted use pesticides shall not be used in a food truck.

(8) A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food.

(9) Rodent bait shall be contained in a covered, tamper-resistant bait station.

(10) Tracking powder may not be used inside of a food truck unless the powder is non-toxic, such as flour or talcum powder, and is used in such a manner that it cannot contaminate food, equipment, utensils, linens, and single-service or single-use articles.

R392-102-14. Personal Cleanliness and Protection from Contamination.

(1) Food truck employees may not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment.

(2) Food truck employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.

(3) If used, single-use gloves shall be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.

(4) Food truck employees shall keep their hands and exposed portions of their arms clean using the cleaning procedure specified in Subpart 2-301.12 of the FDA Food Code immediately before engaging in handling of food or clean equipment and utensils and:

(a) after touching bare human body parts other than clean hands and clean, exposed portions of arms;

(b) after using the toilet room;

(c) after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;

(d) after handling soiled equipment or utensils;

(e) during food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;

(f) when switching between working with raw food and working with ready-to-eat food;

(g) before donning gloves to initiate a task that involves working with food; and

(h) after engaging in other activities that contaminate the hands.

(5) The operator shall supply each handwashing sink with:

(a) a supply of hand cleaning liquid, powder, or bar soap; and

(b) individual, disposable towels and an associated waste receptacle;

(c) a continuous towel system that supplies the user with a clean towel;

(d) a heated air hand drying device; or

(e) a hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperature.

(6) Near each handwashing sink in a conspicuous location, the operator shall place a sign or poster that notifies food truck employees to wash their hands.

(7) Food truck employees shall clean their hands in a handwashing sink and may not clean their hands in a sink used for food preparation or warewashing.

(8) A hand antiseptic used as a topical application, a hand antiseptic solution used as a hand dip, or a hand antiseptic soap shall:

(a) be applied only to hands that are cleaned as specified in Subsection R392-102-14(4); and

(b) comply with the requirements of 2-301.16 of the FDA Food Code.

(c) Except as temporarily allowed by the health officer, the use of a hand antiseptic shall not replace the requirement for hand washing in Subsection R392-102-14(4).

(9) Food truck employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.

(10) Unless wearing intact gloves in good repair, a food truck employee may not wear fingernail polish or artificial fingernails when working with exposed food.

(11) Except for a plain ring such as a wedding band, food truck employees may not wear jewelry including medical information jewelry on their arms and hands.

(12) Food truck employees shall wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

(13) Food truck employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.

(14) Food truck employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles

(15) A food truck employee may not use a utensil more than once to taste food that is to be sold or served.

(16) Toilet rooms shall:

(a) have a supply of toilet tissue available at each toilet;

(b) be conveniently located and accessible to employees during all hours of operation;

(c) be provided with a covered waste receptacle;

(d) be completely enclosed and provided with a tight-fitting door. Except during cleaning and maintenance operations, toilet room doors shall be kept closed.

R392-102-15. Supervision, Employee Health, and Contamination Events.

(1) The operator shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food truck during all hours of operation.

(2) Based on the risks inherent to the food truck operation, during inspections and upon request the person in charge shall demonstrate to the local health officer knowledge of foodborne disease prevention and the requirements of this rule. The person in charge shall demonstrate this knowledge by:

(a) Complying with the requirements of this rule;

(b) Being certified in food safety management according to the requirements of Rule R392-101; or

(c) Responding correctly to the inspector's questions as they relate to the specific food truck operations.

(3) The person in charge shall ensure that:

(a) Food truck operations are not conducted in a private home or in a room used as living or sleeping quarters;

(b) Persons unnecessary to the food truck operation are not allowed in the food truck;

(c) Employees and other persons entering the food truck comply with this rule;

(d) Employees are effectively cleaning their hands;

(e) Employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the proper temperatures, protected from contamination, unadulterated, and accurately presented, and are placing foods into appropriate storage locations;

(f) Employees are properly cooking TCS food;

(g) Employees are using proper methods to rapidly cool TCS food;

(h) Consumers who order raw or partially cooked TCS food of animal origin are informed that the food is not cooked sufficiently to ensure its safety;

(i) Employees are properly sanitizing cleaned equipment and utensils;

(j) Employees are preventing cross-contamination of ready-to-eat food with bare hands by properly using suitable utensils;

(k) Employees are properly trained in food safety, including food allergy awareness;

(l) Employees are informed in a verifiable manner of their responsibility to report, to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food, as specified under Subsection R392-102-15(4); and

(m) Written procedures and plans, where required in this rule or by the local health officer, are maintained and implemented as required.

(4) The operator, person in charge, and employees shall abide by Subpart 2-201 of the FDA Food Code in reporting of diseases, symptoms, and the exclusion or restriction of those working in the food truck.

(5) A food truck shall have procedures for employees to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the food truck. The procedures shall address the specific actions employees must take to minimize the spread of contamination and the exposure of employees, consumers, food, and surfaces to vomitus or fecal matter.

R392-102-16. Inspections, Corrective Actions, and Prevention of Foodborne Disease.

(1) All food trucks shall meet the requirements of this rule. Food trucks are exempt from the requirements of Rule R392-100, Food Service Sanitation, unless otherwise stated in this rule.

(2) Upon presenting proper identification and providing notice of the intent to conduct an inspection, the operator shall allow the local health officer to determine if the food truck is in compliance with this rule by allowing access to the food truck, allowing inspection, and providing information and records specified in this rule during the food truck's hours of operation and other reasonable times.

(3) If an operator denies access to the local health officer, the local health officer shall:

(a) Inform the operator that:

(i) The operator is required to allow access to the local health officer as specified under Subsection R392-102-16(1),

(ii) Access is a condition of the acceptance and retention of a permit to operate as specified under Section R392-102-4, and

(iii) If access is denied, an order issued by an appropriate authority allowing access may be obtained; and

(b) Make a final request for access.

(c) If access continues to be refused, the local health officer shall provide details of the denial of access on an inspection report form.

(4) The local health officer shall document on an inspection report form:

(a) Administrative information about the food truck's legal identity, street and mailing addresses, permit tier designation as specified under Section R392-102-4, inspection date, and other information including the type of water supply, sewage disposal, status of the permit, and personnel certificates of food safety management and training; and

(b) Specific factual observations of noncompliant conditions or other deviations from this rule that require correction by the operator including:

(i) Failure of the operator to demonstrate the knowledge of foodborne illness prevention, and

(ii) Failure of employees and the operator to report a disease or medical condition; and

(c) Time frame for correction of violations.

(5) At the conclusion of the inspection the local health officer shall provide a copy of the completed inspection report and the notice to correct violations to the operator or to the person in charge, and request a signed acknowledgement of receipt.

(a) The local health officer shall inform a person who

declines to sign an acknowledgement of receipt of inspectional findings that: **26-1-30(23) 26-7-1 26-15-2**

(i) An acknowledgment of receipt is not an agreement with findings;

(ii) Refusal to sign an acknowledgement of receipt will not affect the operator's obligation to correct the violations noted in the inspection report within the time frames listed; and

(iii) A refusal to sign an acknowledgement of receipt is noted in the inspection report and conveyed to the historical record for the food truck.

(iv) The local health officer shall make a final request that the person in charge sign an acknowledgement of receipt of inspectional findings.

(6) The local health officer shall treat the inspection report as a public document and shall make it available for disclosure.

(7) An operator shall immediately discontinue operations and notify the local health department if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstances that may endanger public health.

(a) If operations are discontinued as required by the local health officer or in response to an imminent health hazard as specified in Subsection R392-102(16)(7), the operator shall obtain approval from the local health officer before resuming operations.

(8) A local health department issuing the primary permit, or reinstating a suspended primary or secondary permit, may conduct one or more preoperational inspections to verify that the food truck is constructed and equipped in accordance with the approved plans and approved modifications of those plans, and is in compliance with this rule.

(9)(a) A local health officer may periodically conduct operational onsite inspections of a food truck to determine continued compliance with this rule.

(b) For each year that a primary permit is issued to a food truck operator, the local health department that issued the permit shall conduct a minimum of one inspection of a food truck with a primary permit, regardless of tier designation as described in Subsection R392-102-4(5)(b).

(c) Any local health department that issues a secondary permit to a food truck operator may conduct a minimum of one onsite inspection prior to permit expiration.

(d) The local health department shall periodically inspect throughout its permit period a food truck operating only with a temporary food establishment permit that prepares, sells, or serves unpackaged time/temperature control for safety food and that has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, food preparation and protection, food temperature control, warewashing, potable water supply, waste retention and disposal, and insect and rodent control.

(10) A local health officer may conduct follow-up inspections, as needed, to ensure the timely resolution of inspection findings.

(11) The local health officer shall make the operator aware of inspectional findings both during, and at the conclusion of, the inspection as well as strategies for achieving compliance. Repeat violations may prompt further compliance and enforcement actions.

KEY: food trucks, mobile foods, sanitation, public health
May 18, 2018 26-1-5
26-1-30(9)

R392. Health, Disease Control and Prevention, Environmental Services.
R392-200. Design, Construction, Operation, Sanitation, and Safety of Schools.
R392-200-1. Authority and Purpose of Rule.

This rule is authorized under Sections 26-15-2, 26-1-30(9), 26-1-30(23), 26-1-5, and 26-7-1. It establishes minimum standards for the design, construction, operation, sanitation, and safety of schools.

R392-200-2. Applicability, Responsibility for Compliance.

(1) The provisions of this rule are applicable to the design, construction, operation, maintenance, safety, health, and sanitation of schools, their grounds, and accessory structures.

(2) The governing body of the school, shall ensure that the school building and grounds are constructed, operated, and maintained in accordance with this rule.

(3) This rule does not require a construction change in any portion of a school if it was constructed and in compliance with law in effect at the time the school was built except as specifically provided otherwise in this rule. However if the Executive Director or the Local Health Officer determines that conditions in any school are a threat to the health of persons using the school, the Executive Director or the Local Health Officer may order correction of any condition that impairs or endangers the health or life of those attending schools. The Executive Director or Local Health Officer may allow temporary measures to ameliorate the problem for up to a year until the governing body can make a permanent correction.

R392-200-3. Definitions.

The following definitions apply to this rule:

(1) "Department" means the Utah Department of Health.

(2) "Director" means the Executive Director of the Utah Department of Health, or designated representative.

(3) "Governing Body" means the board of education, owner, person or persons designated by the owner with ultimate authority and responsibility, both moral and legal, for the management, control, conduct and functioning of the school.

(4) "Instructor" means any volunteer or employee educator, licensed or not licensed, responsible for student education at a private or public school.

(5) "Local Health Officer" means the health officer of any county or district health department, or designated representative.

(6) "School" means any public or private educational institution including charter schools, elementary schools, middle schools, and secondary schools established to provide education for grades kindergarten through 12 regardless of student's age, including attached pre-schools, but excluding home schools.

(7) "Toxic" means any chemical or biological agent the exposure to which may cause an acute or chronic health hazard.

R392-200-4. Site Standards.

(1) Prior to developing plans and specifications for a new school, or the expansion of an existing school, school districts and charter schools shall coordinate with local health departments regarding environmental health and safety issues to avoid unreasonable risks to the health and safety of students, school staff, and faculty.

(2) The school site shall be located to minimize the negative influence of railroads, freeways, highways, heavy traffic roads, industrial areas, airports and aircraft flight patterns, fugitive dust, odors, or other areas where auditory problems, malodorous conditions, or safety and health hazards exist.

R392-200-5. School Grounds.

(1) School ground fencing shall be constructed of smooth materials with no barbs or projections and shall be maintained in good repair.

(2) Mechanical equipment, electrical transmission lines, poles, transformer boxes, and other electrical equipment shall be located or protected with a barrier to prevent an electrical or other safety hazard.

(3) Walkways shall be provided between the school building and other buildings on the school grounds. Walkways shall be graded to allow proper drainage, and allow for safe passage. Walkways and parking areas shall be maintained in good repair and free of a buildup of snow and ice.

(4) Illuminance at a minimum of 1 foot candle shall be provided for walkways, building entrances, parking areas, roads, and similar areas, during hours of use.

(5) With the exception of "pop up heads", elevated lawn sprinkler heads shall not be permanently installed and shall not be left in place on playgrounds or other recreational areas.

(6) Service roads, parking areas, and walkways on school property shall be constructed and located to facilitate the safe movement of vehicular and pedestrian traffic. Student drop off and pick up zones must maximize safety.

(7) The governing body shall control health and safety risks on school property by removing items that are likely to be a source of risk such as weeds, holes, broken glass, or broken or cut tree limbs and by filling or covering excavations or ditches.

(8) Playgrounds must be located in areas that maximize safety. The governing body shall provide personnel so that playgrounds are adequately supervised during recess and school sponsored outdoor time. Playground equipment, if provided, shall be located to permit supervision.

(9) The governing body shall minimize the likelihood of students' contact with stray animals using methods such as the installation of fencing at elementary schools and taking appropriate actions to have removed any stray animals found on the school property. Animals brought by students or teachers for instruction or demonstration purposes are allowed if controlled in a manner that protects students and, if a vaccine is available for that species, the animal has been vaccinated for rabies. Police enforcement dogs, and service animals on duty under the Americans with Disabilities Act or under the provisions of an individualized education plan made pursuant to the Individuals with Disabilities Education Act are allowed on the school grounds.

(10) If bicycles are permitted at a school, the governing body shall ensure that a designated area for bicycle parking is provided and located where it will not create a safety hazard by obstructing building entry or exit ways, walkways, or vehicular traffic.

(11) Structures or landscaping must not provide access by unauthorized individuals to the roof of the school.

R392-200-6. Food Service.

(1) The design, construction, installation, and operation of food service facilities and equipment shall be in compliance with the Food Service Sanitation Rule R392-100 and local health department regulations. Plans for food service facilities must be submitted by the governing body to the local health department for evaluation and approval prior to the beginning of construction. Any significant modification to the school food service facility that falls within the plan review requirements of R392-100 must be approved by the local health department prior to

modification.

(2) The governing body shall ensure that food provided by the school that is not prepared on site is obtained, transported, and served from approved sources as required by R392-100.

R392-200-7. Sanitary Facilities and Controls.

(1) Water Supply.

(a) The water supply shall meet the requirements of the Utah Department of Environmental Quality. All bottled water supplied or sold by the school shall meet the bottled water requirements of the Utah Department of Agriculture and Food.

(b) The governing body shall notify the local health department as soon as reasonably possible but no longer than four hours after the discovery of a continuing water supply interruption. If the water supply is estimated to be or actually interrupted for four hours or more, the local health officer may require the school to close or have the school provide an alternative source of potable water approved by the local health department.

(2) Wastewater.

(a) The governing body shall ensure that all wastewater or water-carried wastes such as water from cleaning garbage cans and dumpsters is disposed of in accordance with rules established by the Utah Department of Environmental Quality.

(b) The governing body shall notify the local health department as soon as reasonably possible but no longer than four hours after the discovery of a continuing sewer system interruption. If the sewer system is estimated to be or is actually interrupted for four hours or more the local health officer may require the school to be closed or require the school to provide temporary toilet facilities or an alternate wastewater disposal method approved by the local health department and the Utah Department of Environmental Quality.

(3) Plumbing. The governing body shall ensure that plumbing is sized, installed, and maintained in accordance with the requirements of the most restrictive or specific between the plumbing code adopted by the Utah legislature under Section 15A-2-103 and the 2010 Americans with Disability Act (ADA).

(4) Toilet Rooms.

(a) Toilet rooms shall be in compliance with the requirements of the most restrictive or specific between the plumbing code adopted by the Utah Legislature under Section 15A-2-103 and the 2010 ADA. With the exception of faculty or staff restrooms, locked toilet rooms are prohibited unless students have access to the number of unlocked toilet rooms as required under the aforementioned plumbing code or the 2010 ADA, whichever is the most stringent or restrictive of the two.

(b) Self-closing entrance doors shall be provided if privacy is not achieved using shielding to break the line of vision of a person looking into the toilet room from outside the toilet room.

(c) If a toilet room is designed for use by more than one person at a time, each toilet shall occupy a separate compartment with walls or partitions and a door enclosing the fixture to ensure privacy. The height of the walls or partitions shall allow sufficient light or ventilation therein. The walls or partitions and door shall begin at a height not more than 12 inches from and extend not less than 60 inches above the finished floor surface. A urinal is exempt from the requirements for an enclosure; however, where there are two or more adjacent urinals, there shall be a solid partition installed between adjacent urinals according to the requirements of Plumbing Code.

(d) In new or extensively remodeled schools, toilet rooms shall be mechanically vented to the outside of the building. A system shall be installed to resupply the air that is exhausted.

(e) An easily cleanable waste container shall be provided and maintained in each toilet room. At least one conveniently located covered waste receptacles must be provided in toilet rooms used by females nine years and older. Assigned school or contracted personnel shall empty each waste container as often as necessary and at least daily.

(f) All toilet room fixtures shall be kept clean and maintained in good repair.

(g) Toilet fixtures shall be provided with a supply of toilet tissue at all times.

(h) Toilet rooms must be easily accessible and conveniently located for use at all times the school is in session or used for school approved activities, for all school recreational facilities, and for areas utilized for school functions.

(i) Toilet room walls, floors, and ceilings must be constructed of smooth, non-absorbent, easily cleanable materials. Assigned school or contracted personnel shall keep toilet room walls, floors, and ceilings clean and maintained in good repair.

(5) Diaper Changing.

(a) A school attended by students who require changing of diapers by school or designated personnel must have a designated diaper changing area.

(b) The diapering area shall not be located in a food preparation or eating area.

(c) The diapering surface must not be used for any other purpose. The diapering station shall have a solid, smooth, non-absorbent surface kept in good repair.

(d) Child and student diapering stations shall be designed with a raised edge to prevent a child or student from rolling off or falling.

(e) A privacy area for individuals older than three years of age requiring diaper change must be provided for diaper changing.

(f) The governing body shall make sure that the school staff members who perform diapering tasks comply with the following requirements:

(i) Staff members who prepare or serve food shall not change diapers or assist in toilet training.

(ii) Staff members shall not diaper children directly on the floor.

(iii) Staff members shall not leave a child or student unattended on the diapering surface.

(iv) Staff members shall clean and sanitize diapering surfaces after each use, shall use a sanitizer registered by the U.S. Environmental Protection Agency for that purpose and according to the manufacturer's instructions, and shall make sure sanitizer containers are properly labeled and stored in the diaper changing area out of the reach of children and students.

(v) If a disposable covering is used on the diapering surface, a staff member shall properly dispose of the covering after each diaper change.

(vi) Staff members shall wash their hands with soap and water immediately after changing a diaper, and before commencing other tasks.

(vii) Staff members shall place soiled disposable diapers in a container that has a leak proof lining and a tight fitting lid, in a leak proof sealed bag and placed in a container with a tight fitting lid, or placed directly in an outdoor garbage container that has a tight fitting lid. Staff shall clean and sanitize on a daily basis the containers where soiled diapers are placed.

(viii) If cloth diapers are used, staff members shall not

rinse them at the school. After a cloth diaper is changed, a staff member shall place the cloth diaper directly into a leak-proof container or into a sealed bag and placed in a container. The container shall be inaccessible to any child and labeled with the child's name. The staff member may also place the diaper into a leak-proof diapering service container.

(ix) A staff member shall check each child's diaper at least once every two hours and shall change any child's diaper promptly if it is wet or soiled. If a child is napping at the end of a two-hour period, the child's diaper must be checked when the child awakes.

(x) The governing body shall ensure that diaper changing procedures meeting the requirements of this rule are posted in the diaper changing area.

(6) Handwashing Sinks.

(a) Handwashing sinks shall be placed in or immediately adjacent to toilet facilities.

(b) Handwashing sinks shall be located in or conveniently adjacent to classrooms where normal activities require the students to wash their hands either before or after performing the classroom activities. All elementary classrooms, life skills, art, chemistry, biology, auto shop, wood and metal shop, and drama must have handwashing sinks located in or conveniently adjacent to them. Water provided at these locations must be tempered to or adjustable to a minimum of 100 degrees Fahrenheit (37.8 degrees Celsius) and not exceed 110 degrees Fahrenheit (43.3 degrees Celsius).

(c) Handwashing sinks must be provided at locations where persons are required to handle any liquids that may burn, irritate, or are otherwise harmful to the skin.

(d) Handwashing sinks shall be at a height appropriate to the children that use them.

(e) Handwashing sinks with hot and cold water shall be provided with faucets that utilize a mixing valve or a combination faucet. Any self-closing, slow-closing, or metering faucet used shall be designed to provide a flow of water for an average of at least 15 seconds without the need to reactivate the faucet.

(f) Hand cleaning soap or detergent must be conveniently provided near each handwashing sink.

(g) Disposable sanitary towels shall be provided in a protective dispenser that dispenses one towel at a time or a forced-air mechanical hand-drying device providing heated air conveniently located near each handwashing sink. If cloth towels are used for hand drying, a towel or segment of a roll cloth towel that has not been used by another person since it was laundered shall be available for each person.

(h) Handwashing sinks and all related fixtures shall be kept clean and maintained in good repair.

(7) Shower Facilities.

(a) Shower Construction.

(i) Showers for classes in physical education shall be provided if students are required to change clothes. Each shower must be provided with hot and cold water utilizing a mixing valve or combination faucet. Nothing in this section shall prohibit the use of water temperature controls to ensure the safety of the student. A non-skid surface must be installed on shower floors and adjacent floor areas. Shower room walls and ceilings shall be constructed with light colored, smooth, nonabsorbent, and easily cleanable materials.

(ii) At least one shower head shall be provided for each 15 students utilizing any adjacent dressing area at any one time. A supply of liquid soap for showering must be provided.

(iii) At least two privacy showers must be provided for schools constructed after January 1, 2012.

(iv) A dressing room area with non-skid floors and floor drains shall be provided adjacent to shower facilities. Showers shall be constructed to prevent water flow into the drying and dressing room area. Hard surfaced or materials that cannot absorb water must be used for floors, benches, and other furniture in dressing rooms.

(v) The shower area dressing room shall be mechanically ventilated to the outside of the building and a system to resupply the air that is exhausted must be installed.

(vi) Toilet rooms and towel racks shall be located convenient to shower and dressing rooms.

(b) Shower Room Cleaning and Maintenance.

Shower rooms, dressing rooms, and adjacent areas shall be kept clean and free of clutter. Shower room walls and ceilings shall be kept clean and maintained in good repair. Shower floors shall be cleaned and disinfected daily after school activity use.

(c) Shower Supplies.

If students are provided with towels, the towels shall be laundered at least weekly and shall not be shared with another student.

(8) Drinking Fountains.

(a) Drinking fountains shall provide a water stream of at least a 2 inch arch into the basin.

(b) Fountains shall be kept clean and in good repair.

(c) Drinking fountains are prohibited in areas where contamination from human wastes or toxic or hazardous materials is likely to occur, including toilet rooms and laboratories.

(d) Drinking fountains shall be installed so the height of the drinking fountain is at the drinking level convenient to students utilizing the drinking fountain.

(e) Drinking fountains shall be conveniently located and easily accessible for all recreational facilities and areas utilized for school functions.

(f) Single service and multi use cups provided by the school must meet the requirements of R392-100.

(9) Swimming Pools.

Swimming pools at school facilities must be constructed, operated, and maintained in accordance with R392-302.

(10) Waste Collection, Storage and Disposal.

(a) Waste containers shall be provided in each classroom.

(b) For shops, chemistry labs, and similar areas, separate waste containers shall also be provided for each type of waste material not allowed to be disposed with regular municipal waste.

(c) Solid wastes shall be kept in durable, easily cleanable, insect-resistant and rodent-resistant containers that do not leak and do not absorb liquids.

(d) A sufficient number and size of containers must be provided to hold all the garbage, refuse, and other waste accumulated between the times when the containers are emptied.

(e) The governing body shall direct school personnel to clean and repair or replace all waste containers at a frequency that will prevent odors and prevent insect and rodent attraction. Hot water at a minimum of 110 degrees Fahrenheit (43.3 degrees Celsius) and detergent or steam must be provided for washing waste containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage and shall not be allowed to enter any storm drain.

(f) Storage.

(i) Waste materials stored on the premises must be located to minimize access to insects, rodents, and other animals and not cause a nuisance. Outside storage of unprotected plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard or other packaging material that contains no garbage or food wastes need not be stored in covered containers, if such material is protected in an enclosure or baled.

(ii) Tight-fitting lids, doors, or covers shall be provided on waste containers, refuse bins, compactors, and compactor systems. The lids, doors, or covers shall be kept closed except when emptying or filling. Containers, refuse bins, compactors, and compactor systems used by the school shall be easily cleanable and maintained in good repair. Containers designed with drains shall have drain plugs in place except during cleaning.

(iii) If waste storage rooms are used, the rooms shall have walls, floors, and ceilings constructed with easily cleanable, nonabsorbent, washable materials that are clean and in good repair. The doors of storage rooms shall be fitted to reduce the entrance of rodents and insects.

(iv) Outside storage areas or enclosures shall be constructed of easily cleanable materials and shall be kept clean and maintained in good repair. Outside waste containers, refuse bins and compactor systems shall be stored on or above a smooth surface of cleanable material, such as concrete or asphalt, that is kept clean and maintained in good repair.

(g) Disposal.

(i) Waste shall be disposed of often enough to prevent the development of odor and minimize the harborage of insects or rodents.

(ii) The disposal of all waste shall comply with all Utah Division of Solid and Hazardous Waste rules and local health department regulations.

(11) Hazardous Wastes.

All hazardous and regulated waste disposal shall comply with the Utah waste management rules and applicable local regulations.

(12) Pest Management.

(a) The governing body shall minimize in school buildings or on school grounds the presence of pests that are vectors for disease, carry allergens that are likely to affect individuals with allergies or respiratory problems, or may sting or bite causing mild to serious reactions in some individuals.

(b) The governing body shall adopt integrated pest management (IPM) practices and principles to prevent unacceptable levels of pest activity with the least possible hazard to people, property, and the environment.

(c) The governing body shall have a written integrated pest management plan written by the governing body or provided by the contracted pest management contractor whether IPM is implemented as an internal process or contracted to a pest management professional. The plan shall include sections that cover the following topics: an IPM policy statement; IPM implementation and education; pest identification, monitoring procedures, reporting and control practices; approved pesticides; procedures for pesticide use; a policy for the notification of students, parents, and staff; and applicator requirements. Guidance for an IPM plan can be found in publications of the IPM Institute of North America. The Department or the Local Health Officer may require changes in a school's IPM plan if the plan neglects or causes a threat to the health or safety of the occupants of a school.

(d) The governing body shall use non-chemical management methods whenever possible to provide the desired control. The governing body shall use a full range of control alternatives including: identification and removal or repair of conditions that are conducive to pests; structural repair and sealing; improved sanitation; removal of clutter or harborage; elimination of food sources; exclusionary measures to protect doors, windows and any other opening to the outside against the entrance of insects, rodents, and other animals. A no-action alternative shall also be considered in cases where the pest has no public health or property damage significance.

(e) If the governing body chooses to not use a contracted pest control contractor, school personnel who apply pesticides shall follow the Utah Dept. of Agriculture pesticide regulation R68-7. The applicator shall apply all products according to the pesticide label directions.

R392-200-8. Construction and Maintenance of Physical Facilities.

(1) Floors, Walls, and Ceilings.

All school building floors, walls, and ceilings shall be constructed with materials that are durable and easily cleanable. Floors, walls, and ceilings shall be clean and in good condition.

(2) Lighting.

(a) Lighting in all parts of the school building shall have the capability to provide at least the minimum required illumination levels listed in Table I when the building is in use. Permanently fixed artificial light sources must be provided.

TABLE 1

MINIMUM REQUIRED ILLUMINATION LEVELS

Task or Area	Footcandle Level/Lux
General instructional areas: Study halls,art rooms, lecture rooms, libraries, and other areas	50/538
Special instructional areas: Drafting rooms, laboratories, shops, and other rooms where some fine detail work is done	100/1076
Special instruction areas: Sewing and other rooms where fine detail work is done	100/1076
Gymnasiums: Auxiliary spaces, shower rooms and locker rooms	30/323
Gymnasiums: Main recreation spaces	50/538
Auditoriums, faculty and staff lunchrooms, assembly and multi-purpose rooms, andsimilar areas not used for classrooms	30/323
Corridors, stairs, hallways, passageways, storerooms, and similar areas	10/108
Toilet rooms	10/108
Offices	50/538

(b) All light fixtures located in shops, life skills, cafeterias, kitchens, food preparation areas, toilet rooms, shower areas, locker rooms, and gymnasiums shall have protective shields to contain broken glass if the bulb or tube is broken or shattered.

(c) School personnel or contracted persons shall clean and repair light fixtures and replace burned out bulbs or lamps as often as necessary in order to maintain the illumination levels required in this section.

(3) Ventilation.

(a) Ventilation throughout the school must be in accordance with the requirements of the mechanical code adopted by the Utah Legislature under Section 15A-2-103.

(b) Air ducts shall be maintained to prevent the entrance of dust, dirt, and other contaminating materials. Vehicles

must be prohibited from parking in areas adjacent to and close enough to building air intakes to create a vehicle exhaust hazard and nuisance inside the structure.

(4) Heating and Cooling.

(a) Heating facilities must be installed, vented and maintained in a safe working condition. Portable combustion type space heaters are prohibited.

(b) During cold weather, the governing body shall maintain the occupied areas of the school building at a temperature between 68 and 74 degrees Fahrenheit (20 and 26.3 degrees Celsius. Occupied areas of school buildings used for school activities which because of the nature of the activities require a temperature different from that of a classroom such as ice skating, aerobics, and swimming shall be maintained at the appropriate temperature for the activity. Temperatures shall also be maintained at an appropriate range for any students who qualify under the Individuals with Disabilities Education Act.

(c) During periods of hot weather when the outside temperature is 90 degrees Fahrenheit or higher when school is in session, the governing body shall employ either an automatic temperature monitoring system or a written plan executed by assigned staff to monitor the temperature of each occupied classroom, occupied auditorium, and occupied gymnasium in a school building. The equipment used for temperature monitoring must have a full range accuracy of plus or minus two degrees Fahrenheit (1.1 degrees Celsius). The frequency of temperature measurement may vary in the programming of the automatic system or in the staff executed temperature monitoring plan based on outside temperatures but must be often enough to assure that occupied areas don't exceed temperature maximums.

(i) If the temperature readings taken in the classrooms, auditorium, or gymnasium are above 90 degrees Fahrenheit (36.3 degrees Celsius), the time shall be recorded and the temperature continuously monitored by the automatic system or the person measuring the temperature. If the temperature remains above 90 degrees Fahrenheit (36.3 degrees Celsius) for 90 consecutive minutes, the automatic system or person performing the monitoring shall alert the person in charge of the school and the person in charge shall order the removal of all students from the affected areas of the school. The governing body shall not allow students to return to affected areas until the temperature is at or below 79 degrees Fahrenheit (26.1 degrees Celsius). If there are insufficient areas of the school to accommodate students at temperatures below 90 degrees Fahrenheit (36.3 degrees Celsius), then school officials shall provide an alternative environment that meets the above temperature requirement such as providing alternative instructional activities or employing portable cooling equipment. School officials shall notify parents of children with special health care needs.

(ii) The governing body shall have a written plan that identifies any groups of students that are unusually vulnerable to elevated temperatures and describes actions that will be taken when the recorded temperature in occupied classrooms, auditoriums or gymnasiums reaches 80 degrees Fahrenheit (26.7 degrees Celsius) and above. The written plan may be part of the school's emergency response plan.

(5) Maintenance of Heating, Ventilation and Air Conditioning Equipment.

(a) The governing body shall have qualified in-house or contracted service technicians conduct a heating, ventilating, and air-conditioning system inspection and necessary maintenance activities according to manufacturer recommendations at proper time intervals.

(b) If the school has a boiler or other mechanical units required to be inspected and certified for use, the governing body shall make sure that the most recent boiler inspection certificate is posted in the boiler room. The certificate must be issued by the Utah Division of Boiler and Elevator Safety or an inspector who has been approved and deputized by the Division of Boiler and Elevator Safety.

(6) Cleaning Physical Facilities.

(a) The governing body shall make sure that floors, walls, ceilings, and attached equipment are kept clean.

(b) In new or extensively remodeled schools, at least one utility sink or curbed floor sink shall be located on each floor. The governing body shall make sure personnel who perform cleaning tasks use this area for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water or similar liquid wastes. The use of handwashing sinks for this purpose is prohibited.

(7) Custodian Closets.

(a) Custodial closets, equipment and supply storage rooms shall be kept clean and orderly and shall be kept locked if toxic supplies are present.

(b) Storerooms or cabinets shall be provided for cleaning materials, pesticides, paints, flammables, or other hazardous or toxic chemicals, and for tools and maintenance equipment. Materials incompatible due to potential contamination or potential chemical reactions shall be separated from one another. These areas shall be kept locked and not used for any other purpose that is incompatible with the materials stored and shall comply with the fire code and any state amendments to the fire code that have been adopted by the Utah State Legislature.

(c) Oiled mops, dust cloths, rags, and other materials subject to spontaneous combustion shall be properly stored in approved fire resistant containers as required by the fire code and any state amendments to the fire code that have been adopted by the Utah State Legislature.

R392-200-9. Health and Safety.

(1) Health.

(a) A centrally located room or area for emergency use in providing care for persons who are ill, injured or suspected of having any contagious disease must be located in each school. In schools built after 1987, a clinic room must be provided and shall have a handwashing sink with hot and cold running water, soap, individual towels, first aid supplies, and lockable cabinet space for storage of first-aid supplies. Clinic rooms or areas used for emergency treatment and first-aid shall be kept clean and maintained in good repair. The governing body shall have a written plan or policy available for review upon request by the local health department that states how a nurse or doctor can be contacted at any time the school is in session. Prior agreement shall have been made with the doctor or nurse to ensure availability. In addition, at least two designated individuals shall be on site that have a current Red Cross basic first aid and CPR certificate or equivalent training approved by the governing body.

(b) The governing body of each school shall ensure that:

(i) each emergency care room or clinic area is provided with a cot or bed that has a cleanable surface or cover;

(ii) disposable bedding is changed after each person's use; and

(iii) multi-use sheets or covers are laundered after each person's use.

(c) All prescription or over the counter medication administered by school personnel, and records required by Section 53G-9-501 shall be stored in a secure refrigerator, drawer, or cabinet accessible only by those authorized to administer the medication.

(d) If a school has specified sleeping areas, the school shall provide these areas with cots, mats, or floor pads. Reusable covers supplied by the school must be easily cleanable and maintained in good repair. When in use, the

covers must be cleaned between each user and at least weekly. Disposable covers must be discarded after each use.

(e) In high risk injury areas including shops, laboratories, places where theater props and scenery are built,life skills, playgrounds, and gymnasiums, the instructor must possess at a minimum, a current Red Cross basic first-aid certificate, or equivalent as determined by the governing body, and must be on site at all times when classes are being held. A readily accessible first-aid kit that is appropriate for the risks in the area must be available at the school. School buses shall also carry a first aid kit and bus drivers shall have a current Red Cross basic first aid certificate, or equivalent training as determined by the governing body.

(2) Safety.

(a) Instructional, athletic, or recreational equipment shall be kept clean, safe, and in good repair.

(b) Playground equipment shall be installed and maintained in accordance with the Handbook for Public Playground Safety, U.S. Consumer Product Safety Commission, Publication Number 325, April 2008 Revision.

(c) Handrails on stairways, ramps, and outside steps shall be in compliance with the building code adopted by the Utah Legislature under Section 15A-2-103, and shall be properly maintained.

(d) A master shut-off valve to flammable gas supply lines in science laboratories, life skills areas, shops, and other rooms that utilize gas supply lines, shall be readily accessible to instructors for emergency shut off.

(e) A master electric shut off switch shall be readily accessible to instructors in life skills areas, shop classrooms, applicable art rooms, and labs where electrically operated instructional equipment are present that may be a safety hazard to the operator.

(f) All instructional shop classrooms, art rooms, craft rooms, and laboratories shall be kept clean and maintained in good condition. Cleaning and sweeping of these rooms shall be done in a way to minimize dust.

(g) The governing body of the school shall ensure that specific safety directions accompany substances that are deemed potentially harmful or hazardous to the health and safety of individuals who use them. The directions shall include the proper use, storage, handling and disposal of the substance and the potential risks or hazards associated with the substance. Designated personnel shall ensure that Material Safety Data Sheets (MSDS) for all chemicals used at the school are available at all times for review by staff or students that use the product and for review by the local health or safety inspectors during inspections.

(h) In high risk injury areas, the class instructor shall ensure that provisions, including the development and posting of operating instructions, regulations, or procedures are posted and reviewed by students in these areas. Students must demonstrate to the instructor knowledge of and safety practices for each piece of equipment prior to any use by the student. The instructor shall ensure that all safety guards are in place and operational on shop equipment.

(i) The class instructor shall train and direct students operating power equipment to not wear loose clothing including ties, lapels, cuffs, torn clothing or similar garments that can become entangled in power equipment.

(ii) The class instructor shall train and direct students that wrist watches, rings, or other jewelry are not to be worn in any class where they constitute a safety hazard.

(iii) The class instructor shall train and direct students to restrain their hair if there is a risk of hair entanglement in moving parts of power equipment.

(iv) The governing body shall sufficiently control exposure to noise, toxic dusts, gases, mists, fumes, or vapors so that a health hazard does not occur.

(v) The class instructor shall ensure that appropriate safety equipment is available and train and direct students to wear it while engaged in activities where there is exposure to hazardous conditions.

(vi) Safety zones shall be outlined on the floor around areas of equipment where there is danger of possible injury to students.

(vii) Emergency shower or eyewash stations shall be readily available in areas where there is a potential for accidental exposure to corrosive, poisonous, infectious, or irritating materials. The area around this safety equipment shall be kept free of clutter and encumbrances to its immediate use. The design and installation of emergency shower and eyewash stations shall meet the plumbing code adopted by the Utah legislature under Section 15A-2-103.

(i) Poisonous, dangerous or otherwise harmful plants or animals shall not be kept on the school premises unless it is in conjunction with a course curriculum. Poisonous or toxic plants must be labeled with their scientific name, and a warning sign posted describing the health risks and first aid instructions for skin contact or ingestion. A warning sign shall be posted on the confining area of animals which are likely to carry disease; the sign shall state the disease causing organisms the animal is likely to be infected with and precautions to people should take to avoid disease.

(j) Flammable liquids, must be stored in a locked fire resistant area with access only by school assigned personnel. The storage area shall comply with the Utah state fire code and rules.

(k) Oxygen, acetylene, and other high pressure cylinders shall be secured, including empty cylinders, from tipping over. Safety valve hoods shall be kept in place when the tanks are not in use. Unless staged on a welding cart for use, empty or full oxygen and acetylene gas cylinders must be segregated by at least 20 feet or by a fire wall with a 30 minute rating at least five feet high.

(l) No flammable, explosive, toxic, or hazardous liquids, gases, or chemicals shall be placed, stored, or used in any building or part of a building used for school purposes, except in approved quantities as necessary for use in laboratories, instructional shop classes, and utility rooms. Hazardous liquids or gases shall be stored in tightly sealed containers and hazardous liquids, gases, and chemicals shall be stored in locked safety cabinets or locked storage rooms when not in use.

(m) Electrical wiring and components shall be maintained in good repair. Electrical panels must maintain a three foot clearance free of obstructions.

R392-200-10. Access.

The local health department representative, after showing proper identification, shall be granted access to enter any school at any reasonable time for the purpose of making inspections to determine compliance with this rule.

KEY: public health, schools

May 31, 2018	**26-15-2**
Notice of Continuation November 7, 2016	**26-1-30(9)**
	26-1-30(23)
	26-1-5
	26-7-1

R392. Health, Disease Control and Prevention, Environmental Services.
R392-302. Design, Construction and Operation of Public Pools.
R392-302-1. Authority and Purpose of Rule.

This rule is authorized under Sections 26-1-5, 26-1-30(9) and (23), 26-7-1, and 26-15-2. It establishes minimum standards for the design, construction, operation and maintenance of public pools and provides for the prevention and control of health hazards associated with public pools which are likely to affect public health including risk factors contributing to injury, sickness, death, and disability.

R392-302-2. Definitions.

The following definitions apply in this rule.

(1) "AED" means automated external defibrillator.

(2) "Backwash" means the process of cleaning a swimming pool filter by reversing the flow of water through the filter.

(3) "Bather Load" means the number of persons using a pool at any one time or specified period of time.

(4) "Cleansing shower" means the cleaning of the entire body surfaces with soap and water to remove any matter, including fecal matter, that may wash off into the pool while swimming.

(5) "Collection Zone" means the area of an interactive water feature where water from the feature will be collected and drained for treatment.

(6) "CPR" means Cardiopulmonary Resuscitation.

(7) "Department" means the Utah Department of Health.

(8) "Executive Director" means the Executive Director of the Utah Department of Health, or his designated representative.

(9) "Facility" means any premises, building, pool, equipment, system, and appurtenance which appertains to the operation of a public pool.

(10) "Float Tank" means a tank containing a skin-temperature solution of water and Epsom salts at a specific gravity high enough to allow the user to float supine while motionless and require a deliberate effort by the user to turn over and that is designed to provide for solitary use and sensory deprivation of the user.

(11) "Gravity Drain System" means a pool drain system wherein the drains are connected to a surge or collector tank and rather than drawing directly from the drain, the circulation pump draws from the surge or collector tank and the surface of the water contained in the tank is maintained at atmospheric pressure.

(12) "High Bather Load" means 90% or greater of the designed maximum bather load."

(13) "Hydrotherapy Pool" means a pool designed primarily for medically prescribed therapeutic use.

(14) "Illuminance Uniformity" means the ratio between the brightest illuminance falling on a surface compared to the lowest illuminance falling on a surface within an area. The value of illuminance falling on a surface is measured in foot candles.

(15) "Instructional Pool" means a pool used solely for purposes of providing water safety and survival instruction taught by a certified instructor. Instructional pools do not include private residential pools. Private residential pools used for swim instruction shall not be considered instructional pools as defined in this rule.

(16) "Interactive Water Feature" means a recirculating water feature designed, installed or used for recreational use, in which there is direct water contact from the feature with the public, and when not in operation, all water drains freely so there is no ponding.

(17) "Lamp Lumens" means the quantity of light, illuminance, produced by a lamp.

(18) "Lifeguard" means an attendant who supervises the safety of bathers.

(19) "Living Unit" means one or more rooms or spaces that are, or can be, occupied by an individual, group of individuals, or a family, temporarily or permanently for residential or overnight lodging purposes. Living units include motel and hotel rooms, condominium units, travel trailers, recreational vehicles, mobile homes, single family homes, and individual units in a multiple unit housing complex.

(20) "Local Health Officer" means the health officer of the local health department having jurisdiction, or his designated representative.

(21) "Onsite Septic System" means an approved onsite waste water system designed, constructed, and operated in accordance with Rule 317-4.

(22) "Pool" means a man-made basin, chamber, receptacle, tank, or tub, above ground or in-ground, which, when filled with water, creates an artificial body of water used for swimming, bathing, diving, recreational and therapeutic uses.

(23) "Pool Deck" means the area contiguous to the outside of the pool curb, diving boards, diving towers and slides.

(24) "Pool Shell" means the rigid encasing structure of a pool that confines the pool water by resisting the hydrostatic pressure of the pool water, resisting the pressure of any exterior soil, and transferring the weight of the pool water (sometimes through other supporting structures) to the soil or the building that surrounds it.

(25) "Private Residential Pool" means a swimming pool, spa pool or wading pool used only by an individual, family, or living unit members and guests, but not serving any type of multiple unit housing complex of four or more living units.

(26) "Public Pool" means a swimming pool, spa pool, wading pool, or special purpose pool facility which is not a private residential pool and may be above ground or in-ground.

(27) "Saturation Index" means a value determined by application of the formula for calculating the saturation index in Table 5, which is based on interrelation of temperature, calcium hardness, total alkalinity and pH which indicates if the pool water is corrosive, scale forming or neutral.

(28) "Spa Pool" means a pool which uses therapy jet circulation, hot water, cold water, bubbles produced by air induction, or any combination of these, to impart a massaging effect upon a bather. Spa pools include, spas, whirlpools, hot tubs, or hot spas.

(29) "Special Purpose Pool" means a pool with design and operational features that provide patrons recreational, instructional, or therapeutic activities which are different from that associated with a pool used primarily for swimming, diving, or spa bathing.

(30) "Splash Pool" means the area of water located at the terminus of a water slide or vehicle slide.

(31) "Swimming Pool" means a pool used primarily for recreational, sporting, or instructional purposes in bathing, swimming, or diving activities.

(32) "Surge Tank" means a tank receiving the gravity flow from an overflow gutter and main drain or drains from which the circulation pump takes water which is returned to the system.

(33) "Turnover" means the circulation of a quantity of water equal to the pool volume through the filter and treatment facilities.

(34) "Vehicle Slide" means a recreational pool where bathers ride vehicles, toboggans, sleds, etc., down a slide to descend into a splash pool.

(35) "Unblockable Drain" means a drain of any size or shape such that a representation of the torso of a 99 percentile adult male cannot sufficiently block it to the extent that it creates a body suction entrapment hazard.

(36) "Wading Pool" means any pool or pool area used or designed to be used by children five years of age or younger for wading or water play activities.

(37) "Waste Water" means discharges of pool water resulting from pool drainage or backwash.

(38) "Water Slide" means a recreational facility consisting of flumes upon which bathers descend into a splash pool.

R392-302-3. General Requirements.

(1) This rule does not require a construction change in any portion of a public pool facility if the facility was installed and in compliance with law in effect at the time the facility was installed, except as specifically provided otherwise in this rule. However if the Executive Director or the Local Health Officer determines that any facility is dangerous, unsafe, unsanitary, or a nuisance or menace to life, health or property, the Executive Director or the Local Health Officer may order construction changes consistent with the requirements of this rule to existing facilities.

(2) This rule does not regulate any private residential pool. A private residential pool that is used for swimming instruction purposes shall not be regulated as a public pool.

(3) This rule does not regulate any body of water larger than 30,000 square feet, 2,787.1 square meters, and for which the design purpose is not swimming, wading, bathing, diving, a water slide splash pool, or children's water play activities.

(4) This rule does not regulate float tanks.

(5) All public pools shall meet the requirements of this rule unless otherwise specified in R392-302.

R392-302-4. Water Supply.

(1) The water supply serving a public pool and all plumbing fixtures, including drinking fountains, lavatories and showers, must meet the requirements for drinking water established by the Department of Environmental Quality.

(2) All portions of water supply, re-circulation, and distribution systems serving the facility must be protected against backflow. Water introduced into the pool, either directly or through the circulation system, must be supplied through an air gap or a backflow preventer in accordance with the International Plumbing Code as incorporated and amended in Title 15a, State Construction and Fire Codes Act.

(a) The backflow preventer must protect against contamination, backsiphonage and backpressure.

(b) Water supply lines protected by a backflow prevention device shall not connect to the pool recirculation system on the discharge side of the pool recirculation pump.

R392-302-5. Waste Water.

(1) Each public pool must connect to a public sanitary sewer or an onsite septic system.

(a) Each public pool must connect to a sanitary sewer or onsite septic system through an air break to preclude the possibility of sewage or waste backup into the piping system. Pools constructed and approved after December 31, 2010 shall be connected through an air gap.

(2) Each public pool shall discharge waste water:

(a) to a public sanitary sewer system when available within 300 feet of the property line with authorization by the local sanitary sewer authority; or

(b) to an onsite septic system when public sanitary sewer system is not within 300 feet of the property line or authorization is not available; or

(c) in accordance with Subsection R392-302-5(4) and Subsection R392-302-5(5) except for any public pool utilizing salt in the pool water.

(i) Public pools utilizing salt in the pool water shall only discharge waste water to a public sanitary sewer system or an onsite septic system which has been designed for such.

(3) A public pool shall not discharge waste water directly to storm sewers or surface waters.

(4) Except for pools utilizing salt in the pool water, a public pool may discharge waste water that is not backwash according to Subsection R392-302-5(5) if:

(a) a public sanitary sewer is not available within 300 feet of a property line or authorization to discharge to a sanitary sewer is not available; and

(b) an onsite septic system is not available or designed for the discharge amount.

(5) If a public pool meets the criteria of Subsection R392-302-5(4), the public pool shall reduce the disinfectant level to less than one part per million and:

(a) may discharge as irrigation in an area where the water will not flow into a storm drain or surface water; or

(b) may discharge on the facility's property as long as it does not flow off the property.

(6) Public pools shall not discharge waste water in a manner that will create a nuisance condition.

R392-302-6. Construction Materials.

(1) Each public pool and the appurtenances necessary for its proper function and operation must be constructed of materials that are inert, non-toxic to humans, impervious, enduring over time, and resist the effects of wear and deterioration from chemical, physical, radiological, and mechanical actions.

(2) All public pools shall be constructed with a pool shell that meets the requirements of this section R392-302-6. Vinyl liners that are not bonded to a pool shell are prohibited. A vinyl liner that is bonded to a pool shell shall have at least a 60 mil thickness. Sand, clay or earth walls or bottoms are prohibited.

(3) The pool shell of a public pool must withstand the stresses associated with the normal uses of the pool and regular maintenance. The pool shell shall by itself withstand, without any damage to the structure, the stresses of complete emptying of the pool without shoring or additional support.

(4) In addition to the requirements of R392-302-6(3), the interior surface of each pool must be designed and constructed in a manner that provides a smooth, easily cleanable, non-abrasive, and slip resistant surface. The pool shell surfaces must be free of cracks or open joints with the exception of structural expansion joints. The owner of a non-cementitious pool shall submit documentation with the plans required in R392-302-8 that the surface material has been tested and passed by an American National Standards Institute (ANSI) accredited testing facility using one of the following standards that is appropriate to the material used:

(a) for a fiberglass reinforced plastic spa pool, the International Association of Plumbing and Mechanical Officials (IAPMO) standard IAPMO/ANSI Z 124.7-2013;

(b) for a fiberglass reinforced plastic swimming pool, the IAPMO IGC 158-2000 standard;

(c) for pools built with prefabricated pool sections or pool members, the International Cast Products Association (ICPA) standard ANSI/ICPA SS-1-2001; or

(d) a standard that has been approved by the Department based on whether the standard is applicable to the surface and whether it determines compliance with the requirements of this section R392-302-6.

(5) The pool shell surface must be of a white or light pastel color.

R392-302-7. Bather Load.

(1) The bather load capacity of a public pool is determined as follows:

(a) Ten square feet, 0.929 square meters, of pool water surface area must be provided for each bather in a spa pool during maximum load.

(b) Twenty-four square feet, 2.23 square meters, of pool water surface area must be provided for each bather in an indoor swimming pool during maximum load.

(c) Twenty square feet, 1.86 square meters, of pool water surface area must be provided for each bather in an outdoor swimming pool during maximum load.

(d) Fifty square feet, 4.65 square meters, of pool water surface must be provided for each bather in a slide plunge pool during maximum load.

(2) The Department may make additional allowance for bathers when the facility operator can demonstrate that lounging and sunbathing patrons will not adversely affect water quality due to over-loading of the pool.

R392-302-8. Design Detail and Structural Stability.

(1) The designing architect or engineer is responsible to certify the design for structural stability and safety of the public pool.

(2) The shape of a pool and design and location of appurtenances must be such that the circulation of pool water and control of swimmer's safety are not impaired. The designing architect or engineer shall designate sidewalls and endwalls on pool plans.

(3) A pool must have a circulation system with necessary treatment and filtration equipment as required in R392-302-16, unless turnover rate requirements as specified in sub-section R392-302-16(1) can be met by continuous introduction of fresh water and wasting of pool water under conditions satisfying all other requirements of this rule.

(4) Where a facility is subject to freezing temperatures, all parts of the facility subject to freezing damage must be adequately and properly protected from damage due to freezing, including the pool, piping, filter system, pump, motor, and other components and systems.

(5) No new pool construction or modification project of an existing pool shall begin until the requirements of Subsection R392-302-8(6) have been met.

(6) The pool owner or designee shall submit a set of plans for a new pool or modification project of an existing pool to the local health department. This includes the replacement of equipment which is different from that originally approved by the local health department.

(a) The set of plans shall have sufficient details to address all applicable requirements of R392-302 and shall bear a stamp from an engineer licensed in the State of Utah.

(b) The local health department may exempt the pool owner from Subsection R392-302-8(6) for a modification of an existing pool if health and safety are not compromised.

(c) The set of plans shall be initially reviewed by the local health department and a letter of review sent by the local health department to the submitter, pool owner, or designee within 30 days of submittal.

(d) The pool owner shall make required changes to the plans to meet the local health department's review criteria.

(7) All manufactured components of the pool shall be installed as per manufacturer's recommendations.

R392-302-9. Depths and Floor Slopes.

(1) In determining the horizontal slope ratio of a pool floor, the first number shall indicate the vertical change in value or rise and the second number shall indicate the horizontal change in value or run of the slope.

(a) The horizontal slope of the floor of any portion of a pool having a water depth of less than 5 feet, 1.52 meters, may not be steeper than a ratio of 1 to 10 except for a pool used exclusively for scuba diving training.

(b) The horizontal slope of the floor of any portion of a pool having a water depth greater than 5 feet, 1.52 meters, must be uniform, must allow complete drainage and may not exceed a ratio of 1 to 3 except for a pool used exclusively for scuba diving training. The horizontal slope of the pool bottom in diving areas must be consistent with the requirements for minimum water depths as specified in Section R392-302-11 for diving areas.

R392-302-10. Walls.

(1) Pool walls must be vertical or within 11 degrees of vertical for a minimum distance of 2 feet 9 inches, 83.82 centimeters, below the water line in areas with a depth of 5 feet, 1.52 meters, or greater. Pool walls must be vertical or within 11 degrees of vertical for a minimum distance equal to or greater than one half the pool depth as measured from the water line.

(2) Where walls form an arc to join the floors, the transitional arc from wall to floor must:

(a) have its center no less than 2 feet 9 inches, 83.82 centimeters, below the normal water level in areas with a depth greater than 5 feet, 1.52 meters;

(b) have its center no less than 75% of the pool depth beneath the normal water level, in areas of the pool with a depth of 5 feet, 1.52 meters, or less;

(c) be tangent to the wall;

(d) have a radius at least equal to or greater than the depth of the pool minus the vertical wall depth measured from the water line, as described in Subsection R392-302-9(1), minus 3 inches, 7.62 centimeters, to allow draining to the main drain. Radius minimum = Pool Depth - Vertical wall depth - 3 inches, 7.62 centimeters, where the water depth is greater than 5 feet, 1.52 meters; and

(e) have a radius which may not exceed a length greater than 25% of the water depth, in areas with a water depth of 5 feet, 1.52 meters, or less.

(3) Underwater ledges are prohibited except when approved by the local health officer for a special purpose pool. Underwater ledges are prohibited in areas of a pool designed for diving. Where underwater ledges are allowed, a line must mark the extent of the ledge within 2 inches, 5.08 centimeters, of its leading edge. The line must be at least 2 inches, 5.08 centimeters, in width and in a contrasting dark color for maximum visual distinction.

(4) Underwater seats and benches are allowed in pools so long as they conform to the following:

(a) Seats and benches shall be located completely inside of the shape of the pool. Where seats and benches are not located on the perimeter walls of the pool, seats and benches shall have a wall on the back of the seats and benches that extend above the operating level of the pool and is clearly visible to users.

(b) The horizontal surface shall be a maximum of 20 inches, 51 centimeter, below the water line;

(c) An unobstructed surface shall be provided that is a minimum of 10 inches, 25 centimeters, and a maximum of 20 inches front to back, and a minimum of 24 inches, 61 centimeters, wide;

(d) Seats and benches shall not transverse a depth change of more than 24 inches, 61 centimeters;

(e) The minimum horizontal separation between sections of seats and benches shall be five feet, 1.52 meters.

(f) The pool wall under the seat or bench shall be flush with the leading edge of the seat or bench and meet the requirements of R392-302-10(1) and (2);

(g) Seats and benches may not replace the stairs or

ladders required in R392-302-12, but are allowed in conjunction with pool stairs;

(h) Underwater seats may be located in the deep area of the pool where diving equipment (manufactured or constructed) is installed, provided they are located outside of the minimum water envelope for diving equipment; and

(i) A line must mark the extent of the seat or bench within 2 inches, 5.08 centimeters, of its leading edge. The line must be at least 2 inches, 5.08 centimeters, in width and in a contrasting dark color for maximum visual distinction.

(5) Recessed footholds are allowed so long as they are at least four feet, 1.21 meters, under water and meet the requirements of R392-302-12(5)(b) and (c).

R392-302-11. Diving Areas.

(1) Where diving is permitted, the diving area design, equipment placement, and clearances must meet the minimum standards established by the USA Diving Rules and Regulations 2004, Appendix B, which are incorporated by reference.

(2) Where diving from a height of less than 3.28 feet, 1 meter, from normal water level is permitted, the diving bowl shall meet the minimum depths outlined in Section 6, Figure 1 and Table 2 of ANSI/NSPI-1, 2003, which is adopted by reference, for type VI, VII and VIII pools according to the height of the diving board above the normal water level. ANSI/NSPI pool type VI is a maximum of 26 inches, 2/3 meter, above the normal water level; type VII is a maximum of 30 inches, 3/4 meter, above the normal water level; and type VIII is a maximum of 39.37 inches, 1 meter, above the normal water level.

(3) The use of a starting platform is restricted to competitive swimming events or supervised training for competitive swimming events.

(a) If starting platforms are used for competitive swimming or training, the water depth shall be at least four feet.

(b) The operator shall either remove the starting platforms or secure them with a lockable cone-type platform safety cover when not in competitive use.

(4) Areas of a pool where diving is not permitted must have "NO DIVING" or the international no diving icon, or both provided in block letters at least four inches, 10.16 centimeters, in height, as required in R392-302-39(3)(a), in a contrasting color on the deck, located on the horizontal surface of the deck or coping as close to the water's edge as practical.

(a) Where the "NO DIVING" warnings are used, the spacing between each warning may be no greater than 25 feet, 7.62 centimeters.

(b) Where the icon alone is used on the deck as required, the operator shall also post at least one "NO DIVING" sign in plain view within the enclosure. Letters shall be at least four inches, 10.16 centimeters, in height with a stroke width of at least one-half inch.

R392-302-12. Ladders, Recessed Steps, and Stairs.

(1) Location.

(a) In areas of a pool where the water depth is greater than 2 feet, 60.96 centimeters, and less than 5 feet, 1.52 meters, as measured vertically from the bottom of the pool to the mean operating level of the pool water, steps or ladders must be provided, and be located in the area of shallowest depth.

(b) In areas of the pool where the water depth is greater than 5 feet, 1.52 meters, as measured vertically from the bottom of the pool to the mean operating level of the pool water, ladders or recessed steps must be provided.

(c) A pool over 30 feet, 9.14 meters, wide must be equipped with steps, recessed steps, or ladders as applicable, installed on each end of both side walls.

(d) A pool over 30 feet, 9.14 meters, wide and 75 feet, 22.8 meters, or greater in length, must have ladders or recessed steps midway on both side walls of the pool, or must have ladders or recessed steps spaced at equal distances from each other along both sides of the pool at distances not to exceed 30 feet, 9.14 meters, in swimming and diving areas, and 50 feet, 15.23 meters, in non-swimming areas.

(e) Ladders or recessed steps must be located within 15 feet, 4.56 meters, of the diving area end wall.

(f) No pool shall be equipped with fewer that two means of entry or exit as outlined above.

(2) Handrails.

(a) Handrails must be rigidly installed and constructed in such a way that they can only be removed with tools.

(b) Handrails must be constructed of corrosion resistant materials.

(c) The outside diameter of handrails may not exceed 2 inches, 5.08 centimeters.

(3) Steps.

(a) Steps must have at least one handrail. The handrail shall be mounted on the deck and extend to the bottom step either attached at or cantilever to the bottom step. Handrails may also be mounted in the pool bottom of a wading area at the top of submerged stairs that lead into a swimming pool; such handrails must also extend to the bottom step either attached at or cantilever to the bottom step.

(b) Steps must be constructed of corrosion-resistant material, be easily cleanable, and be of a safe design.

(c) Steps leading into pools must be of non-slip design, have a minimum run of 10 inches, 25.4 centimeters, and a maximum rise of 12 inches, 30.48 centimeters.

(d) Steps must have a minimum width of 18 inches, 45.72 centimeters, as measured at the leading edge of the step.

(e) Steps must have a line at least 1 inch, 2.54 centimeters, in width and be of a contrasting dark color for a maximum visual distinction within 2 inches, 5.08 centimeters, of the leading edge of each step.

(4) Ladders.

(a) Pool ladders must be corrosion-resistant and must be equipped with non-slip rungs.

(b) Pool ladders must be designed to provide a handhold, must be rigidly installed, and must be maintained in safe working condition.

(c) Pool ladders shall have a clearance of not more than 5 inches, 12.7 centimeters, nor less than 3 inches, 7.62 centimeters, between any ladder rung and the pool wall.

(d) Pool ladders shall have rungs with a maximum rise of 12 inches, 30.5 centimeters, and a minimum width of 14 inches, 35.6 centimeters.

(5) Recessed Steps.

(a) Recessed steps shall have a set of grab rails located at the top of the course with a rail on each side which extend over the coping or edge of the deck.

(b) Recessed steps shall be readily cleanable and provide drainage into the pool to prevent the accumulation of dirt on the step.

(c) Full or partial recessed steps must have a minimum run of 5 inches, 12.7 centimeters, and a minimum width of 14 inches, 35.56 centimeters.

R392-302-13. Decks and Walkways.

(1) A continuous, unobstructed deck at least 5 feet, 1.52 meters, wide must extend completely around the pool. The deck is measured from the pool side edge of the coping if the coping is flush with the pool deck, or from the back of the pool curb if the coping is elevated from the pool deck. Pool

curbs shall be a minimum of 12 inches wide. The pool deck may include the pool coping if the coping is installed flush with the surrounding pool deck. If the coping is elevated from the pool deck, the maximum allowed elevation difference between the top of the coping surface and the surrounding deck is 19 inches, 38.1 centimeters. The minimum allowed elevation is 4 inches.

(2) Deck obstructions are allowed to accommodate diving boards, platforms, slides, steps, or ladders so long as at least 5 feet, 1.52 meters, of deck area is provided behind the deck end of any diving board, platform, slide, step, or ladder. Other types of deck obstructions may also be allowed by the local health officer so long as the obstructions meet all of the following criteria:

(a) the total pool perimeter that is obstructed equals less than 10 percent of the total pool perimeter; likewise, no more than 15 feet, 4.56 meters, of pool perimeter can be obstructed in any one location;

(b) multiple obstructions must be separated by at least five feet, 1.52 meters;

(c) an unobstructed area of deck not less than five feet, 1.52 meters, is provided around or through the obstruction and located not more than fifteen feet, 4.55 meters, from the edge of the pool.

(d) the design of the obstruction does not endanger the health or safety of persons using the pool; and

(e) written approval for the obstruction is obtained from the local health official prior to, or as part of, the plan review process.

(3) The deck must slope away from the pool to floor drains at a grade of 1/4 inch, 6.35 millimeters, to 3/8 inch, 9.53 millimeters, per linear foot.

(a) The Local Health Officer may allow decks to slope towards the pool for deck level gutter pools if it can be demonstrated that it will not adversely affect the pool's water quality and:

(i) the deck must slope back towards the pool for a maximum distance of five feet, 1.52 meters, from the water's edge; and

(ii) the portion of the deck that slopes back towards the pool must slope towards the pool at grade of 1/4 inch, six millimeters, to 3/8 inch, ten millimeters, per linear foot; and

(iii) a minimum of three feet, 91.4 centimeters, of deck that meets R392-302-13(3) must be provided beyond the high point of said deck.

(4) Decks and walkways must be constructed to drain away any standing water and must have non-slip surfaces.

(5) Wooden decks, walks or steps are prohibited.

(6) Deck drains may not return water to the pool or the circulation system.

(7) The operator shall maintain decks in a sanitary condition and free from litter.

(8) Carpeting may not be installed within 5 feet, 1.52 meters, of the water side edge of the coping. The operator shall wet vacuum any carpeting as often as necessary to keep it clean and free of accumulated water.

(9) Steps serving decks must meet the following requirements:

(a) Risers of steps for the deck must be uniform and have a minimum height of 4 inches, 10.2 centimeters, and a maximum height of 7 inches, 17.8 centimeters.

(b) The minimum run of steps shall be 10 inches, 25.4 centimeters.

(c) Steps must have a minimum width of 18 inches, 45.72 centimeters.

R392-302-14. Fencing and Barriers.

(1) A fence or other barrier is required and must provide complete perimeter security of the facility, and be at least 6 feet, 1.83 meters, in height. Openings through the fence or barrier, other than entry or exit access when the access is open, may not permit a sphere greater than 4 inches, 10.16 centimeters, to pass through it at any location. Horizontal members shall be equal to or more than 45 inches, 114.3 centimeters, apart.

(a) If the local health department determines that the safety of children is not compromised, it may exempt indoor pools from the fencing requirements.

(b) The local health department may grant exceptions to the height requirements in consideration of architectural and landscaping features for pools designed for hotels, motels and apartment houses.

(2) A fence or barrier that has an entrance to the facility must be equipped with a self-closing and self-latching gate or door. Except for self-locking mechanisms, self-latching mechanisms must be installed 54 inches, 1.37 meters, above the ground and must be provided with hardware for locking the gate when the facility is not in use. A lock that is separate from the latch and a self locking latch shall be installed with the lock's operable mechanism (key hole, electronic sensor, or combination dial) between 34 inches, 86.4 centimeters, and 48 inches, 1.219 meters, above the ground. All gates for the pool enclosure shall open outward from the pool.

(3) The gate or door shall have no opening greater than 0.5 inches, 1.27 centimeters, within 18 inches, 45.7 centimeters, of the latch release mechanism.

(4) Any pool enclosure which is accessible to the public when one or more of the pools are not being maintained for use, shall protect those closed pools from access by a sign meeting R392-302-39(3)(a) indicating the pool is closed and by using:

(a) a safety cover which restricts access and meets the minimum ASTM standard F1346-91; or

(b) a secondary barrier that is approved by the Department; or

(c) any method approved by the Department.

R392-302-15. Depth Markings and Safety Ropes.

(1) The depth of the water must be plainly marked at locations of maximum and minimum pool depth, and at the points of separation between the swimming and non-swimming areas of a pool. Pools must also be marked at intermediate 1 foot, 30.48 centimeters, increments of depth, spaced at distances which do not exceed 25 feet, 7.62 meters. Markings must be located above the water line or within 2 inches, 5.8 centimeters, from the coping on the vertical wall of the pool and on the edge of the deck or walk next to the pool with numerals at least 4 inches, 10.16 centimeters, high as required in R392-302-39(3).

(2) A pool with both swimming and diving areas must have a floating safety rope separating the swimming and diving areas. An exception to this requirement is made for special activities, such as swimming contests or training exercises when the full unobstructed length of the pool is used.

(a) The safety rope must be securely fastened to wall anchors. Wall anchors must be of corrosion-resistant materials and must be recessed or have no projections that may be a safety hazard if the safety rope is removed.

(b) The safety rope must be marked with visible floats spaced at intervals of 7 feet, 2.13 meters or less.

(c) The rope must be at least 0.5 inches, 1.27 centimeters, in diameter, and of sufficient strength to support the loads imposed on it during normal bathing activities.

(3) A pool constructed with a change in the slope of the pool floor must have the change in slope designated by a floating safety rope and a line of demarcation on the pool floor.

(a) The floating safety rope designating a change in slope of the pool floor must be attached at the locations on the pool wall that place it directly above and parallel to the line on the bottom of the pool. The floating safety rope must meet the requirements of Subsections R392-302-15(2)(a),(b),(c).

(b) A line of demarcation on the pool floor must be marked with a contrasting dark color.

(c) The line must be at least 2 inches, 5.08 centimeters, in width.

(d) The line must be located 12 inches, 30.48 centimeters, toward the shallow end from the point of change in slope.

(4) The Department may exempt a spa pool from the depth marking requirement if the spa pool owner can successfully demonstrate to the Department that bather safety is not compromised by the elimination of the markings.

R392-302-16. Circulation Systems.

(1) A circulation system, consisting of pumps, piping, filters, water conditioning and disinfection equipment and other related equipment must be provided. The operator shall maintain the normal water line of the pool at the overflow rim of the gutter, if an overflow gutter is used, or at the midpoint of the skimmer opening if skimmers are used whenever the pool is open for bathing. An exemption to this requirement may be granted by the Department if the pool operator can demonstrate that the safety of the bathers is not compromised.

(a) The circulation system shall meet the minimum turnover time listed in Table 1.

(b) If a single pool incorporates more than one the pool types listed in Table 1, either:

(i) the entire pool shall be designed with the shortest turnover time required in Table 1 of all the turnover times for the pool types incorporated into the pool or

(ii) the pool shall be designed with pool-type zones where each zone is provided with the recirculation flow rate that meets the requirements of Table 1.

(c) The Health Officer may require the pool operator to demonstrate that a pool is performing in accordance with the approved design.

(d) The operator shall run circulation equipment continuously except for periods of routine or other necessary maintenance. Pumps with the ability to decrease flow when the pool has little or no use are allowed as long as the same number of turnovers are achieved in 24 hours that would be required using the turnover time listed in Table 1 and the water quality standards of R392-302-27 can be maintained. The circulation system must be designed to permit complete drainage of the system.

(e) Piping must be of non-toxic material, resistant to corrosion and be able to withstand operating pressures.

(f) Plumbing must be identified by a color code or labels.

(2) The water velocity in discharge piping may not exceed 10 feet, 3.05 meters, per second, except for copper pipe where the velocity for piping may not exceed 8 feet, 2.44 meters, per second.

(3) Suction velocity for all piping may not exceed 6 feet, 1.83 meters, per second.

(4) The circulation system must include a strainer to prevent hair, lint, etc., from reaching the pump.

(a) Strainers must be corrosion-resistant with openings not more than 1/8 inch, 3.18 millimeters, in size.

(b) Strainers must provide a free flow capacity of at least four times the area of the pump suction line.

(c) Strainers must be readily accessible for frequent cleaning.

(d) Strainers must be maintained in a clean and sanitary condition.

(e) Each pump strainer must be provided with necessary valves to facilitate cleaning of the system without excessive flooding.

(5) A vacuum-cleaning system must be provided.

(a) If this system is an integral part of the circulation system, connections must be located in the walls of the pool, at least 8 inches, 20.32 centimeters, below the water line. This requirement does not apply to vacuums operated from skimmers.

(b) The number of connections provided must facilitate access to all areas of the pool through hoses less than 50 feet, 15.24 meters, in length.

(6) A rate-of-flow indicator, reading in gallons per minute, must be properly installed and located according to manufacturer recommendations. The indicator must be located in a place and position where it can be easily read.

(7) Pumps must be of adequate capacity to provide the required number of turnovers of pool water as specified in Subsection R392-302-16, Table 1. The pump or pumps must be capable of providing flow adequate for the backwashing of filters. Under normal conditions, the pump or pumps must supply the circulation rate of flow at a dynamic head which includes, in addition to the usual equipment, fitting and friction losses, an additional loss of 15 feet, 4.57 meters, for rapid sand filters, vacuum precoat media filters or vacuum cartridge filters and 40 feet, 12.19 meters, for pressure precoat media filters, high rate sand filters or cartridge filters, as well as pool inlet orifice loss of 15 feet, 4.57 meters.

(8) A pool equipped with heaters must meet the requirements for boilers and pressure vessels as required by the State of Utah Boiler and Pressure Vessel Rules, R616-2, and must have a fixed thermometer mounted in the pool circulation line downstream from the heater outlet. The heater must be provided with a heatsink as required by manufacturer's instructions.

(9) The area housing the circulation equipment must be designed with adequate working space so that all equipment may be easily disassembled, removed, and replaced for proper maintenance.

(10) All circulation lines to and from the pool must be regulated with valves in order to control the circulation flow.

(a) All valves must be located where they will be readily and easily accessible for maintenance and removal.

(b) Multiport valves must comply with NSF/ANSI 50-2015.

(11) Written operational instructions must be immediately available at the facility at all times.

TABLE 1

Circulation

Pool Type	Min. Number of Wall Inlets	Min. Number of Skimmers per 3,500 square ft. or less	Min. Turnover Time
1. Swim	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	8 hrs.
2. Swim, high bather load	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	6 hrs.
3. Wading pool	1 per 20 ft., 6.10 m. min. of 2 equally spaced	1 per 500 sq. ft. 46.45 sq. m.	1 hr.
4. Spa	1 per	1 per	0.5 hr.

	20 ft., 6.10 m.	100 sq. ft., 9.29 sq. m.	
5. Wave	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	6 hrs.
6. Slide	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	1 hr.
7. Vehicle slide	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	1 hr.
8. Special Purpose Pool	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	1 hr.

(12) Each air induction system installed must comply with the following requirements:

(a) An air induction system must be designed and maintained to prevent any possibility of water back-up that could cause electrical shock hazards.

(b) An air intake may not introduce contaminants such as noxious chemicals, fumes, deck water, dirt, etc. into the pool.

(13) The circulation lines of jet systems and other forms of water agitation must be independent and separate from the circulation-filtration and heating systems.

R392-302-17. Inlets.

(1) Inlets for fresh or treated water must be located to produce uniform circulation of water and to facilitate the maintenance of a uniform disinfectant residual throughout the entire pool.

(2) If wall inlets from the circulation system are used, they must be flush with the pool wall and submerged at least 5 feet, 1.52 meters, below the normal water level or at the bottom of the vertical wall surface tangent to the arc forming the transition between the vertical wall and the floor of the pool. Except as provided in Subsections R392-302-31(2)(l) and (3)(e), wall inlets must be placed every 10 feet, 3.05 meters, around the pool perimeter.

(a) The Department or the local health officer may require floor inlets to be installed in addition to wall inlets if a pool has a width greater than 50 feet, 4.57 meters, to assure thorough chemical distribution. If floor inlets are installed in addition to wall inlets, there must be a minimum of one row of floor inlets centered on the pool width. Individual inlets and rows of inlets shall be spaced a maximum of 15 feet, 4.57 meters, from each other. Floor inlets must be at least 15 feet, 4.57 meters, from a pool wall with wall inlets.

(b) Each wall inlet must be designed as a non-adjustable orifice with sufficient head loss to insure balancing of flow through all inlets. The return loop piping must be sized to provide less than 2.5 feet, 76.20 centimeters, of head loss to the most distant orifice to insure approximately equal flow through all orifices.

(3) If floor inlets from the circulation system are used, they must be flush with the floor. Floor inlets shall be placed at maximum 15 foot, 4.46 meter, intervals. The distance from floor inlets to a pool wall shall not exceed 7.5 feet, 2.29 meters if there are no wall inlets on that wall. Each floor inlet must be designed such that the flow can be adjusted to provide sufficient head loss to insure balancing of flow through all inlets. All floor inlets must be designed such that the flow cannot be adjusted without the use of a special tool to protect against swimmers being able to adjust the flow. The return supply piping must be sized to provide less than 2.5 feet, 76.20 centimeters, of head loss to the most distant orifice to insure approximately equal flow through all orifices.

(4) The Department may grant an exemption to the inlet placement requirements on a case by case basis for inlet designs that can be demonstrated to produce uniform mixing of pool water.

R392-302-18. Outlets.

(1) No feature or circulation pump shall be connected to less than two outlets unless the pump is connected to a gravity drain system or the pump is connected to an unblockable drain. All pool outlets shall meet the following design criteria:

(a) The grates or covers of all submerged outlets in pools shall conform to the standards of ANSI/APSP-16 2011.

(b) The outlets must be constructed so that if one of the outlets is completely obstructed, the remaining outlets and related piping will be capable of handling 100 percent of the maximum design circulation flow.

(c) All pool outlets that are connected to a pump through a single common suction line must connect to the common suction line through pipes of equal diameter. The tee feeding to the common suction line from the outlets must be located approximately midway between outlets.

(d) An outlet system with more than one outlet connected to a pump suction line must not have any valve or other means to cut any individual outlet out of the system.

(e) At least one of the circulation outlets shall be located at the deepest point of the pool and must be piped to permit the pool to be completely and easily emptied.

(f) The center of the outlet covers or grates of multiple main drain outlets shall not be spaced more than 30 feet, 9.14 meters, apart nor spaced closer than 3 feet, 0.914 meters, apart.

(g) Multiple pumps may utilize the same outlets only if the outlets are sized to accommodate 100 percent of the total combined design flow from all pumps and only if the flow characteristics of the system meet the requirements of subsection R392-302-18(2) and (3).

(h) There must be one main drain outlet for each 30 feet, 9.14 meters, of pool width. The centers of the outlet covers or grates of any outermost main drain outlets must be located within 15 feet, 4.57 meters, of a side wall.

(i) Devices or methods used for draining pools shall prevent overcharging the sanitary sewer.

(j) No operator shall allow the use of a pool with outlet grates or covers that are broken, damaged, missing, or not securely fastened.

(2) Notwithstanding Section R392-302-3, all public pools must comply with Subsections R392-302-18(2) and (3). The pool operator shall not install, allow the installation of, or operate a pool with a drain, drain cover, or drain grate in a position or an application that conflicts with any of the following mandatory markings on the drain cover or grate under the standard required in R392-302-18(1)(a):

(a) whether the drain is for single or multiple drain use;

(b) the maximum flow through the drain cover; and

(c) whether the drain may be installed on a wall or a floor.

(3) The pool operator shall not install, allow the installation of, or operate a pool with a drain cover or drain grate unless it is over or in front of:

(a) the sump that is recommended by the drain cover or grate manufacturer;

(b) a sump specifically designed for that drain by a Registered Design Professional as defined in ANSI/APSP-16 2011; or

(c) a sump that meets the ANSI/APSP-16 2011 standard.

(4) Notwithstanding Section R392-302-3, all public pools must comply with this subsection R392-302-18(4). The pool owner or certified pool operator shall retrofit by December 19, 2009 each pool circulation system on existing

pools that do not meet the requirements of subsections R392-302-18(1) through R392-302-18(1)(g) and R392-302-18(2) through (3)(c). The owner or operator shall meet the retrofit requirements of this subsection by any of the following means:

(a) Meet the requirements of R392-302-18(1)(a) and R392-302-18(2) through (3)(c) and install a safety vacuum release system which ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when it detects a blockage; that has been tested by an independent third party; and that conforms to ASME standard A112.19.17-2010 or ASTM standard F2387-04(2012);

(i) To ensure proper operation, the certified pool operator shall inspect and test the vacuum release system at least once a week but no less often than established by the manufacturer. The certified pool operator shall test the vacuum release system in a manner specified by the manufacturer. The certified pool operator shall log all inspections, tests and maintenance and retain the records for a minimum of two years for review by the Department and local health department upon request.

(ii) The vacuum release system shall include a notification system that alerts patrons and the pool operator when the system has inactivated the circulation system. The pool operator shall submit to the local health department for approval the design of the notification systems prior to installation. The system shall activate a continuous clearly audible alarm that can be heard in all areas of the pool or a continuous visible alarm that can be seen in all areas of the pool. A sign that meets the requirements of a "2 Inch Safety Sign" in R392-302-39(1),(2) and (3)(b) shall be posted next to the sound or visible alarm source. The sign shall state, "DO NOT USE THE POOL IF THIS ALARM IS ACTIVATED." and provide the phone number of the pool operator.

(iii) No operator shall allow the use of a pool that has a single drain with a safety vacuum release system if the safety vacuum release system is not functioning properly.

(b) Install an outlet system that includes no fewer than two suction outlets separated by no less than 3 feet, 0.914 meters, on the horizontal plane as measured from the centers of the drain covers or grates or located on two different planes and connected to pipes of equal diameter. The outlet system shall meet the requirements of R392-302-18(1)(a) through R392-302-18(1)(g) and 18(2) through (3)(c);

(c) Meet the requirements of R392-302-18(1)(a) and R392-302-18(2) through (3)(c) and installing (or having an existing) gravity drain system;

(d) Install an unblockable drain that meets the requirements of R392-302-18(1)(a) and R392-302-18(2) through (3)(c); or

(e) Any other system determined by the federal Consumer Products Safety Commission to be equally effective as, or better than, the systems described in 15 USC 8003 (c)(1)(A)(ii)(I), (III), or (IV) at preventing or eliminating the risk of injury or death associated with pool drainage systems.

R392-302-19. Overflow Gutters and Skimming Devices.

(1) A pool having a surface area of over 3,500 square feet, 325.15 square meters, must have overflow gutters. A pool having a surface area equal to or less than 3,500 square feet, 325.15 square meters, must have either overflow gutters or skimmers provided.

(2) Overflow gutters must extend completely around the pool, except at steps, ramps, or recessed ladders. The gutter system must be capable of continuously removing pool water at 100 percent of the maximum flow rate. This system must be connected to the circulation system by means of a surge tank.

(3) Overflow gutters must be designed and constructed in compliance with the following requirements:

(a) The opening into the gutter beneath the coping or grating must be at least 3 inches, 7.62 centimeters, in height with a depth of at least 3 inches, 7.62 centimeters.

(b) Gutters must be designed to prevent entrapment of any part of a bather's body.

(c) The edge must be rounded so it can be used as a handhold and must be no thicker than 2.5 inches, 6.35 centimeters, for the top 2 inches, 5.08 centimeters.

(d) Gutter outlet pipes must be at least 2 inches, 5.08 centimeters, in diameter. The outlet grates must have clear openings and be equal to at least one and one-half times the cross sectional area of the outlet pipe.

(4) Skimmers complying with NSF/ANSI 50-2015 standards or equivalent are permitted on any pool with a surface area equal to or less than 3,500 square feet, 325.15 square meters. At least one skimming device must be provided for each 500 square feet, 46.45 square meters, of water surface area or fraction thereof. Where two or more skimmers are required, they must be spaced to provide an effective skimming action over the entire surface of the pool.

(5) Skimming devices must be built into the pool wall and must meet the following general specifications:

(a) The piping and other components of a skimmer system must be designed for a total capacity of at least 80 percent of the maximum flow rate of the circulation system.

(b) Skimmers must be designed with a minimum flow rate of 25 gallons, 94.64 liters, per minute and a maximum flow rate of 55 gallons, 208.12 liters, per minute. The local health department may allow a higher maximum flow through a skimmer up to the skimmer's NSF rating if the piping system is designed to accommodate the higher flow rates. Alternatively, skimmers may also be designed with a minimum of 3.125 gallons, 11.83 liters, to 6.875 gallons, 26.02 liters, per lineal inch, 2.54 centimeters, of weir.

(6) Each skimmer weir must be automatically adjustable and must operate freely with continuous action to variations in water level over a range of at least 4 inches, 10.16 centimeters. The weir must operate at all flow variations. Skimmers shall be installed with the normal operating level of the pool water at the midpoint of the skimmer opening or in accordance with the manufacturer's instructions.

(7) An easily removable and cleanable basket or screen through which all overflow water passes, must be provided to trap large solids.

(8) The skimmer must be provided with a system to prevent air-lock in the suction line. The anti-air-lock may be accomplished through the use of an equalizer pipe or a surge tank or through any other arrangement approved by the Department that will assure a sufficient amount of water for pump suction in the event the pool water drops below the weir level. If an equalizer pipe is used, the following requirements must be met:

(a) An equalizer pipe must be sized to meet the capacity requirements for the filter and pump;

(b) An equalizer pipe may not be less than 2 inches, 5.08 centimeters, in diameter and must be designed to control velocity through the pipe in accordance with section R392-302-16(3);

(c) This pipe must be located at least 1 foot, 30.48 centimeters, below a valve or equivalent device that will remain tightly closed under normal operating conditions. In a shallow pool, such as a wading pool, where an equalizer outlet can not be submerged at least one foot below the skimmer valve, the equalizer pipe shall be connected to a separate dedicated outlet with an anti-entrapment outlet cover

in the floor of the pool that meets the requirements of ANSI/APSP-16 2011; and

(d) The equalizer pipe must be protected with a cover or grate that meets the requirements of ANSI/APSP-16 2011 and is sized to accommodate the design flow requirement of R392-302-19(5).

(9) The operator shall maintain proper operation of all skimmer weirs, float valves, check valves, and baskets. Skimmer baskets shall be maintained in a clean and sanitary condition.

(10) Where skimmers are used, a continuous handhold is required around the entire perimeter of the pool except in areas of the pool that are zero depth and shall be installed not more than 9 inches, 2.86 centimeters, above the normal operating level of the pool. The decking, coping, or other material may be used as the handhold so long as it has rounded edges, is slip-resistant, and does not exceed 3.5 inches, 8.89 centimeters, in thickness. The overhang of the coping, decking, or other material must not exceed 2 inches, 5.08 centimeters, nor be less than 1 inch, 2.54 centimeters beyond the pool wall. An overhang may be up to a maximum of 3 inches to accommodate an automatic pool cover track system.

R392-302-20. Filtration.

(1) The filter system must provide for isolation of individual filters for backwashing or other service.

(2) The filtration system must be designed to allow the pool operator to easily observe the discharge backwash water from the filter in order to determine if the filter cells are clean.

(3) A public pool must use either a rapid sand filter, hi-rate sand filter, precoat media filter, a cartridge filter or other filter types deemed equivalent by the Department. All filters must comply with the standard NSF/ANSI 50-2015.

(4) Gravity and pressure rapid sand filter requirements.

(a) Rapid sand filters must be designed for a filter rate of 3 gallons, 11.36 liters, or less, per minute per square foot, 929 square centimeters, of bed area at time of maximum head loss. The filter bed surface area must be sufficient to meet the design rate of flow required by Section R392-302-16, Table 1, for required turnover.

(b) The filter system must be provided with influent pressure, vacuum, or compound gauges to indicate the condition of the filters. Air-relief valves must be provided at or near the high point of the filter or piping system.

(c) The filter system must be designed with necessary valves and piping to permit:

(i) filtering of all pool water;

(ii) individual backwashing of filters to a sanitary sewer at a minimum rate of 15 gallons, 56.78 liters, per minute per square foot, 929 square centimeters, of filter area;

(iii) isolation of individual filters;

(iv) complete drainage of all parts of the system;

(v) necessary maintenance, operation and inspection in a convenient manner.

(d) Each pressure type filter tank must be provided with an access opening of at least a standard size 11 inch, 27.94 centimeters, by 15 inch, 38.10 centimeters, manhole with a cover.

(5) Hi-rate sand filter requirements.

(a) Hi-rate sand filters must be designed for a filter rate of less than 18 gallons, 68.14 liters, per minute per square foot, 929 square centimeters, of bed area. The filter bed area must be sufficient to meet the design rate of flow required by Section R392-302-16, Table 1, for required turnover. Minimum flow rates must be at least 13 gallons, 49.21 liters, per minute per square foot, 929 square centimeters, of bed area. The minimum flow rate requirement may be reduced to a rate of no less than 10 gallons per minute per square foot of bed area where a multiple filter system is provided, and where the system includes a valve or other means after the filters which is designed to regulate the backwash flow rate and to assure that adequate backwash flow can be achieved through each filter per the filter manufacturer's requirements.

(b) The filter tank and all components must be installed in compliance with the manufacturer's recommendations.

(c) An air-relief valve must be provided at or near the high point of the filter.

(d) The filter system must be provided with an influent pressure gauge to indicate the condition of the filter.

(6) Vacuum or pressure type precoat media filter requirements.

(a) The filtering area must be compatible with the design pump capacity as required by R392-302-16(7). The design rate of filtration may not exceed 2.0 gallons per minute per square foot, 7.57 liters per 929 square centimeters, of effective filtering surface without continuous body feed, nor greater than 2.5 gallons per minute per square foot, 9.46 liters per 929 square centimeters, with continuous body feed.

(b) Where body feed is provided, the feeder device must be accurate to within 10 percent, must be capable of continual feeding within a calibrated range, and must be adjustable from two to six parts per million. The device must feed at the design capacity of the circulation pump.

(c) Where fabric is used, filtering area must be determined on the basis of effective filtering surfaces.

(d) The filter and all component parts must be designed and constructed of materials which will withstand normal continuous use without significant deformation, deterioration, corrosion or wear which could adversely affect filter operations.

(e) If a precoat media filter is supplied with a potable water supply, then the water must be delivered through an air gap.

(f) The filter plant must be provided with influent pressure, vacuum, or compound gauges to indicate the condition of the filter. In vacuum-type filter installations where the circulating pump is rated at two horsepower or higher, an adjustable high vacuum automatic shut-off device must be provided to prevent damage to the pump. Air-relief valves must be provided at or near the high point of the filter system.

(g) A filter must be designed to facilitate cleaning by one or more of the following methods: backwashing, air-bump-assist backwashing, automatic or manual water spray, or agitation.

(h) The filter system must provide for complete and rapid draining of the filter.

(i) Diatomaceous earth filter backwash water must discharge to the sanitary sewer system through a separation tank. The separation tank must have a sign that meets the requirements of a "2 Inch Safety Sign" in R392-302-39(1), (2) and (3)(b) warning the user not to start up the filter pump without first opening the air relief valve.

(j) Personal protection equipment suitable for preventing inhalation of diatomaceous earth or other filter aids must be provided.

(7) The Department may waive NSF/ANSI 50-2015 standards for precoat media filters and approve site-built or custom-built vacuum precoat media filters, if the precoat media filter elements are easily accessible for cleaning by hand hosing after each filtering cycle. Site-built or custom-built vacuum precoat media filters must comply with all design requirements as specified in Subsection R392-302-20(6). Any design which provides the equivalent washing effectiveness as determined by the Department may be acceptable. Where the Department or the local health department determines that a potential cross-connection exits,

a hose bib in the vicinity of the filter to facilitate the washing operation must be equipped with a vacuum breaker listed by the International Association of Plumbing and Mechanical Officials, IAPMO, the American Society of Sanitary Engineering, A.S.S.E., or other nationally recognized standard.

(8) Vacuum or pressure type cartridge filter requirements.

(a) Sufficient filter area must be provided to meet the design pump capacity as required by Subsection R392-302-16, Table 1.

(b) The designed rate of filtration may not exceed 0.375 gallons, 1.42 liters, per minute per square foot, 929 square centimeters, of effective filter area.

(c) The filter and all component parts must be designed and constructed of materials which will withstand normal continuous use without significant deformation, deterioration, corrosion or wear which could adversely affect filter operations. The filter element must be constructed of polyester fiber only.

(d) The filter must be fitted with influent and effluent pressure gauges, vacuum, or compound gauges to indicate the condition of the filter. In vacuum type filter installations where the circulating pump is rated at two horsepower or higher, an adjustable high vacuum automatic shut-off must be provided to prevent damage to the pump. Air-relief valves must be provided at or near the high point of the filter system.

(e) Cleaning of cartridge type filters must be accomplished in accordance with the manufacturer's recommendations.

R392-302-21. Disinfectant and Chemical Feeders.

(1) A pool must be equipped with disinfectant dosing or generating equipment which conform to the NSF/ANSI 50-2015, standards relating to mechanical chemical feeding equipment, or be deemed equivalent by the Department.

(2) All chlorine dosing and generating equipment, including erosion feeders, or in-line electrolytic and brine/bath generators, shall be designed with a capacity to provide the following, depending on the intended use:

(a) Outdoor pools: 4.0 pounds of free available chlorine per day per 10,000 gallons of pool water; or

(b) Indoor pools: 2.5 pounds of free available chlorine per day per 10,000 gallons of pool water.

(3) Where oxidation-reduction potential controllers are used, the operator shall perform supervisory water testing, calibration checks, inspection and cleaning of sensor probes and chemical injectors in accordance with the manufacturer's recommendations. If specific manufacturer's recommendations are not made, the operator shall perform inspections, calibration checks, and cleaning of sensor probes at least weekly.

(4) Where compressed chlorine gas is used, the following additional features must be provided:

(a) Chlorine and chlorinating equipment must be located in a secure, well-ventilated enclosure separate from other equipment systems or equipment rooms. Such enclosures may not be below ground level. If an enclosure is a room within a building, it must be provided with vents near the floor which terminate at a location out-of-doors. Enclosures must be located to prevent contamination of air inlets to any buildings and areas used by people. Forced air ventilation capable of providing at least one complete air change per minute, must be provided for enclosures.

(b) The operator shall not keep substances which are incompatible with chlorine in the chlorine enclosure.

(c) The operator shall secure chlorine cylinders to prevent them from falling over. The operator shall maintain an approved valve stem wrench on the chlorine cylinder so the supply can be shut off quickly in case of emergency. The operator shall keep valve protection hoods and cap nuts in place except when the cylinder is connected.

(d) A sign that meets the requirements of a "4 Inch Safety Sign" in R392-302-39(1), (2) and (3)(a) shall be attached to the entrance door to chlorine gas and equipment rooms that reads, "DANGER CHLORINE GAS" and display the United States Department of Transportation placard and I.D. number for chlorine gas.

(e) The chlorinator must be designed so that leaking chlorine gas will be vented to the out-of-doors.

(f) The chlorinator must be a solution feed type, capable of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere. Injector water must be furnished from the pool circulation system with necessary water pressure increases supplied by a booster pump. The booster must be interlocked with both the pool circulation pump and with a flow switch on the return line.

(g) Chlorine feed lines may not carry pressurized chlorine gas.

(h) The operator shall keep an unbreakable bottle of ammonium hydroxide, of approximately 28 percent solution in water, readily available for chlorine leak detection.

(i) A self-contained breathing apparatus approved by NIOSH for entering environments that are immediately dangerous to life or health must be available and must have a minimum capacity of fifteen minutes.

(j) The breathing apparatus must be kept in a closed cabinet located outside of the room in which the chlorinator is maintained, and must be accessible without use of a key or lock combination.

(k) The facility operator shall demonstrate to the local health department through training documentation, that all persons who operate, or handle gas chlorine equipment, including the equipment specified in Subsections R392-203-21(3)(h) and (i) are knowledgeable about safety and proper equipment handling practices to protect themselves, staff members, and the public from accidental exposure to chlorine gas.

(l) The facility operator or his designee shall immediately notify the local health department of any inadvertent escape of chlorine gas.

(5) Bactericidal agents, other than chlorine and bromine, and their feeding apparatus may be acceptable if approved by the Department. Each bactericidal agent must be registered by the U.S. Environmental Protection Agency for use in swimming pools.

(6) Equipment of the positive displacement type and piping used to apply chemicals to the water must be sized, designed, and constructed of materials which can be cleaned and maintained free from clogging at all times. Materials used for such equipment and piping must be resistant to the effects of the chemicals in use.

(7) All auxiliary chemical feed pumps must be wired electrically to the main circulation pump so that the operation of these pumps is dependent upon the operation of the main circulation pump. If a chemical feed pump has an independent timer, the main circulation pump and chemical feed pump timer must be interlocked.

R392-302-22. Safety Requirements and Lifesaving Equipment.

(1) Areas of a public pool with water depth greater than six feet or a width greater than forty feet and a depth greater than four feet where a lifeguard is required under Subsection R392-302-30(2) shall provide for a minimum number of elevated lifeguard stations in accordance with Table 2. Elevated lifeguard stations shall be located to provide a clear unobstructed view of the pool bottom by lifeguards on duty.

(2) A public pool must have at least one unit of lifesaving equipment. One unit of lifesaving equipment must consist of the following: a Coast Guard-approved ring buoy with an attached rope equal in length to the maximum width of the pool plus 10 feet and a life pole or shepherd's crook type pole with blunted ends and a minimum length of 12 feet, 3.66 meters. The facility operator may substitute a rescue tube for a ring buoy where lifeguard service is provided. Additional units must be provided at the rate of one for each 2,000 square feet, 185.8 square meters, of surface area or fraction thereof. The operator of a pool that has lifeguard services shall provide at least one backboard designed with straps and head stabilization capability.

(3) A public pool must be equipped with a first aid kit which includes a minimum of the following items:

2 Units eye dressing packet;
2 Units triangular bandages;
1 CPR shield;
1 scissors;
1 tweezers;
6 pairs disposable medical exam gloves; and

Assorted types and sizes of the following: self adhesive bandages, compresses, roller type bandages and bandage tape.

(a) The operator shall keep the first-aid kit filled, available, and ready for use.

(4) Lifesaving equipment must be mounted in readily accessible, conspicuous places around the pool deck. The operator shall maintain it in good repair and operable condition. The operator and lifeguards shall prevent the removal of lifesaving equipment or use of it for any reason other than its intended purpose.

(5) Where no lifeguard service is provided in accordance with Subsection R392-302-30(2), a warning sign that meets the requirements of a "4 Inch Safety Sign" in R392-302-39(1), (2) and (3)(a) shall be posted. The sign shall state: WARNING - NO LIFEGUARD ON DUTY. In addition, the sign shall state in text that meets the requirements of "2 Inch Safety Sign" in R392-302-39(1), (2) and (3)(b) "BATHERS SHOULD NOT SWIM ALONE", and CHILDREN 14 AND UNDER SHALL NOT USE POOL WITHOUT RESPONSIBLE ADULT SUPERVISION.

(6) Where lifeguard service is required, the facility must have a readily accessible area designated and equipped for emergency first aid care.

TABLE 2

Safety Equipment and Signs

	POOLS WITH LIFEGUARD	POOLS WITH NO LIFEGUARD
Elevated Station	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction	None
Backboard	1 per facility	None
Room for Emergency Care	1 per facility	None
Ring Buoy with an attached rope equal in length to the maximum width of the pool plus 10 feet, 3.05 meters	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction
Rescue Tube (used as a substitute for ring buoys when lifeguards are present)	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction	None
Life Pole or Shepherds Crook	1 per 2,000 sq. ft. 185, sq. meters, of pool area or fraction	1 per 2,000 sq. ft. 185, sq. meters, of pool area or fraction
First Aid Kit	1 per facility	1 per facility

R392-302-23. Lighting, Ventilation and Electrical Requirements.

(1) A pool constructed after September 16, 1996 may not be used for night swimming in the absence of underwater lighting. The local health officer may grant an exemption to this if the pool operator demonstrates that a 6 inch, 15.24 centimeters, diameter black disk on a white background placed in the deepest part of the pool can be clearly observed from the pool deck during night time hours. The local health department shall keep a record of this exemption on file. The pool operator shall keep a record of this exemption on file at the facility.

(2) Where night swimming is permitted and underwater lighting is used, artificial lighting shall be provided so that all areas of the pool, including the deepest portion of the pool shall be visible. Underwater lights shall provide illumination equivalent to 0.5 watt of incandescent lamp light per square foot, 0.093 square meter, of pool water surface area. The Local Health Officer may waive underwater lighting requirements if overhead lighting provides a minimum of 15 foot candles, 161 lux, illumination over the entire pool surface.

(3) Where night swimming is permitted and underwater luminaires are used, area lighting must be provided for the deck areas and directed away from the pool surface as practical to reduce glare. The luminance must be at least 5 horizontal foot candles of light per square foot, 929 square centimeters, of deck area, but less than the luminance level for the pool shell.

(4) Electrical wiring must conform with Article 680 of the National Electrical Code as incorporated under Title 15a, State Construction and Fire Codes Act.

(a) Wiring may not be routed under a pool or within the area extending 5 feet, 1.52 meters, horizontally from the inside wall of the pool as provided in Article 680 of the National Electric Code as incorporated under Title 15a, State Construction and Fire Codes Act, without the written approval of the Department. The Department may deny the installation and use of any electrical appliance, device, or fixture, if its power service is routed under a pool or within the area extending 5 feet, 1.52 meters, horizontally from the inside wall of the pool, except in the following circumstances;

(i) For underwater lighting,

(ii) electrically powered automatic pool shell covers, and

(iii) competitive judging, timing, and recording apparatus.

(5) Buildings containing indoor pools, pool equipment rooms, access spaces, bathhouses, dressing rooms, shower rooms, and toilet spaces must be ventilated in accordance with American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 62.1-2004, which is incorporated and adopted by reference.

R392-302-24. Dressing Rooms.

(1) The operator shall maintain all areas and fixtures within dressing rooms in an operable, clean and sanitary condition.

(2) Where dressing rooms are provided, a separate dressing room must be provided for each gender. The entrances and exits must be designed to break the line of sight into the dressing areas from other locations.

(3) Dressing rooms must be constructed of materials that have smooth, non-slip surfaces, and are impervious to

moisture.

(4) Floors must slope to a drain and be constructed to prevent accumulation of water.

(5) Carpeting may not be installed on dressing room floors.

(6) Junctions between walls and floors must be coved.

(7) Partitions between dressing cubicles must be raised at least 10 inches, 25.4 centimeters, above the floor or must be placed on continuous raised masonry or concrete bases at least 4 inches, 10.16 centimeters, high.

(8) Lockers must be set either on solid masonry bases 4 inches, 10.16 centimeters, high or on legs elevating the bottom locker at least 10 inches, 25.4 centimeters, above the floor.

(a) Lockers must have louvers for ventilation.

(9) At least one covered waste receptacle must be provided in each dressing room.

R392-302-25. Restroom and Shower Facilities.

(1) The facility shall provide a restroom with shower facility for each gender.

(a) The entrances and exits must be designed to break the line of sight into the restroom and shower facilities.

(2) The minimum number of toilets and showers must be based upon the designed maximum bather load.

(a) Required numbers of fixtures must be based upon 50 percent of the total number of bathers being male and 50 percent being female, except where the facility is used exclusively by one gender.

(b) The minimum number of sanitary fixtures must be in accordance with Table 4.

(i) The local health department may exempt any bathers who have private use fixtures available within 150 feet, 45.7 meters, of the pool from the total number of bathers used to calculate the number of fixtures required.

TABLE 4

Sanitary Fixture Minimum Requirements

Water Closets

Male	Female
1:1 to 25	1:1 to 25
2:26 to 75	2:26 to 75
3:76 to 125	3:76 to 125
4:126 to 200	4:126 to 200
5:201 to 300	5:201 to 300
6:301 to 400	6:301 to 400

Over 400, add one fixture for each additional 200 males or 150 females.

Where urinals are provided, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases may not be reduced to less than one half of the minimum specified.

(3) Lavatories must be provided on the basis of one for each water closet up to four, then one for each two additional water closets.

(4) The facility shall provide showers for each gender and shall enclose these showers for privacy. A minimum of one shower head for each gender must be provided for each 50 bathers or fraction thereof.

(a) Potable water must be provided at all shower heads. Water heaters and thermostatically controlled mixing valves must be inaccessible to bathers and must be capable of providing 2 gallons per minute, 7.57 liters per minute, of 90 degree F. water to each shower head for each bather.

(5) If unisex facilities are provided they may count toward the total number of required fixtures in this section as long as the unisex facilities are provided in multiples of two.

(6) Soap must be dispensed at all lavatories and showers.

(a) Soap dispensers must be constructed of metal or plastic.

(b) Use of bar soap or any communal soap item is prohibited.

(c) Disposable towels or air dryers must be provided for all lavatories.

(7) Fixtures must be designed so that they may be readily cleaned. Fixtures must withstand frequent cleaning and disinfecting.

(8) The operator shall maintain all areas and fixtures within restroom facilities in an operable, clean and sanitary condition.

(9) Restroom and shower facilities must be constructed of materials that have smooth, non-slip surfaces, and are impervious to moisture.

(10) Floor must slope to a drain and be constructed to prevent accumulation of water.

(11) Carpeting may not be installed on restroom and shower floors.

(12) Junctions between walls and floors must be coved.

(13) At least one covered waste receptacle must be provided in each restroom.

R392-302-26. Visitor and Spectator Areas.

(1) Visitors, spectators, or animals may not be allowed within 10 feet, 3.05 meters, of the pool. Service animals are exempt from this requirement.

(2) Food or drink is prohibited within ten feet, 3.05 meters, of the pool. Beverages must be served in non-breakable containers.

(3) Trash containers must be provided in visitor and spectator areas. The entire area must be kept free of litter and maintained in a clean, sanitary condition.

R392-302-27. Disinfection and Quality of Water.

(1) Disinfection Process.

(a) A pool must be continuously disinfected by a product which:

(i) Is registered with the United States Environmental Protection Agency as a disinfecting process or disinfectant product for water;

(ii) Imparts a disinfectant residual which may be easily and accurately measured by a field test procedure appropriate to the disinfectant in use;

(iii) Is compatible for use with other chemicals normally used in pool water treatment;

(iv) Does not create harmful or deleterious effects on bathers if used according to manufacturer's specifications; and

(v) Does not create an undue safety hazard if handled, stored and used according to manufacturer's specifications.

(b) The concentration levels of the active disinfectant within the pool water shall be consistent with the label instructions of the disinfectant and with the minimum levels listed in Table 6 for all circumstances, bather loads, and the pH level of the water.

(i) At no time shall the concentration level of free available chlorine reach a level above ten parts per million while the facility is open to bathers.

(2) Products used to treat or condition pool water shall be used according to the product label.

(3) Testing Kits.

(a) An easy to operate pool-side disinfectant testing kit, compatible with the disinfectant in use and accurate to within 0.5 milligrams per liter, must be provided at each pool.

(b) If chlorine is the disinfectant used, it must be tested by the diethyl-p-phenylene diamine method, the leuco crystal violet method, or another test method approved by the

Department.

(c) If cyanuric acid or stabilized chlorine is used, a testing kit for cyanuric acid, accurate to within 10.0 milligrams per liter must be provided.

(d) Expired test kit reagents may not be used.

(4) Chemical Quality of Water.

(a) If cyanuric acid is used to stabilize the free residual chlorine, or if one of the chlorinated isocyanurate compounds is used as the disinfecting chemical, the concentration of cyanuric acid in the water must be at least ten milligrams per liter, but may not exceed 100 milligrams per liter.

(b) The difference between the total chlorine and the free chlorine in a pool shall not be greater than 0.5 milligrams per liter. If the concentration of combined residual chlorine is greater than 0.5 milligrams per liter the operator shall breakpoint chlorinate the pool water to reduce the concentration of combined chlorine.

(c) Total dissolved solids shall not exceed 1,500 milligrams per liter over the startup total dissolved solids of the pool water.

(d) Total alkalinity must be within the range from 100 to 125 milligrams per liter for a plaster lined pool, 80 to 150 milligrams per liter for a spa pool lined with plaster, and 125 to 150 milligrams per liter for a pool lined with other approved construction materials.

(e) A calcium hardness of at least 200 milligrams per liter must be maintained.

(f) The saturation index value of the pool water must be within the range of positive 0.3 and minus 0.3. The saturation index shall be calculated in accordance with Table 5.

(5) Water Clarity and Temperature.

(a) The water must have sufficient clarity at all times that the drain grates or covers in the deepest part of the pool are readily visible. As an alternative test for clarity, a black disk, six inches in diameter, must be readily visible if placed on a white field in the deepest part of the pool.

(b) Pool water temperatures for general use should be within the range of 82 degrees Fahrenheit, 28 degrees Celsius, to 86 degrees Fahrenheit, 30 degrees Celsius.

(c) The minimum water temperature for a pool is 78 degrees Fahrenheit, 26 degrees Celsius.

(d) The local health department may grant exemption to the pool water temperature requirements for a special purpose pool including a cold plunge pool, but may not exempt maximum hot water temperatures for a spa pool.

TABLE 5

CHEMICAL VALUES AND FORMULA FOR CALCULATING SATURATION INDEX

The formula for calculating the saturation index is:
SI = pH + TF + CF + AF - TDSF
SI means saturation index
TF means temperature factor
CF means calcium factor
mg/l means milligrams per liter
deg F means degrees Fahrenheit
AF means alkalinity factor
TDSF means total dissolved solids factor.

Temperature		Calcium Hardness		Total Alkalinity	
deg. F	TF	mg/l	CF	mg/l	AF
32	0.0	25	1.0	25	1.4
37	0.1	50	1.3	50	1.7
46	0.2	75	1.5	75	1.9
53	0.3	100	1.6	100	2.0
60	0.4	125	1.7	125	2.1
66	0.5	150	1.8	150	2.2
76	0.6	200	1.9	200	2.3
84	0.7	250	2.0	250	2.4
94	0.8	300	2.1	300	2.5
105	0.9	400	2.2	400	2.6
128	1.0	800	2.5	800	2.9

Total Dissolved Solids

mg/l	TDSF
0 to 999	12.1
1000 to 1999	12.2
2000 to 2999	12.3
3000 to 3999	12.4
4000 to 4999	12.5
5000 to 5999	12.55
6000 to 6999	12.6
7000 to 7999	12.65
each additional 1000, add	.05

If the SATURATION INDEX is 0, the water is chemically in balance.
If the INDEX is a minus value, corrosive tendencies are indicated.
If the INDEX is a positive value, scale-forming tendencies are indicated.
EXAMPLE: Assume the following factors:
pH 7.5; temperature 80 degrees F, 19 degrees C; calcium hardness 235; total alkalinity 100; and total dissolved solids 999.
pH = 7.5
TF = 0.7
CF = 1.9
AF = 2.0
TDSF = 12.1
TOTAL: 7.5 + 0.7 + 1.9 + 2.0 - 12.1 = 0.0
This water is balanced.

TABLE 6

DISINFECTANT LEVELS AND CHEMICAL PARAMETERS

	POOLS	SPAS	SPECIAL PURPOSE
Stabilized Chlorine(2) (milligrams per liter)			
pH 7.2 to 7.6	2.0(1)	3.0(1)	2.0(1)
pH 7.7 to 8.0	3.0(1)	5.0(1)	3.0(1)
Non-Stabilized Chlorine(2) (milligrams per liter)			
pH 7.2 to 7.6	1.0(1)	2.0(1)	2.0(1)
pH 7.7 to 8.0	2.0(1)	3.0(1)	3.0(1)
Bromine (milligrams per liter)	4.0(1)	4.0(1)	4.0(1)
Iodine (milligrams per liter)	1.0(1)	1.0(1)	1.0(1)
Ultraviolet and Hydrogen Peroxide (milligrams per liter hydrogen peroxide)	40.0(1)	40.0(1)	40.0(1)
pH	7.2 to 7.8	7.2 to 7.8	7.2 to 7.8
Total Dissolved Solids (TDS) over start-up TDS (milligrams per liter)	1,500	1,500	1,500
Cyanuric Acid (milligrams per liter)	10 to 100	10 to 100	10 to 100
Maximum Temperature (degrees Fahrenheit)	104	104	104
Calcium Hardness (milligrams per liter as calcium carbonate)	200(1)	200(1)	200(1)
Total Alkalinity (milligrams per liter as calcium carbonate)			
Plaster Pools	100 to 125	80 to 150	100 to 125
Painted or Fiberglass Pools	125 to 150	80 to 150	125 to 150
Saturation Index (see Table 5)	Plus or Minus 0.3	Plus or Minus 0.3	Plus or Minus 0.3
Chloramines (combined chlorine residual, milligrams per liter)	0.5	0.5	0.5

Note (1): Minimum Value
Note (2): Maximum value of free chlorine is ten milligrams per liter as stated in Subsection 27(1)(b)(i).

(6) Pool Water Sampling and Testing.

(a) At the direction of the Local Health Officer, the pool operator or a representative of the local health department shall collect a pool water sample from each public pool at

least once per month or at a more frequent interval as determined by the Local health Officer. A seasonal public pool during the off season and any public pool while it is temporarily closed, if the pool is closed for an interval exceeding half of that particular month, are exempt from the requirement for monthly sampling. The operator or local health department representative shall submit the pool water sample to a laboratory approved under R444-14 to perform total coliform and heterotrophic plate count testing.

(b) The operator or local health department shall have the laboratory analyze the sample for total coliform and heterotrophic plate count using methods allowed under R444-14-4.

(c) If the operator submits the sample as required by local health department, the operator shall require the laboratory to report sample results within five working days to the local health department and operator.

(d) A pool water sample fails bacteriological quality standards if it:

(i) Contains more than 200 bacteria per milliliter, as determined by the heterotrophic plate count or

(ii) Shows a positive test for presence of coliform or contains more than 1.0 coliform organisms per 100 milliliters.

(e) Not more than 1 of 5 samples may fail bacteriological quality standards. Failure of any bacteriological water quality sample shall require submission of a second sample within one lab receiving day after the sample report has been received.

R392-302-28. Cleaning Pools.

(1) The operator shall clean the bottom of the pool as often as needed to keep the pool free of visible dirt.

(2) The operator shall clean the surface of the pool as often as needed to keep the pool free of visible scum or floating matter.

(3) The operator shall keep all pool shell surfaces, handrails, floors, walls, and ceilings of rooms enclosing pools, dressing rooms and equipment rooms clean, sanitary, and in good repair.

(4) The operator shall respond to all discovered releases of fecal matter into a public pool in accordance with the following protocol: Centers for Disease Control and Prevention. Fecal Accident Response Recommendations for Pool Staff and Notice to Readers--Revised Guidance for Responding to Fecal Accidents in Disinfected Swimming Venues. Morbidity Mortality Weekly Report February 15, 2008 Volume 57, pages 151-152 and May 25, 2001 Volume 50, pages 416-417, which are incorporated by reference. The operator shall include in the records required in R392-302-29(2) information about all fecal matter releases into a public pool. The records shall include date, time, and where the fecal matter was discovered; whether the fecal matter was loose or solid; and the responses taken. The Local Health Officer may approve the alteration of the required Centers for Disease Control protocol for the hyperchlorination step for a loose fecal release if an operator is able to achieve a 99.9 percent kill or removal of cryptosporidium oocysts in the entire pool system by another method such as ultraviolet light, ozone, or enhanced filtration prior to allowing bathers to reenter the pool.

R392-302-29. Supervision of Pools.

(1) Public pools must be supervised by an operator that is certified or recertified by a program of training and testing that is approved by the Utah Department of Health. The local health department may determine the appropriate numbers of pools any one certified operator may supervise using criteria based on pool compliance history, local considerations of time and distance, and the individual operator's abilities.

(2) The pool operator must keep written records of all information pertinent to the operation, maintenance and sanitation of each pool facility. Records must be available at the facility and be readily accessible. The pool operator must make records available to the Department or the local health department having jurisdiction upon their request. These records must include disinfectant residual in the pool water, pH and temperature of the pool water, pool circulation rate, quantities of chemicals and filter aid used, filter head loss, filter washing schedule, cleaning and disinfecting schedule for pool decks and dressing rooms, occurrences of fecal release into the pool water or onto the pool deck, bather load, and other information required by the local health department. The pool operator must keep the records at the facility, for at least two operating seasons.

(3) The public pool owner, in consultation with the qualified operator designated in accordance with R392-302-29(1), shall develop an operation, maintenance and sanitation plan for the pool that will assure that the pool water meets the sanitation and quality standards set forth in this rule. The plan shall be in writing and available for inspection by the local health department. At a minimum the plan shall include the frequency of measurements of pool disinfectant residuals, pH and pool water temperature that will be taken. The plan shall also specify who is responsible to take and record the measurements.

(4) If the public pool water samples required in Section R392-302-27(5) fail bacteriological quality standards as defined in Section R392-302-27(5), the local health department shall require the public pool owner and qualified operator to develop an acceptable plan to correct the problem. The local health department may require more frequent water samples, additional training for the qualified operator and also may require that:

(a) the pool operator measure and record the level of disinfectant residuals, pH, and pool water temperature four times a day (if oxidation reduction potential technology is used in accordance with this rule, the local health department may reduce the water testing frequency requirement) or

(b) the pool operator read flow rate gauges and record the pool circulation rate four times a day.

(5) Bather load must be limited if necessary to insure the safety of bathers and pool water quality as required in Section R392-302-27.

(6) A sign that meets the requirements of a "2 Inch Safety Sign" in R392-302-39(1), (2) and (3)(b) must be posted in the immediate vicinity of the pool stating the location of the nearest telephone and emergency telephone numbers which shall include 911 or other local emergency numbers.

R392-302-30. Supervision of Bathers.

(1) Access to the pool must be prohibited when the facility is not open for use.

(2) Lifeguard service must be provided at a public pool if direct fees are charged or public funds support the operation of the pool. If a public pool is normally exempt from the requirement to provide lifeguard services, but is used for some purpose that would require lifeguard services, then lifeguard services are required during the period of that use. For other pools, lifeguard service must be provided, or signs must be clearly posted indicating that lifeguard service is not provided.

(3) The Department shall approve programs which provide training and certifications to lifeguards. These programs shall meet the standards set in Subsection R392-302-30(4)(a).

(4) A lifeguard must:

(a) Obtain training and certification in:

(i) lifeguarding by the American Red Cross or an equivalent program; and

(ii) professional level skills in CPR, AED use, and other resuscitation skills consistent with the 2010 American Heart Association Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiovascular Care; and

(iii) first aid consistent with the 2010 American Heart Association Guidelines for First Aid.

(b) Be on duty at all times when the pool is open to use by bathers, except as provided in Subsection R392-302-30(2); and

(c) Have full authority to enforce all rules of safety and sanitation.

(5) A lifeguard shall not have any other duties to perform other than the supervision and safety of bathers while he or she is assigned lifeguarding duties.

(6) Where lifeguard service is required, the number of lifeguards must be sufficient to allow for continuous supervision of all bathers, and surveillance over total pool floor areas.

(7) Lifeguards must be relieved in the rotation of lifeguarding responsibilities at least every 30 minutes with a work break of at least 10 minutes every hour.

(8) The facility operator and staff are responsible for the enforcement of the following personal hygiene and behavior rules:

(a) A bather using the facility must take a cleansing shower before entering the pool enclosure. A bather leaving the pool to use the toilet must take a second cleansing shower before returning to the pool enclosure.

(b) The operator and lifeguards shall exclude any person having a communicable disease transmissible by water from using the pool. A person having any exposed sub-epidermal tissue, including open blisters, cuts, or other lesions may not use a public pool. A person who has or has had diarrhea within the last two weeks caused by an unknown source or from any communicable or fecal-borne disease may not enter any public pool.

(c) Any child under three years old, any child not toilet trained, and anyone who lacks control of defecation shall wear a water resistant swim diaper and waterproof swimwear. Swim diapers and waterproof swimwear shall have waist and leg openings fitted such that they are in contact with the waist or leg around the entire circumference.

(d) Running, boisterous play, or rough play, except supervised water sports, are prohibited.

(e) Where no lifeguard service is provided, children 14 and under shall not use a pool without responsible adult supervision. Children under the age of five shall not use a spa or hot tub.

(f) The lifeguards and operator shall ensure that diapers shall be changed only in restrooms not at poolside. The person or persons who change the diaper must wash their hands thoroughly with soap before returning to the pool. The diapered person using a swim diaper and waterproof swimwear discussed in subsection R392-302-30(7)(c) above must undergo a cleansing shower before returning to the pool.

(f) Placards that meet the requirements of "Rule Sign" in R392-302-39(1), (2) and (3)(c) and embody the above rules of personal hygiene and behavior must be conspicuously posted in the pool enclosure and in the dressing rooms and lifeguard rooms (where applicable).

R392-302-31. Special Purpose Pools: Spa Pools.

(1) Spa pools must meet all applicable requirements of all Sections of R392-302 in addition to those of this Section as they apply to special design features and uses of spa pools.

(a) Spa pool projects require consultation with the local health department having jurisdiction.

(2) This subsection supercedes R392-302-6(5). A spa pool shell may be a color other than white or light pastel.

(3) Spa pools shall meet the bather load requirement of R392-302-7(1)(a).

(4) A spa pool may not exceed a maximum water depth of 4 feet, 1.22 meters. The Department may grant exceptions to the maximum depth requirement for a spa pool designed for special purposes, such as instruction, treatment, or therapy.

(5) This subsection supercedes R392-302-12(1)(f). A spa pool may be equipped with a single entry/exit. A spa pool must be equipped with at least one handrail for each 50 feet, 15.24 meters, of perimeter, or portion thereof, to designate the point of entry and exit. Points of entry and exit must be evenly spaced around the perimeter of the spa pool and afford unobstructed entry and egress.

(6) This subsection supercedes R392-302-12(3)(c). In a spa pool where the bottom step serves as a bench or seat, the bottom riser may be a maximum of 14 inches, 35.56 centimeters.

(7) This subsection supercedes R392-302-13(1). A spa pool must have a continuous, unobstructed deck at least 3 feet, 91.44 centimeters, wide around 25 percent or more of the spa.

(8) This subsection supercedes R392-302-13(5). The Department may allow spa decks or steps made of sealed, clear-heart redwood.

(9) A pool deck may be included as part of the spa deck if the pools are separated by a minimum of 5 feet, 1.52 meters. An exception is allowed to the deck and pool separation requirements if a spa pool and another pool are constructed adjacent to each other and share a common pool sidewall which separates the two pools. The top surface of the common pool side wall may not exceed 18 inches, 45.7 centimeters, in width and shall have markings indicating "No Walking" or an icon that represents the same, provided in block letters at least four inches, 10.16 centimeters, in height, as required by R392-302-39(3)(a), in a contrasting color on the horizontal surface of the common wall. Additionally the deck space around the remainder of the spa shall be a minimum of five feet, 1.52 meters.

(10) This subsection supersedes R392-302-15. The local health officer may exempt a spa pool from depth marking requirements if the spa pool owner can successfully demonstrate to the local health officer that bather safety is not compromised by the elimination of the markings.

(11) A spa pool must have a minimum of one turnover every 30 minutes.

(12) Spa pool air induction systems shall meet the requirements of R392-302-16(12)(a) through (b). Jet or water agitation systems shall meet the requirements of R392-302-16(13).

(13) Spa pool filtration system inlets shall be wall-type inlets and the number of inlets shall be based on a minimum of one for each 20 feet, 6.10 meters, or fraction thereof, of pool perimeter.

(14) Spa pool outlets shall meet all of the requirements of subsections R392-302-18(1) through R392-302-18(4)(e); however, the following exceptions apply:

(a) Multiple spa outlets shall be spaced at least three feet apart from each other as measured from the centers of the drain covers or grates or a third drain shall be provided and the separation distance between individual outlets shall be at the maximum possible spacing.

(b) The Department may exempt an acrylic or fiberglass spa from the requirement to locate outlets at the deepest point in the pool if the outlets are located on side walls within three inches of the pool floor and a wet-vacuum is available on site to remove any water left in the pool after draining.

(15) A spa pool must have a minimum number of surface skimmers based on one skimmer for each 100 square feet, 9.29 square meters of surface area.

(16) A spa pool must be equipped with an oxidation reduction potential controller which monitors chemical demands, including pH and disinfectant demands, and regulates the amount of chemicals fed into the pool circulation system. A spa pool constructed and approved prior to September 16, 1996 is exempt from this requirement if it is able to meet bacteriological quality as required in Subsection R392-302-27 (6)(e).

(17) A spa pool is exempt from the Section R392-302-22, except for Section R392-302-22(3).

(18) The maximum water temperature for a spa pool is 104 degrees Fahrenheit, 40 degrees Celsius.

(19) A spa pool shall meet the total alkalinity requirements of R392-302-27 (3)(d).

(20) A spa pool must have a sign that meets the requirements of a "Rule Sign" in R392-302-39(1),(2) and (3)(c) which contains the following information:

(a) The word "caution" centered at the top of the sign.

(b) Elderly persons and those suffering from heart disease, diabetes or high blood pressure should consult a physician before using the spa pool.

(c) Persons suffering from a communicable disease transmissible via water may not use the spa pool. Persons using prescription medications should consult a physician before using the spa.

(d) Individuals under the influence of alcohol or other impairing chemical substances should not use the spa pool.

(e) Bathers should not use the spa pool alone.

(f) Pregnant women should not use the spa pool without consulting their physicians.

(g) Persons should not spend more than 15 minutes in the spa in any one session.

(h) Children under the age of 14 must be accompanied and supervised by at least one responsible adult over the age of 18 years, when lifeguards are not on duty.

(i) Children under the age of five years are prohibited from bathing in a spa or hot tub.

(j) Running or engaging in unsafe activities or horseplay in or around the spa pool is prohibited.

(21) Water jets and air induction ports on spa pools must be controlled by an automatic timer which limits the duration of their use to 15 minutes per each cycle of operation. The operator shall mount the timer switch in a location which requires the bather to exit the spa before the timer can be reset for another 15 minute cycle or part thereof.

R392-302-32. Special Purpose Pools: Wading Pools.

(1) Wading pools must meet all applicable requirements of all Sections of R392-302 in addition to those of this Section as they apply to special design features and uses of wading pools.

(a) Wading pool projects require consultation with the local health department having jurisdiction.

(2) Wading pools shall be separated from other pools. Wading pools may not share common circulation, filtration, or chemical treatment systems, or walls.

(3) A wading pool may not exceed a maximum water depth of 2 feet, 60.96 centimeters.

(4) The deck of a wading pool may be included as part of adjacent pool decks.

(5) A wading pool must have a minimum of one turnover per hour and have a separate circulation system.

(6) A wading pool that utilizes wall inlets shall have a minimum of two equally spaced inlets around its perimeter at a minimum of one in each 20 feet, 6.10 meters, or fraction thereof.

(7) A wading pool shall have drainage to waste through a quick opening valve to facilitate emptying the wading pool should accidental bowel discharge or other contamination occur.

R392-302-33. Special Purpose Pools: Hydrotherapy Pools.

(1) Hydrotherapy pools must meet all applicable requirements of all Sections of R392-302 in addition to those of this Section as they apply to special design features and uses of hydrotherapy pools.

(a) Hydrotherapy pool projects require consultation with the local health department having jurisdiction.

(2) A hydrotherapy pool shall at all times comply with R392-302-27 Disinfection and Quality of Water, R392-302-28 Cleaning of Pools and R392-302-29 Supervision of Pools unless it is drained cleaned, and sanitized after each individual use.

(3) A hydrotherapy pool is exempt from all other requirements of R392-302, only if use of the hydrotherapy pool is restricted to therapeutic uses and is under the continuous and direct supervision of licensed medical or physiotherapy personnel.

(4) Local health departments may enter and examine the use of hydrotherapy pools to respond to complaints, to assure that use of the pool is being properly supervised, to examine records of testing and sampling, and to take samples to assure that water quality and cleanliness are maintained.

(5) A local health officer may grant an exception to section R392-302-31(4)(a) if the operator of the hydrotherapy pool can demonstrate that the exception will not compromise pool sanitation or the health or safety of users.

R392-302-34. Special Purpose Pools: Water Slides.

(1) Water slides must meet all applicable requirements of all Sections of R392-302 in addition to those of this Section as they apply to special design features and uses of water slides.

(a) Water slide projects require consultation with the local health department having jurisdiction.

(2) Slide Flumes.

(a) The flumes within enclosed slides must be designed to prevent accumulation of hazardous concentrations of toxic chemical fumes.

(b) All curves, turns, and tunnels within the path of a slide flume must be designed so that body contact with the flume or tunnel does not present an injury hazard. The slide flume must be banked to keep the slider's body safely inside the flume.

(c) The flume must be free of hazards including joints and mechanical attachments separations, splinters, holes, cracks, or abrasive characteristics.

(d) Wall thickness of flumes must be thick enough so that the continuous and combined action of hydrostatic, dynamic, and static loads and normal environmental deterioration will not cause structural failures which could result in injury. The facility operator or owner shall insure that repairs or patchwork maintains original designed levels of safety and structural integrity. The facility operator or owner shall insure that repairs or patchwork is performed in accordance with manufacturer's guidelines.

(e) Multiple-flume slides must have parallel exits or be constructed, so that the projected path of their centerlines do not intersect within a distance of less than 8 feet, 2.44 meters, beyond the point of forward momentum of the heaviest bather permitted by the engineered design.

(f) A slide flume exit must provide safe entry into the splash pool. Design features for safe entry include a water backup, and a deceleration distance adequate to reduce the

slider's exit velocity to a safe speed. Other methods may be acceptable if safe exiting from the slide flume is demonstrated to the Department.

(3) Flume Clearance Distances.

(a) A distance of at least 4 feet, 1.22 meters, must be provided between the side of a slide flume exit and a splash pool side wall.

(b) The distance between nearest sides of adjacent slide flume exits must be at least 6 feet, 1.83 meters.

(c) A distance between a slide flume exit and the opposite end of the splash pool, excluding steps, must be at least 20 feet, 6.10 meters.

(d) The distance between the side of the vehicle flume exit and the pool side wall must be at least 6 feet, 1.83 meters.

(e) The distance between nearest sides of adjacent vehicle slide flume exits must be at least 8 feet, 2.44 meters.

(f) The distance between a vehicle slide flume exit and the opposite end of the splash pool, excluding steps, must be long enough to provide clear, unobstructed travel for at least 8 feet, 2.44 meters, beyond the point of forward momentum of the heaviest bather permitted by the engineered design.

(4) Splash Pool Dimensions.

(a) The depth of a water slide splash pool at the end of a horizontally oriented slide flume exit must be at least 3 feet, 9.14 centimeters, but may be required to be deeper if the pool design incorporates special features that may increase risks to bathers as determined by the Department.

(b) The depth must be maintained in front of the flume for a distance of at least 20 feet, 6.10 meters, from which point the splash pool floor may have a constant slope upward. Slopes may not be designed or constructed steeper than a 1 to 10 ratio.

(c) The operating water depth of a vehicle slide splash pool, at the flume exit, must be a minimum of 3 feet 6 inches, 1.07 meters. This depth must be maintained to the point at which forward travel of the vehicle ends. From the point at which forward travel ends, the floor may have a constant upward slope to the pool exit at a ratio not to exceed 1 to 10.

(d) The Department may waive minimum depth and distance requirements for a splash pool and approve a special exit system if the designer can demonstrate to the Department that safe exit from the flume into the splash pool can be assured.

(e) A travel path with a minimum width of 4 feet, 1.22 meters, must be provided between the splash pool deck and the top of the flume.

(5) General Water Slide Requirements.

(a) Stairways serving a slide may not retain standing water. Stairways must have non-slip surfaces and shall conform to the requirements of applicable building codes.

(b) Vehicles, including toboggans, sleds, inflatable tubes, and mats must be designed and manufactured of materials which will safeguard the safety of riders.

(c) Water slides shall meet the bather load requirements of R392-302-7(1)(d).

(6) Water Slide Circulation Systems.

(a) Splash pool overflow reservoirs must have sufficient volume to contain at least two minutes of flow from the splash pool overflow. Splash pool overflow reservoirs must have enough water to insure that the splash pool will maintain a constant water depth.

(b) The circulation and filtration equipment of a special purpose pool must be sized to turn over the entire system's water at least once every hour.

(c) Splash pool overflow reservoirs must circulate water through the water treatment system and return when flume supply service pumps are turned off.

(d) Flume pumps and motors must be sized, as specified by the flume manufacturer, and must meet all NSF/ANSI 50-2015, Section 6. Centrifugal Pumps, standards for pool pumps.

(e) Flume supply service pumps must have check valves on all suction lines.

(f) The splash pool and the splash pool overflow reservoir must be designed to prohibit bather entrapment as water flows from the splash pool to the overflow reservoir.

(g) Perimeter overflow gutter systems must meet the requirements of Section R392-302-19, except that gutters are not required directly under slide flumes or along the weirs which separate splash pools and splash pool overflow reservoirs.

(h) Pump reservoir areas must be accessible for cleaning and maintenance.

(7) Slide Signs.

(a) Signs that meet the requirements in R392-302-39(1), (2) and (3)(c) and reflecting the slide manufacturer's recommendations must be mounted adjacent to the entrance to a water slide and at other appropriate areas in accordance with R392-302-39(1). The heading of the signs shall be, "SLIDE INSTRUCTIONS, WARNINGS, AND REQUIREMENTS". The body of the signs shall state at least the following:

(i) Instructions including:

(A) proper riding position,

(B) expected rider conduct,

(C) dispatch procedures,

(D) exiting procedures, and

(E) obeying slide attendants or lifeguards.

(ii) Warnings to include:

(A) slide characteristics such as speed, and

(B) depth of water in splash zone.

(iii) Requirements which include that riders being free of medical conditions identified by the manufacturer such as pregnancy, heart conditions, back conditions, or musculoskeletal conditions.

R392-302-35. Special Purpose Pools: Interactive Water Features.

(1) Interactive water features must meet all applicable requirements of all Sections of R392-302 in addition to those of this Section as they apply to special design features and uses of interactive water features.

(a) Interactive water feature projects require consultation with the local health department having jurisdiction.

(2) All parts of the interactive water feature shall be designed, constructed, maintained, and operated so there are no slip, fall, or other safety hazards, and shall meet the standards of the State Construction Code Title 15a, State Construction and Fire Codes Act.

(3) Interactive water feature nozzles that spray from the ground level shall be flush with the ground, with openings no greater than one-half inch in diameter. Spray devices that extend above ground level shall be clearly visible.

(4) Areas adjacent to the water feature collection zones shall be sloped away at a minimum of two percent from the interactive water feature to deck drains or other approved surface water disposal systems. A continuous deck at least 3 feet, 0.91 meters, wide as measured from the edge of the collection zones must extend completely around the interactive water feature.

(5) Water discharged from all interactive water feature fountain or spray features shall freely drain by gravity flow through a main drain fitting to a below grade sump or collection system which discharges to a collector tank.

(6) All interactive water feature foggers and misters that produce finely atomized mists shall be supplied directly from a potable water source and not from the underground

reservoir.

(7) The interactive water feature shall have an automated oxidation reduction potential (ORP) and pH controller installed and in operation whenever the feature is open for use. The controller shall be capable of maintaining disinfection and pH levels within the requirements for special purpose pools listed in Table 6. In addition, an approved secondary disinfection system the meets the requirements of in R392-302-38(4)(c) through (4)(f)(iii) shall be installed and in operation whenever the feature is open for use.

(8) A sign that meets the requirement R392-302-39(1), (2) and (3)(c) stating:

(a) The word "CAUTION" centered at the top of the sign.

(b) No running on or around the interactive water feature.

(c) Children under the age of 12 must have adult supervision.

(d) No food, drink, glass or pets are allowed on or around the interactive water feature.

(e) For the health of all users restrooms shall be used for the changing of diapers.

(9) If the interactive water feature is operated at night, five foot-candles of light shall be provided in the all areas of the water feature. Lighting shall be installed in accordance with manufacturer's specifications and approved for such use by UL or NSF.

(10) Hydraulics.

(a) The interactive water feature filter system shall be capable of filtering and treating the entire water volume of the water feature within 30 minutes.

(b) The interactive water feature filter system shall draft from the collector tank and return filtered and treated water to the tank via a minimum of 4 equally spaced inlet fittings. Inlet spacing shall also meet the requirements of section R392-302-17.

(c) The interactive water feature circulation system shall be on a separate loop and not directly interconnected with the interactive water feature pump.

(d) The suction intake of the interactive water feature pump in the underground reservoir shall be located adjacent to the circulation return line and shall be located to maximize uniform circulation of the tank.

(e) An automated water level controller shall be provided for the interactive water feature, and the drinking water line that supplies the feature shall meet the requirements of R392-302-4.

(f) The water velocity through the feature nozzles of the interactive water features shall meet manufacturer's specifications and shall not exceed 20 feet per second.

(g) The minimum size of the interactive water feature sump or collector tank shall be equal to the volume of 3 minutes of the combined flow of all feature pumps and the filter pump. Access lids or doors shall be provided to the sump and collector tank. The lids or doors shall be sized to allow easy maintenance and shall provide security from unauthorized access. Stairs or a ladder shall be provided as needed to ensure safe entry into the tank for cleaning and inspection.

(h) The suction intake from the interactive water feature circulation pump shall be located in the lowest portion of the underground reservoir.

(i) A means of vacuuming and completely draining the interactive water feature tank shall be provided.

(11) An interactive water feature is exempt from:

(a) The wall requirement of section R392-302-10;

(b) The ladder, recessed step, stair, and handrail requirements of section R392-302-12;

(c) The fencing and access barrier requirements of section R392-302-14;

(d) The outlet requirements of section R392-302-18 except any submerged outlet that may create an entrapment hazard to users of the feature shall meet the requirements of R392-302-18(1)(a);

(e) The overflow gutter and skimming device requirements of section R392-302-19;

(f) The safety and lifesaving requirements of section R392-302-22, except that an interactive water feature shall be equipped with a first aid kit as required by subsection R392-302-22(3);

(g) The restroom and shower facility requirements of section R392-302-25 as long as toilets, lavatories and changing tables are available within 150 feet;

(h) The pool water clarity and temperature requirements of subsection R392-302-27(4);

(i) The diving area requirement of R392-302-11 except R392-302-11(4)(a) and (b) may be required by the Local Health Officer if the Local Health Officer determines that a diving risk exists;

(j) The depth marking and safety rope requirements of R392-302-15;

(k) The underwater lighting requirements of R392-302-23(1),(2), and (3);

(l) The supervision of bathers requirements of R392-302-30;

(m) The bather load requirements of R392-302-7; and

(n) The pool color requirements of R392-302-6(5).

(12) All interactive water features shall be constructed with a collection zone that meets the requirements of R392-302-6. Vinyl liners that are not bonded to a collection zone surface are prohibited. A vinyl liner that is bonded to a collection zone shall have at least a 60 millimeter thickness. Sand, clay, or earth collection zones are prohibited.

(a) The collection zone material of an interactive water feature must withstand the stresses associated with the normal uses of the interactive water feature and regular maintenance. The collection zone structure and associated tanks shall withstand, without any damage to the structure, the stresses of complete emptying of the interactive water feature and associated tanks without shoring or additional support.

(b) The collection zone of an interactive water feature must be designed and constructed in a manner that provides a smooth, easily cleanable, non-abrasive, and slip resistant surface. The collection zone surfaces must be free of cracks or open joints with the exception of structural expansion joints or openings that allow water to drain to the collector tank. Openings that drain to the collector tank shall not pass a one-half inch sphere. The owner of a non-cementitious interactive water feature shall submit documentation with the plans required in R392-302-8 that the surface material has been tested and passed by an American National Standards Institute (ANSI) accredited testing facility using one of the following standards that is appropriate to the material used:

(i) for pools built with prefabricated pool sections or pool members, the International Cast Products Association (ICPA) standard ANSI/ICPA SS-1-2001; or

(ii) a standard that has been approved by the Department based on whether the standard is applicable to the surface and whether it determines compliance with the requirements of Section R392-302-6.

R392-302-36. Special Purpose Pools: Instructional Pools.

(1) The Department shall undertake to investigate the public health related experiences and science of instructional pools operating with the exemptions in this section. That investigation shall be completed on June 30th, 2021, after which time this section will expire and may be replaced with minimum requirements based on the findings of the

investigation. The Department will make those findings public 90 days prior to the expiration date.

(a) This investigation shall include periodic testing of the pool's water balance, disinfection level, total coliform, and heterotrophic plate count.

(2) An instructional pool is exempt from all requirements of R392-302.

(a) Pools operating under this exemption shall post a prominent sign stating that the pool does not conform to a standard design and is under evaluation to determine applicable standards to be implemented in the future. The lettering in this sign shall be no less than one centimeter in height.

(b) Pools operating under this exemption shall require parents of participating children to sign an acknowledgment that they have read and understand the notice required in R392-302-36(2)(a).

R392-302-37. Advisory Committee.

(1) An advisory committee to the Department regarding regulation of public pools is hereby authorized.

(2) The advisory committee shall be appointed by the Executive Director. Representatives from local health departments, pool engineering, construction or maintenance companies and pool owners may be represented on the committee.

(3) Consistent with R380-1, the Executive Director may seek the advice of the advisory committee regarding interpretation of this rule, the granting of exemptions and related matters.

R392-302-38. Cryptosporidiosis Watches and Warnings.

(1) The Executive Director or local health officer may issue cryptosporidiosis watches or cryptosporidiosis warnings as methods of intervention for likely or indicated outbreaks of cryptosporidiosis. The Executive Director or local health officer may issue a cryptosporidiosis watch if there is a heightened likelihood of a cryptosporidiosis outbreak. The Executive Director or local health officer may issue a cryptosporidiosis warning if there have been reports of cryptosporidiosis above the background level reported for the disease. The Executive Director or local health officer shall include the geographic area and pool type covered in the warning and may restrict certain persons from using public pools.

(2) If a cryptosporidiosis watch or a cryptosporidiosis warning has been issued, the operator of any public pool shall post a notice sign meeting at a minimum the ANSI Z535.2-2011 requirements for NOTICE signs with a 10-foot viewing distance and approved by the local health officer. An Adobe Acrobat .pdf version of the sign that meets the requirements of this section shall be made available from the Department or the local health department. The notice sign shall be placed so that all patrons are alerted to the cryptosporidium-targeted requirements prior to deciding whether to use the swimming pool. The sign shall be at least 17 inches, 43 centimeters, wide by 11 inches, 28 centimeters, high.

(a) Centered immediately below the blue panel shall appear the words "CRYPTO DISEASE PREVENTION" in capital letters.

(b) The body of the notice sign shall be in upper case letters at least 0.39 inches, 1.0 centimeters, high and include the following four bulleted statements in black letters:

-All with diarrhea in the past 2 weeks shall not use the pool.

-All users must shower with soap to remove all fecal material prior to pool entry and after using the toilet or a diaper change.

-All less than 3 yrs or who wear diapers must wear a swim diaper and waterproof swimwear. Diapers may only be changed in restrooms or changing stations.

-Keep pool water out of your mouth.

(3) If a cryptosporidium warning has been issued, each operator of a public pool subject to the warning shall, at a minimum, implement the following cryptosporidium counter measures:

(a) maintain the disinfectant concentration within the range between two mg/l (four mg/l for bromine) and the concentration listed on the product's Environmental Protection Agency mandated label as the maximum reentry concentration, but in no case more than five mg/l (10 mg/l for bromine);

(b) maintain the pH between 7.2 and 7.5; and

(c) maintain the cyanuric acid level that meets the requirement of R392-302-27(3), except the maximum level shall be reduced to 30 mg/l.

(4)(a) If a cryptosporidium warning has been issued, in addition to the requirements listed in R392-302-38(3), the owner or operator of a public pool shall implement any additional cryptosporidium countermeasures listed in subsection below sufficient to achieve at least a 99.9 percent destruction or removal of cryptosporidium oocysts twice weekly, except as provided in R392-302-38(4)(b).

(b) Hyperchlorination using sodium hypochlorite or calcium hypochlorite to achieve a concentration multiplied by time (CT) value of 15,300 mg/l minutes. Table 7 lists examples of chlorine concentrations and time periods that may be used to achieve the required CT value. The operator shall not allow anyone to use the pool if the chlorine concentration exceeds the Environmental Protection Agency maximum reentry concentration listed on the product's label, but in no case if the concentration exceeds five mg/l. The operator of any public pool not required to have a lifeguard by R392-302-30(2) shall hyperchlorinate at least once weekly.

(c) A full flow ultraviolet treatment system that meets the requirements of standard NSF/ANSI 50-2015 for ultraviolet light process equipment. The owner or operator shall ensure that the system is installed and operated according to the manufacturer's recommendations. The owner or operator shall obtain from the manufacturer of the system documentation of third-party challenge testing that the system can achieve a single pass 99.9 percent inactivation of cryptosporidium or the bacteriophage MS2 at the pool design flow rate and during normal operating conditions. The owner or operator shall maintain and make available for inspection the manufacturer's documentation.

(d) An ozone treatment system that achieves a CT value of 7.4 and a flow-through rate at least four times the volume of the pool every three and a half days. The system shall meet the requirements of standard NSF/ANSI 50-2015 for ozone process equipment. The owner or operator shall ensure that the system is installed and operated according to the manufacturer's recommendations.

(e) A cryptosporidium oocyst-targeted filter system installed and operated according to the manufacturer's recommendations. The filter shall meet the requirements of R392-302-20. The owner or operator shall obtain from the manufacturer of the system documentation of third-party challenge testing that the system can achieve a single pass 99 percent reduction of particles in the range of 4 to 6 microns or cryptosporidium oocysts at the pool design flow rate and normal operating conditions. The owner or operator shall maintain and make available for inspection the manufacturer's documentation.

(f) A system approved by the local health officer. The health officer's approval of a system for use as an alternative shall be based on the system's documented ability to:

(i) achieve cryptosporidium removal or inactivation to a level at least equivalent to the requirements in R392-302-38(4)(a);

(ii) assure safety for swimmers and pool operators; and

(iii) comply with all other applicable rules and federal regulations.

TABLE 7

Chlorine Concentration and Contact Time to Achieve CT = 15,300

Chlorine Concentration	Contact Time
1.0 mg/l	15,300 minutes (255 hours)
10 mg/l	1,530 minutes (25.5 hours)
20 mg/l	765 minutes (12.75 hours)

(5) If the Executive Director or local health officer issues a restriction on the use of public pools by certain persons as part of the cryptosporidium warning the operator shall restrict persons within that segment of the population from using the facility.

(6) If the Executive Director or local health officer determines that a pool is a cryptosporidiosis threat to public health, he may order the pool to close. The owner or operator of the pool may not reopen until the person issuing the order has rescinded it.

R392-302-39. Signs.

(1) Signs required in R392-302 shall be placed to alert and inform patrons in enough time that the patrons may take appropriate actions.

(2) Signs shall be written in a lettering style, stroke width, spacing, and contrast with the background such that the sign is clearly visible.

(3) As required in different subsections of this rule, sign lettering shall meet one or more, if stated, of the following minimum size standards:

(a) "4 Inch Safety Sign" shall be written in all capital letters that are at least four inches, 10.2 centimeters in height.

(b) "2 Inch Safety Sign" shall be written in all capital letters that are at least two inches, 5.1 centimeters, in height.

(c) "Rule Signs" shall be written with any required signal word, warning or caution, as the sign heading in letters at least two inches, 5.1 centimeters, in height and the body or bulleted rules in letters at least 0.5 inches, 1.27 centimeters, in height.

(i) If the sign can only be viewed from more than a distance of ten feet, 3.048 meters, the letter height shall be larger in the same proportion as the required viewing distance is to ten feet, 3.048 meters.

(ii) The Local Health Officer may approve smaller letter sizes than those required in R392-302-39(3)(c) if the sign will always be viewed from less than a ten foot, 3.048 meters, distance and if the Local Health Officer agrees that the sign meets the requirements of R392-302-39(1) and (2).

KEY: pools, spas, swimming, water

May 24, 2018	**26-1-5**
Notice of Continuation November 7, 2016	**26-1-30**
	26-15-2

R392. Health, Disease Control and Prevention, Environmental Services.
R392-402. Manufactured Home Community Sanitation.
R392-402-1. Authority and Purpose.

(1) This rule is authorized under Sections 26-1-5, 26-1-30(9) and (23), 26-7-1, and 26-15-2.

(2) This rule establishes minimum standards for the sanitation, operation, and maintenance of a manufactured home community, as defined by this rule, and provides for the prevention and control of health hazards associated with a manufactured home community that are likely to affect individuals dwelling therein including risk factors contributing to injury, sickness, death, and disability.

R392-402-2. Applicability.

This rule applies to any person who owns or operates a manufactured home community, unless specifically exempted by this rule. This rule applies to the repair, maintenance, use, operation, and occupancy of manufactured home communities designed, intended for use, or otherwise used for human habitation.

R392-402-3. Definitions.

For the purposes of this rule, the following terms, phrases, and words shall have the meanings herein expressed:

(1) "Building Code" means International Building Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.

(2) "Clean" means the condition of being visibly free from dirt, soil, stain, leftover food particles, or other materials or substances not intended to be a part of the object in question.

(3) "Local Health Department" has the same meaning as provided in Section 26A-1-102(5).

(4) "Local health officer" means the health officer of the local health department having jurisdiction or their designated representative.

(5) "Manufactured home" means a factory assembled structure or structures equipped with the necessary service connections and made so as to be readily movable as a unit or units on its own running gear and designed to be used as a dwelling unit without a permanent foundation. A modular home transported on wheels to its foundation is not a manufactured home.

(6) "Manufactured home community" or "Community" means a parcel or contiguous parcels of land which has been so designed and improved that it contains three or more manufactured home lots available to the general public for the placement thereon of manufactured homes for occupancy.

(7) "Nuisance" means a condition or hazard, or the source thereof, which may be deleterious or detrimental to the health, safety, or welfare of the public.

(8) "Occupant" means any person living, sleeping, cooking, or eating in a manufactured home or having actual possession thereof whether as a tenant or owner-occupant.

(9) "Operator" means any person who owns, leases, manages or controls, or who has the duty to manage or control a manufactured home community.

(10) "Pest" means a noxious, destructive, or troublesome organism whether plant or animal, when found in and around places of human occupancy, habitation, or use which threatens the health or well-being of the public.

(11) "Plumbing Code" means International Plumbing Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.

(12) "Plumbing fixture" means a receptacle or device that is connected to the water supply system of the premises and demands a supply of water therefrom; discharges wastewater, liquid-borne waste materials, or sewage to the drainage system of the premises; or requires both a water supply connection and a discharge to the drainage system of the premises.

(13) "Premises" means any lot, parcel, or plot of land, including any buildings or structure.

(14) "Sanitary" means the condition of being free from infective, physically hurtful, diseased, poisonous, unwholesome, or otherwise unhealthful substances and being completely free from vermin, vectors, and pests and from the traces of either, and free of harborage for vermin, vectors, or pests.

(15) "Service building" means a building, buildings or room housing toilet, lavatory, bathing, laundry and other facilities, including service sinks, as may be required for the use of manufactured home community occupants.

(16) "Vector" means any organism, such as insects or rodents, that transmits a pathogen that can adversely affect public health.

(17) "Vermin" means rats, mice, cockroaches, bedbugs, flies, or any other pest or vector as determined by the local health officer to be harmful to the life, health, or welfare of the public.

(18) "Wastewater" means discharges from all plumbing facilities including rest rooms, kitchen, and laundry fixtures either separately or in combination.

R392-402-4. General.

(1) This rule does not require a construction change in any portion of a community if the community was in compliance with the law in effect at the time the community was constructed, except as in R392-402-4(1)(a).

(a) The local health officer may require construction changes if it is determined the community or portion thereof is dangerous, unsafe, unsanitary, a nuisance or menace to life, health, or property.

(2) The operator shall carry out the provisions of this rule.

(3) Severability - If any provision of this rule or its application to any person or circumstance is declared invalid, the application of such provision to other persons or circumstances, and the remainder of this rule, shall not be affected thereby.

(4) The operator shall comply with all applicable building, zoning, electrical, health, fire codes and all local ordinances.

(5) A manufactured home community operator or agent shall select or construct a location for the facility that will provide adequate surface drainage. The operator shall make a reasonable effort to locate the facility away from any existing public health hazard or nuisance.

(6) When an operator allows community occupants to dwell in vehicles or manufactured homes, or temporary dwellings not provided with toilet, sink and bathing plumbing fixtures, the operator shall construct and maintain a service building for occupant use according to the requirements of Section R392-402-7.

(7) Whenever provisions are made for the accommodation of any recreational vehicles, such as travel trailers, camp trailers, truck campers or motor homes, in a manufactured home community, such accommodations must conform to the requirements of Rule R392-301.

R392-402-5. Water Supply.

(1) Potable water supply systems for use by manufactured home community occupants shall be designed, installed, and operated according to the requirements set forth by:

(a) Plumbing Code;

(b) The Utah Department of Environmental Quality,

Division of Drinking Water under Title R309; and

(c) Local health department regulations.

(2) The operator shall provide a potable water connection to each manufactured home space.

(a) Shut-off valves on water connections for individual manufactured homes shall be of the inverted key pattern stop-and-waste type or an approved anti-siphon yard hydrant.

(3) Plumbing fixtures that normally require water for their operation shall be supplied with adequate potable water supply under pressure.

(4) The operator shall provide hot and cold running water under pressure at each service building for showers or bath fixtures, hand sinks, and laundry facilities when provided.

(5) A manufactured home community in which spaces are set aside for vehicles, manufactured homes, or other temporary dwellings not provided with toilet, sink, and bathing plumbing fixtures, as in R392-402-4(6), shall be provided with a common-use, non-threaded water faucet or spigot that shall be accessible to community occupants.

R392-402-6. Wastewater.

(1) All wastewater shall be discharged to a public sanitary sewer system whenever practicable.

(a) Sewer systems for use by manufactured home community occupants shall be designed, installed, and operated according to the requirements set forth by:

(i) Plumbing Code;

(ii) The Utah Department of Environmental Quality, Division of Water Quality under Title R317;

(iii) local health department regulations; and

(iv) the local sewer district having jurisdiction.

(b) Where connection to a public sewer is not available, wastewater shall be discharged into an approved wastewater disposal system meeting the requirements of Title R317, Environmental Quality, Water Quality, and local health department regulations.

(c) The operator shall submit all required plans for the construction or alteration of a wastewater disposal system in accordance with Title R317 prior to commencing construction or alteration.

(2) Sewer service shall be made available to each designated manufactured home space and the operator shall design, install, operate, and maintain individual connections to the sewer system according to the requirements set by:

(a) Plumbing Code;

(b) the Utah Department of Environmental Quality, Division of Water Quality;

(c) local health department regulations; and

(d) the local sewer district having jurisdiction.

(3) The operator shall provide tight-fitting covers for all sewer risers not in use.

R392-402-7. Service Building Requirements.

(1) A manufactured home community in which spaces are set aside for vehicles, manufactured homes, or other temporary dwellings not provided with toilet, sink, and bathing plumbing fixtures, as in R392-402-4(6), shall be provided with a service building or buildings for the exclusive use of the occupants and employees of the manufactured home community.

(2) Except as provided in Subsection R392-402-7(2)(a)(i), separate toilet rooms within the service building shall be provided for each sex. These rooms shall be distinctly marked "for men" and "for women" by signs printed in English, or marked with easily understood pictures or symbols.

(a) Each service building shall have one toilet, one hand sink, and one bath fixture for each sex for each 15 sites set aside in Subsection R392-402-4(6), or fraction thereof.

(i) Where a toilet room will be occupied by no more than one person at a time, can be locked from the inside, and contains at least one toilet, separate toilet rooms for each sex need not be provided.

(ii) Urinals may be substituted for up to half of the required number of toilets for males, provided the urinal is installed in addition to a toilet at the same location.

(b) A service building shall be located not less than 15 feet and not more than 500 feet from any site set aside for vehicles, manufactured homes, or other temporary dwellings not provided with toilet, sink, and bathing plumbing fixtures, as in R392-402-4(6).

(3) Service buildings shall meet the following requirements:

(a) Each shall be of permanent construction, meeting the requirements of Building Code.

(b) Each shall be provided with adequate light and ventilation.

(c) Each shall be constructed of smooth, moisture resistant finish materials to withstand frequent washing and cleaning.

(d) Each shall be maintained in a clean and sanitary condition.

(4) The operator shall provide clean individual disposable towels near handwashing sinks. Alternate hand drying methods approved by the local health officer may be substituted for individual disposable towels.

(5) The operator shall provide soap and waste receptacles with lids in each service building.

(6) For each toilet room within a service building, the operator shall provide:

(a) toilet tissue in suitable dispensers; and

(b) at least one solid, easily cleanable, covered waste receptacle for the collection of solid waste; or

(c) at least one solid, easily cleanable, uncovered waste receptacle and a sanitary napkin receptacle.

(7) The operator shall provide water heating equipment capable of heating water to a minimum temperature of 110˚ F, and shall maintain such in proper operating condition.

(8) Each service building shall be provided with at least one service sink or utility sink.

(9) Approaches to any service building shall be free from obstruction.

(10) Sinks shall be located either in the same room as toilet fixtures or immediately adjacent to the toilet room or service building.

(11) Interior spaces intended for human occupancy shall be provided with active or passive space heating systems capable of maintaining an indoor temperature of not less than 68 degrees F at a point three feet above the floor.

R392-402-8. Operation and Maintenance.

(1) The operator shall maintain all common-use buildings, rooms, and equipment, including provided furnishings and equipment in manufactured home community areas, and the grounds surrounding them in a clean and operable condition, and free of litter and debris.

(2) Where necessary, the operator shall employ all reasonable means to eliminate or control infestations of vermin within all parts of any manufactured home community. This shall include approved screening or other approved control of outside openings in common-use buildings.

(3) The operator shall maintain interior roads and parking areas in a manner that prevents harborage for vermin or fugitive dust.

R392-402-9. Food Service.

When the operator provides food service for manufactured home community occupants, food service, storage, and preparation shall comply with the FDA Model Food Code as incorporated and amended in Rule R392-100 and local health department regulations.

R392-402-10. Solid Wastes.

(1) The operator shall provide adequate containers to prevent the accumulation of solid waste in the manufactured home community.

(2) Solid waste generated at a manufactured home community or picnic area shall be stored in a leak-proof, non-absorbent container, which shall be kept covered with a tight-fitting lid.

(3) All solid wastes shall be disposed with sufficient frequency and in such a manner as to prevent insect breeding, rodent harborage, or a public health nuisance.

R392-402-11. Swimming Pools.

The operator shall comply with Rule R392-302, Design, Construction, and Operation of Public Pools as well as other local health department regulations for all pools or spas made available to manufactured home community occupants or staff.

R392-402-12. Inspections and Investigations.

(1)(a) Upon presenting proper identification, the operator shall permit the local health officer to enter upon the premises of a manufactured home community to perform inspections, investigations, reviews, and other actions as necessary to ensure compliance with Rule R392-402.

(b) The local health officer may not enter an occupied manufactured home without the express permission of the occupant except when a warrant is issued to a duly authorized public safety officer which authorizes the local health officer to enter, or when the operator and the local health officer determine that there exists an imminent risk to the life, health, or safety of the occupant.

R392-402-13. Closing of Manufactured Home Communities or Sites.

(1) If a local health officer deems a manufactured home community, housing site, space, or portion thereof to be an imminent risk to the life, health, or safety of the public, the community, housing site, or space may be closed or its use may be restricted, as determined by the local health officer.

(2) The operator shall restrict public access to the impacted area of any manufactured home community, housing site, or space closed or restricted to use by a local health officer within a reasonable time as ordered by the local health officer.

(3) It shall be unlawful for an operator to allow the public to utilize any manufactured home community, housing unit, space, or portion thereof that has been deemed unfit for use until written approval of the local health officer is given.

KEY: public health, manufactured home community, manufactured homes, mobile homes

May 24, 2018	**26-15-2**
Notice of Continuation November 8, 2016	**26-1-30(9)**
	26-1-30(23)
	26-7-1

R410. Health, Health Care Financing.
R410-14. Administrative Hearing Procedures.
R410-14-1. Introduction and Authority.

(1) This rule sets forth the administrative hearing procedures for the Division of Medicaid and Health Financing.

(2) This rule is authorized by Section 26-1-24, Section 63G-4-102, 42 U.S.C. 1396(a) (3), and 42 CFR 431, Subpart E.

R410-14-2. Definitions.

(1) The definitions in Rule R414-1 and Section 63G-4-103 apply to this rule.

(2) The following definitions also apply:

(a) "Action" means:

(i) a denial, termination, suspension, or reduction of medical assistance for a recipient;

(ii) a reduction, denial or revocation of reimbursement for services for a provider;

(iii) a denial or termination of eligibility for participation in a program, or as a provider;

(iv) a determination by skilled nursing facilities and nursing facilities to transfer or discharge residents;

(v) an adverse determination, as defined in Subsection R410-14-2(2)(b);

(vi) an adverse benefit determination as defined in Subsection R410-14-20(2)(a); or

(vii) placement of a Medicaid enrollee on the restriction program.

(b) "Adverse determination" means a determination made in accordance with Sections 1919(b)(3)(F) or 1919(e)(7)(B) of the Social Security Act that the individual does not require the level of services provided by a nursing facility or that the individual does or does not require specialized services.

(c) "Agency" means Division of Medicaid and Health Financing (DMHF) within the Department of Health, the Department of Human Services (DHS), the Department of Workforce Services (DWS) or any managed health care organization (MCO) that has conducted or performed an action as defined in this rule.

(d) "Aggrieved person" means any recipient, enrollee, or provider who is affected by an action of an agency.

(e) "CHEC" means Child Health Evaluation and Care program, which is Utah's version of the federally mandated Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Medicaid child health program.

(f) "De novo" means anew, or considering the question of a case for the first time.

(g) "DHS" means the Department of Human Services.

(h) "DOH" means the Department of Health.

(i) " DWS" means the Department of Workforce Services.

(j) "Eligibility Agency" means DWS or DHS or any entity the Agency contracts with to determine medical assistance eligibility.

(k) "Ex Parte" communications mean direct or indirect communication in connection with an issue of fact or law between the hearing officer and one party only.

(l) "Grievance" means an expression of dissatisfaction about any matter other than an action as defined in this rule. Grievances may include but are not limited to the quality of care of services provided, and aspects of interpersonal relationships such as rudeness of a provider or employee or failure to respect the rights of an enrollee of an MCO.

(m) "Grievance system" means the overall system that includes grievances and appeals handled by an MCO and access to the administrative hearing process set out in this rule.

(n) "Hearing Officer" means solely any person designated by the DMHF Director to conduct administrative hearings pursuant to this rule.

(o) "Managed Care Organization" or "MCO" means a health maintenance organization, a prepaid mental health plan or a dental managed care plan that contracts with DMHF to provide health, behavioral health or oral health services to Medicaid or CHIP recipients.

(p) "Medical record" means a record that contains medical data of a medical assistance recipient or enrollee.

(q) "Provider" means any person or entity that is licensed and otherwise authorized to furnish health care to medical assistance recipients or medical assistance MCO enrollees.

(r) "Order" means a ruling by a hearing officer that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.

(s) "Scope of service" means medical, oral or behavioral health services set out under R414 as a covered benefit.

(t) "State fair hearing" means an administrative hearing conducted pursuant to this rule.

R410-14-3. Administrative Adjudicative Procedures.

(1) Except as provided in this rule or as otherwise designated by rule or statute or converted pursuant to Subsection 63G-4-202(3), all adjudicative proceedings conducted pursuant to this rule are informal proceedings.

(2) Request for Agency Action. An aggrieved person may file a written request for agency action pursuant to Utah Code Ann. Section 63G-4-201, and in accordance with this rule.

(a) A provider may file a written request for agency action without the consent of the recipient or MCO enrollee if the request for agency action pertains to the denial of an authorization for service or a denial of payment on a claim.

(b) A provider may not file a request for agency action if the request for agency action pertains to the denial, change or termination of eligibility of a member or enrollee for a medical assistance program.

(3) If a medical issue is in dispute, each request shall include supporting medical documentation. DMHF shall schedule a hearing only when it receives sufficient medical records and may dismiss a request for agency action if it does not receive supporting medical documentation in a timely manner.

(4) Notice of Agency Action.

(a) An agency shall provide a written notice of action to each aggrieved person. Such actions include but are not limited to:

(i) eligibility for assistance;

(ii) scope of service;

(iii) denial or limited prior authorization of a requested service including the type or level of service; and

(iv) payment of a claim.

(b) The notice must include:

(i) a statement of the action the agency intends to take;

(ii) the date the intended action becomes effective;

(iii) the reasons for the intended action;

(iv) the specific regulations that support the action, or the change in federal law, state law or DMHF policy which requires the action;

(v) the right to request a hearing;

(vi) the right to represent oneself, the right to legal counsel, or the right to use another representative at the hearing; and

(vii) if applicable, an explanation of the circumstances under which reimbursement for medical services will continue or may be reinstated pursuant to this rule.

(c) The agency shall mail the notice at least 10 calendar

days before the date of the intended action except:

(i) the agency may mail the notice not later than the date of action in accordance with 42 CFR 431.213;

(ii) the agency may shorten the period of advance notice to five days before the date of action if it has facts that indicate it must take action due to probable fraud by the recipient or provider and the facts have been verified by affidavit.

R410-14-4. Hearings.

(1) DMHF shall conduct informal hearings for all issues except those specifically designated as formal hearings pursuant to this rule. The hearing officer may convert the proceeding to a formal hearing if an aggrieved person requests a hearing that meets the criteria set forth in Section 63G-4-202.

(2) If a hearing under this rule is converted to a formal hearing pursuant to Section 63G-4-202, the formal hearing shall be conducted in accordance with these rules except as otherwise provided in Sections 63G-4-204 through 63G-4-208 or other applicable statutes.

(3) DMHF shall conduct a hearing in connection with an agency action if the Aggrieved Person requests a hearing and there is a disputed issue of fact. If there is no disputed issue of fact, the hearing officer may deny a request for an evidentiary hearing and issue a recommended decision without a hearing based on the record. In the recommended decision, the hearing officer shall specifically set out all material and relevant facts that are not in dispute.

(4) There is no disputed issue of fact if the Aggrieved Person submits facts that do not conflict with the facts that the agency relies upon in taking action or seeking relief.

(5) If the Aggrieved Person objects to the hearing denial, the person may raise that objection as grounds for relief in a request for reconsideration.

(6) An MCO may not require an Aggrieved Person to utilize arbitration or mediation in order to resolve an Action. An Aggrieved Person may file a request for hearing relating to an Action regardless of any contractual provision with an MCO which may require arbitration or mediation.

(7) The hearing officer may not grant a hearing if the issue is a state or federal law requiring an automatic change in eligibility for medical assistance or covered services that affect the Aggrieved Person.

R410-14-5. Request for Hearing.

(1) An aggrieved person shall request a hearing by submitting the request on the DMHF "Request for Hearing/Agency Action" form. The aggrieved person must then mail or fax the form to the address or fax number contained on the Notice of Agency Action or Request for Hearing Form. The request must explain why the aggrieved person is seeking agency relief.

(2) Except as set forth in Section R410-14-20, hearings must be requested within the following deadlines:

(a) A medical assistance provider or recipient must request a hearing within 30 calendar days from the date that DMHF sends written notice of its intended action.

(b) A medical assistance recipient must request a hearing with DWS regarding eligibility for medical assistance within 90 calendar days from the date that the agency sends written notice of its intended action.

(c) A medical assistance recipient must request a hearing with DMHF regarding a determination of disability for the purposes of medical assistance eligibility within 90 calendar days from the date that DMHF sends written notice of its intended action.

(d) A medical assistance recipient must request a hearing regarding approval or denial of a scope of service within 30 calendar days from the date the agency sends written notice of its intended action.

(3) A hearing request that an aggrieved person sends via mail is deemed filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the request is deemed filed on the date that the agency receives it, unless the sender can demonstrate through competent evidence of the mailing date.

(4) Failure to submit a timely request for a hearing constitutes a waiver of an individual's due process rights.

(5) DMHF may dismiss a request for a hearing if the Aggrieved Person:

(a) withdraws the request in writing;

(b) verbally withdraws the hearing request at a prehearing conference;

(c) fails to appear or participate in a scheduled proceeding without good cause;

(d) prolongs the hearing process without good cause;

(e) cannot be located or agency mail is returned without a forwarding address; or

(f) does not respond to any correspondence from the hearing officer or fails to provide medical records that the agency requests.

R410-14-6. Reinstatement and Continuation of Services.

(1) Continuation of Services. If the agency mails the notice of action in the time required by Section R410-14-3 and the recipient requests a hearing within 10 days of the date the notice was mailed, the agency shall continue services until a decision is rendered after the hearing unless it is determined at the hearing that the sole issue is one of federal or state law or policy and the agency promptly informs the recipient in writing that services are to be terminated or reduced pending the hearing decision.

(2) Reinstatement of Services.

(a) The agency may reinstate services if a recipient requests a hearing not more than 10 days after the date of the action. The reinstated services must continue until a hearing decision is rendered unless, at the hearing, it is determined that the sole issue is one of federal or state law or policy.

(b) The agency shall reinstate and continue services until a decision is rendered after a hearing if the agency takes action without giving 10-day notice as required by Section R410-14-3, the recipient requests a hearing not more than 10 days after the date the notice of action is mailed and action is not the result of the application of federal or state law or policy.

R410-14-7. Notice of Hearing.

(1) The agency shall notify the aggrieved person or representative in writing of the date, time and place of the hearing, and shall mail the notice at least 10 calendar days before the date of the hearing unless all parties agree to an alternative time frame. All aggrieved persons must inform the agency of a current address and telephone number.

(2) If DMHF must provide notice of a hearing, the notice becomes effective on the date of first class mailing to the party's address of record.

R410-14-8. Prehearing Procedures.

(1) DMHF shall schedule a preliminary conference, or begin negotiations in writing, within 30 calendar days from the date it receives the request for a hearing or agency action.

(2) The hearing officer may elect to conduct a preliminary conference to:

(a) formulate or simplify the issues;

(b) obtain admissions of fact and documents that will avoid unnecessary proof;

(c) arrange for the exchange of proposed exhibits or

prepared expert testimony;

(d) outline procedures for the hearing; or

(e) to agree to other matters that may expedite the orderly conduct of the hearing or settlement.

(3) The hearing officer may request a review of the medical record by a DMHF CHEC/Utilization Review committee to evaluate the medical necessity of benefits or services under dispute. The committee's recommendation is not binding, but may be admitted as evidence and included in the hearing record. If a party to the proceeding objects to the committee's determination, a representative of the committee shall be made available at the hearing for examination by the hearing officer and the parties.

(4) The hearing officer may require the parties to submit a prehearing position statement setting forth the parties' positions.

(5) The parties may enter into a written stipulation during the preliminary conference or at any time during the process.

(6) Ex parte communications with the hearing officer are prohibited. If a party attempts ex parte communication, the hearing officer shall inform the offeror that any communication that the hearing officer receives off the record, will become part of the record and furnished to all parties. Ex parte communications do not apply to communications on the status of the hearing and uncontested procedural matters.

(7) The agency shall allow the aggrieved person or a representative to examine all DMHF documents and records upon written request to DMHF at least three days before the hearing.

(8) A party may request access to protected health information in accordance with Rule 380-250, which implements the privacy rule under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(a) The agency may request copies of pertinent records in the possession of a party and the recipient's health care providers. In the event the recipient or provider fails to produce the records within a reasonable time, DMHF may review all pertinent records in the custody of the recipient or provider during regular working hours after three days of written notice.

(b) The recipient shall submit medical records with the hearing request whenever possible. Necessary medical records include:

(i) the provision of each service and activity addressed in the hearing request;

(ii) the first and last name of the party;

(iii) the reason for performing the service or activity that includes the party's complaint or symptoms;

(iv) the recipient's medical history;

(v) examination findings;

(vi) diagnostic test results;

(vii) the goal or need that the plan of care identifies; and

(viii) the observer's assessment, clinical impression or diagnosis that includes the date of observation and identity of the observer.

(c) The medical records must demonstrate that the service is:

(i) medically necessary;

(ii) consistent with the diagnosis of the recipient's condition; and

(iii) consistent with professionally recognized standards of care.

(9) The hearing officer may require each party to file a signed prehearing disclosure form at least 10 calendar days before the scheduled hearing that identifies:

(a) fact witnesses;

(b) expert witnesses;

(c) exhibits and reports the parties intend to offer into evidence at the hearing.

(10) Each party shall supplement the disclosure form with information that becomes available after filing the original form.

R410-14-9. Form and Service of Papers.

(1) Any document that a party files with DMHF in a proceeding must:

(a) be typed or legibly written;

(b) bear a caption that clearly shows the title of the hearing;

(c) bear the docket number, if any;

(d) be dated and signed by the party or the party's authorized representative; and

(e) contain the address and telephone number of the party or the party's authorized representative.

(2) The party that files a document with DMHF shall also serve a copy of the document to all parties to the proceeding or their representatives and file a proof of service with DMHF that consists of a certificate of service.

(3) A document may be served by mail, fax, or email address to the party's address or phone number on record with the agency.

(4) In addition to the methods set forth in this rule, a party may be served as permitted by the Utah Rules of Civil Procedure.

R410-14-10. Conduct of Hearing.

(1) The agency shall conduct hearings in accordance with Section 63G-4-203 on a de novo basis.

(2) DMHF shall appoint an impartial hearing officer to conduct hearings. Previous involvement in the initial determination of the action precludes an officer from appointment.

(3) Telephonic hearings will be held at the discretion of the hearing officer.

(4) The Department is not responsible for any travel costs incurred by the member in attending an in-person hearing.

(5) The hearing officer shall take testimony under oath or affirmation.

(6) Each party has the right to:

(a) present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence;

(b) introduce exhibits;

(c) impeach any witness regardless of which party first called the witness to testify; and

(d) rebut the evidence against the party.

(7) Each party may admit any relevant evidence and use hearsay evidence to supplement or explain other evidence as may be required for full disclosure of all facts relevant to the disposition of the hearing. Hearsay, however, is not sufficient by itself to support a finding unless admissible over objection in civil actions. The hearing officer shall give effect to the rules of privilege recognized by law and may exclude irrelevant, immaterial and unduly repetitious evidence.

(8) The hearing officer may question any party or witness.

(9) The hearing officer shall control the evidence to obtain full disclosure of the relevant facts and to safeguard the rights of the parties. The hearing officer may determine the order in which he receives the evidence.

(10) The hearing officer shall maintain order and may recess the hearing to regain order if a person engages in disrespectful, disorderly or disruptive conduct. The hearing officer may remove any person, including a participant from the hearing, to maintain order. If a person shows persistent disregard for order and procedure, the hearing officer may:

(a) restrict the person's participation in the hearing;
(b) strike pleadings or evidence; or
(c) issue an order of default.

(11) If a party desires to employ a court reporter to make a record of the hearing, it must file an original transcript of the hearing with the hearing officer at no cost to the agency.

(12) The party who initiates the hearing process through a request for agency action has the burden of proof as the moving party.

(13) When a party possesses but fails to introduce certain evidence, the hearing officer may infer that the evidence does not support the party's position.

R410-14-11. Witnesses and Subpoenas.

(1) A party shall arrange for a witness to be present at a hearing.

(2) A hearing officer may on his own or at the request of a party, order a witness excluded so that they cannot hear another witness' testimony.

(3) The hearing officer may issue a subpoena to compel the attendance of a witness or the production of evidence upon written request by a party that demonstrates a sufficient need.

(4) The hearing officer may issue a subpoena on his own motion.

(5) A party may file an affidavit that requests the hearing officer to subpoena a witness to produce books, papers, correspondence, memoranda, or other records. The affidavit must include:

(a) the name and address of the person or entity upon whom the subpoena is to be served;

(b) a description of the documents, papers, books, accounts, letters, photographs, objects, or other tangible items that the applicant seeks;

(c) material that is relevant to the issue of the hearing; and

(d) a statement by the applicant that to the best of his knowledge, the witness possesses or controls the requested material.

(6) A party shall arrange to serve any subpoena that the hearing officer issues on its behalf, and shall serve a copy of the affidavit that it presents to the hearing officer.

(7) Except for employees of an agency, a witness that the hearing officer subpoenas to attend a hearing is entitled to appropriate fees and mileage. The witness shall file a written demand for fees with the hearing officer within 10 calendar days from the date that he appears at the hearing.

(8) The hearing officer may issue an order of default against any party that fails to obey an order entered by the hearing officer.

R410-14-12. Record.

(1) The hearing officer shall make a complete record of all hearings. A hearing record is the sole property of DMHF and DMHF shall maintain the complete record in a secure area.

(2) Proceedings other than hearings may be recorded at the discretion of the hearing officer.

(3) If a party requests a copy of the recording of a hearing, that party may transcribe the recording at the party's sole cost.

(4) DMHF or its designated agent shall retain recordings of all hearings for a period of one year.

(5) DMHF shall retain written records of all hearings for a period of 10 years pending further litigation.

R410-14-13. Continuances or Further Hearings.

(1) The hearing officer, on the officer's own motion or at the request of a party showing good cause, may:

(a) continue the hearing to another time or place; or
(b) order a further hearing.

(2) If the hearing officer determines that additional evidence is necessary for the proper determination of the case, the officer may:

(a) continue the hearing to a later date and order the parties to produce additional evidence; or

(b) close the hearing and hold the record open to receive additional documentary evidence.

(3) The hearing officer shall provide to all parties any evidence that he receives and each party has the opportunity to rebut that evidence.

(4) The hearing officer shall provide written notice of the time and place of a continued or further hearing, except when the officer orders a continuance during a hearing and all parties receive oral notice.

R410-14-14. Proposed Decision and Final Agency Review.

(1) At the conclusion of the hearing, the hearing officer shall take the matter under advisement and submit a recommended decision to the DMHF Director or the director's designee. The recommended decision is based on the testimony and evidence entered at the hearing, Medicaid policy and procedure, and legal precedent.

(2) The recommended decision must contain findings of fact and conclusions of law.

(3) The DMHF Director or the director's designee may:

(a) adopt the recommended decision or any portion of the decision;

(b) reject the recommended decision or any portion of the decision, and make an independent determination based upon the record; or

(c) remand the matter to the hearing officer to take additional evidence, and the hearing officer thereafter shall submit to the DMHF director or the director's designee a new recommended decision.

(4) The director or designee's decision constitutes final administrative action and is subject to judicial review.

(5) DMHF shall send a copy of the final administrative action to each party or representative and notify them of their right to judicial review.

(6) The parties shall comply with a final decision from the director reversing the agency's decision within 10 calendar days.

(7) The DOH Executive Director shall review all recommended decisions to determine approval of medical assistance for an organ transplant. The Executive Director's decision constitutes final administrative action and is subject to judicial review.

R410-14-15. Amending Administrative Orders.

(1) DMHF may amend an order if the hearing officer determines that the order contains a clerical error.

(2) DMHF shall notify the parties of its intent to amend the order by serving a notice of agency action signed by the hearing officer.

(3) The DMHF Director shall review the amended order and he or his designee shall issue a final agency amended order.

(4) DMHF shall provide a copy of the final amended order to the respondent and the petitioner.

R410-14-16. Agency Review.

A party to the proceeding may move for reconsideration of DMHF's final administrative action in accordance with Sections 63G-4-301 through 63G-4-302. A person may seek review of a DWS final agency order concerning eligibility for medical assistance by filing a written request for review with DMHF in accordance with Section 63G-4-301.

R410-14-17. Judicial Review.

A party to the proceeding may obtain judicial review in accordance with Section 63G-4-102 and Sections 63G-4-401 through 63G-4-405.

R410-14-18. Declaratory Orders.

(1) DMHF may issue declaratory orders in accordance with Rule R380-1.

(2) If DMHF does not issue a declaratory order within 60 days after receipt of the request, the petition is denied.

(3) DMHF shall retain the request for declaratory ruling in its records.

(4) DMHF may not issue a declaratory order if an adjudicative proceeding that involves the same parties and issue is pending before the agency or a federal or state court.

R410-14-19. Interpreters.

(1) If a party notifies DMHF that it needs an interpreter, DMHF shall arrange for an interpreter at no cost to the party.

(2) The party may arrange for an interpreter to be present at the hearing only if the hearing officer can verify that the interpreter is at least 18 years of age, and fluent in English and the language of the person who testifies.

(3) The hearing officer shall instruct the interpreter to interpret word for word, and not to summarize, add, change, or delete any of the testimony or questions.

(4) The interpreter must swear under oath to truthfully and accurately translate all statements, questions and answers.

R410-14-20. MCO Grievance and Appeal System.

(1) The procedures in Section R410-14-20 apply only to appeals or requests for agency action arising from actions taken by an MCO.

(2) For the purpose of this section, the following definitions apply:

(a) "Adverse benefit determination" means one of the following actions by an MCO:

(i) The denial or limited authorization of a requested service, including the type and level of services, requirements for medical necessity, appropriateness, setting or effectiveness of a covered benefit;

(ii) The reduction, suspension, or termination of a previously authorized service;

(iii) The denial, in whole or in part, of payment for a service;

(iv) The failure to provide services in a timely manner;

(v) The failure to act within the time frames provided in 42 CFR 438.408(b);

(vi) The denial of a request by a Medicaid enrollee who is a resident of a rural area with only one MCO to exercise his or her right under 42 CFR 438.52(b)(2)(ii) to obtain services outside of the network;

(vii) The denial of an enrollee's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other enrollee financial liabilities; or

(viii) The restriction of a Medicaid enrollee that utilize services at a frequency or amount that are not medically necessary, in accordance with state utilization guidelines.

(b) "Appeal" means a review by an MCO of an "action" as defined in Section R410-14-20 or a request for DMHF to review a final decision rendered by an MCO as a result of the MCO's appeal process.

(c) "Grievance" means an expression of dissatisfaction about any matter other than an adverse benefit determination. Grievances may include, but are not limited to, the quality of care or services provided, and aspects of interpersonal relationships such as rudeness of a provider or employee, or failure to respect the enrollee's rights regardless of whether remedial action is requested. Grievance includes an enrollee's right to dispute an extension of time proposed by the MCO to make an authorization decision.

(d) Grievance and appeal system means the processes the MCO implements to handle appeals of an action and grievances.

(e) "Party" means the agency, or other person commencing an adjudicative proceeding, all respondents, and any MCO who is or may be obligated to pay a claim or provide a benefit or service to a recipient.

(3) An MCO shall establish a grievance and appeal system in accordance with this rule, 42 CFR 431.200 et seq. and 438.400 et seq. and the MCO's contractual obligations entered into with DMHF.

(4) The MCO grievance and appeal system shall include a written internal grievance and appeal procedure for aggrieved person to challenge an action by the MCO.

(5) The MCO shall provide to its enrollees and providers written information that explains the grievance and appeal procedure including a right to request a state fair hearing in accordance with this rule.

(6) The MCO's notice of action shall comply with the requirements set out in Section R410-14-3 and 42 CFR 438.402 and 438.404.

(7) The MCO's written notice of final decision shall comply with the requirements set out in 42 CFR 438.408 and include an explanation of the aggrieved person's right to a state fair hearing pursuant to this rule.

(8) State fair hearings.

(a) Unless otherwise stated in this section, an aggrieved party may appeal an MCO final written disposition on an action by requesting a state fair hearing in accordance with this rule. The hearing request must include a copy of the final written notice of the MCO disposition.

(b) An aggrieved person must exhaust the MCO grievance and appeal procedure before requesting a state fair hearing for an action other than the restriction of a Medicaid enrollee. In the case of an MCO that fails to adhere to the notice and timing requirements in 42 CFR 438.400 et seq., the enrollee is deemed to have exhausted the MCO's appeals process. The hearing request must include a copy of the final written notice of the MCO decision.

(c) The aggrieved party must request a hearing within 120 days from the date of the MCO final written notice of the decision.

(d) Multiple MCO Participation in a state fair hearing.

(i) If an appeal is based on a dispute regarding the payment liability between two or more MCOs, the aggrieved person is not required to exhaust the MCO grievance procedure for each MCO before requesting a state fair hearing under this rule.

(ii) If DMHF identifies an MCO that may be liable to pay the claim and did not participate in the underlying grievance procedure, it shall send notice to that MCO that it may be subject to liability and its right to participate in the state fair hearing.

(iii) If more than one MCO is party to the state fair hearing, DMHF shall provide a notice to all parties that shall include the identity of all parties, the reason for the dispute, a copy of the hearing request and a statement that the MCO that did not participate in the underlying grievance and appeal procedure may be subject to payment liability and its right to participate in the state fair hearing.

(e) DMHF may, but is not required to, file an answer or other response or position statement in the hearing proceeding at any time so long as it gives notice to all other parties no less than five days before the hearing. If DMHF chooses not to file a response or position statement, it does not waive its right to participate in the hearing.

(9) Reversed appeal resolutions.

(a) If the MCO or the State fair hearing officer reverses a decision to deny, limit, or delay services that were not furnished while the appeal was pending, the MCO must authorize or provide the disputed services promptly and as expeditiously as the enrollee's health condition requires but no later than 72 hours from the date it receives notice reversing the determination.

(b) If the MCO or the State fair hearing officer reverses a decision to deny authorization of services, and the enrollee received the disputed services while the appeal was pending, the MCO or the State must pay for those services in accordance with State policy and regulations.

R410-14-21. Pre-admission Screening Resident Review (PASRR) Hearings.

Pursuant to 42 U.S.C. 1396r, any resident and potential resident of a nursing facility whether Medicaid eligible or not, who disagrees with the preadmission screening and appropriateness of a placement decision that DMHF or its designated agent makes, has the right to an informal hearing upon request in accordance with this rule and the requirements set out in 42 CFR 483.200, Subpart D.

R410-14-22. Nurse Aid Registry Hearings.

Pursuant to 42 U.S.C. 1395i-3, each nurse aide is subject to investigation of allegations of resident abuse, neglect or misappropriation of resident property. DMHF or its designated agent shall investigate each complaint and the nurse aide is entitled to a hearing that DMHF or its designated agent conducts before a substantiated claim can be entered into the registry.

R410-14-23. Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF) and Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID) Hearings.

Pursuant to 42 CFR 431, Subpart D, DMHF shall provide an appeals hearing procedure for Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF) or Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID). The informal hearing shall be conducted pursuant to this rule and the requirements of 42 CFR 431.153 and 431.154.

R410-14-24. Home and Community-Based Waver Hearings.

(1) Hearings conducted by DMHF. Pursuant to 42 CFR 431, Subpart E, DMHF shall provide an appeals hearing procedure for home and community-based waiver hearings. The informal hearing shall be conducted pursuant to this rule and the requirements of 42 CFR 431.200 through 431.250.

(2) Hearings conducted by the Division of Services for People with Disabilities (DSPD).

(a) For home and community-based waivers in which DSPD is the designated operating agency and the grievance is based on whether the person meets the eligibility criteria for state matching funds through DHS in accordance with Title 62A, Chapter 5a, the eligibility determination of the operating agency is final.

(b) If DSPD determines that an individual does not meet the eligibility criteria for state matching funds through DHS, it shall inform the individual in writing and provide the individual an opportunity to appeal the decision through the DHS hearing process in accordance with Section R539-3-8.

(c) The DSPD decision is dispositive for purposes of this subsection. DMHF shall sustain the determination and there is no right to further agency review.

R410-14-25. Restriction Program Hearings.

Pursuant to 42 CFR 431.54(e), the Department may restrict Medicaid recipients who utilize services at a frequency or amount that are not medically necessary, in accordance with state utilization guidelines. DMHF shall give the recipient notice and opportunity for an informal hearing pursuant to this section before imposing restrictions.

R410-14-26. Eligibility Hearings.

(1) The eligibility agency shall provide a fair hearing process for applicants and recipients in accordance with the requirements of 42 CFR 431.220 through 431.246. The eligibility agency shall comply with Title 63G, Chapter 4.

(2) An applicant or recipient must request a hearing in writing or orally at the agency that made the final eligibility decision. A request for a hearing concerning a Medicaid eligibility decision must be made within 90 calendar days of the date of the notice of agency action with which the applicant or recipient disagrees. The request need only include a statement that the applicant or recipient wants to present his case.

(3) Hearings are conducted only at the request of a client or spouse, a minor client's parent, or a guardian or representative of the client.

(4) A recipient who requests a fair hearing concerning a decision about Medicaid eligibility shall receive continued medical assistance benefits pending a hearing decision if the recipient requests a hearing before the effective date of the action or within 15 calendar days of the date on the notice of agency action.

(5) The recipient must repay the continued benefits that he receives pending the hearing decision if the hearing decision upholds the agency action.

(a) A recipient may decline the continued benefits that the Department offers pending a hearing decision by notifying the eligibility agency.

(b) Benefits that the recipient must repay include premiums for Medicare or other health insurance, premiums and fees to managed care and contracted mental health services entities, fee-for-service benefits on behalf of the individual, and medical travel fees or reimbursement to or on behalf of the individual.

(6) The eligibility agency must receive a request for a hearing by the close of business on a business day that is before or on the due date. If the due date is a non-business day, the eligibility agency must receive the request by the close of business on the next business day.

(7) DWS conducts fair hearings for all medical assistance cases except those concerning eligibility for advanced premium tax credits made by the FFM, foster care or subsidized adoption Medicaid. The Department conducts hearings for foster care or subsidized adoption Medicaid cases. In addition, the Department conducts hearings concerning its disability determination decisions. The FFM conducts hearings concerning determinations for advanced premium tax credits.

(8) DWS conducts informal, evidentiary hearings in accordance with Sections R986-100-124 through R986-100-134, except for the provisions in Subsection R986-100-128(17) and Subsection R986-100-134(5). Instead, the provisions in Subsection R414-301-7(16) concerning the time frame to comply with the DWS decision, and Subsection R414-301-7(17)(c) concerning continued assistance during a superior agency review conducted by the Department apply respectively.

(9) The Department conducts informal hearings concerning eligibility for foster care or subsidized adoption Medicaid in accordance with Rule R414-1. Pursuant to Section 63G-4-402, within 30 days of the date the Department issues the hearing decision, the applicant or

recipient may file a petition for judicial review with the district court.

(10) DWS may not conduct a hearing contesting resource assessment until an institutionalized individual has applied for Medicaid.

(11) An applicant or recipient may designate a person or professional organization to assist in the hearing or act as his representative. An applicant or recipient may have a friend or family member attend the hearing for assistance.

(12) The applicant, recipient or representative can arrange to review case information before the scheduled hearing.

(13) At least one employee from the eligibility agency must attend the hearing. Other employees of the eligibility agency, other state agencies and legal representatives for the eligibility agency may attend as needed.

(14) The DWS Division of Adjudication and Appeals shall mail a written hearing decision to the parties involved in the hearing. The decision shall include the decision, a summary of the facts and the policies or regulations supporting the decision.

(a) The DWS decision shall include information about the right to request a superior agency review from the Department and how to make that request.

(b) The applicant or recipient may appeal the DWS decision to the Department pursuant to Section R410-14-16. The request for agency review must be made in writing and delivered to either DWS or the Department within 30 days of the mailing date of the decision.

(15) The Department, as the single state Medicaid agency, is a party to all fair hearings concerning eligibility for medical assistance programs. The Department conducts appeals and has the right to conduct a superior agency review of medical assistance hearing decisions rendered by DWS.

(16) The DWS hearing decision becomes final 30 days after the decision is sent unless the Department conducts a superior agency review. The DWS hearing decision may be made final in less than 30 days upon agreement of all parties.

(17) The Department conducts a superior agency review when the applicant or recipient appeals the DWS decision or upon its own accord if it disagrees with the DWS decision.

(a) The Department notifies DWS whenever it conducts a superior agency review.

(b) The DWS hearing decision is suspended until the Department issues a final decision and order on agency review.

(c) A recipient receiving continued benefits continues to be eligible for continued benefits pending the superior agency review decision.

(18) The superior agency review is an informal proceeding and shall be conducted in accordance with Section 63G-4-301.

(19) A Department decision and order on agency review becomes final upon issuance.

(20) The eligibility agency takes case action within 10 calendar days of the date the decision becomes final.

(21) Pursuant to Section 63G-4-402, within 30 days of the date the decision and order on agency review is issued, the applicant or recipient may file a petition for judicial review with the district court. Failure to appeal a DWS hearing decision to the Department negates this right to a judicial appeal.

(22) Recipients are not entitled to continued benefits pending judicial review by the district court.

KEY: Medicaid
May 29, 2018 **26-1-24**
Notice of Continuation August 14, 2017 **26-1-5**
63G-4-102

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-1. Utah Medicaid Program.

R414-1-1. Introduction and Authority.

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

(1) "Act" means the federal Social Security Act.

(2) "Applicant" means any person who requests assistance under the medical programs available through the Division.

(3) "Categorically needy" means aged, blind or disabled individuals or families and children:

(a) who are otherwise eligible for Medicaid; and

(i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or

(ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or

(iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or

(iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or

(v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or

(vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or

(vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or

(viii) who is a child for whom an adoption assistance agreement with the state is in effect.

(b) whose categorical eligibility is protected by statute.

(4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.

(5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.

(6) "CMS" means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the State Children's Health Insurance Program.

(7) "Department" means the Department of Health.

(8) "Director" means the director of the Division.

(9) "Division" means the Division of Health Care Financing within the Department.

(10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(a) placing the patient's health in serious jeopardy;

(b) serious impairment to bodily functions;

(c) serious dysfunction of any bodily organ or part; or

(d) death.

(11) "Emergency service" means immediate medical

attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of diagnosis.

(12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(13) "Executive Director" means the executive director of the Department.

(14) "InterQual" means the McKesson Criteria for Inpatient Reviews, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.

(15) "Medicaid agency" means the Department of Health.

(16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18.

(17) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(18) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(19) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(20) "Medical standards," as applied in this rule, means that an individual may receive reasonable and necessary medical services up until the time a physician makes an official determination of death.

(21) "Prior authorization" means the required approval for provision of a service that the provider must obtain from the Department before providing the service. Details for obtaining prior authorization are found in Section I of the Utah Medicaid Provider Manual.

(22) "Provider" means any person, individual or corporation, institution or organization that provides medical, behavioral or dental care services under the Medicaid program and who has entered into a written contract with the Medicaid program.

(23) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(24) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

(25) "Utilization review" means the Department provides for review and evaluation of the utilization of inpatient Medicaid services provided in acute care general hospitals to patients entitled to benefits under the Medicaid plan.

(26) "Utilization Control" means the Department has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services, safeguards against excess payments, and assesses the quality of services available under the plan. The program meets the requirements of 42 CFR, Part 456.

R414-1-3. Single State Agency.

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

R414-1-5. Incorporations by Reference.

The Department incorporates the January 2018 versions of the following by reference:

(1) Utah Medicaid State Plan, including any approved amendments, under Title XIX of the Social Security Act Medical Assistance Program;

(2) Medical Supplies and Durable Medical Equipment Utah Medicaid Provider Manual, as applied in Rule R414-70, and the manual's attachment for Donor Human Milk Request Form;

(3) Hospital Services Utah Medicaid Provider Manual with its attachments;

(4) Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid;

(5) Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual;

(6) Hospice Care Utah Medicaid Provider Manual;

(7) Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments;

(8) Personal Care Utah Medicaid Provider Manual;

(9) Utah Home and Community-Based Waiver Services for Individuals Age 65 or Older Utah Medicaid Provider Manual;

(10) Utah Home and Community-Based Waiver Services for Individuals with an Acquired Brain Injury Utah Medicaid Provider Manual;

(11) Utah Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual;

(12) Utah Home and Community-Based Services Waiver for Individuals with Physical Disabilities Utah Medicaid Provider Manual;

(13) Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual;

(14) Utah Home and Community-Based Services Waiver for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual;

(15) Utah Home and Community-Based Waiver Services Medicaid Autism Waiver Utah Medicaid Provider Manual;

(16) Office of Inspector General Administrative Hearings Procedures Manual;

(17) Pharmacy Services Utah Medicaid Provider Manual with its attachments;

(18) Drug Criteria and Limits Policy;

(19) Coverage and Reimbursement Code Look-up Tool found at http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php;

(20) CHEC Services Utah Medicaid Provider Manual with its attachments;

(21) Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual;

(22) General Attachments (All Providers) for the Utah Medicaid Provider Manual;

(23) Indian Health Utah Medicaid Provider Manual;

(24) Medical Transportation Utah Medicaid Provider Manual;

(25) Non-Traditional Medicaid Plan Utah Medicaid Provider Manual with attachment;

(26) Licensed Nurse Practitioner Utah Medicaid Provider Manual;

(27) Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, and the manual's attachment for Physical Therapy and Occupational Therapy Decision Tables;

(28) Physician Services Utah Medicaid Provider Manual with its attachments;

(29) Podiatric Services Utah Medicaid Provider Manual;

(30) Primary Care Network Utah Medicaid Provider Manual with its attachments;

(31) Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual;

(32) Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual;

(33) School-Based Skills Development Services Utah Medicaid Provider Manual;

(34) Section I: General Information Utah Medicaid Provider Manual;

(35) Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual;

(36) Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual;

(37) Vision Care Services Utah Medicaid Provider Manual;

(38) Medically Complex Children's Waiver Utah Medicaid Provider Manual; and

(39) Autism Spectrum Disorder Related Services for EPSDT Eligible Individuals Utah Medicaid Provider Manual.

R414-1-6. Services Available.

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;

(b) outpatient hospital services and rural health clinic services;

(c) other laboratory and x-ray services;

(d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;

(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;

(f) family planning services and supplies for individuals of child-bearing age;

(g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;

(h) podiatrist's services;

(i) optometrist's services;

(j) psychologist's services;

(k) interpreter's services;

(l) home health services:

(i) intermittent or part-time nursing services provided by a home health agency;

(ii) home health aide services by a home health agency; and

(iii) medical supplies, equipment, and appliances;

(m) private duty nursing services for children under age 21;

(n) clinic services;

(o) dental services;

(p) physical therapy and related services;

(q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;

(r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;

(s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;

(t) services for individuals age 65 or older in institutions for mental diseases:

(i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;

(ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and

(iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;

(u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

(v) inpatient psychiatric facility services for individuals under 22 years of age;

(w) nurse-midwife services;

(x) family or pediatric nurse practitioner services;

(y) hospice care in accordance with section 1905(o) of the Social Security Act;

(z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;

(aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;

(bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and

(cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:

(i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;

(ii) transportation services;

(iii) skilled nursing facility services for patients under 21 years of age;

(iv) emergency hospital services; and

(v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.

(dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:

(i) it is medically necessary and more appropriate than any Medicaid covered service; and

(ii) it is more cost effective than any Medicaid covered service.

R414-1-7. Aliens.

Certain qualified aliens described in Title IV of Pub. L.

No. 104 193, 110 Stat. 2105, may be eligible for the Medicaid program. All other aliens are prohibited from receiving non-emergency services as described in Section 1903(v) of the Social Security Act.

R414-1-8. Statewide Basis.

The medical assistance program is state-administered and operates on a statewide basis in accordance with 42 CFR 431.50.

R414-1-9. Medical Care Advisory Committee.

There is a Medical Care Advisory Committee that advises the Medicaid agency director on health and medical care services. The committee is established in accordance with 42 CFR 431.12.

R414-1-10. Discrimination Prohibited.

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 45 CFR Parts 80 and 84, the Medicaid agency assures that no individual shall be subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

R414-1-11. Administrative Hearings.

The Department has a system of administrative hearings for medical providers and dissatisfied applicants, clients, and recipients that meets all the requirements of 42 CFR, Part 431, Subpart E.

R414-1-12. Utilization Review.

(1) The Department conducts hospital utilization review as outlined in the Hospital Services Utah Medicaid Provider Manual in effect at the time service is rendered.

(2) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Criteria, published by McKesson Corporation.

(3) The standards in the InterQual Criteria shall not apply to services in which a determination has been made to utilize criteria customized by the Department or that are:

(a) excluded as a Medicaid benefit by rule or contract;

(b) provided in an intensive physical rehabilitation center as described in Rule R414-2B; or

(c) organ transplant services as described in Rule R414-10A.

In these exceptions, or where InterQual is silent, the Department shall approve or deny services based upon appropriate administrative rules or its own criteria as incorporated in the Medicaid provider manuals.

R414-1-13. Provider and Client Agreements.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Utah Medicaid Program.

(2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

R414-1-14. Utilization Control.

(1) In order to control utilization, and in accordance with 42 CFR 440, Subpart B, services, equipment, or supplies not specifically identified by the Department as covered services under the Medicaid program are not a covered benefit. In addition, the Department will also use prior authorization for utilization control. All necessary and appropriate medical record documentation for prior approvals must be submitted with the request. If the provider has not obtained prior authorization for a service as outlined in the Medicaid provider manual, the Department shall deny coverage of the service.

(2) The Department may request records that support provider claims for payment under programs funded through the Department. These requests must be in writing and identify the records to be reviewed. Responses to requests must be returned within 30 days of the date of the request. Responses must include the complete record of all services for which reimbursement is claimed and all supporting services. If there is no response within the 30 day period, the Department will close the record and will evaluate the payment based on the records available.

(3)(a) If the Department pays for a service which is later determined not to be a benefit of the Utah Medicaid program or does not comply with state or federal policies and regulations, the provider shall refund the payment upon written request from the Department.

(b) If services cannot be properly verified or when a provider refuses to provide or grant access to records, the provider shall refund to the Department all funds for services rendered. Otherwise, the Department may deduct an equal amount from future reimbursements.

(c) Unless appealed, the refund must be made to Medicaid within 30 days of written notification. An appeal of this determination must be filed within 30 days of written notification as specified in Rule R410-14.

(d) A provider shall reimburse the Department for all overpayments regardless of the reason for the overpayment.

(e) Provider appeals of action for recovery or withholding of money initiated by the Office of Inspector General of Medicaid Services (OIG) shall be governed by the OIG Administrative Hearings Procedures Manual incorporated by reference in Section R414-1-5.

R414-1-15. Medicaid Fraud.

The Department has established and will maintain methods, criteria, and procedures that meet all requirements of 42 CFR 455.13 through 455.21 for prevention and control of program fraud and abuse.

R414-1-16. Confidentiality.

State statute, Title 63G, Chapter 2, and Section 26-1-17.5, impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning applicants, clients, and recipients to purposes directly connected with the administration of the plan.

All other requirements of 42 CFR Part 431, Subpart F are met.

R414-1-17. Eligibility Determinations.

Determinations of eligibility for Medicaid under the plan are made by the Division of Health Care Financing, the Utah Department of Workforce Services, and the Utah Department of Human Services. There is a written agreement among the Utah Department of Health, the Utah Department of Workforce Services, and the Utah Department of Human Services. The agreement defines the relationships and respective responsibilities of the agencies.

R414-1-18. Professional Standards Review Organization.

All other provisions of the State Plan shall be administered by the Medicaid agency or its agents according

to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

R414-1-19. Timeliness in Eligibility Determinations.

The Medicaid agency shall adhere to all timeliness requirements of 42 CFR 435.911, for processing applications, determining eligibility, and approving Medicaid requests. If these requirements are not completed within the defined time limits, clients may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

R414-1-20. Residency.

Medicaid is furnished to eligible individuals who are residents of the State under 42 CFR 435.403.

R414-1-21. Out-of-state Services.

Medicaid services shall be made available to eligible residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

R414-1-22. Retroactive Coverage.

Individuals are entitled to Medicaid services under the plan during the 90 days preceding the month of application if they were, or would have been, eligible at that time.

R414-1-23. Freedom of Choice of Provider.

Unless an exception under 42 CFR 431.55 applies, any individual eligible under the plan may obtain Medicaid services from any institution, pharmacy, person, or organization that is qualified to perform the services and has entered into a Medicaid provider contract, including an organization that provides these services or arranges for their availability on a prepayment basis.

R414-1-24. Availability of Program Manuals and Policy Issuances.

In accordance with 42 CFR 431.18, the state office, local offices, and all district offices of the Department maintain program manuals and other policy issuances that affect recipients, providers, and the public. These offices also maintain the Medicaid agency's rules governing eligibility, need, amount of assistance, recipient rights and responsibilities, and services. These manuals, policy issuances, and rules are available for examination and, upon request, are available to individuals for review, study, or reproduction.

R414-1-25. Billing Codes.

In submitting claims to the Department, every provider shall use billing codes compliant with Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements as found in 45 CFR Part 162.

R414-1-26. General Rule Format.

The following format is used generally throughout the rules of the Division. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

(1) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(2) Definitions. Definitions that have special meaning to the particular rule.

(3) Client Eligibility. Categories of Medicaid clients eligible for the service covered by the rule: Categorically Needy or Medically Needy or both. Conditions precedent to the client's obtaining coverage such as age limitations or otherwise.

(4) Program Access Requirements. Conditions precedent external to the client's obtaining service, such as type of certification needed from attending physician, whether available only in an inpatient setting or otherwise.

(5) Service Coverage. Detail of specific services available under the rule, including limitations, such as number of procedures in a given period of time or otherwise.

(6) Prior Authorization. As necessary, a description of the procedures for obtaining prior authorization for services available under the particular rule. However, prior authorization must not be used as a substitute for regulatory practice that should be in rule.

(7) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (5).

R414-1-27. Determination of Death.

(1) In accordance with the provisions of Section 26-34-2, the fiduciary responsibility for medically necessary care on behalf of the client ceases upon the determination of death.

(2) Reimbursement for the determination of death by acceptable medical standards must be in accordance with Medicaid coverage and billing policies that are in place on the date the physician renders services.

R414-1-28. Provider-Preventable Conditions.

(1) In accordance with 42 CFR 447.26, October 1, 2011 ed., which is incorporated by reference, Medicaid will not reimburse providers or contractors for provider-preventable conditions as noted therein. Please see Utah Medicaid State Plan Attachments 4.19-A and 4.19-B for detail.

(2) Medicaid providers who treat Medicaid eligible patients must report all provider-preventable conditions whether or not reimbursement for the services is sought. Medicaid providers shall meet this requirement by complying with existing state reporting requirements (rules and legislation) of these events that include:

(a) Rule R380-200;
(b) Rule R380-210;
(c) Rule R386-705;
(d) Rule R428-10; and
(e) Section 26-6-31.

(3) Utilizing the reporting mechanism from one of the rules noted above shall not impact confidentiality and privacy protections for reporting entities as noted in Title 26, Chapter 25, Confidential Information Release.

R414-1-29. Medicaid Policy for Reconstructive and Cosmetic Procedures.

(1) Reconstructive or restorative services are medically necessary; and

(a) performed on abnormal structures of the body to improve and restore bodily function; or

(b) performed to correct deformity resulting from disease, trauma, congenital anomaly, or previous therapeutic intervention.

(2) Medicaid does not cover cosmetic procedures performed with the primary intent to improve appearance, nor does it cover non-medically necessary procedures performed in the same episode as a covered procedure.

(3) Coverage for reconstructive breast procedures related to cancer includes:

(a) reconstruction of the breast on which the procedure is performed; and

(b) reconstruction of the breast on which the procedure is not performed to produce a symmetrical appearance and prostheses.

(4) Medicaid limits reconstructive breast surgeries to initial occurrences that may include multi-step procedures.

(5) Medicaid does not cover repeat reconstructive breast procedures.

R414-1-30. Face-to-Face Requirements for Home Health Services.

(1) Orders for home health services and certain durable medical equipment (DME) must be in accordance with 42 CFR 440.70.

(2) DME that requires face-to-face shall be the same as DME items required by Medicare.

(3) No home health agency or DME supplier may report services for reimbursement until they meet the face-to-face requirement.

R414-1-31. Withholding of Payments.

(1) In addition to other remedies allowed by law and unless specified otherwise, the Department may withhold payments to a provider if:

(a) the provider fails to provide the requested information within 30 calendar days from the date of a written request for information; or

(b) the provider has an outstanding balance owing the Department for any reason, including, but not limited to, claims adjustments or a provider assessment.

(2) The Department shall provide written notice before withholding payments.

(3) When the Department rescinds withholding of payments to a provider, it will, without notice, resume payments according to the regular claims payment cycle.

KEY: Medicaid
May 8, 2018 26-1-5
Notice of Continuation February 15, 2017 26-18-3
26-34-2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-2A. Inpatient Hospital Services.

R414-2A-1. Introduction and Authority.

This rule defines the scope of inpatient hospital services that are available to Medicaid clients for the treatment of disorders other than mental disease. This rule is authorized under Section 26-18-3 and governs the services allowed under 42 CFR 440.10.

R414-2A-2. Definitions.

(1) "Admission" means the acceptance of a Medicaid member for inpatient hospital care and treatment when the member meets established criteria for severity of illness and intensity of service and the required service cannot be provided in an alternative setting.

(2) "Inpatient" is an individual whose severity of illness and intensity of service requires continuous care in a hospital.

(3) "Inpatient Hospital Services" are services that a hospital provides for the care and treatment of inpatients with disorders other than mental illness.

(4) "Observation services" means services, often less than 24 hours, including use of a bed and monitoring by hospital staff, which are reasonable and necessary to evaluate the medical condition or determine the need for a possible admission to the hospital.

(5) "Prepaid Mental Health Plan" means the Medicaid mental and/or substance use disorder managed care plan that covers inpatient and/or outpatient mental health services and outpatient substance use disorder services for PMHP-enrolled Medicaid members.

R414-2A-3. Member Eligibility Requirements.

Inpatient hospital services are available to categorically and medically needy individuals.

R414-2A-4. Hospital Admission Requirements.

(1) An inpatient hospital must meet Medicare participation requirements.

(2) Each hospital that provides inpatient services must have a utilization review plan as described in 42 CFR 482.30.

(3) Each hospital that accepts a Medicaid member for treatment is responsible to verify that the member receives all medically necessary services from Medicaid providers.

(4) Each hospital is financially responsible for any services a member receives from a non-Medicaid provider.

R414-2A-5. Prepaid Mental Health Plan.

Before admitting a Prepaid Mental Health Plan (PMHP) member for an inpatient psychiatric stay, a hospital must obtain prior authorization from the PMHP serving the member's county of residence. If the hospital is not contracted with the PMHP, the PMHP may choose to transfer the member to a contracted hospital.

R414-2A-6. Service Coverage.

(1) Inpatient hospital services must be medically necessary and ordered by an appropriate Medicaid-enrolled provider for the diagnosis and treatment of a member's illness.

(2) Services performed for a member by the admitting hospital or by an entity wholly-owned or wholly-operated by the hospital within three days of patient admission, are considered inpatient services. This three-day window applies to diagnostic and non-diagnostic services that are clinically related to the reason for the member's inpatient admission regardless of whether the inpatient, outpatient, or observation diagnoses are the same.

(3) Medical supplies, appliances, drugs, and equipment required for the care and treatment of a member during an

inpatient stay are reimbursed as part of payment under the Diagnosis Related Group (DRG).

(4) Services associated with pregnancy, labor, and vaginal or C-section delivery are reimbursed as inpatient services as part of payment under the DRG, even if the stay is less than 24 hours.

(5) Medicaid may pay at least one-day inpatient admission for:

(a) Admission for a normal delivery;

(b) Admitted and expired;

(c) Admitted and transferred to a distinct part of or to another acute care hospital.

(6) Outpatient hospital services during an inpatient episode are bundled to the DRG.

(7) Inpatient hospital psychiatric services are available to all Medicaid members. If the member is not enrolled in a PMHP, providers may bill the State directly on a fee-for-service basis. Otherwise, the provider must bill the member's PMHP.

R414-2A-7. Limitations.

Inpatient hospital care is limited to medical treatment of symptoms that lead to medical stabilization of the member. This medical stabilization care is irrespective of any underlying psychiatric diagnosis.

(1) Detoxification for a substance use disorder in a hospital is limited to medical detoxification for acute symptoms of withdrawal when the member is in danger of experiencing severe or life-threatening withdrawal. The Department does not cover any lesser level of detoxification in an inpatient hospital.

(2) Abortion procedures require prior authorization. Refer to Rule R414-1B.

(3) Sterilization and hysterectomy procedures require prior authorization and must meet the requirements of 42 CFR 441, Subpart F.

(4) Organ transplant services are governed by Rule R414-10A.

(5) Take-home supplies, dressings, non-rental durable medical equipment, and drugs are reimbursed as part of payment under the DRG.

(6) Coverage of sleep studies requires sleep center accreditation through one of the following nationally recognized accreditation organizations:

(a) American Academy of Sleep Medicine (AASM);

(b) Accreditation Commission for Health Care (ACHC); or

(c) The Joint Commission (TJC).

(7) Hyperbaric oxygen therapy is limited to service in a facility in which the hyperbaric unit is accredited by the Undersea and Hyperbaric Medical Society. Hyperbaric oxygen therapy is therapy that places the member in an enclosed pressure chamber for medical treatment.

(8) Medicaid does not cover inpatient services solely for pain management. Pain management is adjunct to other Medicaid services.

(9) Inpatient rehabilitation services require prior authorization.

(10) Observation services are limited to cases where observation and evaluation is required to establish a diagnosis and determine the appropriateness of an inpatient admission or discharge. Observation is used to monitor the member's condition, complete diagnostic testing to establish a definitive diagnosis and formulate the treatment plan.

(a) Medicaid covers observation services with a physician's written order that outlines specific medically necessary reasons for the service, such as the member requires more evaluation to determine the severity of illness (e.g. laboratory, imaging, other diagnostic test) and an order to continue monitoring for clinical signs and symptoms to determine improving or declining health status.

(b) Outpatient procedures include uneventful recovery period.

(i) Observation is used to monitor complications of outpatient procedures beyond uneventful recovery period.

(c) Medicaid does not cover observation services for convenience of the hospital, member or family, or when awaiting transfer to another facility.

(d) When an ordered hospital inpatient admission improves to the point of discharge with a stay less than 24 hours, the admission is covered as inpatient when documentation supports the medical necessity.

(e) Inpatient admissions solely for observation or diagnostic evaluation do not qualify for reimbursement under the DRG system.

(11) Medicaid does not cover admission solely for the treatment of eating disorders.

(12) Medicaid does not cover non-physician psychosocial counseling outside of the DRG.

(13) An individual (undocumented immigrant) who does not meet United States residency requirements may only receive emergency services, including emergency labor and delivery, to treat an emergency medical condition.

(a) Medicaid does not cover prenatal and post-partum services for undocumented immigrants.

(b) Medicaid does not cover prescriptions for a member who is eligible to receive emergency services only.

R414-2A-8. Provider-Preventable Conditions.

(1) Medicaid does not pay for Provider Preventable Conditions (PPC).

(a) Medicaid utilizes the Medicaid Severity-Diagnosis Related Group (MS-DRG) to identify a PPC.

(b) For inpatient hospital claims, Medicaid does not cover PPCs in Medicare crossover patients.

(c) To qualify as a PPC, one of the Medicare-listed diagnoses must develop during hospitalization.

(i) When present on admission, these diagnoses are not considered to be a PPC for that hospitalization.

(ii) Providers are expected to identify Present on Admission (POA) status for all diagnoses on each claim according to correct coding standards.

(d) Providers must assure that all PPC-related diagnoses, services, and charges are noted as "non-covered charges" on the claim.

(i) The Department does not use non-covered charges in calculating the hospital reimbursement.

(e) The Department shall deny PPC-related claims that result in an outlier payment and medical records will be required.

(i) Providers will receive Remittance Advice (RA) that confirms the occurrence of a PPC outlier claim.

(ii) The Department requires providers to know which medical records and other required documents are needed.

(iii) Upon RA notification of a PPC, the provider shall submit the following documents within 30 days:

(A) "Outlier PPC Medical Record Documentation Submission Form";

(B) Complete medical records from the associated hospital stay;

(C) Itemized bill (tab de-limited text file or Excel spreadsheet), including a detailed listing of PPC-related charges as non-covered charges, with total charges matching the total charges submitted on the claim.

(f) The Department will review and, if appropriate, re-process the claim based upon the review of the required documents submitted within the 30-day period of RA notification.

(g) The Department shall deny review of the claim unless the required documentation is submitted within 30 days of RA notification.

(h) The Department requires providers to report PPCs in accordance with Section R414-1-28.

R414-2A-9. Utilization Control and Review Program for Hospital Services.

The Hospital Utilization Review Program is administered and operated in accordance with Title 63A, Chapter 13.

(1) The purpose of the hospital utilization review program is to ensure:

(a) efficient and effective delivery of services;

(b) services are appropriate and medically necessary;

(c) service quality is maintained; and

(d) the State satisfies federal requirements for a statewide surveillance and utilization control program.

(2) The Hospital Utilization Review Program shall conduct assessments and audits to ensure the appropriateness and medical necessity of the following:

(a) Admissions to a hospital or a designated distinct part unit within a hospital;

(b) Transfers from one acute care hospital to another acute care hospital, or to a distinct part of a rehabilitation unit or psychiatric unit in another acute care hospital (inter-facility transfer);

(c) Transfers from an acute care setting to a distinct part rehabilitation or psychiatric unit within the same facility (intra-facility transfer);

(d) Continued stays;

(e) Services, surgical services and diagnostic procedures;

(f) Principal diagnosis, principal surgical procedure or both, reflected on paid claims to ensure consistency with the attending physician's determination and documentation as found in the member's medical record;

(g) Determine whether co-morbidity, as found on the claim, is correct and consistent with the attending physician's determination and compatible with documentation found in the member's medical record; and

(h) Quality of care.

(3) The Hospital Utilization Review Program shall conduct assessments and audits to determine:

(a) Appropriate utilization;

(b) Compliance with state and federal Medicaid regulations;

(c) Whether documentation meets state and federal requirements for sufficiency, and whether it accurately describes the status of services provided to the member; and

(d) Whether procedures that require prior authorization have been approved before the provision of services, except in cases that meet the criteria listed in the Utah Medicaid Section 1: General Information Provider Manual (Retroactive Authorization).

(4) The Hospital Utilization Review Program shall make determinations of medical necessity medical necessity, appropriateness of care, and suitability of discharge planning in accordance with the following criteria and protocols:

(a) InterQual Criteria;

(b) Administrative rules or criteria developed by Medicaid for programs and services not otherwise addressed; and

(c) DRGs.

(5) Hospital Utilization Readmission Policy and Reviews.

(a) Whenever information available to the reviewer indicates the possibility of readmission to acute care within 30 days of the previous discharge, the staff administering and operating the Hospital Utilization Review Program may review any claim for:

(i) Readmission for the same or a similar diagnosis to the same hospital, or to a different hospital;

(ii) Appropriateness of inter-facility transfers; and

(iii) Appropriateness of intra-facility transfers.

(b) The Hospital Utilization Review Program shall review all suspected readmissions within 30 days of a previous discharge to ensure that Medicaid criteria have been met for severity of illness, intensity of service, and appropriate discharge planning and financial impact to the Department as noted in Subsection R414-2A-9(3).

(c) If a member is readmitted for the same or similar diagnosis within 30 days of discharge and, if after review as described in Subsection R414-2A-9(4)(b), program review staff determines that readmission does not meet the criteria in Subsection R414-2A-9(3)(b), then the payment shall be combined into a single DRG payment, unless it is cost effective to pay for two separate admissions. The first DRG (initial admission) shall be the DRG that is paid. This policy does not apply to cases related to pregnancy, neonatal jaundice, or chemotherapy.

(6) Definition, Policy Application.

(a) When applying policy, a similar diagnosis is defined as:

(i) Any diagnoses code with similar descriptors;

(ii) Any exchange or combination of principal and secondary diagnosis; and

(iii) Any other sets of principal diagnoses established to be similar by Utah Medicaid policy in written criteria and published to the hospitals prior to service dates.

(b) The evaluation criteria for utilization control are severity of illness, intensity of service, and cost effectiveness as noted in Subsection R414-2A-9(4)(b).

(7) Appropriate remedial action will be initiated for inappropriate readmissions when identified though the hospital utilization post-payment review process.

(8) Applicability to Outpatient Hospital Services.

(a) When a Medicaid member is readmitted to the hospital, or readmitted as an outpatient within 30 days of a previous discharge for the same or similar diagnosis, Medicaid will evaluate both claims to determine if they should be combined into a single payment or paid separately.

(9) Recovery of Funds.

(a) The Department shall recover payment when post-payment review finds that services are not medically necessary, not appropriate, or that quality of service is not suitable.

(b) The Department shall recover payment when it determines there is a violation of the 30-day re-admission policy.

(10) Hospital Utilization Review.

(a) Each month, the Hospital Utilization Review Program shall review at least 5 percent of a selected universe of claims adjudicated in the previous month. At least 2.5 percent of the claims shall be a random sample. Up to 2.5 percent may be a focused review on a specific service. A staff decision to focus on a specific service shall be made no later than the beginning of the sample cycle.

(b) The Department shall select the universe from paid inpatient hospital claims within the Data Warehouse. The universe from which the random sample is selected is defined as all inpatient hospital claims adjudicated before the beginning of the review cycle, except for:

(i) Claims showing, as a principal diagnosis, any International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM) delivery code in the ICD-10-CM Manual Chapter 15 -- Pregnancy, Childbirth, and the Puerperium, in the range of O00 through O9A.53,

and other ICD-10-CM codes or DRG or DRGs as specified by policy or administrative decision.

(ii) Claims that show $0 payment by Medicaid;

(iii) Medicare crossover claims;

(iv) Claims with other codes or diagnoses determined by the review program staff to be inappropriate for review.

(c) The sample cycle shall begin on the first working day of each month.

(11) Utah State Hospital Utilization Review.

(a) The purpose of this utilization review is to ensure that Medicaid funds, as defined under 42 CFR 456, Subpart D, are expended appropriately and to ensure that services provided to Medicaid members at the Utah State Hospital (USH) are necessary and of high quality. Review program staff shall conduct oversight activities at USH.

(b) Oversight activities include quarterly clinical utilization reviews in which program staff review a sample of members who are under 21 years of age and are 65 years of age or older, and who were reviewed by USH utilization review staff during a previous quarter. These reviews are performed to:

(i) Evaluate the USH utilization process; and

(ii) Address the clinical topic selected for that quarter's review.

(c) Reviews of USH Quality Improvement and Quality Assurance programs are conducted to determine whether:

(i) The programs have been implemented in accordance with written hospital policy;

(ii) The programs are effective in meeting stated goals;

(iii) Improvements or modifications have been made to increase the effectiveness of program design.

(12) Applicability to Inpatient Psychiatric Care and Inpatient Rehabilitation Services.

(a) Provisions in the Hospital Utilization Review Program also apply to inpatient psychiatric care and inpatient rehabilitation services.

R414-2A-10. Cost Sharing.

A Medicaid member is responsible for a copayment as established in the Utah Medicaid State Plan and incorporated by reference in Rule R414-1.

R414-2A-11. Reimbursement.

Reimbursement for inpatient hospital services is in accordance with Attachment 4.19-B of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

KEY: Medicaid
May 8, 2018 26-1-5
Notice of Continuation September 15, 2017 26-18-3
26-18-3.5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-3A. Outpatient Hospital Services.
R414-3A-1. Introduction and Authority.

This rule defines the scope of outpatient hospital services available to Medicaid members for the treatment of disorders other than mental disease. This rule is authorized under Section 26-18-3 and governs the services allowed under 42 CFR 440.20.

R414-3A-2. Definitions.

(1) "Outpatient" is defined in 42 CFR 440.20.

(2) "Outpatient hospital" is a facility that:

(a) is in, or physically connected to, a hospital licensed by the Department as a general hospital, as defined by Subsection 26-21-2(11), and meets the standards set forth in Rule R432-100 and 42 CFR Part 482;

(b) meets participation requirements in the Medicare program; and

(c) has a Medicaid provider agreement with the Department.

R414-3A-3. Member Eligibility Requirements.

Outpatient hospital services are available to categorically and medically needy individuals.

R414-3A-4. Program Access Requirements.

(1) An outpatient hospital must:

(a) Be licensed or formally-approved as a hospital by an officially designated authority for state-standard setting;

(b) Meet participation requirements in Medicare as a hospital;

(c) Be a hospital that accepts a Medicaid member for treatment and accepts responsibility to make sure the member receives all medically necessary services from Medicaid providers; and

(d) Accept financial responsibility for any services a member receives from a non-Medicaid provider.

R414-3A-5. Services.

(1) Services appropriate in the outpatient hospital setting encompass medically necessary diagnostic, therapeutic, rehabilitative, or palliative medical services and supplies.

(2) Outpatient hospital services include:

(a) the service of nurses or other personnel necessary to complete the service and provide member care during the provision of service;

(b) the use of hospital facilities, equipment, and supplies; and

(c) the technical portion of clinical laboratory and radiology services.

(3) Cosmetic or reconstructive procedures are set forth in Section R414-1-29.

(4) Coverage of sleep studies requires sleep center accreditation through one of the following nationally recognized accreditation organizations:

(a) American Academy of Sleep Medicine (AASM);

(b) Accreditation Commission for Health Care (ACHC); or

(c) The Joint Commission (TJC).

(5) Hyperbaric oxygen therapy is limited to service in a facility in which the hyperbaric unit is accredited by the Undersea and Hyperbaric Medical Society. Hyperbaric oxygen therapy is therapy that places the member in an enclosed pressure chamber for medical treatment.

R414-3A-6. Prior Authorization.

Prior authorization is required on certain medical and

surgical procedures in accordance with Section R414-1-14.

R414-3A-7. Cost Sharing.

Each Medicaid member is responsible for a copayment as established in the Utah Medicaid State Plan and incorporated by reference in Rule R414-1.

R414-3A-8. Reimbursement for Services.

Reimbursement for outpatient hospital services is in accordance with Attachment 4.19-B of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

KEY: Medicaid
May 8, 2018 **26-1-5**
Notice of Continuation September 15, 2017 **26-18-2.3**
26-18-3(2)
26-18-4

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-302. Eligibility Requirements.
R414-302-1. Authority and Purpose.

This rule is authorized by Section 26-1-5 and Section 26-18-3 and establishes eligibility requirements for Medicaid and the Medicare Cost Sharing programs.

R414-302-2. Definitions.

The definitions in Rules R414-1 and R414-301 apply to this rule.

R414-302-3. Citizenship and Alienage.

(1) The Department incorporates by reference 42 CFR 435.406 October 1, 2012 ed., which requires applicants and recipients to be United States (U.S.) citizens or qualified aliens and to provide verification of their U.S. citizenship or lawful alien status.

(2) The Department elects to cover applicants and recipients who are under 19 years of age and lawfully present as defined in 42 U.S.C. 1396b(v) and 42 U.S.C. 1397gg(e)(1), and referenced in Section S89 of the Utah Medicaid State Plan.

(3) The Department shall decide if a public or private organization no longer exists or is unable to meet an alien's needs. The Department shall base the decision on the evidence submitted to support the claim. The documentation submitted by the alien must be sufficient to prove the claim.

(4) One adult household member must declare the citizenship status of all household members who will receive Medicaid.

(5) A qualified alien, as defined in 8 U.S.C. 1641 who was residing in the U.S. before August 22, 1996, may receive full Medicaid, Qualified Medicare Beneficiaries (QMB), Specified Low-Income Medicare Beneficiaries (SLMB), or Qualifying Individuals (QI) services.

(6) A qualified alien, as defined in 8 U.S.C. 1641 newly admitted into the U.S. on or after August 22, 1996, may receive full Medicaid, QMB, SLMB, or QI services after five years have passed from the person's date of entry into the U.S.

(7) The Department accepts as verification of citizenship documents from federally recognized Indian tribes evidencing membership or enrollment in such tribe including those with international borders as required under Section 211(b)(1) of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3, or as prescribed by the Secretary.

(8) The Department provides reasonable opportunity for applicants or clients to present satisfactory documentation of citizenship as required under Section 211(b)(2) of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3.

(9) The Department considers that an infant born to a mother who is eligible for Medicaid at the time of the infant's birth has provided satisfactory evidence of citizenship. The Department does not require further verification of citizenship for the infant as required under Section 211(b)(3) of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3.

(10) The Department adopts and incorporates by reference 42 CFR 435.949 and 42 CFR 435.952, October 1, 2012 ed.

(a) The Department shall verify citizenship and immigration status requirements through the Federal Data Services Hub or through other electronic match systems approved by the Secretary.

(b) If the Department cannot verify citizenship or immigration status through an electronic match system or the electronic data is not reasonably compatible with the client

statement, the client must provide verification of citizenship and identity as described in 42 CFR 435.407.

R414-302-4. Utah Residence.

(1) The Department adopts and incorporates by reference 42 CFR 435.403, October 1, 2012 ed. The Department also adopts and incorporates by reference Subsection 1902(b) of the Compilation of the Social Security Laws, in effect May 8, 2013.

(2) The Department considers an individual who establishes state residency to be a resident of the state during periods of temporary absence, if the individual intends to return to the state when the purpose for the temporary absence ends.

R414-302-5. Deprivation of Supports.

(1) The Department adopts and incorporates by reference the definition of "dependent child" found in 42 CFR 435.4, October 1, 2012 ed.

(2) A child who lives with two parents is deprived of support if at least one parent is working less than 100 hours a month.

(3) A child is not considered deprived of support if any of the following situations is true:

(a) The parent is absent because of military service;

(b) The parent is absent for employment, schooling, training or another temporary purpose;

(c) The parent will return to live in the home within 30 days from the date of the application;

(d) The parent is the primary child care provider and care is frequent enough that the child is not deprived of support, care and guidance.

(4) A parent is incapacitated if the parent meets one of the following criteria:

(a) The parent receives SSI;

(b) The parent is recognized as 100% disabled by the Veteran's Administration;

(c) The parent is determined disabled by the State Medicaid Disability Office or the Social Security Administration;

(d) The parent provides written documentation completed by a medical professional engaged in the practice of mental health therapy, which states that the parent is incapacitated and the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity substantially reduces the parent's ability to work or care for the child. Full-time employment, however, nullifies the parent's claim of incapacity. The written documentation must be completed by one of the following medical professionals:

(i) Medical Doctor (MD);

(ii) Doctor of Osteopathy (DO);

(iii) Advanced Practice Registered Nurse (APRN);

(iv) Physician Assistant; or

(v) Mental Health Therapist who is either a psychologist, licensed clinical social worker, certified social worker, marriage and family therapist, professional counselor, MD, DO, or APRN.

R414-302-6. Residents of Institutions.

(1) For purposes of institutions, the definitions in 42 CFR 435.1010 apply.

(2) An individual who resides in a halfway house may receive Medicaid coverage if the halfway house meets the following criteria:

(a) The halfway house allows the individual to work outside the facility;

(b) The halfway house allows the individual to use community facilities at will, such as libraries, grocery stores, recreation areas, or schools; and

(c) The halfway house allows the individual to seek health care treatment in the community to the same extent as other Medicaid enrollees.

(3) The Department does not consider an individual who resides in a temporary shelter for a limited period of time as a resident of an institution.

(4) Individuals who are inmates of public institutions are not eligible for Medicaid coverage.

(5) Individuals who reside in an institution for mental disease (IMD) are not eligible for Medicaid coverage with the following exceptions:

(a) Individuals 65 years of age or older;

(b) Individuals under 22 years of age who receive inpatient psychiatric services as described in 42 CFR 440.160; and

(c) Individuals who reside in an IMD that is licensed as a Substance Use Disorder (SUD) residential treatment program and are receiving treatment for an SUD.

R414-302-7. Social Security Numbers.

(1) The Department adopts and incorporates by reference 42 CFR 435.910, October 1, 2012 ed., which requires the social security number (SSN) of each applicant or beneficiary, specifies the exceptions to requiring the SSN, and specifies agency verification responsibilities. The Department adopts Section 1137 of the Compilation of the Social Security Laws, in effect May 8, 2013, which is incorporated by reference.

(2) Acceptable proof of an SSN is an electronic match, a social security card, or an official document from the Social Security Administration, which identifies the correct number. Acceptable proof of an application for an SSN is a social security receipt that confirms the individual has applied for an SSN.

(3) The Department requires a new proof of application for an SSN at each recertification if the SSN has not previously been provided.

(4) The Department may assign a unique Medicaid identification number to an applicant or beneficiary who meets one of the exceptions to the requirement to provide an SSN.

R414-302-8. Application for Other Possible Benefits.

(1) The Department adopts and incorporates by reference 42 CFR 435.608, October 1, 2012 ed., which requires applicants for and recipients of medical assistance to apply for and take all reasonable steps to receive other possible benefits.

(2) The Department may not require an applicant for or recipient of medical assistance to apply for an income benefit if the applicant's or recipient's income is not counted for the purpose of determining eligibility for medical assistance for either that individual or any other household member.

(3) Individuals who may be eligible for Medicare Part B benefits must apply for Medicare Part B and, if eligible, become enrolled in Medicare Part B to be eligible for Medicaid. The state pays the applicable monthly premium and cost-sharing expenses for Medicare Part B for individuals who are eligible for both Medicaid and Medicare Part B.

(4) Individuals whose eligibility is determined using non-Modified Adjusted Gross Income (MAGI) methodologies and who may be eligible for a Veterans Administration (VA) apportionment payment of benefits, as defined by the VA, must apply for those benefits.

R414-302-9. Third Party Liability.

(1) The Department adopts and incorporates by reference 42 CFR 433.138(b), October 1, 2012 ed., on the collection of health insurance information. The Department

also adopts and incorporates by reference Section 1915(b) of the Compilation of the Social Security Laws, in effect September 9, 2013.

(2) The Department requires clients to report any changes in third party liability information within 30 days.

(3) The Department considers a client uncooperative if the client knowingly withholds third party liability information without good cause.

(4) The Department shall decide whether employer provided group health insurance would be cost effective for the state to purchase as a benefit of Medicaid.

(5) The Department requires clients residing in selected communities to be enrolled in a Health Maintenance Organization as their primary care provider. The Department shall enroll clients who do not make a selection in a Health Maintenance Organization that the Department selects. The Department shall notify clients of the Health Maintenance Organization that they will be enrolled in and allowed ten days to contact the Department with a different selection. If the client fails to notify the Department to make a different selection within ten days, the enrollment shall become effective for the next benefit month.

R414-302-10. Assignment of Rights and Medical Support Enforcement.

The Department adopts and incorporates by reference 42 CFR 433.145 through 433.148, and 435.610, October 1, 2012 ed., which spell out the assignment of rights to the state to collect from liable third parties and to cooperate in establishing paternity and medical support.

R414-302-11. Financial Responsibility.

(1) The Department adopts and incorporates by reference 42 CFR 435.602(a), October 1, 2012 ed., on the financial responsibility of family members.

(2) The Department shall apply the requirements of 42 CFR 435.603 for all individuals eligible for coverage groups subject to the Modified Adjusted Gross Income (MAGI) methodology.

KEY: state residency, citizenship, third party liability, Medicaid
May 8, 2018 26-18-3
Notice of Continuation January 8, 2018

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-308. Application, Eligibility Determinations and Improper Medical Assistance.
R414-308-1. Authority and Purpose.

(1) This rule is authorized by Section 26-18-3.

(2) The purpose of this rule is to establish requirements for medical assistance applications, eligibility decisions and reviews, eligibility period, verifications, change reporting, notification and improper medical assistance for Medicaid and Medicare cost sharing programs.

R414-308-2. Definitions.

(1) The definitions in Rules R414-1 and R414-301 apply to this rule.

(2) In addition, the following definitions apply:

(a) "Due date" means the date that a recipient is required to report a change or provide requested verification to the eligibility agency.

(b) "Eligibility review" means a process by which the eligibility agency reviews current information about a recipient's circumstances to determine whether the recipient is still eligible for medical assistance.

(c) "Open enrollment" means a period of time when the eligibility agency accepts applications.

R414-308-3. Application and Signature.

(1) The Department shall comply with the requirements in 42 CFR 435.907, concerning the application for medical assistance.

(a) The applicant or authorized representative must complete and sign the application under penalty of perjury. If an applicant cannot write, the applicant must make his mark on the application form and have at least one witness to the signature.

(b) A representative may apply on behalf of an individual. A representative may be a legal guardian, a person holding a power of attorney, a representative payee or other responsible person acting on behalf of the individual. In this case, the eligibility agency may send notices, requests and forms to both the individual and the individual's representative, or to just the individual's representative. The eligibility agency may assign someone to act as the authorized representative when the individual requires help to apply and cannot appoint a representative.

(c) If the Division of Child and Family Services (DCFS) has custody of a child and the child is placed in foster care, DCFS completes the application. DCFS determines eligibility for the child pursuant to a written agreement with the Department. DCFS also determines eligibility for children placed under a subsidized adoption agreement. The Department does not require an application for Title IV-E eligible children.

(2) The application date for medical assistance is the date that the eligibility agency receives the application during normal business hours on a week day that does not include Saturday, Sunday or a state holiday except as described below:

(a) When the individual applies through the federally facilitated marketplace (FFM) and the application is transferred from the FFM for a Medicaid eligibility determination, the date of application is the date the individual applies through the FFM.

(b) If the application is delivered to the eligibility agency after the close of business, the date of application is the next business day;

(c) If the applicant delivers the application to an outreach location during normal business hours, the date of application is that business day when outreach staff is

available to receive the application. If the applicant delivers the application to an outreach location on a non-business day or after normal business hours, the date of application is the last business day that a staff person from the eligibility agency was available at the outreach location to receive or pick up the application;

(d) When the eligibility agency receives application data transmitted from the Social Security Administration (SSA) pursuant to the requirements of 42 U.S.C. Sec. 1320b-14(c), the eligibility agency shall use the date that the individual submits the application for the low-income subsidy to the SSA as the application date for Medicare cost sharing programs. The application processing period for the transmitted data begins on the date that the eligibility agency receives the transmitted data. The transmitted data meets the signature requirements for applications for Medicare cost sharing programs;

(e) If an application is filed through the "myCase" system, the date of application is the date the application is submitted to the eligibility agency online.

(3) The eligibility agency shall accept a signed application that an applicant sends by facsimile as a valid application.

(4) If an applicant submits an unsigned or incomplete application form to the eligibility agency, the eligibility agency shall notify the applicant that he must sign and complete the application no later than the last day of the application processing period. The eligibility agency shall send a signature page to the applicant and give the applicant at least ten days to sign and return the signature page. When the application is incomplete, the eligibility agency shall notify the applicant of the need to complete the application and offer ways to complete the application.

(a) The date of application for an incomplete or unsigned application form is the date that the eligibility agency receives the application if the agency receives a signed signature page and completed application within the application processing period.

(b) If the eligibility agency does not receive a signed signature page and completed application form within the application processing period, the application is void and the eligibility agency shall send a denial notice to the applicant.

(c) If the eligibility agency receives a signed signature page and completed application within 30 calendar days after the notice of denial date, the date of receipt is the new application date and the provisions of Subsection R414-308-3(2) apply.

(d) If the eligibility agency receives a signed signature page and completed application more than 30 calendar days after it sends the denial notice, the applicant must reapply by completing and submitting a new application form. The new application date is determined in accordance with this rule.

(5) The eligibility agency treats the following situations as a new application without requiring a new application form. The application date is the day that the eligibility agency receives the request or verification from the recipient. The effective date of eligibility for these situations depends on the rules for the specific program:

(a) A household with an open medical assistance case asks to add a new household member by contacting the eligibility agency;

(b) The eligibility agency ends medical assistance when the recipient fails to return requested verification, and the recipient provides all requested verification to the eligibility agency before the end of the calendar month that follows the closure date. The eligibility agency waives the requirement for the open enrollment period during that calendar month for programs subject to open enrollment;

(c) A medical assistance program other than PCN ends due to an incomplete review, and the recipient responds to the review request within the three calendar months that follow the closure date. The provisions of Section R414-310-14 apply to recertification for PCN enrollment;

(d) Except for PCN, Targeted Adult Medicaid and UPP that are subject to open enrollment periods, the eligibility agency denies an application when the applicant fails to provide all requested verification, but provides all requested verification within 30 calendar days of the denial notice date. The new application date is the date that the eligibility agency receives all requested verification and the retroactive period is based on that date. The eligibility agency does not act if it receives verification more than 30 calendar days after it denies the application. The recipient must complete a new application to reapply for medical assistance;

(e) For PCN, Targeted Adult Medicaid and UPP applicants, the eligibility agency denies an application when the applicant fails to provide all requested verification, but provides all requested verification within 30 calendar days of the denial notice date and the eligibility agency has not stopped the open enrollment period. If the eligibility agency has stopped enrollment, the applicant must wait for an open enrollment period to reapply.

(6) For an individual who applies for and is found ineligible for Medicaid from October 1, 2013, and December 31, 2013, the eligibility agency shall redetermine eligibility under the policies that become effective January 1, 2014, using the modified adjusted gross income (MAGI)-based methodology without requiring a new application.

(a) Medicaid eligibility may begin no earlier than January 1, 2014, for an individual who becomes eligible using the MAGI-based methodology;

(b) For applications received on or after January 1, 2014, the eligibility agency shall apply the MAGI-based methodology first to determine Medicaid eligibility.

(c) The eligibility agency shall determine eligibility for other Medicaid programs that do not use MAGI-based methodology if the individual meets the categorical requirements of these programs, which may include a medically needy eligibility group for individuals found ineligible using the MAGI-based methodology.

(7) If a medical assistance case closes for one or more calendar months, the recipient must complete a new application form to reapply, except as defined in Subsection R414-308-6(7).

(8) An individual determined eligible for a presumptive eligibility period must file an application for medical assistance with the eligibility agency in accordance with the requirements of Sections 1920, 1920A and 1920B of the Social Security Act.

(9) The eligibility agency shall process low-income subsidy application data transmitted from SSA in accordance with 42 U.S.C. Sec. 1320b-14(c) as an application for Medicare cost sharing programs. The eligibility agency shall take appropriate steps to gather the required information and verification from the applicant to determine the applicant's eligibility.

(a) Data transmitted from SSA is not an application for Medicaid.

(b) An individual who wants to apply for Medicaid when contacted for information to process the application for Medicare cost sharing programs must complete and sign a Department-approved application form for medical assistance. The date of application for Medicaid is the date that the eligibility agency receives the application for Medicaid.

R414-308-4. Verification of Eligibility and Information Exchange.

(1) The Department adopts and incorporates by reference 42 CFR 435.945, 435.948, 435.949, 435.952, and 435.956, October 1, 2012 ed.

(a) The Department may seek approval from the Secretary in accordance with 42 CFR 435.945(k) to use alternative electronic data sources in lieu of using the data available from the federal data hub.

(b) Medical assistance applicants and recipients must provide identifying information that the eligibility agency needs to complete electronic data matches.

(c) The eligibility agency may request verification from applicants and recipients in accordance with the agency's verification plan that is necessary to determine eligibility.

(2) Medical assistance applicants and recipients must verify all eligibility factors requested by the eligibility agency to establish or to redetermine eligibility when the information cannot be verified through electronic data matches, or when the electronic data match information is not reasonably compatible with the client provided information.

(a) The eligibility agency shall provide the applicant or recipient a written request of the needed verification.

(b) The applicant or recipient has at least ten calendar days from the date that the eligibility agency gives or sends the verification request to provide verification.

(c) The due date for returning verification, forms or information requested by the eligibility agency is the close of business on the date that the eligibility agency sets as the due date in a written request.

(d) An applicant must provide all requested verification before the close of business on the last day of the application period. If the last day of the application processing period is a non-business day, the applicant or recipient has until the close of business on the next business day to return verification.

(e) The eligibility agency shall allow the applicant or recipient more time to provide verification if he requests more time by the due date. The eligibility agency shall set a new due date based on what the applicant or recipient needs to do to obtain the verification and whether he shows a good faith effort to obtain the verification.

(f) If an applicant or recipient does not provide verification by the due date and does not contact the eligibility agency to ask for more time to provide verification, the eligibility agency shall deny the application or review, or end eligibility.

(g) If a due date falls on a non-business day, the due date is the close of business on the next business day.

(3) The eligibility agency must receive verification of an individual's income, both unearned and earned. To be eligible under the Medicaid Work Incentive program, the eligibility agency may require proof such as paycheck stubs showing deductions of FICA tax, self-employment tax filing documents, or for newly self-employed individuals who have not filed tax forms yet, a written business plan and verification of gross receipts and business expenses, to verify that the income is earned income.

(4) If an applicant's citizenship and identity do not match through the Social Security electronic match process and the eligibility agency cannot resolve this inconsistency, the eligibility agency shall require the applicant to provide verification of his citizenship and identity in accordance with 42 U.S.C. 1396a(ee)(1)(B).

(a) The individual must provide verification to resolve the inconsistency or provide original documentation to verify his citizenship and identity within 90 days of the request.

(b) The eligibility agency shall continue to provide medical assistance during the 90-day period if the individual meets all other eligibility criteria.

(c) If the individual fails to provide verification, the eligibility agency shall end eligibility within 30 days after the 90-day period. The eligibility agency may not extend or repeat the verification period.

(d) An individual who provides false information to receive medical assistance is subject to investigation of Medicaid fraud and penalties as outlined in 42 CFR 455.13 through 455.23.

R414-308-5. Eligibility Decisions or Withdrawal of an Application.

(1) The Department adopts and incorporates by reference 42 CFR 435.911, 435.912 and 435.919, October 1, 2012 ed., regarding eligibility determinations and timely determinations. The eligibility agency shall provide proper notice about a recipient's eligibility, changes in eligibility, and the recipient's right to request a fair hearing in accordance with the provisions of 78 FR 42303, which is incorporated by reference and 42 CFR 431.206, 431.210, 431.211, 431.213, 431.214, October 1, 2012 ed., which are incorporated by reference.

(2) The eligibility agency shall extend the time limit if the applicant asks for more time to provide requested information before the due date. The eligibility agency shall give the applicant at least ten more days after the original due date to provide verifications upon the applicant's request. The eligibility agency may allow a longer period of time for the recipient to provide verifications if the agency determines that the delay is due to circumstances beyond the recipient's control.

(3) If an individual who is determined presumptively eligible files an application for medical assistance in accordance with the requirements of Sections 1920 and 1920A of the Social Security Act, the eligibility agency shall continue presumptive eligibility until it makes an eligibility decision based on that application. The filing of additional applications by the individual does not extend the presumptive eligibility period.

(4) An applicant may withdraw an application for medical assistance any time before the eligibility agency makes an eligibility decision. An individual requesting an assessment of assets for a married couple under 42 U.S.C. 1396r-5 may withdraw the request any time before the eligibility agency completes the assessment.

R414-308-6. Eligibility Period and Reviews.

(1) The eligibility period begins on the effective date of eligibility as defined in Section R414-306-4, which may be after the first day of a month, subject to the following requirements.

(a) If a recipient must pay one of the following fees to receive Medicaid, the eligibility agency shall determine eligibility and notify the recipient of the amount owed for coverage. The eligibility agency shall grant eligibility when it receives the required payment, or in the case of a spenddown or cost-of-care contribution for waivers, when the recipient sends proof of incurred medical expenses equal to the payment. The fees a recipient may owe include:

(i) a spenddown of excess income for medically needy Medicaid coverage;

(ii) a Medicaid Work Incentive (MWI) premium; or

(iii) a cost-of-care contribution for home and community-based waiver services.

(b) A required spenddown, MWI premium, or cost-of-care contribution is due each month for a recipient to receive Medicaid coverage.

(c) The recipient must make the payment or provide proof of medical expenses within 30 calendar days from the mailing date of the application approval notice, which states how much the recipient owes.

(d) For ongoing months of eligibility, the recipient has until the close of business on the tenth day of the month after the benefit month to meet the spenddown or the cost-of-care contribution for waiver services, or to pay the MWI premium. If the tenth day of the month is a non-business day, the recipient has until the close of business on the first business day after the tenth. Eligibility begins on the first day of the benefit month once the recipient meets the required payment. If the recipient does not meet the required payment by the due date, the recipient may reapply for retroactive benefits if that month is within the retroactive period of the new application date.

(e) A recipient who lives in a long-term care facility and owes a cost-of-care contribution to the medical facility must pay the medical facility directly. The recipient may use unpaid past medical bills, or current incurred medical bills other than the charges from the medical facility, to meet some or all of the cost-of-care contribution subject to the limitations in Section R414-304-9. An unpaid cost-of-care contribution is not allowed as a medical bill to reduce the amount that the recipient owes the facility.

(f) Even when the eligibility agency does not close a medical assistance case, no eligibility exists in a month for which the recipient fails to meet a required spenddown, MWI premium, or cost-of-care contribution for home and community-based waiver services.

(g) The eligibility agency shall continue eligibility for a resident of a nursing home even when an eligible resident fails to pay the nursing home the cost-of-care contribution. The resident, however, must continue to meet all other eligibility requirements.

(2) The eligibility period ends on:

(a) the last day of the month in which the eligibility agency determines that the recipient is no longer eligible for medical assistance and sends proper closure notice;

(b) the last day of the month in which the eligibility agency sends proper closure notice when the recipient fails to provide required information or verification to the eligibility agency by the due date;

(c) the last day of the month in which the recipient asks the eligibility agency to discontinue eligibility, or if benefits have been issued for the following month, the end of that month;

(d) for time-limited programs, the last day of the month in which the time limit ends;

(e) for the pregnant woman program, the last day of the month which is at least 60 days after the date the pregnancy ends, except that for pregnant woman coverage for emergency services only, eligibility ends on the last day of the month in which the pregnancy ends; or

(f) the date the individual dies.

(3) A presumptive eligibility period begins on the day the qualified entity determines an individual to be presumptively eligible. The presumptive eligibility period shall end on the earlier of:

(a) the day the eligibility agency makes an eligibility decision for medical assistance based on the individual's application when that application is filed in accordance with the requirements of Sections 1920 and 1920A of the Social Security Act; or

(b) in the case of an individual who does not file an application in accordance with the requirements of Sections 1920 and 1920A of the Social Security Act, the last day of the month that follows the month in which the individual becomes presumptively eligible.

(4) For an individual selected for coverage under the Qualified Individuals Program, the eligibility agency shall extend eligibility through the end of the calendar year if the individual continues to meet eligibility criteria and the program still exists.

(5) The eligibility agency shall complete a periodic review of a recipient's eligibility for medical assistance in accordance with the requirements of 42 CFR 435.916, October 1, 2013 ed., which the Department adopts and incorporates by reference. The Department elects to conduct reviews for non-MAGI-based coverage groups in accordance with 42 CFR 435.916(a)(3) if eligibility cannot be renewed in accordance with 42 CFR 435.916(a)(2). The eligibility agency shall review factors that are subject to change to determine if the recipient continues to be eligible for medical assistance.

(6) For non-MAGI-based coverage groups, the eligibility agency may complete an eligibility review more frequently when it:

(a) has information about anticipated changes in the recipient's circumstances that may affect eligibility;

(b) knows the recipient has fluctuating income;

(c) completes a review for other assistance programs that the recipient receives; or

(d) needs to meet workload demands.

(7) If a recipient fails to respond to a request for information to complete the review, the eligibility agency shall end eligibility effective at the end of the review month and send proper notice to the recipient.

(a) If the recipient responds to the review or reapplies within three calendar months of the review closure date, the eligibility agency shall consider the response to be a new application without requiring the client to reapply. The application processing period shall apply for the new request for coverage.

(b) If the recipient becomes eligible based on this reapplication, the recipient's eligibility becomes effective the first day of the month after the closure date if verification is provided timely. If the recipient fails to return verification timely or if the recipient is determined to be ineligible, the eligibility agency shall send a denial notice to the recipient.

(c) The eligibility agency may not continue eligibility while it makes a new eligibility determination.

(8) If the eligibility agency sends proper notice of an adverse decision in the review month, the agency shall change eligibility for the following month.

(9) If the eligibility agency does not send proper notice of an adverse change for the following month, the agency shall extend eligibility to the following month. Upon completing an eligibility determination, the eligibility agency shall send proper notice of the effective date of any adverse decision.

(10) If the recipient responds to the review in the review month and the verification due date is in the following month, the eligibility agency shall extend eligibility to the following month. The recipient must provide all verification by the verification due date.

(a) If the recipient provides all requested verification by the verification due date, the eligibility agency shall determine eligibility and send proper notice of the decision.

(b) If the recipient does not provide all requested verification by the verification due date, the eligibility agency shall end eligibility effective the end of the month in which the eligibility agency sends proper notice of the closure.

(c) If the recipient returns all verification after the verification due date and before the effective closure date, the eligibility agency shall treat the date that it receives the verification as a new application date. The agency shall then determine eligibility and send notice to the recipient.

(11) The eligibility agency shall provide ten-day notice of case closure if the recipient is determined ineligible or if the recipient fails to provide all verification by the verification due date.

(12) The eligibility agency may not extend coverage under certain medical assistance programs in accordance with state and federal law. The agency shall notify the recipient before the effective closure date.

(a) If the eligibility agency determines that the recipient qualifies for a different medical assistance program, the agency shall notify the recipient. Otherwise, the agency shall end eligibility when the permitted time period for such program expires.

(b) If the recipient provides information before the effective closure date that indicates that the recipient may qualify for another medical assistance program, the eligibility agency shall treat the information as a new application. If the recipient contacts the eligibility agency after the effective closure date, the recipient must reapply for benefits.

R414-308-7. Change Reporting and Benefit Changes.

(1) A recipient must report to the eligibility agency reportable changes as defined in Section R414-301-2 within 10 calendar days of the change.

(2) The eligibility agency shall:

(a) Act on the reported change; and

(b) Request verification from the recipient if the change cannot be verified through an electronic interface or other credible source.

(3) If verification is needed, the agency shall send a written request and give the recipient at least 10 calendar days from the notice date to respond.

(a) If the recipient does not provide verification by the due date, the agency shall end eligibility after the month in which proper notice is sent.

(b) If the recipient provides verification by the due date, the agency shall re-determine eligibility.

(c) If the recipient provides verification during the month that follows the effective closure date, the eligibility agency shall treat the date as a new application date without requiring a new application.

(d) If the recipient does not provide verification by the end of the month that follows the effective closure date, the recipient must submit a new application.

(4) If the recipient does not provide verification, or a reported change does not affect all household members, the agency may only take action on those individuals who are affected by the change.

(5) If a due date falls on a non-business day, then the due date shall be the close of the next business day.

(6) If a change has an adverse effect on the recipient, the agency shall change eligibility after the month in which proper notice is sent.

(7) If the agency can verify that a change is timely, the change becomes effective on the first day of the month of report.

(8) If the agency cannot verify that a change is timely, the change becomes effective on the first day of the month in which the agency receives verification.

(9) If a recipient requests to add a new household member, the effective date of the change is the date of request, and the following provisions apply:

(a) The agency does not require a new application; and

(b) The applicant must meet all other eligibility requirements.

(10) An overpayment may occur if the recipient does not report changes timely, or if the recipient does not return verification by the verification due date.

(a) The eligibility agency shall determine whether an overpayment has occurred based on when the agency could have made the change if the recipient had reported the change on time or returned verification by the due date.

(b) If a recipient fails to report a change timely or return verification or forms by the due date, the recipient must repay all services and benefits paid by the Department for which the recipient is ineligible.

R414-308-8. Case Closure and Redetermination.

(1) The eligibility agency shall end medical assistance when the recipient requests the agency to close his case, when the recipient fails to respond to a request to complete the eligibility review, when the recipient fails to provide all verification needed to determine continued eligibility, or when the agency determines that the recipient is no longer eligible.

(2) If a recipient fails to complete the review process in accordance with Section R414-308-6, the eligibility agency shall close the case and notify the recipient.

(3) Before terminating a recipient's medical assistance, the eligibility agency shall determine whether the recipient is eligible for any other available medical assistance provided under Medicaid, the Medicare Cost Sharing programs, the Children's Health Insurance Program (CHIP), the Primary Care Network (PCN), and Utah's Premium Partnership for Health Insurance (UPP).

(a) The eligibility agency may not require a recipient to complete a new application to make the redetermination. The agency, however, may request more information from the recipient to determine whether the recipient is eligible for other medical assistance programs. If the recipient does not provide the necessary information by the close of business on the due date, the recipient's medical assistance ends.

(b) When determining eligibility for other programs, the eligibility agency may only enroll an individual in a medical assistance program during an open enrollment period, or when that program allows a person who becomes ineligible for Medicaid to enroll during a period when enrollment is closed. Open enrollment applies only to the PCN and UPP programs.

(4) The eligibility agency shall comply with the requirements of 42 CFR 435.1200, regarding transfer of the electronic file for the purpose of determining eligibility for other insurance affordability programs.

R414-308-9. Improper Medical Coverage.

(1) Improper medical coverage occurs when:

(a) an individual receives medical assistance for which the individual is not eligible. This assistance includes benefits that an individual receives pending a fair hearing or during an undue hardship waiver when the individual fails to take actions required by the eligibility agency;

(b) an individual receives a benefit or service that is not part of the benefit package for which the individual is eligible;

(c) an individual pays too much or too little for medical assistance benefits; or

(d) the Department pays in excess or not enough for medical assistance benefits on behalf of an eligible individual.

(2) As applied in this section, services and benefits include all amounts that the Department pays on behalf of the recipient during the period in question and includes:

(a) premiums that the recipient pays to any Medicaid health plan or managed care plan including any payments for administration costs, Medicare, and private insurance plans;

(b) payments for prepaid mental health services; and

(c) payments made directly to service providers or to the recipient.

(3) If the eligibility agency determines that a recipient is ineligible for the services and benefits that he receives, the recipient must repay to the Department any costs that result from the services and benefits.

(4) The eligibility agency shall reduce the amount that

the recipient must repay by the amount that the recipient pays to the eligibility agency for a Medicaid spenddown, a cost-of-care contribution, or a MWI premium for the month.

(5) If the recipient is eligible but the overpayment is because the spenddown, the MWI premium, or the cost-of-care contribution is incorrect, the recipient must repay the difference between the correct amount that the recipient should pay and the amount that the recipient has paid.

(6) If the eligibility agency determines that the recipient is ineligible due to having resources that exceed the resource limit, the recipient must pay the lesser of the cost of services or benefits that the recipient receives, or the difference between the recipient's countable resources and the resource limit for each month resources exceed the limit.

(7) A recipient may request a refund from the Department if the recipient believes that:

(a) the monthly spenddown, or cost-of-care contribution that the recipient pays to receive medical assistance is less than what the Department pays for medical services and benefits for the recipient; or

(b) the amount that the recipient pays in the form of a spenddown, an MWI premium, or a cost-of-care contribution for long-term care services, exceeds the payment requirement.

(8) Upon receiving the request, the Department shall determine whether it owes the recipient a refund.

(a) In the case of an incorrect calculation of a spenddown, MWI premium, or cost-of-care contribution, the refundable amount is the difference between the incorrect amount that the recipient pays to the Department for medical assistance and the correct amount that the recipient should pay, less the amount that the recipient owes to the Department for any other past due, unpaid claims.

(b) If the spenddown or a cost-of-care contribution for long-term care exceeds medical expenditures, the refundable amount is the difference between the correct spenddown or cost-of-care contribution that the recipient pays for medical assistance and the amount that the Department pays on behalf of the recipient for services and benefits, less the amount that the recipient owes to the Department for any other past due, unpaid claims. The Department shall issue the refund only after the 12-month time period that medical providers have to submit claims for payment.

(c) The Department may not issue a cash refund for any portion of a spenddown or cost-of- care contribution that is met with medical bills. Nevertheless, the Department may pay additional covered medical bills used to meet the spenddown or cost-of-care contribution equal to the amount of refund that the Department owes the recipient, or apply the bill amount toward a future spenddown or cost-of-care contribution.

(9) A recipient who pays a premium for the MWI program may not receive a refund even when the Department pays for services that are less than the premium that the recipient pays for MWI.

(10) If the cost-of-care contribution that a recipient pays a medical facility is more than the Medicaid daily rate for the number of days that the recipient is in the medical facility, the recipient may request a refund from the medical facility. The Department shall refund the amount that it owes the recipient only when the medical facility sends the excess cost-of-care contribution to the Department.

(11) If the sponsor of an alien does not provide correct information, the alien and the alien's sponsor are jointly liable for any overpayment of benefits. The Department shall recover the overpayment from both the alien and the sponsor.

KEY: public assistance programs, applications, eligibility, Medicaid
May 8, 2018 **26-18**

Notice of Continuation January 8, 2018

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-311. Targeted Adult Medicaid.
R414-311-1. Introduction and Authority.

(1) This rule is authorized by Sections 26-1-5 and 26-18-3 and allowed under Subsection 1115(f) of the Social Security Act.

(2) This rule establishes eligibility requirements for enrollment under the 1115 Demonstration Waiver for Adults without Dependent Children, also known as the Targeted Adult Medicaid program.

R414-311-2. Definitions.

The definitions in Rules R414-1 and R414-301 apply to this rule. In addition, the following definitions apply throughout this rule:

(1) "Chronically Homeless Individual" means an individual who has a substance use disorder, serious mental illness, developmental disability, post-traumatic stress disorder, cognitive impairments resulting from a brain injury, or chronic illness or disability; and

(a) is living or residing for at least 12 months, or on at least four separate occasions that amount to at least 12 months in the last three years, in a place not meant for human habitation, in a safe haven, or in an emergency shelter; or

(b) is living in supportive housing and has previously met the criteria established in Subsection R414-311-2(2)(a).

(2) "Dependent Child" means a child who is under 19 years of age and required to be included in the Targeted Adult Medicaid household size.

(3) "Individual Needing Treatment" means an individual who:

(a) is receiving General Assistance from the Department of Workforce Services and has been diagnosed with a substance use or mental health disorder;

(b) was discharged from the Utah State Hospital and was admitted due to a civil commitment; or

(c) is living or residing for at least 6 months within a 12 month period in a place not meant for human habitation, in a safe haven, or an emergency shelter, and has a substance use or serious mental health disorder.

(4) "Justice Involved Individuals" means an individual who:

(a) has complied with and substantially completed a substance use disorder treatment program while incarcerated in jail or prison; or

(b) was discharged from the Utah State Hospital and was admitted to the civil unit in connection with a criminal charge, or to the forensic unit due to a criminal offense, with which the individual was charged or convicted; or

(c) is involved with a drug or mental health court.

R414-311-3. General Provisions.

(1) The provisions in Rule R414-301 apply to all applicants and enrollees, except that applicants and enrollees are required to report only the following changes in circumstances:

(a) The individual moves out of state; or

(b) The individual enters a public institution or an institution for mental disease.

R414-311-4. General Eligibility Requirements.

Unless otherwise stated, the provisions in Rule R414-302 and Section R414-306-4 apply to applicants and enrollees.

(1) The following individuals are not eligible for Targeted Adult Medicaid:

(a) Individuals who do not meet the coverage group criteria of being chronically homeless, justice involved, or needing treatment as defined in Section R414-311-2;

(b) Individuals who have a dependent child under 19 years old; or

(c) Individuals eligible for a Medicaid program without a spenddown.

(2) An individual must be at least 19 years old and not yet 65 years old to enroll in Targeted Adult Medicaid.

(a) The month in which an individual turns 19 years old is the first month in which the individual may enroll in Targeted Adult Medicaid.

(b) An individual may only enroll in Targeted Adult Medicaid through the month in which the individual turns 65 years old.

(3) The eligibility agency only enrolls applicants during an open enrollment period. The eligibility agency may limit the number it enrolls and may stop enrollment at any time. The open enrollment period may be limited to a coverage group or a subgroup within the coverage group.

(4) The eligibility agency shall waive the open enrollment requirement for the following situations:

(a) The individual who was previously on Targeted Adult Medicaid, and is moving from another Medicaid program back to Targeted Adult Medicaid, is otherwise eligible, and there is no break in coverage between the medical programs;

(b) The individual is no longer eligible for PCN, is otherwise eligible, and there is no break in coverage between the two medical programs; or

(c) The enrollee completes a review within three months of case closure as outlined in Section R414-308-6.

(5) A resource test is not required.

R414-311-5. Application, Eligibility Reviews and Improper Medical Assistance.

(1) Unless otherwise stated, the provisions of Rule R414-308 apply to applicants and enrollees.

(2) Subject to the provisions of Subsection R414-311-5(3), an individual who is determined eligible shall receive 12 months of coverage that begins with the first month of enrollment.

(3) Coverage for Targeted Adult Medicaid may end before the end of the 12-month certification period if the individual:

(a) turns 65 years old;

(b) moves out of state;

(c) becomes eligible for another Medicaid program;

(d) enters a public institution or an institution for mental disease, except as described in Section R414-302-6;

(e) is convicted of fraud; or

(f) leaves the household.

(4) An individual who leaves prison, jail or the Utah State Hospital must submit an application within 60 days of release or discharge.

(5) An enrollee must verify at each review that he meets the criteria of a coverage group as defined in Section R414-311-2. An enrollee who no longer meets criteria of a coverage group is no longer eligible for Targeted Adult Medicaid.

R414-311-6. Household Composition and Income Provisions.

(1) The eligibility agency shall use the provisions of Section R414-304-5 to determine household composition and countable income.

(2) Section R414-304-12 applies to the budgeting of income through the Modified Adjusted Gross Income (MAGI) methodology.

(3) For an individual to be eligible to enroll in Targeted Adult Medicaid, the individual must have zero countable

income.

KEY: Medicaid, Targeted Adult Medicaid, eligibility
May 8, 2018 26-18

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-508. Requirements for Transfer of Bed Licenses.
R414-508-1. Introduction and Authority.

(1) This rule implements requirements that a Medicaid certified nursing care facility program must meet to transfer licensed bed capacity for Medicaid certified beds to another entity.

(2) Sections 26-18-3, 26-18-5, and 26-18-505 authorize this rule.

R414-508-2. Definitions.

As used in this rule:

(1) "Bureau of Health Facility Licensing, Certification and Resident Assessment" (BHFLCRA) within the Department of Health is the entity that evaluates nursing care facilities to comply with state and federal regulations.

(2) "Bed License" is the state authorization given by BHFLCRA to provide nursing care facility services to an individual resident. BHFLCRA only issues licenses to a nursing care facility program to provide services for several individuals. The number of individuals for which a nursing care facility program can provide service equals the total licensed beds held by the licensee.

(3) "Current Owner" is any one of or combination of the following: owner of a building from which a nursing care facility program operates, owner of land on which a nursing care facility program operates, owner of a nursing care facility program licensed by the BHFLCRA, owner of Medicaid certification, lessor of the building, lessor of the land, mortgagor of the building, mortgagor of the land, the management team responsible for executing the operations of a nursing care facility program, a holder of a lien security interest in the land, a holder of a lien security interest in the building, and a holder of a lien security interest in the business operation.

(4) "Medicaid Certification" is the authorization to provide services outlined in the Medicaid State Plan in accordance with Section R414-27-1;

(5) "Transfer" is a change of ownership due to sale, lease, or mortgage.

(6) "Transfer Agreement" is a contract for a transfer of bed licenses.

(7) "Transferor" is the entity or nursing care facility program transferring one or more Medicaid beds to another entity or nursing care facility program.

(8) "Transferee" is the entity or nursing care facility program receiving one or more Medicaid beds from the Transferor.

R414-508-3. Bed License Transfer Requirements for the Transferor.

(1) A nursing care facility program shall meet the requirements of Rule R414-27 to fulfill the transfer requirements found in Subsection 26-18-505(2).

(2) Pursuant to Subsection 26-18-505(2), a nursing care facility program shall demonstrate its intent to transfer bed licenses by providing written notice to the Division of Medicaid and Health Financing in accordance with timing specified in Section 26-18-505. The transferring nursing care facility program or entity shall use the "Notice of Medicaid Bed Transfer" form to request the transfer.

(3) The nursing care facility program shall include all necessary information on the "Notice of Medicaid Bed Transfer" form. If the form or supporting documentation is deficient, the incomplete notice shall be returned to the requestor.

(4) The notice date shall be the postmark date of a complete "Notice of Medicaid Bed Transfer" form mailed to the Division of Medicaid and Health Financing.

R414-508-4. Bed License Transfer Requirements for the Transferee.

Pursuant to Subsection 26-18-505(3), an entity that receives bed licenses from a nursing care facility program must provide written notice to the Division of Medicaid and Health Financing in accordance with timing specified in Section 26-18-505. The receiving nursing care facility program or entity shall use the "Request for Medicaid Certification of Transferred Beds" form.

(1) The nursing care facility program shall include all necessary information on the "Request for Medicaid Certification of Transferred Beds" form. If the form or supporting documentation is deficient, the incomplete notice shall be returned to the requestor.

(2) The notice date shall be the postmark date of a complete "Request for Medicaid Certification of Transferred Beds" form mailed to the Division of Medicaid and Health Financing.

(3) If the receiving nursing care facility or entity receives bed licenses from more than one nursing care facility or entity and wants to have the multiple beds certified at the same time, the transferee shall complete a request form for each different transferring entity and submit the request forms at the same time.

R414-508-5. Expiration and Forfeiture of Bed Licenses.

Pursuant to Subsection 26-18-505(3), if the receiving entity does not obtain Medicaid certification within three years of the effective date of the transfer, the transferred bed licenses expire and the receiving entity forfeits the bed licenses available through the transfer. The transferring nursing care facility program does not regain any right to the transferred beds that have expired.

KEY: Medicaid
December 7, 2016 26-1-3
Notice of Continuation May 25, 2018 26-18-505

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-519. Settings for Home and Community-Based Services.
R414-519-1. Introduction and Authority.

Settings for home and community-based services (HCBS) must include all the qualities defined in 42 CFR 441.301(c)(4)(5), based on the needs specified in an individual's person-centered service plan. For purposes of this rule, "individual" shall also refer to the individual's legal representative or guardian if the individual has one.

R414-519-2. HCBS Setting Requirements.

(1) An HCBS setting must be integrated and support community access to services that include opportunities for an individual to:

(a) seek employment and to work in competitive integrated settings;

(b) engage in aspects of community life;

(c) control personal resources; and

(d) receive community services with the same degree of access afforded to individuals who do not receive HCBS.

(2) An individual shall select the setting from among setting options that include non-disability specific settings and an option for a private unit in a residential setting.

(3) Setting options are identified and documented in the person-centered service plan based on the following:

(a) Individual need and preference; and

(b) Resources available for room and board in residential settings.

(4) An HCBS setting must ensure the following:

(a) Individual rights of privacy;

(b) Dignity and respect; and

(c) Freedom from coercion and restraint.

(5) An HCBS setting must optimize, but not regiment, individual initiative, autonomy, and independence through life choices that include daily activities, physical environment, and personal interaction.

(6) An HCBS setting must facilitate individual choice in relation to services and support.

(7) In addition to the qualities described in 42 CFR 441.301(c)(4)(i) through (v), a provider-owned or controlled residential setting must meet the following conditions:

(a) The unit or dwelling must be owned, rented, or occupied under a legally enforceable agreement by an individual who receives HCBS;

(b) An individual must possess the same responsibilities and protections from eviction that tenants have under the landlord and tenant law of the state, county, city, or other designated entity; and

(c) For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement, or other form of written agreement is in place for each HCBS participant, and that the document provides protections which address eviction processes and appeals comparable to those provided under the landlord tenant law within the jurisdiction.

(8) An HCBS setting must afford privacy to each individual in a sleeping or living unit and the following provisions shall apply:

(a) Units must have lockable entrance doors and only authorized staff may possess the keys;

(b) An individual who shares a unit may have a choice of roommates in that setting;

(c) An individual may furnish and decorate his sleeping or living unit within the lease or other agreement;

(d) An individual may control his own schedule and activities, and access food at any time;

(e) An individual may have his choice of visitors at any time;

(f) An individual must be able to physically access the setting;

(g) Any modification of the additional conditions, under 42 CFR 441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. HCBS providers shall document that the plan meets the following requirements:

(i) The plan identifies a specific and individualized assessed need;

(ii) The plan documents the positive interventions and supports used before any modifications to the person-centered service plan;

(iii) The plan documents less intrusive, but unsuccessful methods of meeting an individual need;

(iv) The plan includes a clear description of the condition that is directly proportionate to the specific assessed need;

(v) The plan includes a regular collection and review of data to measure the ongoing effectiveness of the modification;

(vi) The plan includes established time limits for periodic reviews to determine whether the modification is still necessary or may be terminated;

(vii) The plan includes the informed consent of the individual; and

(viii) The plan includes an assurance that interventions and supports will cause no individual harm.

R414-519-3. Limitations.

(1) Home and community-based settings do not include the following:

(a) A nursing facility;

(b) An institution for mental diseases;

(c) An intermediate care facility for individuals with intellectual disabilities;

(d) A hospital; or

(e) Any other locations that have qualities of an institutional setting, as determined by the Centers for Medicare and Medicaid Services (CMS). Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless CMS determines through heightened scrutiny, based on information presented by the Department or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.

(2) If, upon initial assessment, or any time thereafter, the Department determines that a setting does not comply with 42 CFR 441.301(c)(4)(5), the Department, or its designee, shall utilize an approved method to inform the individual of alternative settings that would comply with these requirements. If the individual elects to remain in, or receive services at a setting that does not meet these requirements, and the provider has not demonstrated compliance with the Department's corrective action plan for meeting such requirements, the individual shall not receive services under Utah home and community-based waiver programs.

(3) The Department shall assess compliance with 42 CFR 441.301(c)(4)(5) as part of its process for credentialing and re-credentialing providers.

KEY: Medicaid
May 25, 2018 **26-1-5**
26-18-3

R428. Health, Center for Health Data, Health Care Statistics.
R428-1. Health Data Plan and Incorporated Documents.
R428-1-1. Legal Authority.

This rule is promulgated in accordance with Title 26, Chapter 33a.

R428-1-2. Purpose.

This rule adopts and incorporates documents related to the collection, analysis, and dissemination of data covered in this title.

R428-1-3. Health Data Plan Adoption.

As required by Section 26-33a-104, the Health Data Committee adopts by rule the health data plan dated October 3, 1991.

R428-1-4. Incorporation by Reference.

The following documents are adopted and incorporated by reference:

(1) "Utah Healthcare Facility Data Submission Guide" means:

(a) Utah Healthcare Facility Data Submission Guide, Version 1, January 15, 2016 for data submissions required before February 16, 2018, and

(b) Utah Healthcare Facility Data Submission Guide, Version 2 for data submissions required on or after February 16, 2018;

(2) "NCQA Survey Specifications" means:

(a) HEDIS 2017, Volume 3: Specifications for Survey Measures, published by NCQA for data submissions required before January 1, 2018, and

(b) HEDIS 2018, Volume 3: Specifications for Survey Measures, published by NCQA for data submissions required on or after January 1, 2018;

(3) "NCQA HEDIS Specifications" means:

(a) HEDIS 2017, Volume 5: HEDIS Compliance Audit: Standards, Policies, and Procedures, published by NCQA for data submissions required before January 1, 2018, and

(b) HEDIS 2018, Volume 5: HEDIS Compliance Audit: Standards, Policies, and Procedures, published by NCQA for data submissions required on or after January 1, 2018;

(4) "Data Submission Guide for Claims Data" means:

(a) Utah All-Payer Claims Database Data Submission Guide Version 3.0 for data submissions required before March 1, 2018, and

(b) Utah All-Payer Claims Database Data Submission Guide Version 3.1 (as corrected on March 15, 2018) for data submissions required on or after March 1, 2018.

KEY: APCD, health, health policy, health planning
May 25, 2018 26-33a-104
Notice of Continuation November 10, 2016

R430. Health, Family Health and Preparedness, Child Care Licensing.
R430-50. Residential Certificate Child Care.
R430-50-1. Legal Authority and Purpose.

(1) This rule is enacted and enforced in accordance with Utah Code, Title 26, Chapter 39.

(2) This rule establishes the foundational standards necessary to protect the health and safety of children in residential child care facilities and defines the general procedures and requirements to obtain and maintain a certificate to provide residential child care.

R430-50-2. Definitions.

(1) "Applicant" means a person or business who has applied for a new or a renewal of a license, certificate, or exemption from Child Care Licensing.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Background Finding" means information in a background screening that may result in a denial from Child Care Licensing.

(4) "Background Screening Denial" means that an individual has failed the background screening and is prohibited from being involved with a child care facility.

(5) "Barrier" means an enclosing structure such as a fence, wall, bars, railing, or solid panel to prevent accidental or deliberate movement through or access to something.

(6) "Body Fluid" means blood, urine, feces, vomit, mucus, and/or saliva.

(7) "Capacity" means the maximum number of children for whom care can be provided at any given time.

(8) "Caregiver-to-Child Ratio" means the number of caregivers responsible for a specific number of children.

(9) "CCL" means the Child Care Licensing Program in the Department of Health that is delegated with the responsibility to enforce the Utah Child Care Licensing Act.

(10) "Child Care" means continuous care and supervision of 5 or more qualifying children, that is:

(a) in place of care ordinarily provided by a parent in the parent's home,

(b) for less than 24 hours a day, and

(c) for direct or indirect compensation.

(11) "Child Care Hours" means the days and times during which the provider is open for business.

(12) "Child Care Program" means a person or business that offers child care.

(13) "Choking Hazard" means an object or a removable part on an object with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches that could be caught in a child's throat blocking their airway and making it difficult or impossible to breathe.

(14) "Conditional Status" means that the provider is at risk of losing their certificate because compliance with licensing rules has not been maintained.

(15) "Covered Individual" means any of the following individuals involved with a child care facility:

(a) an owner;

(b) an employee;

(c) a caregiver;

(d) a volunteer, except a parent of a child enrolled in the child care program;

(e) an individual age 12 years or older who resides in the facility; and

(f) anyone who has unsupervised contact with a child in care.

(16) "CPSC" means the Consumer Product Safety Commission.

(17) "Department" means the Utah Department of Health.

(18) "Designated Play Surface" means any accessible elevated surface for standing, walking, crawling, sitting or climbing; or an accessible flat surface at least 2 by 2 inches in size and having an angle less than 30 degrees from horizontal.

(19) "Emotional Abuse" means behavior that could harm a child's emotional development, such as threatening, intimidating, humiliating, demeaning, criticizing, rejecting, using profane language, and/or using inappropriate physical restraint.

(20) "Entrapment Hazard" means an opening greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter where a child's body could fit through but the child's head could not fit through, potentially causing a child's entrapment and strangulation.

(21) "Facility" means a child care program or the premises approved by the Department to be used for child care.

(22) "Group" means the children who are supervised by one or more caregivers in an individual room or in an area within a room that is defined by furniture or other partition.

(23) "Group Size" means the number of children in a group.

(24) "Guest" means an individual who is not a covered individual and is on the premises with the provider's permission.

(25) "Health Care Provider" means a licensed health professional, such as a physician, dentist, nurse practitioner, or physician's assistant.

(26) "Homeless" means anyone who lacks a fixed, regular, and adequate nighttime residence as described in the McKinney-Vento Act. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA)

(27) "Inaccessible" means out of reach of children by being:

(a) locked, such as in a locked room, cupboard, or drawer;

(b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;

(c) behind a properly secured child safety gate;

(d) located in a cupboard or on a shelf that is at least 36 inches above the floor; or

(e) in a bathroom, at least 36 inches above any surface from where a child could stand or climb.

(28) "Infant" means a child who is younger than 12 months of age.

(29) "Infectious Disease" means an illness that is capable of being spread from one person to another.

(30) "Involved with Child Care" means to do any of the following at or for a child care facility certified by the Department:

(a) provide child care;

(b) volunteer at a child care facility;

(c) own, operate, direct, or be employed at a child care facility;

(d) reside at a facility where child care is provided; or

(e) be present at a facility while care is being provided, except for authorized guests or parents who are dropping off a child, picking up a child, or attending a scheduled event at the child care facility.

(31) "LIS Supported Finding" means background screening information from the Licensing Information System (LIS) database for child abuse and neglect, maintained by the Utah Department of Human Services.

(32) "McKinney-Vento Act" means a federal law that requires protections and services for children and youth who are homeless including those with disabilities. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA)

(33) "Over-the-Counter Medication" means medication that can be purchased without a written prescription including

herbal remedies, vitamins, and mineral supplements.

(34) "Parent" means the parent or legal guardian of a child in care.

(35) "Person" means an individual or a business entity.

(36) "Physical Abuse" means causing nonaccidental physical harm to a child.

(37) "Preschooler" means a child age 2 through 4 years old.

(38) "Provider" means the legally responsible person or business that holds a valid certificate from Child Care Licensing.

(39) "Qualifying Child" means:

(a) a child who is younger than 13 years old and is the child of a person other than the child care provider or caregiver,

(b) a child with a disability who is younger than 18 years old and is the child of a person other than the provider or caregiver, or

(c) a child who is younger than 4 years old and is the child of the provider or a caregiver.

(40) "Residential Child Care" means care that takes place in a child care provider's home.

(41) "Related Child" means a child for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(42) "Sanitize" means to use a chemical product to remove soil and bacteria from a surface or object.

(43) "School-Age Child" means a child age 5 through 12 years old.

(44) "Sexual Abuse" means abuse as defined in Utah Code, Title 76-5-404(1).

(45) "Sexually Explicit Material" means any depiction of sexually explicit conduct as defined in Utah Code, Title 76-5b-103(10).

(46) "Sleeping Equipment" means a cot, mat, crib, bassinet, porta-crib, playpen, or bed.

(47) "Stationary Play Equipment" means equipment such as a climber, slide, swing, merry-go-round, or spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse that sits on the ground or floor and has no attached equipment, such as a slide, swing, or climber.

(48) "Strangulation Hazard" means something on which a child's clothes or drawstrings could become caught, or something in which a child could become entangled such as:

(a) a protruding bolt end that extends more than 2 threads beyond the face of the nut;

(b) hardware that forms a hook or leaves a gap or space between components such as an open S-hook; or

(c) a rope, cord, or chain that is attached to a structure and is long enough to encircle a child's neck.

(49) "Substitute" means a person who assumes a caregiver's duties when the caregiver is not present.

(50) "Toddler" means a child age 12 through 23 months.

(51) "Unrelated Child" means a child who is not a "related child" as defined in R430-50-2(41).

(52) "Unsupervised Contact" means being with, caring for, communicating with, or touching a child in the absence of a caregiver or other employee who is at least 18 years old and has passed a Child Care Licensing background screening.

(53) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(54) "Volunteer" means an individual who receives no form of direct or indirect compensation for their service.

(55) "Working Days" means the days of the week the Department is open for business.

R430-50-3. Certificate Required.

(1) A person or persons shall be certified as a residential child care provider under this rule if they provide child care:

(a) in the home where they reside;

(b) in the absence of the child's parent;

(c) for 5 to 8 unrelated children;

(d) for 4 or more hours per day;

(e) on a regularly scheduled, ongoing basis; and

(f) for direct or indirect compensation.

(2) The Department may not certify, nor is a certificate is required for:

(a) a person who cares for related children only; or

(b) a person who provides care on a sporadic basis only.

(3) According to Foster Care Services rule R501-12-4(8)(f), a provider may not be certified to provide child care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program.

R430-50-4. Certificate Application, Renewal, Changes, and Variances.

(1) An applicant for a new child care certificate shall submit to the Department:

(a) an online application;

(b) a copy of a current local fire clearance or a statement from the local fire authority that a fire inspection is not required;

(c) a copy of a current local health department kitchen clearance for a facility providing food service or a statement from the local health department that a kitchen inspection is not required;

(d) a copy of a current local business license or a statement from the city that a business license is not required;

(e) a copy of a completed Department health and safety plan form;

(f) CCL background screenings for all covered individuals as required in R430-50-8;

(g) a current copy of the Department's new provider training certificate of attendance;

(h) all required fees, which are nonrefundable; and

(i) a signed Affidavit of Lawful Presence form provided by the Department.

(2) The applicant shall pass a Department's inspection of the facility before a new certificate or a renewal is issued.

(3) If the local fire authority states that a fire inspection is not required, a Department's CCL inspection for a new certificate or a renewal of a certificate shall include compliance with the following:

(a) address numbers and/or letters shall be readable from the street;

(b) address numbers and/or letters shall be at least 4 inches in height and 1/2 inch thick;

(c) exit doors shall operate properly and shall be well maintained;

(d) obstructions in exits, aisles, corridors, and stairways shall be removed;

(e) items stored under exit stairs shall be removed;

(f) there shall be unobstructed fire extinguishers that are of an X minimum rate and appropriate to the type of hazard, currently charged and serviced, and mounted not more than 5 feet above the floor;

(g) there shall be working smoke detectors that are properly installed on each level of the building; and

(h) boiler, mechanical, and electrical panel rooms shall

not be used for storage.

(4) If the local health department states that a kitchen inspection is not required, a Department's CCL inspection for a new certificate or a renewal of a certificate shall include compliance with the following:

(a) the refrigerator shall be clean, in good repair, and working at or below 41 degrees Fahrenheit;

(b) there shall be a working thermometer in the refrigerator;

(c) there shall be a working stem thermometer available to check cook and hot hold temperatures;

(d) cooks shall have a current food handler's permit available on-site for review by the Department;

(e) reusable food holders, utensils, and food preparation surfaces shall be washed, rinsed, and sanitized with an approved sanitizer before each use;

(f) chemicals shall be stored away from food and food service items;

(g) food shall be properly stored, kept to the proper temperature, and in good condition; and

(h) there shall be a working handwashing sink in the kitchen.

(5) If the applicant does not complete the application process within 6 months of first submitting any portion of the application, the Department may deny the application and to be certified, the applicant shall reapply. This includes resubmitting all required documentation, repaying licensing fees, and passing another inspection of the facility.

(6) The Department may deny an application for a certificate if, within the 5 years preceding the application date, the applicant held a license or a certificate that was:

(a) closed under an immediate closure;

(b) revoked;

(c) closed as a result of a settlement agreement resulting from a notice of intent to revoke, a notice of revocation, or a notice of immediate closure;

(d) voluntarily closed after an inspection of the facility found rule violations that would have resulted in a notice of intent to revoke or a notice of revocation had the provider not closed voluntarily; or

(e) voluntarily closed having unpaid fees or civil money penalties issued by the Department.

(7) Each child care certificate expires at midnight on the last day of the month shown on the certificate, unless the certificate was previously revoked by the Department, or voluntarily closed by the provider.

(8) Within 30 to 90 days before a current certificate expires, the provider shall submit for renewal:

(a) an online renewal request,

(b) applicable renewal fees,

(c) any previous unpaid fees,

(d) a copy of a current business license,

(e) a copy of a current fire inspection report, and

(f) a copy of a current kitchen inspection report.

(9) A provider who fails to renew their certificate by the expiration date may have an additional 30 days to complete the renewal process if they pay a late fee.

(10) The Department may not renew a certificate for a provider who is no longer caring for children.

(11) The provider shall submit a complete application for a new certificate at least 30 days before a change of the child care facility's location.

(12) The provider shall submit a complete application to amend an existing certificate at least 30 days before any of the following changes:

(a) an increase or decrease of capacity, including any change to the amount of usable space where child care is provided;

(b) a change in the name of the program;

(c) a change in the regulation category of the program;

(d) a change in the name of the provider; or

(e) a transfer of business ownership to a spouse or to any other household member.

(13) The Department may amend a certificate after verifying that the applicant is in compliance with all applicable rules and required fees have been paid. The expiration date of the amended certificate remains the same as the previous certificate.

(14) A certificate is not assignable or transferable and shall only be amended by the Department.

(15) If an applicant or provider cannot comply with a rule but can meet the intent of the rule in another way, they may apply for a variance to that rule by submitting a request to the Department.

(16) The Department may:

(a) require additional information before acting on the variance request, and

(b) impose health and safety requirements as a condition of granting a variance.

(17) The provider shall comply with the existing rule until a variance is approved.

(18) If a variance is approved, the provider shall keep a copy of the written approval on-site for review by parents and the Department.

(19) The Department may grant variances for up to 12 months.

(20) The Department may revoke a variance if:

(a) the provider is not meeting the intent of the rule as stated in their approved variance;

(b) the provider fails to comply with the conditions of the variance; or

(c) a change in statute, rule, or case law affects the basis for the variance.

R430-50-5. Rule Violations and Penalties.

(1) The Department may place a program's child care certificate on a conditional status for the following causes:

(a) chronic, ongoing noncompliance with rules;

(b) unpaid fees; or

(c) a serious rule violation that places children's health or safety in immediate jeopardy.

(2) The Department shall establish the length of the conditional status and set the conditions that the child care provider shall satisfy to remove the conditional status.

(3) The Department may increase monitoring of the program that is on conditional status to verify compliance with rules.

(4) The Department may deny or revoke a certificate if the child care provider:

(a) fails to meet the conditions of a certificate on conditional status;

(b) violates the Child Care Licensing Act;

(c) provides false or misleading information to the Department;

(d) misrepresents information by intentionally altering a certificate or any other document issued by the Department;

(e) refuses to allow authorized representatives of the Department access to the facility to ensure compliance with rules;

(f) refuses to submit or make available to the Department any written documentation required to verify compliance with rules;

(g) commits a serious rule violation that results in death or serious harm to a child, or that places a child at risk of death or serious harm; or

(h) has committed an illegal act that would exclude a person from having a certificate.

(5) Within 10 working days of receipt of a revocation

notice, the provider shall submit to the Department the names and mailing addresses of the parents of each enrolled child so the Department can notify the parents of the revocation.

(6) The Department may order the immediate closure of a facility if conditions create a clear and present danger to any child in care and may require immediate action to protect their health or safety.

(7) Upon receipt of an immediate closure notice, the provider shall give the Department the names and mailing addresses of the parents of each enrolled child so the Department can notify the parents of the immediate closure.

(8) If there is a severe injury or the death of a child in care, the Department may order the child care provider to suspend services and/or prohibit new enrollments, pending a review by the Child Fatality Review Committee or a determination of the probable cause of death or injury by a medical professional.

(9) If a person is providing care for more than 4 unrelated children without the appropriate certificate, the Department may:

(a) issue a cease and desist order, or

(b) allow the person to continue operation if:

(i) the person was unaware of the need for a certificate or a license,

(ii) conditions do not create a clear and present danger to the children in care, and

(iii) the person agrees to apply for the appropriate certificate or license within 30 calendar days of notification by the Department.

(10) If a person providing care without the appropriate certificate agrees to apply for a certificate but does not submit an application and all required application documents within 30 days, the Department may issue a cease and desist order.

(11) A violation of any rule is punishable by an administrative civil money penalty of up to $5,000 per day as provided in Utah Code, Section 26-39-601.

(12) Assessment of any civil money penalty does not prevent the Department from also taking action to deny, place on conditional status, revoke, immediately close, or refuse to renew a certificate.

(13) Assessment of any administrative civil money penalty under this section does not prevent court-ordered or other equitable remedies.

(14) The Department may deny an application or revoke a certificate for failure to pay any required fees, including fees for applications, late fees, returned checks, certificate changes, additional inspections, conditional monitoring inspections, background screenings, civil money penalties, and other fees assessed by the Department.

(15) An applicant or provider may appeal any Department decision within 30 days of being informed of the decision.

R430-50-6. Administration and Children's Records.

(1) The provider shall:

(a) be at least 18 years of age;

(b) pass a CCL background screening;

(c) demonstrate lawful presence in the United States;

(d) complete the new provider training offered by the Department; and

(e) complete at least 10 hours of child care training each year, based on the facility's certificate date.

(2) The provider shall not engage in or allow conduct that endangers children in care; or is contrary to the health, morals, welfare, and safety of the public.

(3) The provider shall have knowledge of and comply with all federal, state, and local laws, ordinances, and rules, and shall be responsible for the operation and management of a child care program.

(4) The provider shall comply with licensing rules at all times when a child in care is present.

(5) The provider shall post the original child care certificate on the facility premises in a place readily visible and accessible to the public.

(6) The provider shall post a copy of the Department's Parent Guide at the facility for parent review during business hours, or give each parent a copy of the guide at enrollment.

(7) The provider shall inform parents and the Department of any changes to the program's telephone number and other contact information within 48 hours of the change.

(8) The provider shall establish, follow, and ensure that all staff and volunteers follow a written health and safety plan that is:

(a) completed on the Department's required form;

(b) submitted to the Department for initial approval and any time changes are made to the plan;

(c) reviewed and updated as needed;

(d) signed and dated at least annually; and

(e) available for review by parents, staff, and the Department during business hours.

(9) The provider shall ensure that each parent completes an admission and health assessment form for their child before the child is admitted into the child care program.

(10) The admission and health assessment form shall include the following information:

(a) child's name;

(b) child's date of birth;

(c) parent's name, address, and phone number, including a daytime phone number;

(d) names of people authorized by the parent to pick up the child;

(e) name, address, and phone number of a person to be contacted in case of an emergency if the provider is unable to contact the parent;

(f) if available, the name, address, and phone number of an out-of-area emergency contact person for the child;

(g) current emergency medical treatment and emergency transportation releases with the parent's signature;

(h) any known allergies of the child;

(i) any known food sensitivities of the child;

(j) any chronic medical conditions that the child may have;

(k) instructions for special or nonroutine daily health care of the child;

(l) current ongoing medications that the child may be taking; and

(m) any other special health instructions for the caregiver.

(11) The admission and health assessment form shall:

(a) be reviewed, updated, and signed or initialed by the parent at least annually; and

(b) kept on-site for review by the Department.

(12) Before admitting any child younger than 5 years of age into the child care program, including the provider's and employees' own children, the provider shall obtain the following documentation from the child's parent:

(a) current immunizations, as required by Utah law;

(b) a medical schedule to receive required immunizations;

(c) a legal exemption; or

(d) a 90-day exemption for children who are homeless.

(13) For each child younger than 5 years of age, including the provider's and employees' own children, the provider shall keep their current immunization records on-site for review by the Department.

(14) The provider shall submit the annual immunization report to the Immunization Program in the Utah Department

of Health by the date specified by the Department.

(15) Each child's information shall be kept confidential and shall not be released without written parental permission.

R430-50-7. Personnel and Training Requirements.

(1) The provider shall train and supervise employees and volunteers to ensure that they are qualified to:

(a) meet the needs of the children as required by rule, and

(b) be in compliance with all licensing rules.

(2) Each week, the provider shall be present at the home at least 50% of the time that any child is in care; and whenever a child is in care, the provider, a caregiver who is at least 18 years old, or a substitute with authority to act on behalf of the provider shall be present.

(3) Caregivers shall:

(a) be at least 18 years old;

(b) pass a CCL background screening;

(c) receive at least 2.5 hours of preservice training before beginning job duties;

(d) have knowledge of and follow all applicable laws and rules; and

(e) complete at least 10 hours of child care training each year, based on the facility's certificate date.

(4) Substitutes shall:

(a) be at least 18 years old;

(b) pass a CCL background screening;

(c) be capable of providing care, supervising children, and handling emergencies in the provider's absence;

(d) receive at least 2.5 hours of preservice training before beginning job duties; and

(e) complete at least 1/2 hour of child care training for each month they work 40 hours or more.

(5) All other employees such as drivers, cooks, and clerks shall:

(a) pass a CCL background screening,

(b) receive at least 2.5 hours of preservice training before beginning job duties, and

(c) have knowledge of and follow all applicable laws and rules.

(6) Volunteers shall:

(a) pass a CCL background screening, and

(b) not have unsupervised contact with any child in care if the volunteer is younger than 18 years of age.

(7) Guests:

(a) shall not have unsupervised contact with any child in care, and

(b) are not required to pass a CCL background screening when they remain in the home for not more than 2 weeks.

(8) Any individual who stays in the home for more than 2 weeks shall be considered a household member and shall be required to pass a CCL background screening.

(9) Parents of children in care:

(a) shall not have unsupervised contact with any child in care except their own, and

(b) do not need a CCL background screening unless involved with child care in the facility.

(10) Household members who are:

(a) 12 to 17 years old shall pass a CCL background screening;

(b) 18 years of age or older shall pass a CCL background screening that includes fingerprints; and

(c) younger than 18 years of age shall not have unsupervised contact with any child in care including during offsite activities and transportation.

(11) Individuals who provide IEP or IFSP services such as physical, occupational, or speech therapists:

(a) are not required to have a CCL background screening as long as the child's parent has given permission for services to take place at the facility, and

(b) shall provide proper identification before having access to the facility or a child at the facility.

(12) Members from law enforcement or from Child Protective Services:

(a) are not required to have a CCL background screening, and

(b) shall provide proper identification before having access to the facility or a child at the facility.

(13) Preservice training shall include the following:

(a) job description and duties;

(b) current Department rule sections R430-50-7 through 24;

(c) the Department-approved health and safety plan that includes preparing for and responding to emergencies;

(d) prevention, signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;

(e) prevention of shaken baby syndrome and abusive head trauma, and coping with crying babies;

(f) prevention of sudden infant death syndrome (SIDS) and the use of safe sleeping practices;

(g) recognizing the signs of homelessness and available assistance;

(h) a review of the information in each child's health assessment; and

(i) an introduction and orientation to the children in care.

(14) Annual child care training shall include the following topics:

(a) current Department rule sections R430-50-7 through 24;

(b) the Department-approved health and safety plan that includes preparing for and responding to emergencies;

(c) the prevention, signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;

(d) principles of child growth and development, including brain development;

(e) positive guidance and interactions with children;

(f) prevention of shaken baby syndrome and abusive head trauma, and coping with crying babies;

(g) prevention of sudden infant death syndrome (SIDS) and use of safe sleeping practices; and

(h) recognizing the signs of homelessness and available assistance.

(15) At least 5 of the 10 hours of annual child care training shall be face-to-face instruction.

(16) Documentation of each individual's annual child care training shall be kept on-site for review by the Department and include the following:

(a) training topic,

(b) date of the training,

(c) whether the training was face-to-face or non-face-to-face instruction,

(d) name of the person or organization that presented the training, and

(e) total hours or minutes of training.

(17) At least one staff member with a current Red Cross, American Heart Association, or equivalent first aid and infant/child CPR certification shall be present when children are in care:

(a) at the facility,

(b) in each vehicle transporting children, and

(c) at each offsite activity.

(18) CPR certification shall include hands-on testing.

(19) The following records for each covered individual shall be kept on-site for review by the Department:

(a) a copy of the current background screening card

issued by the Department; and

(b) a current first aid and CPR certification, if required in rule.

R430-50-8. Background Screenings.

(1) The provider shall ensure that an online CCL background screening form is submitted within 10 working days from when:

(a) a new covered individual becomes involved with the program,

(b) a new covered individual age 12 years or older begins living in the facility, and

(c) a child who resides in the facility turns 12 years old.

(2) Unless an exception is granted in rule, the provider shall ensure that a CCL background screening for each individual age 18 years or older includes fingerprints and fingerprints fees.

(3) The fingerprints shall be prepared by a local law enforcement agency or an agency approved by local law enforcement.

(4) If fingerprints are submitted through Live Scan (electronically), the agency taking the fingerprints shall follow the Department's guidelines.

(5) Fingerprints are not required if:

(a) the covered individual has resided in Utah continuously for the past 5 years, or since the individual's 18th birthday and will only be involved with child care in a program that was licensed or certified prior to 1 July 2013; or

(b) the covered individual has previously submitted fingerprints to the Department under this section for a national criminal history record check and has resided in Utah continuously since that time.

(6) Background screenings are valid for 1 year and shall be renewed before the last day of the month listed on the covered individual's background screening card.

(7) At least 2 weeks before the end of the month that is written on a covered individual's background screening card, the provider shall:

(a) have the individual submit an online CCL background screening form,

(b) authorize the individual's background screening form, and

(c) pay all required fees.

(8) Regardless of any exception in rule, if an in-state criminal background screening indicates that a covered individual age 18 years or older has a background finding, the Department may require that individual to submit fingerprints and fees in order for the Department to conduct a national criminal background screening for that individual.

(9) The following background findings shall deny a covered individual from being involved with child care:

(a) LIS supported findings,

(b) the individual's name appears on the Utah or national sex offender registry,

(c) any felony convictions,

(d) any Misdemeanor A convictions, or

(e) Misdemeanor B and C convictions for the reasons listed in R430-50-8(10).

(10) The following convictions, regardless of severity, may result in a background screening denial:

(a) unlawful sale or furnishing alcohol to minors;

(b) sexual enticing of a minor;

(c) cruelty to animals, including dogfighting;

(d) bestiality;

(e) lewdness, including lewdness involving a child;

(f) voyeurism;

(g) providing dangerous weapons to a minor;

(h) a parent providing a firearm to a violent minor;

(i) a parent knowing of a minor's possession of a dangerous weapon;

(j) sales of firearms to juveniles;

(k) pornographic material or performance;

(l) sexual solicitation;

(m) prostitution and related crimes;

(n) contributing to the delinquency of a minor;

(o) any crime against a person;

(p) a sexual exploitation act;

(q) leaving a child unattended in a vehicle; and

(r) driving under the influence (DUI) while a child is present in the vehicle.

(11) A covered individual with a Class A misdemeanor background finding not listed in R430-50-8(10) may be involved with child care when:

(a) 10 or more years have passed since the Class A misdemeanor offense, and

(b) there is no other conviction for the individual in the past 10 years.

(12) A covered individual with a Class A misdemeanor background finding not listed in R430-50-8(10) may be involved with child care for up to 6 months if:

(a) 5 to 9 years have passed since the offense,

(b) there is no other conviction since the Class A misdemeanor offense,

(c) the individual provides to the Department documentation of an active petition for expungement, and

(d) the provider ensures that the individual does not have unsupervised contact with any child in care.

(13) If a petition for expungement is denied, the covered individual shall no longer be involved with child care.

(14) A covered individual shall not be denied if the only background finding is a conviction or plea of no contest to a nonviolent drug offense that occurred 10 or more years before the CCL background screening was conducted.

(15) The Department may rely on the criminal background screening findings as conclusive evidence of the arrest warrant, arrest, charge, or conviction; and the Department may revoke, suspend, or deny a certificate or employment based on that evidence.

(16) If the provider has a background screening denial, the Department may suspend or deny their certificate until the reason for the denial is resolved.

(17) If a covered individual has a background screening denial, the Department may prohibit that individual from being employed by the child care program or residing at the facility until the reason for the denial is resolved.

(18) If a covered individual is denied a certificate or employment based upon the criminal background screening and disagrees with the information provided by the Department of Public Safety, the covered individual may appeal the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

(19) If a covered individual disagrees with a supported finding on the Department of Human Services Licensing Information System (LIS):

(a) the individual cannot appeal the supported finding to the Department of Health, and

(b) the covered individual may appeal the finding to the Department of Human Services and follow the process established by the Department of Human Services.

(20) Within 48 hours of becoming aware of a covered individual's arrest warrant, felony or misdemeanor arrest, charge, conviction, or supported LIS finding, the provider and the covered individual shall notify the Department. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the certificate.

(21) The Executive Director of the Department of Health may overturn a background screening denial under the following conditions:

(a) the background finding is not a felony, and

(b) the Executive Director determines that the nature of the background finding or mitigating circumstances do not pose a risk to children.

R430-50-9. Facility.

(1) There shall be at least 35 square feet of indoor space for each child in care, including the provider's children.

(2) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:

(a) by children,

(b) for the care of children, or

(c) to store classroom materials.

(3) The following areas are not included when measuring indoor space for children's use:

(a) bathrooms,

(b) closets,

(c) hallways, and

(d) entryways.

(4) The maximum allowed capacity for a child care facility may be limited by local ordinances.

(5) The number of children in care at any given time shall not exceed the capacity identified on the certificate.

(6) The provider shall ensure that any building or play structure on the premises constructed before 1978 that has peeling, flaking, chalking, or failing paint is tested for lead. If lead-based paint is found, the provider shall contact their local health department within 5 working days and follow required procedures for remediation of the lead hazard.

(7) Each room and indoor area that is used by children shall be ventilated by mechanical ventilation, or by windows that open and have screens.

(8) All rooms and areas that are used for child care shall have adequate light intensity for the safety of the children and the type of activity being conducted.

(9) There shall be a working telephone in the home, in each vehicle while transporting children, and during offsite activities.

(10) There shall be a working toilet and a working handwashing sink accessible to each nondiapered child in care.

(11) A bathroom that provides privacy shall be available for use by school-age children.

(12) If there is a swimming pool on the premises that is not emptied after each use:

(a) the provider shall meet applicable state and local laws and ordinances related to the operation of a swimming pool and maintain the pool in a safe manner; and

(b) when not in use, the pool shall be enclosed within at least a 4-foot-high fence or solid barrier that is kept locked and that separates the pool from any other areas on the premises, or enclosed with a locked, properly working safety cover that meets ASTM Specification F1346-91.

(13) A hot tub on the premises with water in it shall be inaccessible to children by being:

(a) kept locked with a properly working cover; or

(b) enclosed within at least a 4-foot-high fence or solid barrier that is kept locked and that separates the hot tub from any other areas on the premises.

(14) The provider shall maintain buildings and outdoor areas in good repair and safe condition including:

(a) ceilings, walls, and floor coverings;

(b) lighting, bathroom, and other fixtures;

(c) draperies, blinds, and other window coverings;

(d) indoor and outdoor play equipment;

(e) furniture, toys, and materials accessible to the children;

(f) entrances, exits, steps, and walkways including keeping them free of ice, snow and other hazards.

(15) Accessible raised decks or balconies that are 5 feet or higher, and open basement stairwells that are 5 feet or deeper shall have protective barriers that are at least 3 feet high.

(16) If the house is subdivided, any part of the house is rented out, or any other area of the facility is shared including the outdoor area, the entire facility shall be inspected and covered individuals in the facility shall comply with rules, except when all of the following conditions are met:

(a) there is a signed rental/lease agreement between the provider and the individual responsible for or living in the other part of the house;

(b) there is a separate mailing address;

(c) there is a separate entrance for the child care program;

(d) there are no connecting interior doorways that can be used by unauthorized individuals; and

(e) there is no shared access to the outdoor area used for child care, or a qualified caregiver is present when children are using a shared outdoor area of the facility.

(17) If there is an outdoor area used by children, R430-50-9(18) through R430-50-9(23) apply:

(18) The outdoor area shall be safely accessible to children.

(19) The outdoor area shall have at least 40 square feet of space for each child using the area at one time.

(20) The outdoor area shall be enclosed within a fence, wall, or solid natural barrier that is at least 4 feet high when the facility is on a street or within half a mile of a street that:

(a) has a speed of 25 miles per hour or higher, or

(b) has more than 2 lanes of traffic.

(21) The following hazards shall be separated from the children's outdoor area with a fence, wall, or solid natural barrier that is at least 4 feet high:

(a) barbed wire that is within 30 feet of the children's play area;

(b) livestock on or within 50 yards of the property line;

(c) dangerous machinery, such as farm equipment, on or within 50 yards of the property line;

(d) a drop-off of more than 5 feet on or within 50 yards of the property line; or

(e) a water hazard, such as a swimming pool, pond, ditch, lake, reservoir, river, stream, creek, or animal watering trough, on or within 100 yards of the property line.

(22) There shall be no gap 5 by 5 inches or greater in or under the fence.

(23) Whenever there are children in the outdoor area, there shall be shade available to protect them from excessive sun and heat.

R430-50-10. Ratios and Group Size.

(1) The provider shall maintain at least 1 caregiver for up to 8 children in care.

(2) There shall be no more than 2 children younger than 2 years old in care including the provider's and employee's own children.

(3) The provider's or an employee's child age 4 years or older shall not be counted in the caregiver-to-child ratio when the parent of the child is working at the facility.

R430-50-11. Child Supervision and Security.

(1) The provider shall ensure that caregivers provide and maintain active supervision of each child at all times:

(a) a caregiver shall be inside the home when any child in care is inside the home,

(b) a caregiver shall be in the outdoor area when any child younger than 5 years old is in the outdoor area,

(c) caregivers shall know the number of children in their

care at all times, and

(d) caregivers' attention shall be focused on the children and not on the caregivers' own personal interests.

(2) A caregiver may allow only school-age children to play outdoors while the caregiver is indoors when:

(a) the caregiver can hear the children playing outdoors; and

(b) the children are in an area completely enclosed within a fence, wall, or solid natural barrier that is at least a 4 feet high.

(3) A caregiver shall monitor each sleeping infant by:

(a) placing each infant to sleep within the sight and hearing of the caregiver, or

(b) personally observing each sleeping infant at least once every 15 minutes.

(4) A child may participate in supervised offsite activities without the provider if:

(a) the provider has prior written permission from the child's parent for the child's participation, and

(b) the provider has clearly assigned the responsibility for the child's whereabouts and supervision to a responsible adult who accepts that responsibility throughout the period of the offsite activity.

(5) Whenever a child is in care, the child's parent shall have access to their child and the areas used to care for their child.

(6) To maintain security and supervision of children, the provider shall ensure that:

(a) each child is signed in and out;

(b) only parents or persons with written authorization from the parent may sign out a child;

(c) photo identification is required if the individual signing the child in or out is unknown to the provider;

(d) persons signing children in and out use identifiers, such as a signature, initials, or electronic code;

(e) the sign-in and sign-out records include the date and time each child arrives and leaves; and

(f) there is written permission from their parents if school-age children sign themselves in and out.

(7) In an emergency, the caregiver shall accept the parent's verbal authorization to release a child when the caregiver can confirm the identity of:

(a) the person giving verbal authorization, and

(b) the person picking up the child.

R430-50-12. Child Guidance and Interaction.

(1) The provider shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) The provider shall inform parents, children, and those who interact with the children of the program's behavioral expectations and how any misbehavior will be handled.

(3) Individuals who interact with the children shall guide children's behavior by using positive reinforcement, redirection, and by setting clear limits that promote children's ability to become self-disciplined.

(4) Caregivers shall use gentle, passive restraint with children only when it is needed to stop children from injuring themselves or others, or from destroying property.

(5) Interactions with the children shall not include:

(a) any form of corporal punishment or any action that produces physical pain or discomfort such as hitting, spanking, shaking, biting, or pinching;

(b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds gentle, passive restraint;

(c) shouting at children;

(d) any form of emotional abuse;

(e) forcing or withholding food, rest, or toileting; or

(f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

(6) Any person who witnesses or suspects that a child has been subjected to abuse, neglect, or exploitation shall immediately notify Child Protective Services or law enforcement as required in Utah Code Section 62A-4a-403 and Section 62A-4a-411.

R430-50-13. Child Safety and Injury Prevention.

(1) The building, outdoor area, toys, and equipment shall be used in a safe manner and as intended by the manufacturer to prevent injury to children.

(2) Harmful objects and hazards, such as the following, shall be inaccessible to children:

(a) poisonous and harmful plants;

(b) sharp objects, edges, corners, or points that could cut or puncture skin;

(c) for children younger than 3 years of age, choking hazards;

(d) strangulation hazards such as ropes, cords, chains, and wires attached to a structure and long enough to encircle a child's neck;

(e) tripping hazards such as unsecured flooring, rugs with curled edges, or cords in walkways;

(f) for children younger than 5 years of age, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(g) standing water that is 2 inches or deeper and 5 by 5 inches or greater in diameter.

(3) Toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials shall be:

(a) inaccessible to children,

(b) used according to manufacturer instructions, and

(c) stored in containers labeled with their contents.

(4) Items and substances that could burn a child or start a fire shall be inaccessible, such as:

(a) matches or cigarette lighters;

(b) open flames;

(c) hot wax or other substances; and

(d) when in use, portable space heaters, wood burning stoves, and fireplaces of all types.

(5) Children shall be protected from items that cause electrical shock such as:

(a) live electrical wires; and

(b) for children younger than 5 years of age, electrical outlets and surge protectors without protective caps or safety devices when not in use.

(6) Unless used and stored in compliance with the Utah Concealed Weapons Act or as otherwise allowed by law, firearms such as guns, muzzles loaders, rifles, shotguns, hand guns, pistols, and automatic guns shall:

(a) be locked in a cabinet or area with a key, combination lock, or fingerprint lock; and

(b) stored unloaded and separate from ammunition.

(7) Weapons such as paintball guns, BB guns, airsoft guns, sling shots, arrows, and mace shall be inaccessible to children.

(8) Alcohol, illegal substances, and sexually explicit material shall be inaccessible, and shall not be used on the premises, during offsite activities, or in program vehicles any time a child is in care.

(9) An outdoor source of drinking water, such as individually labeled water bottles, a pitcher of water and individual cups, or a working water fountain shall be available to each child whenever the outside temperature is 75 degrees or higher.

(10) Areas accessible to children shall be free of heavy or unstable objects that children could pull down on themselves, such as furniture, unsecured televisions, and

standing ladders.

(11) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(12) Highchairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(13) Infant walkers with wheels shall be inaccessible to children.

(14) In compliance with the Utah Indoor Clean Air Act, tobacco, e-cigarettes, e-juice, e-liquids, and similar products shall be inaccessible and not used:

(a) in the facility or any other building when a child is in care,

(b) in any vehicle that is being used to transport a child in care,

(c) within 25 feet of any entrance to the facility or other building occupied by a child in care, or

(d) in any outdoor area or within 25 feet of any outdoor area occupied by a child in care.

R430-50-14. Emergency Preparedness and Response.

(1) The provider shall post the home's street address and emergency numbers, including ambulance, fire, police, and poison control, near a telephone in the home or in an area clearly visible to anyone needing the information.

(2) The provider shall conduct fire evacuation drills at least once every 6 months. Drills shall include a complete exit of all children, staff, and volunteers from the home.

(3) The provider shall conduct drills for disasters other than fires at least once every 12 months.

(4) The provider shall vary the days and times on which fire and other disaster drills are held.

(5) In case of an emergency or disaster, the provider and all employees shall follow procedures as outlined in the facility's health and safety plan.

(6) If the provider must leave the premises due to an emergency, the provider may use an emergency substitute who was not named in the facility's health and safety plan.

(7) The emergency substitute:

(a) shall be at least 18 years old;

(b) is not required to have a CCL background screening; and

(c) is not required to meet the training, first aid, and CPR requirements of this rule.

(8) Before the provider may leave the children in the care of the emergency substitute, the provider shall first obtain a signed, written statement from the individual that they:

(a) have not been convicted of a felony or misdemeanor;

(b) do not have a substantiated background finding; and

(c) are not being investigated for abuse or neglect by any federal, state, or local government agency.

(9) The emergency substitute's written background statement shall be submitted to the Department for review within 5 working days after the occurrence.

(10) During the term of the emergency, the emergency substitute may be counted in the caregiver-to-child ratio.

(11) The provider shall make reasonable efforts to minimize the time that the emergency substitute has unsupervised contact with the children in care, and the amount of time shall not be more than 24 hours per emergency incident.

(12) The provider shall give parents a written report of every serious incident, accident, or injury involving their child:

(a) The caregivers involved, the provider, and the person picking up the child shall sign the report on the day of occurrence.

(b) If school-age children sign themselves out of the facility, a copy of the report shall be sent to the parent on the day following the occurrence.

(13) If a child is injured and the injury appears serious but not life-threatening, the child's parent shall be contacted immediately.

(14) In the case of a life-threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb:

(a) emergency personnel shall be called immediately;

(b) after emergency personnel are called, then the parent shall be contacted;

(c) if the parent cannot be reached, staff shall try to contact the child's emergency contact person.

(15) If a child is injured while in care and receives medical attention, or for a child fatality, the provider shall:

(a) submit a completed accident report form to the Department within the next business day of the incident; or

(b) contact the Department within the next business day and submit a completed accident report form within 5 business days of the incident.

R430-50-15. Health and Infection Control.

(1) The building, furnishings, equipment, and outdoor area shall be kept clean and sanitary including:

(a) ceilings, walls, and flooring shall be clean and free of spills, dirt, and grime;

(b) areas and equipment used for the storage, preparation, and service of food shall be clean and sanitary;

(c) surfaces used by children shall be free of rotting food or a build-up of food;

(d) the building and grounds shall be free of a build-up of litter, trash, and garbage; and

(e) the facility shall be free of animal feces.

(2) The provider shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other pests.

(3) All toys and materials including those used by infants and toddlers shall be cleaned:

(a) at least weekly or more often if needed,

(b) after being put in a child's mouth and before another child plays with the toy, and

(c) after being contaminated by a body fluid.

(4) Fabric toys and items such as stuffed animals, cloth dolls, pillows, and dress-up clothes shall be machine washable and washed weekly, and as needed.

(5) Highchair trays shall be cleaned and sanitized before each use.

(6) Water play tables or tubs shall be cleaned and sanitized daily, if used by the children.

(7) Bathroom surfaces including toilets, sinks, faucets, and counters shall be cleaned and sanitized each day.

(8) Potty chairs shall be cleaned and sanitized after each use.

(9) Toilet paper shall be accessible to children and kept in a dispenser.

(10) Only single-use paper towels or individually labeled cloth towels shall be used to dry a child's hands.

(11) If cloth towels are used, they shall not be shared by children, caregivers, or volunteers.

(12) Staff and volunteers shall wash their hands thoroughly with soap and running water at required times including:

(a) before handling or preparing food or bottles,

(b) before and after eating meals and snacks or feeding a child,

(c) after using the toilet or helping a child use the toilet,

(d) after contact with a body fluid,

(e) when coming in from outdoors, and

(f) after cleaning up or taking out garbage.

(13) Caregivers shall teach children how to wash their

hands thoroughly and shall oversee handwashing whenever possible.

(14) The provider shall ensure that children wash their hands thoroughly with soap and running water at required times including:

(a) before and after eating meals and snacks,

(b) after using the toilet,

(c) after contact with a body fluid,

(d) before using a water play table or tub, and

(e) when coming in from outdoors.

(15) Personal hygiene items, such as toothbrushes, combs, and hair accessories, shall not be shared and shall be stored so they do not touch each other, or they shall be sanitized between each use.

(16) A child's clothing shall be promptly changed if the child has a toileting accident.

(17) Staff shall take precautions when cleaning floors, furniture, and other surfaces contaminated by blood, urine, feces, and vomit. Except for diaper changes and toileting accidents, staff shall:

(a) wear waterproof gloves;

(b) clean the surface using a detergent solution;

(c) rinse the surface with clean water;

(d) sanitize the surface;

(e) throw away in a leakproof plastic bag the disposable materials, such as paper towels, that were used to clean up the body fluid;

(f) wash and sanitize any nondisposable materials used to clean up the body fluid, such as cleaning cloths, mops, or reusable rubber gloves, before reusing them; and

(g) wash their hands after cleaning up the body fluid.

(18) A child who becomes ill with an infectious disease while in care shall be made comfortable in a safe, supervised area that is separated from the other children.

(19) If a child becomes ill while in care, the provider shall contact the child's parent as soon as the illness is observed or suspected.

(20) The parents of every child in care shall be informed when any child, employee, or person in the home has an infectious disease or parasite. Parents shall be notified on the day the illness is discovered.

(21) When any child or employee has an infectious disease, an unusual or serious illness, or a sudden onset of an illness, the provider shall notify the local health department on the day the illness is discovered.

R430-50-16. Food and Nutrition.

(1) The provider shall ensure that each child age 2 years and older is offered a meal or snack at least once every 3 hours.

(2) When food for children's meals and/or snacks is supplied by the provider:

(a) the meal service shall meet local health department food service regulations;

(b) the foods that are served shall meet the nutritional requirements of the USDA Child and Adult Care Food Program (CACFP) whether or not the provider participates in the CACFP;

(c) the provider shall use the CACFP menus, the standard Department-approved menus, or menus approved by a registered dietician. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years;

(d) the current week's menu shall be posted for review by parents and the Department; and

(e) providers who are not participating or in good standing with the CACFP shall keep a six-week record of foods served at each meal and snack.

(3) The person who serves food to children shall:

(a) be aware of the children in their assigned group who have food allergies or sensitivities, and

(b) ensure that the children are not served the food or drink they are allergic or sensitive to.

(4) Children's food shall be served on dishes, napkins, or sanitary highchair trays, except an individual finger food, such as a cracker, that may be placed directly in a child's hand. Food shall not be placed on a bare table.

(5) Food and drink brought in by parents for their child's use shall be:

(a) labeled with the child's name or individually identified,

(b) refrigerated if needed, and

(c) consumed only by that child.

R430-50-17. Medications.

(1) All medications shall be inaccessible to children.

(2) All liquid refrigerated medications shall be stored in a separate leakproof container.

(3) All over-the-counter and prescription medications supplied by parents shall:

(a) be labeled with the child's full name,

(b) be kept in the original or pharmacy container,

(c) have the original label, and

(d) have child-safety caps.

(4) The provider shall have a written medication permission form completed and signed by the parent before administering any medication supplied by the parent for their child.

(5) The medication permission form shall include:

(a) the name of the child,

(b) the name of the medication,

(c) written instructions for administration, and

(d) the parent signature and the date signed.

(6) The instructions for administering the medication shall include:

(a) the dosage,

(b) how the medication will be given,

(c) the times and dates to administer the medication, and

(d) the disease or condition being treated.

(7) If the provider supplies an over-the-counter medication for children's use, the medication shall not be administered to any child without previous parental consent for each instance it is given. The consent shall be:

(a) prior written consent; or

(b) verbal consent if the date and time of the consent is documented, and is signed by the parent upon picking up their child.

(8) The caregiver administering the medication shall:

(a) wash their hands,

(b) check the medication label to confirm the child's name if the parent supplied the medication,

(c) check the medication label or the package to ensure that a child is not given a dosage larger than that recommended by the health care professional or manufacturer, and

(d) administer the medication.

(9) Immediately after administering a medication, the caregiver giving the medication shall record the following information:

(a) the date, time, and dosage of the medication given;

(b) any errors in administration or adverse reactions; and

(c) their signature or initials.

(10) The provider shall report a child's adverse reaction to a medication or error in administration to the parent immediately upon recognizing the reaction or error, or after notifying emergency personnel if the reaction is life-threatening.

(11) If the provider chooses not to administer medication as instructed by the parent, the provider shall notify the parent of their refusal to administer the medication before the time the medication needs to be given.

(12) The provider shall keep a six-week record of medication permission and administration forms on-site for review by the Department.

R430-50-18. Activities.

(1) The provider shall offer daily activities that support each child's healthy physical, social, emotional, cognitive, and language development.

(2) Physical development activities shall include light, moderate, and vigorous physical activity for a daily total of at least 15 minutes for every 2 hours children spend in the program.

(3) Toys, materials, and equipment needed to support children's healthy development shall be available to the children.

(4) Except for occasional special events, children's screen time on media such as television, cell phones, tablets, and computers shall:

(a) not be allowed for children 0 to 17 months old;

(b) be limited for children 18 months to 4 years old to 1 hour per day, or 5 hours per week with a maximum screen time of 2 hours per activity; and

(c) be part of a media plan that addresses the needs of children 5 to 12 years old.

(5) If swimming activities are offered or if wading pools are used:

(a) the provider shall obtain parental permission before each child in care uses the pool;

(b) caregivers shall stay at the pool supervising whenever a child is in the pool or has access to the pool, and whenever a wading pool has water in it;

(c) diapered children shall wear swim diapers whenever they are in the pool;

(d) wading pools shall be emptied and sanitized after use by each group of children;

(e) if the pool is over 4 feet deep, there shall be a lifeguard on duty who is certified by the Red Cross or other approved certification program any time children have access to the pool; and

(f) lifeguards and pool personnel shall not count toward the caregiver-to-child ratio.

(6) If offsite activities are offered:

(a) the provider shall obtain written parental consent before each activity;

(b) the required caregiver-to-child ratio and supervision shall be maintained during the entire activity;

(c) a first aid kit shall be available;

(d) children's names shall not be used on nametags, t-shirts, or in other visible ways; and

(e) there shall be a way for caregivers and children to wash their hands with soap and water, or if there is no source of running water, caregivers and children shall clean their hands with wet wipes and hand sanitizer.

(7) On every offsite activity, caregivers shall take the written emergency information and releases for each child in the group.

R430-50-19. Play Equipment.

(1) The provider shall ensure that children using play equipment use it safely and in the manner intended by the manufacturer.

(2) There shall be no entrapment hazards on or within the use zone of any piece of stationary play equipment.

(3) There shall be no strangulation hazards on or within the use zone of any piece of stationary play equipment.

(4) There shall be no crush, shearing, or sharp edge hazards on or within the use zone of any piece of stationary play equipment.

(5) There shall be no tripping hazards such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

(6) There shall be no heavy metal swings, such as animal-shaped swings, accessible to children.

(7) Cushioning for stationary play equipment shall cover the entire surface of each required use zone.

(8) If ASTM cushioning is used, the provider shall keep on-site for review by the Department the documentation from the manufacturer that the material meets ASTM Specification F1292.

(9) Stationary play equipment with a designated play surface that measures 6 inches or higher shall not be placed on a hard surface such as concrete, asphalt, dirt, or the bare floor, but may be placed on grass or other cushioning.

(10) Except for trampolines, stationary play equipment that is 18 inches or higher shall:

(a) have a 3-foot use zone that is free of hard objects or surfaces and that extends from the outermost edge of the equipment; and

(b) be stable and securely anchored.

(11) A trampoline shall be considered accessible to children in care unless the trampoline:

(a) is enclosed behind at least a 3-foot high, locked fence or barrier;

(b) has no jumping mat;

(c) is placed upside down, or

(d) is enclosed within at least a 6-foot-high safety net that is locked.

(12) An accessible trampoline without a safety net enclosure shall be placed at least 6 feet away from any structure or object onto which a child could fall, including play equipment, trees, and fences.

(13) An accessible trampoline with a safety net enclosure shall be place at least 3 feet away from any structure or object onto which a child could fall, including play equipment, trees, and fences if the net:

(a) is properly installed and used as specified by the manufacturer,

(b) is in good repair, and

(c) is at least 6 feet tall.

(14) An accessible trampoline shall be placed over grass, 6-inch-deep cushioning, or ASTM-approved cushioning. Cushioning shall extend at least 6 feet from the outermost edge of the trampoline frame, or at least 3 feet from the outermost edge of the trampoline frame if a net is used as specified in R430-50-19(13).

(15) There shall be no ladders or other objects within the use zone of an accessible trampoline that a child could use to climb on the trampoline.

(16) An accessible trampoline shall have shock-absorbing pads that completely cover its springs, hooks, and frame.

(17) Before a child in care uses a trampoline, the child's parent shall sign a Department-approved permission form that the provider keeps on-site for review by the Department.

(18) When a trampoline is being used by a child in care:

(a) a caregiver shall be at the trampoline supervising,

(b) only one person at a time shall use a trampoline,

(c) no child in care shall be allowed to do somersaults or flips on the trampoline, and

(d) no one shall be allowed to play under the trampoline when it is in use.

R430-50-20. Transportation.

If transportation services are offered:

(1) For each child being transported, the provider shall have a transportation permission form:
(a) signed by the parent, and
(b) on-site for review by the Department.
(2) Each vehicle used for transporting children shall:
(a) be enclosed with a roof or top,
(b) be equipped with safety restraints,
(c) have a current vehicle registration,
(d) be maintained in a safe and clean condition,
(e) contain a first aid kit, and
(f) contain a body fluid clean up kit.
(3) The safety restraints in each vehicle that transports children shall:
(a) be appropriate for the age and size of each child who is transported, as required by Utah law;
(b) be properly installed; and
(c) be in safe condition and working order.
(4) The driver of each vehicle who is transporting children shall:
(a) be at least 18 years old;
(b) have and carry with them a current, valid driver's license for the type of vehicle being driven;
(c) have with them the written emergency contact information for each child being transported;
(d) ensure that each child being transported is in an individual safety restraint that is used according to Utah law;
(e) ensure that the inside vehicle temperature is between 60-85 degrees Fahrenheit;
(f) never leave a child in the vehicle unattended by an adult;
(g) ensure that children stay seated while the vehicle is moving;
(h) never leave the keys in the ignition when not in the driver's seat; and
(i) ensure that the vehicle is locked during transport.
(5) When the provider walks or uses public transportation to transport children to or from the facility, the provider shall ensure that:
(a) each child being transported has a completed transportation permission form signed by their parent,
(b) a caregiver goes with the children and actively supervises them,
(c) the caregiver-to-child ratio is maintained, and
(d) caregivers take each child's written emergency contact information and releases with them.

R430-50-21. Animals.
(1) The provider shall inform parents of the kinds of animals allowed at the facility.
(2) There shall be no animal on the premises that:
(a) is naturally aggressive;
(b) has a history of dangerous, attacking, or aggressive behavior; or
(c) has a history of biting even one person.
(3) Animals at the facility shall be clean and free of obvious disease or health problems that could adversely affect children.
(4) There shall be no animal or animal equipment in food preparation or eating areas during food preparation or eating times.
(5) Children younger than 5 years of age shall not assist with the cleaning of animals or animal cages, pens, or equipment.
(6) If school-age children help in the cleaning of animals or animal equipment, the children shall wash their hands immediately after cleaning the animal or equipment.
(7) Children and staff shall wash their hands immediately after playing with or touching animals, including reptiles and amphibians.
(8) Dogs, cats, and ferrets that are housed at the facility shall have current rabies vaccinations.
(9) The provider shall keep current animal vaccination records on-site for review by the Department.

R430-50-22. Rest and Sleep.
(1) The provider shall offer children in care a daily opportunity for rest or sleep in an environment with subdued lighting, a low noise level, and freedom from distractions.
(2) Each crib used by children shall:
(a) have a tight-fitting mattress;
(b) have slats spaced no more than 2-3/8 inches apart;
(c) have at least 20 inches from the top of the mattress to the top of the crib rail, or at least 12 inches from the top of the mattress to the top of the crib rail if the child using the crib cannot sit up without help;
(d) not have strings, cords, ropes, or other entanglement hazards on the crib or within reach of the child; and
(e) meet CPSC standards.
(3) Sleeping equipment may not block exits.
(4) Sleeping equipment and bedding items that are clearly assigned to and used by an individual child shall be cleaned and sanitized as needed and at least weekly.
(5) Sleeping equipment and bedding items that are not clearly assigned to and used by an individual child shall be cleaned and sanitized before each use.

R430-50-23. Diapering.
If the provider accepts children who wear diapers:
(1) Caregivers shall ensure that each child's diaper is:
(a) checked at least once every 2 hours,
(b) promptly changed when wet or soiled, and
(c) checked as soon as a sleeping child awakens.
(2) The diapering area shall not be located in a food preparation or eating area.
(3) Children shall not be diapered directly on the floor, or on any surface used for another purpose.
(4) The diapering surface shall be smooth, waterproof, and in good repair.
(5) Caregivers shall clean and sanitize the diapering surface after each diaper change, or use a disposable, waterproof diapering surface that is thrown away after each diaper change.
(6) Caregivers shall wash their hands after each diaper change.
(7) Caregivers shall place wet and soiled disposable diapers:
(a) in a container that has a disposable plastic lining and a tight-fitting lid,
(b) directly in an outdoor garbage container that has a tight-fitting lid, or
(c) in a container that is inaccessible to children.
(8) Indoor containers where wet and soiled diapers are placed shall be cleaned and sanitized each day.
(9) If cloth diapers are used:
(a) they shall not be rinsed at the facility; and
(b) they shall be placed directly into a leakproof container that is inaccessible to any child and labeled with the child's name, or placed in a leakproof diapering service container.

R430-50-24. Infant and Toddler Care.
If the provider cares for infants or toddlers:
(1) Each awake infant and toddler shall receive positive physical and verbal interaction with a caregiver at least once every 20 minutes.
(2) To stimulate their healthy development, the provider shall ensure that infants receive daily interactions with adults; including on the ground interaction and closely supervised

time spent in the prone position for infants younger than 6 months of age.

(3) Caregivers shall respond promptly to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, a wet or soiled diaper, fear, teething, or illness.

(4) For their healthy development, safe toys shall be available for infants and toddlers. There shall be enough toys accessible to each infant and toddler in the group to engage in play.

(5) Mobile infants and toddlers shall have freedom of movement in a safe area.

(6) An awake infant or toddler shall not be confined for more than 30 minutes in any piece of equipment, such as a swing, high chair, crib, playpen, or other similar piece of equipment.

(7) Only one infant or toddler shall occupy any one piece of equipment at any time, unless the equipment has individual seats for more than one child.

(8) Infants and toddlers shall not have access to objects made of styrofoam.

(9) Each infant and toddler shall be allowed to eat and sleep on their own schedule.

(10) Baby food, formula, or breast milk that is brought from home for an individual child's use shall be:

(a) labeled with the child's name;

(b) kept refrigerated if needed; and

(c) discarded within 24 hours of preparation or opening, except for unprepared powdered formula or dry food.

(11) If an infant is unable to sit upright and hold their own bottle, a caregiver shall hold the infant during bottle feeding. Bottles shall not be propped.

(12) The caregiver shall swirl and test warm bottles for temperature before feeding to children.

(13) Formula and milk, including breast milk, shall be discarded after feeding or within 2 hours of starting a feeding.

(14) Caregivers shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter, and shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(15) Infants shall sleep in equipment designed for sleep such as a crib, bassinet, porta-crib or play pen. An infant shall not be placed to sleep on a mat, cot, pillow, bouncer, swing, car seat, or other similar piece of equipment unless the provider has written permission from the infant's parent.

(16) Infants shall be placed on their backs for sleeping unless there is documentation from a health care provider requiring a different sleep position.

KEY: child care facilities, residential certification
December 28, 2017 26-39
Notice of Continuation May 9, 2018

R430. Health, Family Health and Preparedness, Child Care Licensing.
R430-90. Licensed Family Child Care.
R430-90-1. Legal Authority and Purpose.

(1) This rule is enacted and enforced in accordance with Utah Code, Title 26, Chapter 39.

(2) This rule establishes the foundational standards necessary to protect the health and safety of children in residential child care facilities and defines the general procedures and requirements to obtain and maintain a license to provide child care.

R430-90-2. Definitions.

(1) "Applicant" means a person or business who has applied for a new or a renewal of a license, certificate, or exemption from Child Care Licensing.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Background Finding" means information in a background screening that may result in a denial from Child Care Licensing.

(4) "Background Screening Denial" means that an individual has failed the background screening and is prohibited from being involved with a child care facility.

(5) "Barrier" means an enclosing structure such as a fence, wall, bars, railing, or solid panel to prevent accidental or deliberate movement through or access to something.

(6) "Body Fluid" means blood, urine, feces, vomit, mucus, and/or saliva.

(7) "Capacity" means the maximum number of children for whom care can be provided at any given time.

(8) "Caregiver-to-Child Ratio" means the number of caregivers responsible for a specific number of children.

(9) "CCL" means the Child Care Licensing Program in the Department of Health that is delegated with the responsibility to enforce the Utah Child Care Licensing Act.

(10) "Child Care" means continuous care and supervision of 5 or more qualifying children, that is:

(a) in place of care ordinarily provided by a parent in the parent's home,

(b) for less than 24 hours a day, and

(c) for direct or indirect compensation.

(11) "Child Care Hours" means the days and times during which the provider is open for business.

(12) "Child Care Program" means a person or business that offers child care.

(13) "Choking Hazard" means an object or a removable part on an object with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches that could be caught in a child's throat blocking their airway and making it difficult or impossible to breathe.

(14) "Conditional Status" means that the provider is at risk of losing their license because compliance with licensing rules has not been maintained.

(15) "Covered Individual" means any of the following individuals involved with a child care facility:

(a) an owner;

(b) an employee;

(c) a caregiver;

(d) a volunteer, except a parent of a child enrolled in the child care program;

(e) an individual age 12 years or older who resides in the facility; and

(f) anyone who has unsupervised contact with a child in care.

(16) "CPSC" means the Consumer Product Safety Commission.

(17) "Department" means the Utah Department of Health.

(18) "Designated Play Surface" means any accessible elevated surface for standing, walking, crawling, sitting or climbing; or an accessible flat surface at least 2 by 2 inches in size and having an angle less than 30 degrees from horizontal.

(19) "Emotional Abuse" means behavior that could harm a child's emotional development, such as threatening, intimidating, humiliating, demeaning, criticizing, rejecting, using profane language, and/or using inappropriate physical restraint.

(20) "Entrapment Hazard" means an opening greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter where a child's body could fit through but the child's head could not fit through, potentially causing a child's entrapment and strangulation.

(21) "Facility" means a child care program or the premises approved by the Department to be used for child care.

(22) "Group" means the children who are supervised by one or more caregivers in an individual room or in an area within a room that is defined by furniture or other partition.

(23) "Group Size" means the number of children in a group.

(24) "Guest" means an individual who is not a covered individual and is on the premises with the provider's permission.

(25) "Health Care Provider" means a licensed health professional, such as a physician, dentist, nurse practitioner, or physician's assistant.

(26) "Homeless" means anyone who lacks a fixed, regular, and adequate nighttime residence as described in the McKinney-Vento Act. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA)

(27) "Inaccessible" means out of reach of children by being:

(a) locked, such as in a locked room, cupboard, or drawer;

(b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;

(c) behind a properly secured child safety gate;

(d) located in a cupboard or on a shelf that is at least 36 inches above the floor; or

(e) in a bathroom, at least 36 inches above any surface from where a child could stand or climb.

(28) "Infant" means a child who is younger than 12 months of age.

(29) "Infectious Disease" means an illness that is capable of being spread from one person to another.

(30) "Involved with Child Care" means to do any of the following at or for a child care facility licensed by the Department:

(a) provide child care;

(b) volunteer at a child care facility;

(c) own, operate, direct, or be employed at a child care facility;

(d) reside at a facility where child care is provided; or

(e) be present at a facility while care is being provided, except for authorized guests or parents who are dropping off a child, picking up a child, or attending a scheduled event at the child care facility.

(31) "License" means a license issued by the Department to provide child care services.

(32) "Licensee" means the legally responsible person or business that holds a valid license from Child Care Licensing.

(33) "LIS Supported Finding" means background screening information from the Licensing Information System (LIS) database for child abuse and neglect, maintained by the Utah Department of Human Services.

(34) "McKinney-Vento Act" means a federal law that requires protections and services for children and youth who

are homeless including those with disabilities. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA).

(35) "Over-the-Counter Medication" means medication that can be purchased without a written prescription including herbal remedies, vitamins, and mineral supplements.

(36) "Parent" means the parent or legal guardian of a child in care.

(37) "Person" means an individual or a business entity.

(38) "Physical Abuse" means causing nonaccidental physical harm to a child.

(39) "Preschooler" means a child age 2 through 4 years old.

(40) "Provider" means the legally responsible person or business that holds a valid license from Child Care Licensing.

(41) "Qualifying Child" means:

(a) a child who is younger than 13 years old and is the child of a person other than the child care provider or caregiver,

(b) a child with a disability who is younger than 18 years old and is the child of a person other than the provider or caregiver, or

(c) a child who is younger than 4 years old and is the child of the provider or a caregiver.

(42) "Residential Child Care" means care that takes place in a child care provider's home.

(43) "Related Child" means a child for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(44) "Sanitize" means to use a chemical product to remove soil and bacteria from a surface or object.

(45) "School-Age Child" means a child age 5 through 12 years old.

(46) "Sexual Abuse" means abuse as defined in Utah Code, Title 76-5-404(1).

(47) "Sexually Explicit Material" means any depiction of sexually explicit conduct as defined in Utah Code, Title 76-5b-103(10).

(48) "Sleeping Equipment" means a cot, mat, crib, bassinet, porta-crib, playpen, or bed.

(49) "Stationary Play Equipment" means equipment such as a climber, slide, swing, merry-go-round, or spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse that sits on the ground or floor and has no attached equipment, such as a slide, swing, or climber.

(50) "Strangulation Hazard" means something on which a child's clothes or drawstrings could become caught, or something in which a child could become entangled such as:

(a) a protruding bolt end that extends more than 2 threads beyond the face of the nut;

(b) hardware that forms a hook or leaves a gap or space between components such as an open S-hook; or

(c) a rope, cord, or chain that is attached to a structure and is long enough to encircle a child's neck.

(51) "Substitute" means a person who assumes a caregiver's duties when the caregiver is not present.

(52) "Toddler" means a child age 12 through 23 months.

(53) "Unrelated Child" means a child who is not a "related child" as defined in R430-90-2(43).

(54) "Unsupervised Contact" means being with, caring for, communicating with, or touching a child in the absence of a caregiver or other employee who is at least 18 years old and has passed a Child Care Licensing background screening.

(55) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(56) "Volunteer" means an individual who receives no form of direct or indirect compensation for their service.

(57) "Working Days" means the days of the week the Department is open for business.

R430-90-3. License Required.

(1) A person or persons shall be licensed under this rule if they provide child care:

(a) in the home where they reside;

(b) in the absence of the child's parent;

(c) for 5 to 16 unrelated children;

(d) for 4 or more hours per day;

(e) on a regularly scheduled, ongoing basis; and

(f) for direct or indirect compensation.

(2) The Department may not license, nor is a license required for:

(a) a person who cares for related children only; or

(b) a person who provides care on a sporadic basis only.

(3) According to Foster Care Services rule R501-12-4(8)(f), a provider may not be licensed to provide child care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program.

R430-90-4. License Application, Renewal, Changes, and Variances.

(1) An applicant for a new child care license shall submit to the Department:

(a) an online application;

(b) a copy of a current local fire clearance or a statement from the local fire authority that a fire inspection is not required;

(c) a copy of a current local health department kitchen clearance for a facility providing food service or a statement from the local health department that a kitchen inspection is not required;

(d) a copy of a current local business license or a statement from the city that a business license is not required;

(e) a copy of a completed Department health and safety plan form;

(f) CCL background screenings for all covered individuals as required in R430-90-8;

(g) a current copy of the Department's new provider training certificate of attendance;

(h) all required fees, which are nonrefundable; and

(i) a signed Affidavit of Lawful Presence form provided by the Department.

(2) The applicant shall pass a Department's inspection of the facility before a new license or a renewal is issued.

(3) If the local fire authority states that a fire inspection is not required, a Department's CCL inspection for a new license or a renewal of a license shall include compliance with the following:

(a) address numbers and/or letters shall be readable from the street;

(b) address numbers and/or letters shall be at least 4 inches in height and 1/2 inch thick;

(c) exit doors shall operate properly and shall be well maintained;

(d) obstructions in exits, aisles, corridors, and stairways shall be removed;

(e) items stored under exit stairs shall be removed;

(f) there shall be unobstructed fire extinguishers that are of an X minimum rate and appropriate to the type of hazard, currently charged and serviced, and mounted not more than 5 feet above the floor;

(g) there shall be working smoke detectors that are properly installed on each level of the building; and

(h) boiler, mechanical, and electrical panel rooms shall not be used for storage.

(4) If the local health department states that a kitchen inspection is not required, a Department's CCL inspection for a new license or a renewal of a license shall include compliance with the following:

(a) the refrigerator shall be clean, in good repair, and working at or below 41 degrees Fahrenheit;

(b) there shall be a working thermometer in the refrigerator;

(c) there shall be a working stem thermometer available to check cook and hot hold temperatures;

(d) cooks shall have a current food handler's permit available on-site for review by the Department;

(e) reusable food holders, utensils, and food preparation surfaces shall be washed, rinsed, and sanitized with an approved sanitizer before each use;

(f) chemicals shall be stored away from food and food service items;

(g) food shall be properly stored, kept to the proper temperature, and in good condition; and

(h) there shall be a working handwashing sink in the kitchen.

(5) If the applicant does not complete the application process within 6 months of first submitting any portion of the application, the Department may deny the application and to be licensed, the applicant shall reapply. This includes resubmitting all required documentation, repaying licensing fees, and passing another inspection of the facility.

(6) The Department may deny an application for a license if, within the 5 years preceding the application date, the applicant held a license or certificate that was:

(a) closed under an immediate closure;

(b) revoked;

(c) closed as a result of a settlement agreement resulting from a notice of intent to revoke, a notice of revocation, or a notice of immediate closure;

(d) voluntarily closed after an inspection of the facility found rule violations that would have resulted in a notice of intent to revoke or a notice of revocation had the provider not closed voluntarily; or

(e) voluntarily closed having unpaid fees or civil money penalties issued by the Department.

(7) Each child care license expires at midnight on the last day of the month shown on the license, unless the license was previously revoked by the Department, or voluntarily closed by the provider.

(8) Within 30 to 90 days before a current license expires, the provider shall submit for renewal:

(a) an online renewal request,

(b) applicable renewal fees,

(c) any previous unpaid fees,

(d) a copy of a current business license,

(e) a copy of a current fire inspection report, and

(f) a copy of a current kitchen inspection report.

(9) A provider who fails to renew their license by the expiration date may have an additional 30 days to complete the renewal process if they pay a late fee.

(10) The Department may not renew a license for a provider who is no longer caring for children.

(11) The provider shall submit a complete application for a new license at least 30 days before a change of the child care facility's location.

(12) The provider shall submit a complete application to amend an existing license at least 30 days before any of the following changes:

(a) an increase or decrease of licensed capacity, including any change to the amount of usable indoor or outdoor space where child care is provided;

(b) a change in the name of the program;

(c) a change in the regulation category of the program;

(d) a change in the name of the provider; or

(e) a transfer of business ownership to a spouse or to any other household member.

(13) The Department may amend a license after verifying that the applicant is in compliance with all applicable rules and required fees have been paid. The expiration date of the amended license remains the same as the previous license.

(14) A license is not assignable or transferable and shall only be amended by the Department.

(15) If an applicant or provider cannot comply with a rule but can meet the intent of the rule in another way, they may apply for a variance to that rule by submitting a request to the Department.

(16) The Department may:

(a) require additional information before acting on the variance request, and

(b) impose health and safety requirements as a condition of granting a variance.

(17) The provider shall comply with the existing rule until a variance is approved.

(18) If a variance is approved, the provider shall keep a copy of the written approval on-site for review by parents and the Department.

(19) The Department may grant variances for up to 12 months.

(20) The Department may revoke a variance if:

(a) the provider is not meeting the intent of the rule as stated in their approved variance;

(b) the provider fails to comply with the conditions of the variance; or

(c) a change in statute, rule, or case law affects the basis for the variance.

R430-90-5. Rule Violations and Penalties.

(1) The Department may place a program's child care license on a conditional status for the following causes:

(a) chronic, ongoing noncompliance with rules;

(b) unpaid fees; or

(c) a serious rule violation that places children's health or safety in immediate jeopardy.

(2) The Department shall establish the length of the conditional status and set the conditions that the child care provider shall satisfy to remove the conditional status.

(3) The Department may increase monitoring of the program that is on conditional status to verify compliance with rules.

(4) The Department may deny or revoke a license if the child care provider:

(a) fails to meet the conditions of a license on conditional status;

(b) violates the Child Care Licensing Act;

(c) provides false or misleading information to the Department;

(d) misrepresents information by intentionally altering a license or any other document issued by the Department;

(e) refuses to allow authorized representatives of the Department access to the facility to ensure compliance with rules;

(f) refuses to submit or make available to the Department any written documentation required to verify compliance with rules;

(g) commits a serious rule violation that results in death or serious harm to a child, or that places a child at risk of death or serious harm; or

(h) has committed an illegal act that would exclude a person from having a license.

(5) Within 10 working days of receipt of a revocation notice, the provider shall submit to the Department the names and mailing addresses of the parents of each enrolled child so the Department can notify the parents of the revocation.

(6) The Department may order the immediate closure of a facility if conditions create a clear and present danger to any child in care and may require immediate action to protect their health or safety.

(7) Upon receipt of an immediate closure notice, the provider shall give the Department the names and mailing addresses of the parents of each enrolled child so the Department can notify the parents of the immediate closure.

(8) If there is a severe injury or the death of a child in care, the Department may order the child care provider to suspend services and/or prohibit new enrollments, pending a review by the Child Fatality Review Committee or a determination of the probable cause of death or injury by a medical professional.

(9) If a person is providing care for more than 4 unrelated children without the appropriate license, the Department may:

(a) issue a cease and desist order, or

(b) allow the person to continue operation if:

(i) the person was unaware of the need for a license,

(ii) conditions do not create a clear and present danger to the children in care, and

(iii) the person agrees to apply for the appropriate license within 30 calendar days of notification by the Department.

(10) If a person providing care without the appropriate license agrees to apply for a license but does not submit an application and all required application documents within 30 days, the Department may issue a cease and desist order.

(11) A violation of any rule is punishable by an administrative civil money penalty of up to $5,000 per day as provided in Utah Code, Section 26-39-601.

(12) Assessment of any civil money penalty does not prevent the Department from also taking action to deny, place on conditional status, revoke, immediately close, or refuse to renew a license.

(13) Assessment of any administrative civil money penalty under this section does not prevent court-ordered or other equitable remedies.

(14) The Department may deny an application or revoke a license for failure to pay any required fees, including fees for applications, late fees, returned checks, license changes, additional inspections, conditional monitoring inspections, background screenings, civil money penalties, and other fees assessed by the Department.

(15) An applicant or provider may appeal any Department decision within 30 days of being informed of the decision.

R430-90-6. Administration and Children's Records.

(1) The provider shall:

(a) be at least 18 years of age;

(b) pass a CCL background screening;

(c) demonstrate lawful presence in the United States;

(d) complete the new provider training offered by the Department; and

(e) complete at least 20 hours of child care training each year, based on the facility's license date.

(2) The provider shall not engage in or allow conduct that endangers children in care; or is contrary to the health, morals, welfare, and safety of the public.

(3) The provider shall have knowledge of and comply with all federal, state, and local laws, ordinances, and rules, and shall be responsible for the operation and management of a child care program.

(4) The provider shall comply with licensing rules at all times when a child in care is present.

(5) The provider shall post the original child care license on the facility premises in a place readily visible and accessible to the public.

(6) The provider shall post a copy of the Department's Parent Guide at the facility for parent review during business hours, or give each parent a copy of the guide at enrollment.

(7) The provider shall inform parents and the Department of any changes to the program's telephone number and other contact information within 48 hours of the change.

(8) The provider shall establish, follow, and ensure that all staff and volunteers follow a written health and safety plan that is:

(a) completed on the Department's required form;

(b) submitted to the Department for initial approval and any time changes are made to the plan;

(c) reviewed and updated as needed;

(d) signed and dated at least annually; and

(e) available for review by parents, staff, and the Department during business hours.

(9) The provider shall ensure that each parent completes an admission and health assessment form for their child before the child is admitted into the child care program.

(10) The admission and health assessment form shall include the following information:

(a) child's name;

(b) child's date of birth;

(c) parent's name, address, and phone number, including a daytime phone number;

(d) names of people authorized by the parent to pick up the child;

(e) name, address, and phone number of a person to be contacted in case of an emergency if the provider is unable to contact the parent;

(f) if available, the name, address, and phone number of an out-of-area emergency contact person for the child;

(g) current emergency medical treatment and emergency transportation releases with the parent's signature;

(h) any known allergies of the child;

(i) any known food sensitivities of the child;

(j) any chronic medical conditions that the child may have;

(k) instructions for special or nonroutine daily health care of the child;

(l) current ongoing medications that the child may be taking; and

(m) any other special health instructions for the caregiver.

(11) The admission and health assessment form shall:

(a) be reviewed, updated, and signed or initialed by the parent at least annually; and

(b) kept on-site for review by the Department.

(12) Before admitting any child younger than 5 years of age into the child care program, including the provider's and employees' own children, the provider shall obtain the following documentation from the child's parent:

(a) current immunizations, as required by Utah law;

(b) a medical schedule to receive required immunizations;

(c) a legal exemption; or

(d) a 90-day exemption for children who are homeless.

(13) For each child younger than 5 years of age, including the provider's and employees' own children, the provider shall keep their current immunization records on-site for review by the Department.

(14) The provider shall submit the annual immunization report to the Immunization Program in the Utah Department of Health by the date specified by the Department.

(15) Each child's information shall be kept confidential and shall not be released without written parental permission.

R430-90-7. Personnel and Training Requirements.

(1) The provider shall train and supervise employees and volunteers to ensure that they are qualified to:

(a) meet the needs of the children as required by rule, and

(b) be in compliance with all licensing rules.

(2) Each week, the provider shall be present at the home at least 50% of the time that any child is in care; and whenever a child is in care, the provider, a caregiver who is at least 18 years old, or a substitute with authority to act on behalf of the provider shall be present.

(3) Caregivers shall:

(a) be at least 16 years old;

(b) pass a CCL background screening;

(c) receive at least 2.5 hours of preservice training before beginning job duties;

(d) have knowledge of and follow all applicable laws and rules; and

(e) complete at least 20 hours of child care training each year, based on the facility's license date.

(4) Substitutes shall:

(a) be at least 18 years old;

(b) pass a CCL background screening;

(c) be capable of providing care, supervising children, and handling emergencies in the provider's absence;

(d) receive at least 2.5 hours of preservice training before beginning job duties; and

(e) complete at least 1.5 hours of child care training for each month they work 40 hours or more.

(5) All other employees such as drivers, cooks, and clerks shall:

(a) pass a CCL background screening,

(b) receive at least 2.5 hours of preservice training before beginning job duties, and

(c) have knowledge of and follow all applicable laws and rules.

(6) Volunteers shall:

(a) pass a CCL background screening, and

(b) not have unsupervised contact with any child in care if the volunteer is younger than 18 years of age.

(7) Guests:

(a) shall not have unsupervised contact with any child in care, and

(b) are not required to pass a CCL background screening when they remain in the home for not more than 2 weeks.

(8) Any individual who stays in the home for more than 2 weeks shall be considered a household member and shall be required to pass a CCL background screening.

(9) Parents of children in care:

(a) shall not have unsupervised contact with any child in care except their own, and

(b) do not need a CCL background screening unless involved with child care in the facility.

(10) Household members who are:

(a) 12 to 17 years old shall pass a CCL background screening;

(b) 18 years of age or older shall pass a CCL background screening that includes fingerprints; and

(c) younger than 18 years of age shall not have unsupervised contact with any child in care including during offsite activities and transportation.

(11) Individuals who provide IEP or IFSP services such as physical, occupational, or speech therapists:

(a) are not required to have a CCL background screening as long as the child's parent has given permission for services to take place at the facility, and

(b) shall provide proper identification before having access to the facility or a child at the facility.

(12) Members from law enforcement or from Child Protective Services:

(a) are not required to have a CCL background screening, and

(b) shall provide proper identification before having access to the facility or a child at the facility.

(13) Preservice training shall include the following:

(a) job description and duties;

(b) current Department rule sections R430-90-7 through 24;

(c) the Department-approved health and safety plan that includes preparing for and responding to emergencies;

(d) prevention, signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;

(e) prevention of shaken baby syndrome and abusive head trauma, and coping with crying babies;

(f) prevention of sudden infant death syndrome (SIDS) and the use of safe sleeping practices;

(g) recognizing the signs of homelessness and available assistance;

(h) a review of the information in each child's health assessment; and

(i) an introduction and orientation to the children in care.

(14) Documentation of each individual's preservice training shall be kept on-site for review by the Department and include the following:

(a) training topics,

(b) date of the training, and

(c) total hours or minutes of training.

(15) Annual child care training shall include the following topics:

(a) current Department rule sections R430-90-7 through 24;

(b) the Department-approved health and safety plan that includes preparing for and responding to emergencies;

(c) the prevention, signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;

(d) principles of child growth and development, including brain development;

(e) positive guidance and interactions with children;

(f) prevention of shaken baby syndrome and abusive head trauma, and coping with crying babies;

(g) prevention of sudden infant death syndrome (SIDS) and use of safe sleeping practices; and

(h) recognizing the signs of homelessness and available assistance.

(16) At least 10 of the 20 hours of annual child care training shall be face-to-face instruction.

(17) Individuals who are required to receive annual child care training and who begin employment partway through the facility's license year shall complete a proportionate number of training hours including the face-to-face instruction.

(18) Documentation of each individual's annual child care training shall be kept on-site for review by the Department and include the following:

(a) training topic,

(b) date of the training,

(c) whether the training was face-to-face or non-face-to-face instruction,

(d) name of the person or organization that presented

the training, and

(e) total hours or minutes of training.

(19) Whenever there are children present, there shall be at least one caregiver present who can demonstrate English literacy skills needed to care for children and respond to emergencies.

(20) At least one staff member with a current Red Cross, American Heart Association, or equivalent first aid and infant/child CPR certification shall be present when children are in care:

(a) at the facility,

(b) in each vehicle transporting children, and

(c) at each offsite activity.

(21) CPR certification shall include hands-on testing.

(22) The following records for each covered individual shall be kept on-site for review by the Department:

(a) the date of initial employment or association with the program;

(b) a copy of the current background screening card issued by the Department;

(c) a current first aid and CPR certification, if required in rule; and

(d) a six-week record of the times worked each day.

R430-90-8. Background Screenings.

(1) The provider shall ensure that an online CCL background screening form is submitted within 10 working days from when:

(a) a new covered individual becomes involved with the program,

(b) a new covered individual age 12 years or older begins living in the facility, and

(c) a child who resides in the facility turns 12 years old.

(2) Unless an exception is granted in rule, the provider shall ensure that a CCL background screening for each individual age 18 years or older includes fingerprints and fingerprints fees.

(3) The fingerprints shall be prepared by a local law enforcement agency or an agency approved by local law enforcement.

(4) If fingerprints are submitted through Live Scan (electronically), the agency taking the fingerprints shall follow the Department's guidelines.

(5) Fingerprints are not required if:

(a) the covered individual has resided in Utah continuously for the past 5 years, or since the individual's 18th birthday and will only be involved with child care in a program that was licensed or certified prior to 1 July 2013; or

(b) the covered individual has previously submitted fingerprints to the Department under this section for a national criminal history record check and has resided in Utah continuously since that time.

(6) Background screenings are valid for 1 year and shall be renewed before the last day of the month listed on the covered individual's background screening card.

(7) At least 2 weeks before the end of the month that is written on a covered individual's background screening card, the provider shall:

(a) have the individual submit an online CCL background screening form,

(b) authorize the individual's background screening form, and

(c) pay all required fees.

(8) Regardless of any exception in rule, if an in-state criminal background screening indicates that a covered individual age 18 years or older has a background finding, the Department may require that individual to submit fingerprints and fees in order for the Department to conduct a national criminal background screening for that individual.

(9) The following background findings shall deny a covered individual from being involved with child care:

(a) LIS supported findings,

(b) the individual's name appears on the Utah or national sex offender registry,

(c) any felony convictions,

(d) any Misdemeanor A convictions, or

(e) Misdemeanor B and C convictions for the reasons listed in R430-90-8(10).

(10) The following convictions, regardless of severity, may result in a background screening denial:

(a) unlawful sale or furnishing alcohol to minors;

(b) sexual enticing of a minor;

(c) cruelty to animals, including dogfighting;

(d) bestiality;

(e) lewdness, including lewdness involving a child;

(f) voyeurism;

(g) providing dangerous weapons to a minor;

(h) a parent providing a firearm to a violent minor;

(i) a parent knowing of a minor's possession of a dangerous weapon;

(j) sales of firearms to juveniles;

(k) pornographic material or performance;

(l) sexual solicitation;

(m) prostitution and related crimes;

(n) contributing to the delinquency of a minor;

(o) any crime against a person;

(p) a sexual exploitation act;

(q) leaving a child unattended in a vehicle; and

(r) driving under the influence (DUI) while a child is present in the vehicle.

(11) A covered individual with a Class A misdemeanor background finding not listed in R430-90-8(10) may be involved with child care when:

(a) 10 or more years have passed since the Class A misdemeanor offense, and

(b) there is no other conviction for the individual in the past 10 years.

(12) A covered individual with a Class A misdemeanor background finding not listed in R430-90-8(10) may be involved with child care for up to 6 months if:

(a) 5 to 9 years have passed since the offense,

(b) there is no other conviction since the Class A misdemeanor offense,

(c) the individual provides to the Department documentation of an active petition for expungement, and

(d) the provider ensures that the individual does not have unsupervised contact with any child in care.

(13) If a petition for expungement is denied, the covered individual shall no longer be involved with child care.

(14) A covered individual shall not be denied if the only background finding is a conviction or plea of no contest to a nonviolent drug offense that occurred 10 or more years before the CCL background screening was conducted.

(15) The Department may rely on the criminal background screening findings as conclusive evidence of the arrest warrant, arrest, charge, or conviction; and the Department may revoke, suspend, or deny a license or employment based on that evidence.

(16) If the provider has a background screening denial, the Department may suspend or deny their license until the reason for the denial is resolved.

(17) If a covered individual has a background screening denial, the Department may prohibit that individual from being employed by the child care program or residing at the facility until the reason for the denial is resolved.

(18) If a covered individual is denied a license or employment based upon the criminal background screening and disagrees with the information provided by the

Department of Public Safety, the covered individual may appeal the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

(19) If a covered individual disagrees with a supported finding on the Department of Human Services Licensing Information System (LIS):

(a) the individual cannot appeal the supported finding to the Department of Health, and

(b) the covered individual may appeal the finding to the Department of Human Services and follow the process established by the Department of Human Services.

(20) Within 48 hours of becoming aware of a covered individual's arrest warrant, felony or misdemeanor arrest, charge, conviction, or supported LIS finding, the provider and the covered individual shall notify the Department. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license.

(21) The Executive Director of the Department of Health may overturn a background screening denial under the following conditions:

(a) the background finding is not a felony, and

(b) the Executive Director determines that the nature of the background finding or mitigating circumstances do not pose a risk to children.

R430-90-9. Facility.

(1) There shall be at least 35 square feet of indoor space for each child in care, including the provider's and employees' children.

(2) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:

(a) by children,

(b) for the care of children, or

(c) to store classroom materials.

(3) The following areas are not included when measuring indoor space for children's use:

(a) bathrooms,

(b) closets,

(c) hallways, and

(d) entryways.

(4) The maximum allowed capacity for a child care facility may be limited by local ordinances.

(5) The number of children in care at any given time shall not exceed the capacity identified on the license.

(6) The provider shall ensure that any building or play structure on the premises constructed before 1978 that has peeling, flaking, chalking, or failing paint is tested for lead. If lead-based paint is found, the provider shall contact their local health department within 5 working days and follow required procedures for remediation of the lead hazard.

(7) Each room and indoor area that is used by children shall be ventilated by mechanical ventilation, or by windows that open and have screens.

(8) All rooms and areas that are used for child care shall have adequate light intensity for the safety of the children and the type of activity being conducted.

(9) The provider shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

(10) There shall be a working telephone in the home, in each vehicle while transporting children, and during offsite activities.

(11) There shall be a working toilet and a working handwashing sink accessible to each nondiapered child in care.

(12) A bathroom that provides privacy shall be available for use by school-age children.

(13) There shall be an outdoor area that is safely accessible to children.

(14) The outdoor area shall have at least 40 square feet of space for each child using the area at one time.

(15) The outdoor area shall be enclosed within a fence, wall, or solid natural barrier that is at least 4 feet high when the facility is on a street or within half a mile of a street that:

(a) has a speed of 25 miles per hour or higher, or

(b) has more than 2 lanes of traffic.

(16) The following hazards shall be separated from the children's outdoor area with a fence, wall, or solid natural barrier that is at least 4 feet high:

(a) barbed wire that is within 30 feet of the children's play area;

(b) livestock on or within 50 yards of the property line;

(c) dangerous machinery, such as farm equipment, on or within 50 yards of the property line;

(d) a drop-off of more than 5 feet on or within 50 yards of the property line; or

(e) a water hazard, such as a swimming pool, pond, ditch, lake, reservoir, river, stream, creek, or animal watering trough, on or within 100 yards of the property line.

(17) There shall be no gap 5 by 5 inches or greater in or under the fence.

(18) Whenever there are children in the outdoor area, there shall be shade available to protect them from excessive sun and heat.

(19) If there is a swimming pool on the premises that is not emptied after each use:

(a) the provider shall meet applicable state and local laws and ordinances related to the operation of a swimming pool and maintain the pool in a safe manner; and

(b) when not in use, the pool shall be enclosed within at least a 4-foot-high fence or solid barrier that is kept locked and that separates the pool from any other areas on the premises, or enclosed with a locked, properly working safety cover that meets ASTM Specification F1346-91.

(20) A hot tub on the premises with water in it shall be inaccessible to children by being:

(a) kept locked with a properly working cover; or

(b) enclosed within at least a 4-foot-high fence or solid barrier that is kept locked and that separates the hot tub from any other areas on the premises.

(21) The provider shall maintain buildings and outdoor areas in good repair and safe condition including:

(a) ceilings, walls, and floor coverings;

(b) lighting, bathroom, and other fixtures;

(c) draperies, blinds, and other window coverings;

(d) indoor and outdoor play equipment;

(e) furniture, toys, and materials accessible to the children;

(f) entrances, exits, steps, and walkways including keeping them free of ice, snow and other hazards.

(22) Accessible raised decks or balconies that are 5 feet or higher, and open basement stairwells that are 5 feet or deeper shall have protective barriers that are at least 3 feet high.

(23) If the house is subdivided, any part of the house is rented out, or any other area of the facility is shared including the outdoor area, the entire facility shall be inspected and covered individuals in the facility shall comply with rules, except when all of the following conditions are met:

(a) there is a signed rental/lease agreement between the provider and the individual responsible for or living in the other part of the house;

(b) there is a separate mailing address;

(c) there is a separate entrance for the child care program;

(d) there are no connecting interior doorways that can be used by unauthorized individuals; and

(e) there is no shared access to the outdoor area used for

child care, or a qualified caregiver is present when children are using a shared outdoor area of the facility.

R430-90-10. Ratios and Group Size.

(1) The provider shall maintain at least 1 caregiver for up to 8 children in care, and at least 2 caregivers for 9 to 16 children in care.

(2) The provider's or an employee's child age 4 years or older is not counted in the caregiver-to-child ratio when the parent of the child is working at the facility, but the child shall be counted in the group size.

(3) When caring for children younger than 2 years old:

(a) there shall be no more than 2 children younger than 2 years old with 1 caregiver;

(b) there shall be no more than 4 children younger than 2 years old with 2 caregivers; and

(c) if there are 6 or fewer children in care, there may be up to 3 children younger than 2 years old with 1 caregiver.

(4) The provider shall not exceed the group sizes found in Table 1 and Table 2.

TABLE 1

MAXIMUM GROUP SIZE WITH 1 PROVIDER

# of Provider's and Caregivers' Own Children Ages 4-12 Years Present During Child Care Hours	Maximum Allowed # of Children in Care, Including the Provider's and Caregivers' Own Children Younger than 4 years old	Total # of Children Through age 12 Years Present in the Home During Child Care Hours
0-4 Children	8 children	12 Children
5 Children	7 children	12 Children
6 Children	6 children	12 Children
7 Children	5 children	12 Children
8 Children	4 children	12 Children
9 Children	3 children	12 Children
10 Children	2 children	12 Children
11 Children	1 child	12 Children

TABLE 2

MAXIMUM GROUP SIZE WITH 2 CAREGIVERS

# of Provider's and Caregivers' Own Children Ages 4-12 Years Present During Child Care Hours	Maximum Allowed # of Children in Care, Including the Provider's and Caregivers' Own Children Younger than 4 years old	Total # of Children Through age 12 Years Present in the Home During Child Care Hours
0-8 Children	16 children	24 Children
9 Children	15 children	24 Children
10 Children	14 children	24 Children
11 Children	13 children	24 Children
12 Children	12 children	24 Children
13 Children	11 children	24 Children
14 Children	10 children	24 Children
15 Children	9 children	24 Children
16 Children	8 children	24 Children
17 Children	7 children	24 Children
18 Children	6 children	24 Children
19 Children	5 children	24 Children
20 Children	4 children	24 Children
21 Children	3 children	24 Children
22 Children	2 children	24 Children
23 Children	1 child	24 Children

(5) Caregivers who are 16 or 17 years old may be included in the caregiver-to-child ratio only when there is a caregiver who is at least 18 years on the premises.

(6) Volunteers may be included in the caregiver-to-child ratio if they:

(a) are at least 16 years old,

(b) receive at least 2.5 hours of preservice training before counting in the caregiver-to-child ratio, and

(c) complete at least 1.5 hours of child care training for each month they volunteer 40 hours or more.

(7) Guests shall not count in the caregiver-to-child ratio.

R430-90-11. Child Supervision and Security.

(1) The provider shall ensure that caregivers provide and maintain active supervision of each child at all times:

(a) a caregiver shall be inside the home when any child in care is inside the home,

(b) a caregiver shall be in the outdoor area when any child younger than 5 years old is in the outdoor area,

(c) caregivers shall know the number of children in their care at all times, and

(d) caregivers' attention shall be focused on the children and not on the caregivers' own personal interests.

(2) A caregiver may allow only school-age children to play outdoors while the caregiver is indoors when:

(a) the caregiver can hear the children playing outdoors; and

(b) the children are in an area completely enclosed within a fence, wall, or solid natural barrier that is at least a 4 feet high.

(3) A caregiver shall monitor each sleeping infant by:

(a) placing each infant to sleep within the sight and hearing of the caregiver, or

(b) personally observing each sleeping infant at least once every 15 minutes.

(4) A child may participate in supervised offsite activities without the provider if:

(a) the provider has prior written permission from the child's parent for the child's participation, and

(b) the provider has clearly assigned the responsibility for the child's whereabouts and supervision to a responsible adult who accepts that responsibility throughout the period of the offsite activity.

(5) Whenever a child is in care, the child's parent shall have access to their child and the areas used to care for their child.

(6) To maintain security and supervision of children, the provider shall ensure that:

(a) each child is signed in and out;

(b) only parents or persons with written authorization from the parent may sign out a child;

(c) photo identification is required if the individual signing the child in or out is unknown to the provider;

(d) persons signing children in and out use identifiers, such as a signature, initials, or electronic code;

(e) the sign-in and sign-out records include the date and time each child arrives and leaves; and

(f) there is written permission from their parents if school-age children sign themselves in and out.

(7) In an emergency, the caregiver shall accept the parent's verbal authorization to release a child when the caregiver can confirm the identity of:

(a) the person giving verbal authorization, and

(b) the person picking up the child.

(8) A six-week record of each child's daily attendance, including sign-in and sign-out records, shall be kept on-site for review by the Department.

R430-90-12. Child Guidance and Interaction.

(1) The provider shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) The provider shall inform parents, children, and those who interact with the children of the program's

behavioral expectations and how any misbehavior will be handled.

(3) Individuals who interact with the children shall guide children's behavior by using positive reinforcement, redirection, and by setting clear limits that promote children's ability to become self-disciplined.

(4) Caregivers shall use gentle, passive restraint with children only when it is needed to stop children from injuring themselves or others, or from destroying property.

(5) Interactions with the children shall not include:

(a) any form of corporal punishment or any action that produces physical pain or discomfort such as hitting, spanking, shaking, biting, or pinching;

(b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds gentle, passive restraint;

(c) shouting at children;

(d) any form of emotional abuse;

(e) forcing or withholding food, rest, or toileting; or

(f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

(6) Any person who witnesses or suspects that a child has been subjected to abuse, neglect, or exploitation shall immediately notify Child Protective Services or law enforcement as required in Utah Code Section 62A-4a-403 and Section 62A-4a-411.

R430-90-13. Child Safety and Injury Prevention.

(1) The building, outdoor area, toys, and equipment shall be used in a safe manner and as intended by the manufacturer to prevent injury to children.

(2) Harmful objects and hazards, such as the following, shall be inaccessible to children:

(a) poisonous and harmful plants;

(b) sharp objects, edges, corners, or points that could cut or puncture skin;

(c) for children younger than 3 years of age, choking hazards;

(d) strangulation hazards such as ropes, cords, chains, and wires attached to a structure and long enough to encircle a child's neck;

(e) tripping hazards such as unsecured flooring, rugs with curled edges, or cords in walkways;

(f) for children younger than 5 years of age, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(g) standing water that is 2 inches or deeper and 5 by 5 inches or greater in diameter.

(3) Toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials shall be:

(a) inaccessible to children,

(b) used according to manufacturer instructions, and

(c) stored in containers labeled with their contents.

(4) Items and substances that could burn a child or start a fire shall be inaccessible, such as:

(a) matches or cigarette lighters;

(b) open flames;

(c) hot wax or other substances; and

(d) when in use, portable space heaters, wood burning stoves, and fireplaces of all types.

(5) Children shall be protected from items that cause electrical shock such as:

(a) live electrical wires; and

(b) for children younger than 5 years of age, electrical outlets and surge protectors without protective caps or safety devices when not in use.

(6) Unless used and stored in compliance with the Utah Concealed Weapons Act or as otherwise allowed by law, firearms such as guns, muzzles loaders, rifles, shotguns, hand guns, pistols, and automatic guns shall:

(a) be locked in a cabinet or area with a key, combination lock, or fingerprint lock; and

(b) stored unloaded and separate from ammunition.

(7) Weapons such as paintball guns, BB guns, airsoft guns, sling shots, arrows, and mace shall be inaccessible to children.

(8) Alcohol, illegal substances, and sexually explicit material shall be inaccessible, and shall not be used on the premises, during offsite activities, or in program vehicles any time a child is in care.

(9) An outdoor source of drinking water, such as individually labeled water bottles, a pitcher of water and individual cups, or a working water fountain shall be available to each child whenever the outside temperature is 75 degrees or higher.

(10) Areas accessible to children shall be free of heavy or unstable objects that children could pull down on themselves, such as furniture, unsecured televisions, and standing ladders.

(11) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(12) Highchairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(13) Infant walkers with wheels shall be inaccessible to children.

(14) In compliance with the Utah Indoor Clean Air Act, tobacco, e-cigarettes, e-juice, e-liquids, and similar products shall be inaccessible and not used:

(a) in the facility or any other building when a child is in care,

(b) in any vehicle that is being used to transport a child in care,

(c) within 25 feet of any entrance to the facility or other building occupied by a child in care, or

(d) in any outdoor area or within 25 feet of any outdoor area occupied by a child in care.

R430-90-14. Emergency Preparedness and Response.

(1) The provider shall post the home's street address and emergency numbers, including ambulance, fire, police, and poison control, near a telephone in the home or in an area clearly visible to anyone needing the information.

(2) The provider shall keep first-aid supplies in the home, including at least antiseptic, band-aids, and tweezers.

(3) The provider shall conduct fire evacuation drills quarterly. Drills shall include a complete exit of all children, staff, and volunteers from the home.

(4) The provider shall document each fire drill, including:

(a) the date and time of the drill,

(b) the number of children participating,

(c) the total time to complete the evacuation, and

(d) any problems encountered.

(5) The provider shall conduct drills for disasters other than fires at least once every 12 months.

(6) A provider shall document each disaster drill, including:

(a) the type of disaster, such as earthquake, flood, prolonged power outage, or tornado;

(b) the date and time of the drill;

(c) the number of children participating;

(d) the total time to complete the evacuation; and

(e) any problems encountered.

(7) The provider shall vary the days and times on which fire and other disaster drills are held.

(8) The provider shall keep documentation of the previous 12 months of quarterly fire drills and annual disaster drills on-site for review by the Department.

(9) In case of an emergency or disaster, the provider and all employees shall follow procedures as outlined in the facility's health and safety plan.

(10) If the provider must leave the premises due to an emergency, the provider may use an emergency substitute who was not named in the facility's health and safety plan.

(11) The emergency substitute:

(a) shall be at least 18 years old;

(b) is not required to have a CCL background screening; and

(c) is not required to meet the training, first aid, and CPR requirements of this rule.

(12) Before the provider may leave the children in the care of the emergency substitute, the provider shall first obtain a signed, written statement from the individual that they:

(a) have not been convicted of a felony or misdemeanor;

(b) do not have a substantiated background finding; and

(c) are not being investigated for abuse or neglect by any federal, state, or local government agency.

(13) The emergency substitute's written background statement shall be submitted to the Department for review within 5 working days after the occurrence.

(14) During the term of the emergency, the emergency substitute may be counted in the caregiver-to-child ratio.

(15) The provider shall make reasonable efforts to minimize the time that the emergency substitute has unsupervised contact with the children in care, and the amount of time shall not be more than 24 hours per emergency incident.

(16) The provider shall give parents a verbal report of every minor incident, accident, or injury involving their child on the day of the occurrence.

(17) The provider shall give parents a written report of every serious incident, accident, or injury involving their child:

(a) The caregivers involved, the provider, and the person picking up the child shall sign the report on the day of occurrence.

(b) If school-age children sign themselves out of the facility, a copy of the report shall be sent to the parent on the day following the occurrence.

(18) If a child is injured and the injury appears serious but not life-threatening, the child's parent shall be contacted immediately.

(19) In the case of a life-threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb:

(a) emergency personnel shall be called immediately;

(b) after emergency personnel are called, then the parent shall be contacted;

(c) if the parent cannot be reached, staff shall try to contact the child's emergency contact person.

(20) If a child is injured while in care and receives medical attention, or for a child fatality, the provider shall:

(a) submit a completed accident report form to the Department within the next business day of the incident; or

(b) contact the Department within the next business day and submit a completed accident report form within 5 business days of the incident.

(21) The provider shall keep a six-week record of every serious incident, accident, and injury report on-site for review by the Department.

R430-90-15. Health and Infection Control.

(1) The building, furnishings, equipment, and outdoor area shall be kept clean and sanitary including:

(a) ceilings, walls, and flooring shall be clean and free of spills, dirt, and grime;

(b) areas and equipment used for the storage, preparation, and service of food shall be clean and sanitary;

(c) surfaces used by children shall be free of rotting food or a build-up of food;

(d) the building and grounds shall be free of a build-up of litter, trash, and garbage; and

(e) the facility shall be free of animal feces.

(2) The provider shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other pests.

(3) All toys and materials including those used by infants and toddlers shall be cleaned:

(a) at least weekly or more often if needed,

(b) after being put in a child's mouth and before another child plays with the toy, and

(c) after being contaminated by a body fluid.

(4) Fabric toys and items such as stuffed animals, cloth dolls, pillows, and dress-up clothes shall be machine washable and washed weekly, and as needed.

(5) Highchair trays shall be cleaned and sanitized before each use.

(6) Water play tables or tubs shall be cleaned and sanitized daily, if used by the children.

(7) Bathroom surfaces including toilets, sinks, faucets, and counters shall be cleaned and sanitized each day.

(8) Potty chairs shall be cleaned and sanitized after each use.

(9) Toilet paper shall be accessible to children and kept in a dispenser.

(10) Only single-use paper towels or individually labeled cloth towels shall be used to dry a child's hands.

(11) If cloth towels are used:

(a) they shall not be shared by children, caregivers, or volunteers; and

(b) towels shall be washed daily.

(12) Staff and volunteers shall wash their hands thoroughly with soap and running water at required times including:

(a) before handling or preparing food or bottles,

(b) before and after eating meals and snacks or feeding a child,

(c) after using the toilet or helping a child use the toilet,

(d) after contact with a body fluid,

(e) when coming in from outdoors, and

(f) after cleaning up or taking out garbage.

(13) Caregivers shall teach children how to wash their hands thoroughly and shall oversee handwashing whenever possible.

(14) The provider shall ensure that children wash their hands thoroughly with soap and running water at required times including:

(a) before and after eating meals and snacks,

(b) after using the toilet,

(c) after contact with a body fluid,

(d) before using a water play table or tub, and

(e) when coming in from outdoors.

(15) Personal hygiene items, such as toothbrushes, combs, and hair accessories, shall not be shared and shall be stored so they do not touch each other, or they shall be sanitized between each use.

(16) Pacifiers, bottles, and nondisposable drinking cups shall:

(a) be labeled with each child's name or individually identified; and

(b) not shared, or washed and sanitized before being used by another child.

(17) A child's clothing shall be promptly changed if the child has a toileting accident.

(18) If a child's clothing is wet or soiled from a body

fluid, the provider shall ensure that:

(a) the clothing is washed and dried, or

(b) the clothing is placed in a leakproof container that is labeled with the child's name and returned to the parent.

(19) Staff shall take precautions when cleaning floors, furniture, and other surfaces contaminated by blood, urine, feces, and vomit. Except for diaper changes and toileting accidents, staff shall:

(a) wear waterproof gloves;

(b) clean the surface using a detergent solution;

(c) rinse the surface with clean water;

(d) sanitize the surface;

(e) throw away in a leakproof plastic bag the disposable materials, such as paper towels, that were used to clean up the body fluid;

(f) wash and sanitize any nondisposable materials used to clean up the body fluid, such as cleaning cloths, mops, or reusable rubber gloves, before reusing them; and

(g) wash their hands after cleaning up the body fluid.

(20) A child who becomes ill with an infectious disease while in care shall be made comfortable in a safe, supervised area that is separated from the other children.

(21) If a child becomes ill while in care, the provider shall contact the child's parent as soon as the illness is observed or suspected.

(22) The parents of every child in care shall be informed when any child, employee, or person in the home has an infectious disease or parasite. Parents shall be notified on the day the illness is discovered.

(23) When any child or employee has an infectious disease, an unusual or serious illness, or a sudden onset of an illness, the provider shall notify the local health department on the day the illness is discovered.

R430-90-16. Food and Nutrition.

(1)The provider shall ensure that each child age 2 years and older is offered a meal or snack at least once every 3 hours.

(2) When food for children's meals and/or snacks is supplied by the provider:

(a) the meal service shall meet local health department food service regulations;

(b) the foods that are served shall meet the nutritional requirements of the USDA Child and Adult Care Food Program (CACFP) whether or not the provider participates in the CACFP;

(c) the provider shall use the CACFP menus, the standard Department-approved menus, or menus approved by a registered dietician. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years;

(d) the current week's menu shall be posted for review by parents and the Department; and

(e) providers who are not participating or in good standing with the CACFP shall keep a six-week record of foods served at each meal and snack.

(3) The person who serves food to children shall:

(a) be aware of the children in their assigned group who have food allergies or sensitivities, and

(b) ensure that the children are not served the food or drink they are allergic or sensitive to.

(4) Children's food shall be served on dishes, napkins, or sanitary highchair trays, except an individual finger food, such as a cracker, that may be placed directly in a child's hand. Food shall not be placed on a bare table.

(5) Food and drink brought in by parents for their child's use shall be:

(a) labeled with the child's name or individually identified,

(b) refrigerated if needed, and

(c) consumed only by that child.

R430-90-17. Medications.

(1) All medications shall be inaccessible to children.

(2) All liquid refrigerated medications shall be stored in a separate leakproof container.

(3) All over-the-counter and prescription medications supplied by parents shall:

(a) be labeled with the child's full name,

(b) be kept in the original or pharmacy container,

(c) have the original label, and

(d) have child-safety caps.

(4) The provider shall have a written medication permission form completed and signed by the parent before administering any medication supplied by the parent for their child.

(5) The medication permission form shall include:

(a) the name of the child,

(b) the name of the medication,

(c) written instructions for administration, and

(d) the parent signature and the date signed.

(6) The instructions for administering the medication shall include:

(a) the dosage,

(b) how the medication will be given,

(c) the times and dates to administer the medication, and

(d) the disease or condition being treated.

(7) If the provider supplies an over-the-counter medication for children's use, the medication shall not be administered to any child without previous parental consent for each instance it is given. The consent shall be:

(a) prior written consent; or

(b) verbal consent if the date and time of the consent is documented, and is signed by the parent upon picking up their child.

(8) The caregiver administering the medication shall:

(a) wash their hands,

(b) check the medication label to confirm the child's name if the parent supplied the medication,

(c) check the medication label or the package to ensure that a child is not given a dosage larger than that recommended by the health care professional or manufacturer, and

(d) administer the medication.

(9) Immediately after administering a medication, the caregiver giving the medication shall record the following information:

(a) the date, time, and dosage of the medication given;

(b) any errors in administration or adverse reactions; and

(c) their signature or initials.

(10) The provider shall report a child's adverse reaction to a medication or error in administration to the parent immediately upon recognizing the reaction or error, or after notifying emergency personnel if the reaction is life-threatening.

(11) If the provider chooses not to administer medication as instructed by the parent, the provider shall notify the parent of their refusal to administer the medication before the time the medication needs to be given.

(12) The provider shall keep a six-week record of medication permission and administration forms on-site for review by the Department.

R430-90-18. Activities.

(1) The provider shall offer daily activities that support each child's healthy physical, social, emotional, cognitive, and language development.

(2) Daily activities shall include outdoor play as weather and air quality allow.

(3) Physical development activities shall include light, moderate, and vigorous physical activity for a daily total of at least 15 minutes for every 2 hours children spend in the program.

(4) For children 2 years old and older, the provider shall post a daily schedule that includes:

(a) activities that support children's healthy development; and

(b) the times activities occur including at least meal, snack, nap or rest, and outdoor play times.

(5) Toys, materials, and equipment needed to support children's healthy development shall be available to the children.

(6) Except for occasional special events, children's screen time on media such as television, cell phones, tablets, and computers shall:

(a) not be allowed for children 0 to 17 months old;

(b) be limited for children 18 months to 4 years old to 1 hour per day, or 5 hours per week with a maximum screen time of 2 hours per activity; and

(c) be part of a media plan that addresses the needs of children 5 to 12 years old.

(7) If swimming activities are offered or if wading pools are used:

(a) the provider shall obtain parental permission before each child in care uses the pool;

(b) caregivers shall stay at the pool supervising whenever a child is in the pool or has access to the pool, and whenever a wading pool has water in it;

(c) diapered children shall wear swim diapers whenever they are in the pool;

(d) wading pools shall be emptied and sanitized after use by each group of children;

(e) if the pool is over 4 feet deep, there shall be a lifeguard on duty who is certified by the Red Cross or other approved certification program any time children have access to the pool; and

(f) lifeguards and pool personnel shall not count toward the caregiver-to-child ratio.

(8) If offsite activities are offered:

(a) the provider shall obtain written parental consent before each activity;

(b) the required caregiver-to-child ratio and supervision shall be maintained during the entire activity;

(c) a first aid kit shall be available;

(d) children's names shall not be used on nametags, t-shirts, or in other visible ways; and

(e) there shall be a way for caregivers and children to wash their hands with soap and water, or if there is no source of running water, caregivers and children shall clean their hands with wet wipes and hand sanitizer.

(9) On every offsite activity, caregivers shall take the written emergency information and releases for each child in the group. The information shall include:

(a) the child's name,

(b) the parent's name and phone number,

(c) the name and phone number of a person to notify in case of an emergency if the parent cannot be contacted,

(d) the names of people authorized by the parents to pick up the child, and

(e) current emergency medical treatment and emergency medical transportation releases.

R430-90-19. Play Equipment.

(1) The provider shall ensure that children using play equipment use it safely and in the manner intended by the manufacturer.

(2) There shall be no entrapment hazards on or within the use zone of any piece of stationary play equipment.

(3) There shall be no strangulation hazards on or within the use zone of any piece of stationary play equipment.

(4) There shall be no crush, shearing, or sharp edge hazards on or within the use zone of any piece of stationary play equipment.

(5) There shall be no tripping hazards such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

(6) There shall be no heavy metal swings, such as animal-shaped swings, accessible to children.

(7) Cushioning for stationary play equipment shall cover the entire surface of each required use zone.

(8) If ASTM cushioning is used, the provider shall keep on-site for review by the Department the documentation from the manufacturer that the material meets ASTM Specification F1292.

(9) Stationary play equipment with a designated play surface that measures 6 inches or higher shall not be placed on a hard surface such as concrete, asphalt, dirt, or the bare floor, but may be placed on grass or other cushioning.

(10) Except for trampolines, stationary play equipment that is 18 inches or higher shall:

(a) have a 3-foot use zone that is free of hard objects or surfaces and that extends from the outermost edge of the equipment; and

(b) be stable and securely anchored.

(11) A trampoline shall be considered accessible to children in care unless the trampoline:

(a) is enclosed behind at least a 3-foot high, locked fence or barrier;

(b) has no jumping mat;

(c) is placed upside down, or

(d) is enclosed within at least a 6-foot-high safety net that is locked.

(12) An accessible trampoline without a safety net enclosure shall be placed at least 6 feet away from any structure or object onto which a child could fall, including play equipment, trees, and fences.

(13) An accessible trampoline with a safety net enclosure shall be place at least 3 feet away from any structure or object onto which a child could fall, including play equipment, trees, and fences if the net:

(a) is properly installed and used as specified by the manufacturer,

(b) is in good repair, and

(c) is at least 6 feet tall.

(14) An accessible trampoline shall be placed over grass, 6-inch-deep cushioning, or ASTM-approved cushioning. Cushioning shall extend at least 6 feet from the outermost edge of the trampoline frame, or at least 3 feet from the outermost edge of the trampoline frame if a net is used as specified in R430-90-19(13).

(15) There shall be no ladders or other objects within the use zone of an accessible trampoline that a child could use to climb on the trampoline.

(16) An accessible trampoline shall have shock-absorbing pads that completely cover its springs, hooks, and frame.

(17) Before a child in care uses a trampoline, the child's parent shall sign a Department-approved permission form that the provider keeps on-site for review by the Department.

(18) When a trampoline is being used by a child in care:

(a) a caregiver shall be at the trampoline supervising,

(b) only one person at a time shall use a trampoline,

(c) no child in care shall be allowed to do somersaults or flips on the trampoline, and

(d) no one shall be allowed to play under the trampoline

when it is in use.

R430-90-20. Transportation.

If transportation services are offered:

(1) For each child being transported, the provider shall have a transportation permission form:

(a) signed by the parent, and

(b) on-site for review by the Department.

(2) Each vehicle used for transporting children shall:

(a) be enclosed with a roof or top,

(b) be equipped with safety restraints,

(c) have a current vehicle registration,

(d) be maintained in a safe and clean condition,

(e) contain a first aid kit, and

(f) contain a body fluid clean up kit.

(3) The safety restraints in each vehicle that transports children shall:

(a) be appropriate for the age and size of each child who is transported, as required by Utah law;

(b) be properly installed; and

(c) be in safe condition and working order.

(4) The driver of each vehicle who is transporting children shall:

(a) be at least 18 years old;

(b) have and carry with them a current, valid driver's license for the type of vehicle being driven;

(c) have with them the written emergency contact information for each child being transported;

(d) ensure that each child being transported is in an individual safety restraint that is used according to Utah law;

(e) ensure that the inside vehicle temperature is between 60-85 degrees Fahrenheit;

(f) never leave a child in the vehicle unattended by an adult;

(g) ensure that children stay seated while the vehicle is moving;

(h) never leave the keys in the ignition when not in the driver's seat; and

(i) ensure that the vehicle is locked during transport.

(5) When the provider walks or uses public transportation to transport children to or from the facility, the provider shall ensure that:

(a) each child being transported has a completed transportation permission form signed by their parent,

(b) a caregiver goes with the children and actively supervises them,

(c) the caregiver-to-child ratio is maintained, and

(d) caregivers take each child's written emergency contact information and releases with them.

R430-90-21. Animals.

(1) The provider shall inform parents of the kinds of animals allowed at the facility.

(2) There shall be no animal on the premises that:

(a) is naturally aggressive;

(b) has a history of dangerous, attacking, or aggressive behavior; or

(c) has a history of biting even one person.

(3) Animals at the facility shall be clean and free of obvious disease or health problems that could adversely affect children.

(4) There shall be no animal or animal equipment in food preparation or eating areas during food preparation or eating times.

(5) Children younger than 5 years of age shall not assist with the cleaning of animals or animal cages, pens, or equipment.

(6) If school-age children help in the cleaning of animals or animal equipment, the children shall wash their hands immediately after cleaning the animal or equipment.

(7) Children and staff shall wash their hands immediately after playing with or touching animals, including reptiles and amphibians.

(8) Dogs, cats, and ferrets that are housed at the facility shall have current rabies vaccinations.

(9) The provider shall keep current animal vaccination records on-site for review by the Department.

R430-90-22. Rest and Sleep.

(1) The provider shall offer children in care a daily opportunity for rest or sleep in an environment with subdued lighting, a low noise level, and freedom from distractions.

(2) Nap or rest times shall not be scheduled for more than 2 hours daily.

(3) Each crib used by children shall:

(a) have a tight-fitting mattress;

(b) have slats spaced no more than 2-3/8 inches apart;

(c) have at least 20 inches from the top of the mattress to the top of the crib rail, or at least 12 inches from the top of the mattress to the top of the crib rail if the child using the crib cannot sit up without help;

(d) not have strings, cords, ropes, or other entanglement hazards on the crib or within reach of the child; and

(e) meet CPSC standards.

(4) Sleeping equipment may not block exits.

(5) Sleeping equipment and bedding items that are clearly assigned to and used by an individual child shall be cleaned and sanitized as needed and at least weekly.

(6) Sleeping equipment and bedding items that are not clearly assigned to and used by an individual child shall be cleaned and sanitized before each use.

R430-90-23. Diapering.

If the provider accepts children who wear diapers:

(1) Caregivers shall ensure that each child's diaper is:

(a) checked at least once every 2 hours,

(b) promptly changed when wet or soiled, and

(c) checked as soon as a sleeping child awakens.

(2) The diapering area shall not be located in a food preparation or eating area.

(3) Children shall not be diapered directly on the floor, or on any surface used for another purpose.

(4) The diapering surface shall be smooth, waterproof, and in good repair.

(5) Caregivers shall clean and sanitize the diapering surface after each diaper change, or use a disposable, waterproof diapering surface that is thrown away after each diaper change.

(6) Caregivers shall wash their hands after each diaper change.

(7) Caregivers shall place wet and soiled disposable diapers:

(a) in a container that has a disposable plastic lining and a tight-fitting lid,

(b) directly in an outdoor garbage container that has a tight-fitting lid, or

(c) in a container that is inaccessible to children.

(8) Indoor containers where wet and soiled diapers are placed shall be cleaned and sanitized each day.

(9) If cloth diapers are used:

(a) they shall not be rinsed at the facility; and

(b) they shall be placed directly into a leakproof container that is inaccessible to any child and labeled with the child's name, or placed in a leakproof diapering service container.

R430-90-24. Infant and Toddler Care.

If the provider cares for infants or toddlers:

(1) Each awake infant and toddler shall receive positive physical and verbal interaction with a caregiver at least once every 20 minutes.

(2) To stimulate their healthy development, the provider shall ensure that infants receive daily interactions with adults; including on the ground interaction and closely supervised time spent in the prone position for infants younger than 6 months of age.

(3) Caregivers shall respond promptly to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, a wet or soiled diaper, fear, teething, or illness.

(4) For their healthy development, safe toys shall be available for infants and toddlers. There shall be enough toys accessible to each infant and toddler in the group to engage in play.

(5) Mobile infants and toddlers shall have freedom of movement in a safe area.

(6) An awake infant or toddler shall not be confined for more than 30 minutes in any piece of equipment, such as a swing, high chair, crib, playpen, or other similar piece of equipment.

(7) Only one infant or toddler shall occupy any one piece of equipment at any time, unless the equipment has individual seats for more than one child.

(8) Infants and toddlers shall not have access to objects made of styrofoam.

(9) Each infant and toddler shall be allowed to eat and sleep on their own schedule.

(10) Baby food, formula, or breast milk that is brought from home for an individual child's use shall be:

(a) labeled with the child's name;

(b) kept refrigerated if needed; and

(c) discarded within 24 hours of preparation or opening, except for unprepared powdered formula or dry food.

(11) If an infant is unable to sit upright and hold their own bottle, a caregiver shall hold the infant during bottle feeding. Bottles shall not be propped.

(12) The caregiver shall swirl and test warm bottles for temperature before feeding to children.

(13) Formula and milk, including breast milk, shall be discarded after feeding or within 2 hours of starting a feeding.

(14) Caregivers shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter, and shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(15) Infants shall sleep in equipment designed for sleep such as a crib, bassinet, porta-crib or play pen. An infant shall not be placed to sleep on a mat, cot, pillow, bouncer, swing, car seat, or other similar piece of equipment unless the provider has written permission from the infant's parent.

(16) Infants shall be placed on their backs for sleeping unless there is documentation from a health care provider requiring a different sleep position.

KEY: child care facilities, licensed family child care
December 28, 2017 26-39
Notice of Continuation May 9, 2018

R501. Human Services, Administration, Administrative Services, Licensing.
R501-7. Child Placing Adoption Agencies.
R501-7-1. Authority and Purpose.

(1) This rule is authorized under Section 62A-2-106.

(2) This rule establishes standards for licensing agencies to provide child placing adoption services.

R501-7-2. Definitions.

(1) "Adoption" is defined in Section 78B-6-103.

(2) "Adoptive Parent" also means potential adoptive parent(s).

(3) "Child Placing" is defined in 62A-2-101.

(4) "Child Placing Adoption Agency" means an individual, agency, firm, corporation, association, or group children's home that engages in child placing for the purpose of finding a person to adopt a child or placing a child in a home for adoption.

(5) "Adoption Related Expenses" are defined in 76-7-203.

(6) "Adoption Services" is defined in 62A-4a-101(2).

(7) "Adoption Related Counseling" includes clinical counseling and psycho educational counseling that is specific to adoption and includes the counseling provided to pre-existing parent(s) as required by circumstances and 78B-6-119.

(8) "Agency" means a child placing adoption agency.

(9) "Allowable Adoptive Parent Information" is the information shared with birth parents regarding the adoptive parent(s). It may include:

(a) non-identifying information as follows:

(b) demographics, such as age, nationality, religious affiliation;

(c) health status;

(d) physical characteristics;

(e) educational achievement and profession;

(f) family characteristics, including marital history and length, sexual orientation, and any other children;

(g) support system;

(h) discipline preferences;

(i) reason for adopting;

(j) non-identifying information transparently disclosed by the Agency in advance; and

(k) any other identifying or non-identifying information agreed upon via a signed release of information by the adoptive parent.

(10) "Allowable Child/Pre-existing Parent Information" is the information shared with adoptive parent(s). It includes:

(a) Genetic and Social History defined 78B-6-103 and used as described in 78B-6-143 which shall include all items defined in 76B-6-103 inclusive of:

(i) birth family's medical, genetic, social, and mental health history;

(ii) information pertaining to changes in caregivers; and

(iii) a description of the child's race, cultural and ethnic background.

(b) Health History as defined 78B-6-103 and used as described in 78B-6-143 which shall include all items defined in 76B-6-103 inclusive of:

(i) Pre-natal, labor and delivery records for mother and infant;

(ii) medical records including the child's physical health, immunizations, and any known or potentially significant factors that may interfere with normal development or may signal any potential medical problems; and

(iii) non-identifying information transparently disclosed by the Agency in advance.

(c) Any other identifying or non-identifying information agreed upon via a signed release of information by the birth parent.

(11) "Client" a client of a child placing adoption agency is a pre-existing parent(s), adoptive parent(s) who have consented to, or been ordered by the court to receive adoption services and child(ren)placed or to be placed. For purposes of background screening in accordance with 62A-2-101 only, the adoptive parent(s) are also defined as "Associated with the Licensee".

(12) "Confinement" means the time period when a woman is hospitalized or medically restricted due to her pregnancy and childbirth. Individualized medical documentation is required to justify any confinement period longer than 6 weeks.

(13) "Directly Affected Person" is defined in 76-7-203.

(14) "Disruption" means the termination of an adoptive placement prior to the issuance of a final decree of adoption.

(15) "Foster Care" means family care in the residence of a foster parent who is licensed or certified pursuant to R501-12.

(16) "Genetic and Social History" is defined in Section 78B-6-103.

(17) "Health History" is defined in Section 78B-6-103.

(18) "High Needs Child" is as defined in 62A-4a-601.

(19) "Home Study" is equivalent to a pre-placement adoptive evaluation as outlined in 78B-6-128 and is the written assessment of an applicant's ability to be considered for adoptive placement.

(20) "Infant" for purposes of adoption means a child up to six months in age at placement.

(21) "Intercountry Adoption" is when an individual or couple becomes the legal and permanent parents of a child who is a habitual resident of another country and is governed by the laws of both countries.

(22) "Legal Risk Placement" means at the time the placement is made, one or more of the child's biological parents or putative legal parents has not executed a legal relinquishment or consent to the adoption, their parental rights have not been lawfully terminated, or they have expressed their intention to exercise parental rights or contest the adoption.

(23) "Match" means the identification of a specific potential adoptive child with a specific potential adoptive family.

(24) "Mental Health Therapist" is defined in Section 58-60-102.

(25) "Office" means the DHS Office of Licensing.

(26) "Pre-existing Parent" is defined in 78B-6-103.

(27) "Special Needs Child" means there is known evidence that:

(a) the child is 5 years of age or older;

(b) the child is under the age of 18 with a physical, emotional or mental disability; or

(c) the child is a member of a sibling group placed together for adoption.

(28) "Unmarried Biological Father" is defined in Section 78B-6-103(17).

R501-7-3. Legal Requirements.

(1) In addition to this rule, all child placing adoption agencies shall comply with R495-876, R501-1, R501-2-1 through R501-2-5, R501-2-8 through R501-2-14, R501-14; Title 58, Chapter 60; Title 62A, Chapters 2 and 4a; Section 76-7-203; 78A-6; 78B-6; 78B-13; 78B-15; and all other applicable local, State and Federal laws.

(2) Child placing adoption agencies that do not arrange housing for birth mothers are exempt from R501-2-5, 10, 11, and 12.

(3) A child placing adoption agency shall:

(a) be legally responsible for the child following

relinquishment of the child to the adoption agency until the adoption is finalized, unless a court of competent jurisdiction or applicable law places legal responsibility with another party, in accordance with Section 78B-6-134;

(b) comply with the Indian Child Welfare Act;

(c) obtain a child placing foster license and comply with R501-12 if providing foster care;

(d) obtain a residential support license and comply with R501-22 if providing residential support services to pre-existing parent(s);

(e) comply with the Interstate Compact on the Placement of Children, in accordance with Section 62A-4a-701 et seq; and

(f) ensure that its employees, contractors, volunteers and agents comply with all laws relating to adoption services.

(4) The Division of Child and Family Services shall additionally comply with R512-40 for recruitment, home study and approval; R512-41 for qualifying and adoptive family and adoptive placement; R512-302 for responsibilities pertaining to out of home caregivers and any other section of 62A-4a and R512 that governs the provision of adoptive services to child welfare clients served by the Division of Child and Family Services.

(a) The aforementioned child welfare statue and rule shall supersede this rule when in conflict for child welfare clients served by the Division of Child and Family Services.

R501-7-4. Administrative Ethics and Responsibilities.

(1) Child placing adoption agencies shall:

(a) identify and strictly adhere to accurate accounting practices, including all fee requirements of this rule;

(b) always act in the best interest of a child;

(i) best interest determinations are made by considering a number of factors related to the child's circumstances including age and developmental needs and the parent or caregiver's circumstances and capacity to parent the child to adulthood and shall consider the pre-existing parent(s)' wishes when parental rights are voluntarily relinquished;

(c) provide services and adhere to ethical practices that support and comply with all client rights and responsibilities;

(d) develop and comply with processes that are free from fraud, duress or undue influence and avoid and mitigate conflicts of interest in order to preserve the protections of clients to include:

(i) not give preferential treatment to its board members, employees, volunteers, agents, consultants, independent contractors, donors, or their respective families with regard to child placing decisions;

(ii) not accepting or soliciting donations from an adoptive family that is under consideration for placement of a child or pending finalization of an adoption;

(A) a generalized mass solicitation through newsletters or the media shall not constitute a violation under this rule;

(iii) not coercing or incentivizing pre-existing parent(s) to make a plan of adoption or to relinquish their parental rights;

(iv) not permitting its employees, volunteers, agents, consultants, or independent contractors to provide adoption services to both the pre-existing parent(s) and the adoptive parent(s) unless all parties are made aware of potential conflicts of interest and sign a voluntary consent;

(v) inform clients that they are free to select independent attorneys and other non-child placing adoption services;

(A) client bears the responsibility to select a competent provider and their choice may affect costs incurred;

(vi) not referring any individual to services in which the agency's board members, volunteers, employees, agents, consultants, independent contractors, or their respective families are engaged, without first disclosing potential conflicts of interest and informing said individuals that they are free to select independent adoption service providers; and

(vii) require members of the governing body to disclose, in writing, to the chairperson of the governing body and the Office of Licensing, any direct or indirect financial interest in the agency;

(e) manage and share information while still preserving confidentiality when required. This includes:

(i) documenting information shared with potential adoptive parent(s) regarding unknown pre-existing parent(s), Indian Child Welfare Act, and any known information that could potentially disrupt an adoptive placement;

(ii) respond to requests for information from clients and former clients within 30 days and document all requests for information or actual sharing of information to/from birth families, adoptees, adoptive families, and others;

(iii) provide non-identifying information in client files that can allowably be shared, and shall comply with previous releases and established policies;

(iv) the agency shall refer clients to the Mutual-Consent Voluntary Adoption Registry through Department of Health Vital Records if adult adoptees or birth family members want to reunite; and

(v) in more urgent circumstances that could have serious implication to any client or prior client, the agency will utilize prior contact and emergency contact information, as well as engage in simple social media and search engine inquiries to locate and communicate with former clients;

(vi) agencies may engage in a fee based more extensive service to search if desired;

(vii) the agency may share information with third party search providers only if consent has been given by the affected party;

(viii) not misrepresent or withhold any facts or allowable adoptive parent(s) or child/pre-existing parent(s) information relating to its services, involved individuals, or the applicable law;

(f) accept and utilize third party assessments, evaluations, references, home studies or pre-placement evaluations only if received directly from the document's author;

(g) preserve the confidentiality and content of client files;

(h) with respect to adoption services an agency shall refer to or utilize only agencies, entities or individuals that are authorized to provide the service by the laws of this state or the jurisdiction in which that agency, entity or individual performs the service;

(i) provide at least 30 days' prior written notice to the Office of Licensing that the agency is:

(i) dissolving or ceasing to provide child placing services; or

(ii) implementing significant changes in adoption services provided, such as adding or eliminating intercountry adoption.

(j) Provide copies of all document signed by clients directly to those clients upon request.

(2) In addition to policy and procedure requirements outlined in R501-2, agencies shall develop and adhere to the following adoption-related policies and procedures:

(a) a process regarding how to transfer a relinquishment to another agency in compliance with 78B-6-124 (7);

(b) a process to identify a high needs child as defined in 62A-4a-601, and once identified comply with 62A-4a-609 including disclosure and training to adoptive parent(s);

(c) a process for the temporary placement of children awaiting adoptive placement for over 30-days;

(d) a process and standards for the evaluation and approval or denial of an adoptive home study or pre-

placement evaluation;

(e) process and standards for the evaluation and approval or denial of applications from prospective adoptive parent(s);

(f) a written plan for contact, file maintenance, and record retrieval in the event that the agency ceases to provide child placement adoption services;

(i) this plan may involve a secondary licensed or file retention entity;

(g) a process for identifying the pre-existing parent(s)' utilization of alternative payment sources including any public assistance that may defray adoptive parent(s) costs;

(h) policy identifying what is allowable child/pre-existing parent(s) information to be shared with potential adoptive parent(s), including the development of releases of information as needed;

(i) policy identifying what is allowable adoptive parent(s) information to be shared with pre-existing parent(s) including the development of releases of information as needed;

(j) process for refunds to include refunding over-paid fixed costs for birth parent expenses and/or the utilization of over-paid estimated costs toward other birth parent expenses; and

(k) written policy to be provided to the adoptive parent(s) outlining how the match is determined, its relationship to any fees, and how it is managed by the agency.

R501-7-5. Staffing Requirements.

(1) A child placing adoption agency shall have at least one social work supervisor responsible for directly supervising all staff and volunteers who provide adoption services to clients.

(2) If an Executive Director is serving as a social work supervisor, they shall not supervise more than four staff and volunteers who provide adoption services to clients.

(3) Each social work supervisor shall be licensed in this state as a mental health therapist, shall comply with the Utah Mental Health Professional Practice Act, and shall have at least one year of full time paid professional experience in a licensed child placing adoption agency.

(4) A social work supervisor may not supervise more than eight staff and volunteers who provide adoption services to clients.

(5) An executive director shall have at least one year of full time paid experience in a licensed child placing adoption agency.

(6) All staff that provide services shall be trained a minimum of 20 hours of pre-service training, prior to independently providing direct client services, and 12 hours annual in-service training.

(a) Training content shall include:

(i) agency policy and procedures;

(ii) adoption ethics, laws, and rules;

(iii) the provision of professional and trauma informed adoption practices; and

(iv) any evaluations they will be performing.

(b) Staff will be supervised for adherence to training topics.

R501-7-6. Fees and Disclosures.

(1) A child placing adoption agency may charge adoptive parent(s) agency fees which includes administrative and professional services provided on behalf of the adoptive parent(s), including but not limited to:

(a) agency overhead;

(b) personnel;

(c) background screenings for adoptive parent(s) and staff;

(d) training;

(e) insurance;

(f) legal services for the agency;

(g) advertising/recruiting;

(h) post-placement visit;

(i) agency staff support throughout pregnancy, birth, placement and post placement;

(j) home studies, if completed by the agency; and

(k) home study updates, if completed by the agency:

(i) copies of purchased home studies and updates are to be provided to the subjects of these documents upon request.

(2) An agency fee must be itemized to clarify what is included or specifically excluded.

(3) Any fee billed inclusive of an agency fee shall not be billed additionally outside of that agency fee.

(4) An agency may charge and accept payment from the prospective adoptive parent(s) only for reasonable, and actual outstanding adoption related expenses of the pre-existing parent(s) which are itemized outside of any agency fee for service except as described in Section 5 below. These expenses are limited to the following:

(a) additional counseling;

(b) adoption related legal fees to utilize an independent attorney for the adoption;

(c) maternity expenses limited to pregnancy related clothing, pre-natal vitamins, other non-medical pregnancy related needs;

(d) medical and hospital expenses limited to pregnancy and childbirth related medical expenses for the mother/child; and

(e) temporary living expenses limited to the duration of the pregnancy and confinement of the pre-existing parent(s) or directly affected person and include only:

(i) food;

(ii) transportation including bus passes, gasoline, car maintenance, car payments, and taxi/ride share services;

(iii) housing;

(iv) utilities and telephone;

(v) reasonable and minimal incidentals;

(vi) sufficient apparel for the weather and circumstances;

(vii) daily living household supplies;

(viii) travel between the mother's or father's home and the location where the child will be born or placed;

(f) any other expense not explicitly outlined in this rule shall be reasonably related to the adoption, incurred for a reasonable amount and not paid for the purpose of inducing a birth parent to place the child for adoption. If such fees are charged or paid, the agency shall notify the Office of Licensing.

(5) An agency may charge an adoptive or potential adoptive parent(s) for either the actual adoption related expenses in regard to the pre-existing parent(s) and directly affected individuals or a fixed amount estimate of adoption related expenses.

(a) the agency must disclose whether their adoption related expenses charged are actual or estimated and share the agency policy on refunds or re-appropriation prior to charging adoptive parent(s).

(b) If the agency charges the actual adoption expenses they must still be capped at the maximum amount outlined in the disclosure. Any over-collected actual expenses must be reimbursed.

(c) If the agency charges a fixed amount for adoption related expenses, it must be outlined in the disclosure and capped at that amount. It shall be disclosed whether or not the flat adoption related expenses are or are not refundable in the disclosure.

(d) Over collection of adoption related expenses that are

not refunded is only permissible with estimated adoption related expenses if:

(i) any overage will be used to support the adoption related expenses of another adoption;

(ii) adoptive parent(s) are informed in advance that their payments could contribute to the support of other pre-existing parent(s); and

(iii) any over-collected adoption related expenses are never to be used for the benefit of the agency or anyone associated with the licensee or as a payment to a pre-existing parent(s), and may only be used for other documented pre-existing parent(s) adoption related expenses.

(6) A child placing adoption agency shall provide a written disclosure statement of all agency fees and fixed or estimated adoption related expenses that prospective adoptive parent(s) may incur before the agency accepts any payments, or enters into any agreement with the prospective adoptive parent(s).

(a) The written disclosure shall identify and itemize:

(i) each fee and the services associated with each fee; and

(ii) each adoption-related expense.

(b) If providing only a fee range, additionally provide the average cost for each itemized fee and each adoption-related expense for the preceding two fiscal years, and the maximum amount that may be charged for each fee and adoption related expense.

(c) The written disclosure shall identify any fee that is non-refundable.

(d) The written disclosure shall be signed and dated by the prospective adoptive parent(s) and an agency representative and maintained in the adoptive parent(s) file.

(7) An agency shall not charge prospective adoptive parent(s) for any fees or adoption related expenses that the client obtained independently or were paid for by another entity, including any public assistance.

(8) An agency shall not charge adoptive parent(s) for any fee that was not included in the written disclosure without providing written agreement and justification approved by the prospective adoptive parent(s), and either the Office of Licensing or the Court.

(9) An agency shall not directly or indirectly offer, give, or attempt to give money or another thing of value in order to induce or influence pre-existing parent(s) in the adoption process.

(10) The agency shall retain documentation for any adoption related expense exceeding twenty five dollars, which may include receipts, lease agreements, signed fund transfers to pre-existing parent(s) in reasonable amounts in order to cover basic daily needs such as food and household supplies, and any other pertinent documentation.

(11) An agency shall not charge the adoptive parent(s) for the temporary living expenses of any person other than the pre-existing parent(s) or directly affected persons.

(12) An agency shall not charge the adoptive parent(s) for any expenses that are post-confinement, with the exception of post-placement counseling if agreed upon.

(13) A birth mother who decides not to place her child shall not be responsible for reimbursing the costs of any goods or services provided to her by the prospective adoptive parent(s) or the child placing adoption agency during her pregnancy unless they are first convicted of fraud.

(14) Child placing adoption agencies that provide or pay for pre-existing parent(s)' transportation to the State of Utah shall also ensure that the pre-existing parent(s)' return transportation to their home state is provided, regardless of whether the pre-existing parent(s) decides to relinquish parental rights.

(15) The agency shall create an affidavit of itemized accounting of the actual fees and adoption related expenses paid by the adoptive parent(s).

(a) The agency shall utilize an affidavit form provided by the Office of Licensing or a form inclusive of the Office's form content.

(b) The affidavit shall be executed as follows:

(i) a copy shall be signed by the adoptive parent(s);

(ii) all adoption related expenses shall be itemized and includea declaration that Section 76-7-203 has not been violated;

(A) itemized expenses in the affidavit shall align with those verified by pre-existing parents in R501-7-11(3)(n);

(iii) the affidavit shall include a declaration of all gifts, property, or other items that have been or will be provided to the pre-existing parent(s), including the source of the gifts, property or other items;

(iv) the affidavit shall include a declaration of the state of the residence of the pre-existing parent(s) and the prospective adoptive parent(s);

(v) the affidavit shall include a declaration of all public funds used for any medical or hospital costs in connection with the pregnancy, delivery of the child, or care of the child; and

(vi) the affidavit shall include the signature of an agency representative with adequate knowledge to verify the contents of the affidavit are accurate and complete.

R501-7-7. Services to Pre-existing Parents.

(1) The Division of Child and Family services shall comply with 62A-4a and R512 in regards to services provided to pre-existing parent(s), including disclosing all allowable adoptive parent(s) information to the birth family, except as governed by R512-41-11 for the Division of Child and Family Services.

(2) Child placing adoption agencies other than the Division of Child and Family Services shall:

(a) offer pre-existing parent(s) all available allowable adoptive parent(s) information unless waived in full or part by the pre-existing parent(s) as early in the matching process or consent to adopt process as reasonable;

(b) per 78B-6-119, accept voluntary relinquishments only after offering a minimum of three sessions of adoption related counseling to any person who is considering relinquishing a child for adoption prior to accepting the consent or relinquishment. This counseling shall include at a minimum:

(i) parental rights prior to relinquishments;

(ii) alternative options for the child and pre-existing parent(s); and

(iii) adoption issues including grief/loss;

(c) provide complete and accurate information to the pre-existing parent(s) regarding their decision to consent to adopt or relinquish;

(d) meet in-person, via video, or via telephone with the pre-existing parent(s) to review the designated adoption orientation form provided by the Office;

(i) pre-existing parent(s) will be given the opportunity for questions/clarifications before initialing and signing the document;

(ii) a pre-existing parent(s) under the age of 18 shall meet privately with the adoption worker unless they waive the option to meet privately;

(e) ensure the written consent to relinquishment includes language acknowledging that the pre-existing parent(s) was afforded adoption related counseling, and that the relinquishment is completely voluntary, permanent and irrevocable once signed under Utah Law;

(i) a child placing adoption agency shall wait at least 24 hours after the birth of a child before taking the birth mother's

relinquishment of parental rights or legal consent to the adoption of her child, in accordance with Section 78B-6-125 or the laws of the state governing the relinquishment.

(3) If an agency arranges housing for pre-existing parents, assure that such housing complies with the following minimum standards:

(a) housing is in compliance with health, fire, zoning, and other applicable laws and regulations;

(b) if the housing meets the definition of Residential Support (R501-22) the agency shall obtain a Residential Support license through the Office of Licensing;

(c) housing is clean, well-maintained and adequately furnished;

(d) birth mothers shall not share bedrooms with other birth mothers;

(e) laundry equipment and supplies shall be available; and

(f) adequate nutritious food, or resources to obtain food, is available.

(7) The agency shall be responsible to encourage and facilitate prenatal and medical care of the birth mother.

(8) A child placing agency shall inform pre-existing parent(s) of their information that will be shared with adoptive parent(s) including their detailed health history and a genetic and social history in accordance with Section 78B-6-143.

(9) A child placing adoption agency shall inform pre-existing parent(s) of Utah's Mutual Consent Voluntary Adoption Registry, Section 78B-6-144.

(10) A child placing adoption agency shall assist the birth and adoptive parent(s) in creating a post-placement contact agreement, including:

(a) whether the birth parent wants to disclose their identity to the adoptee or the adoptive family;

(b) contact about or from the child or parents, directly or indirectly, in the future and how that will occur;

(c) that such agreements are non-binding except in certain public child welfare cases; and

(d) Contact agreements shall be updated only when initiated by the previous clients and maintained in case file records.

R501-7-8. Services to Children.

(1) Assessment.

(a) A needs assessment for the child shall be completed to obtain information and identify characteristics which should be given consideration in selecting and preparing a child for an adoptive family and promote appropriate placement for the child.

(b) The needs of the child will be determined through this assessment and shall evaluate for high needs or special needs as defined in this chapter.

(c) A report(s) regarding all assessment information shall be given to the adoptive parent(s) prior to placement.

(d) If the child is an infant that is not defined as special needs or high need, information shall be obtained from the pre-existing parent(s) and any legal guardian to include all allowable child/pre-existing parent(s) information as defined in this chapter. This information should include:

(i) If the child is older than six months the same information from Section 2 above, shall be obtained from the birth or legal parent;

(ii) additional information shall be obtained using an interdisciplinary approach which may include input from: caseworkers, therapists, pediatricians, teachers, previous caregivers, foster parents, nurses, psychologists, and other consultants.

(e) The assessment shall additionally include:

(i) information pertaining to changes in caregivers including foster care, separation experiences and description of the child's behaviors;

(ii) all evaluations regarding a child's development including; physical, social, emotional, mental health and cognitive;

(iii) the child's educational records, and any special educational needs;

(iv) talents and interests; and

(v) if the child is identified as having special needs or is a high needs child as defined in 62A-4a-601, specific training for prospective adoptive parent(s) is statutorily mandated.

(2) Recruitment of adoptive families.

(a) Child placing adoption agencies shall recruit adoptive families that are able to meet the needs of children the agency serves.

(b) If the family states they would be open to a child with special needs or high needs, they will complete training specific to identified needs and in compliance with 62A-4a-609-2.

(3) Matching.

(a) The selection of the adoptive family and the adoptive family's decision to adopt a specific child shall be based on the following:

(i) the child's assessment;

(ii) adoptive family's ability to meet the identified and potential needs of the child;

(iii) the wishes of the pre-existing parent(s) who voluntarily relinquish their rights, the adoptive parent(s), and when applicable, the child, shall be considered.

(4) Placement.

(a) A child placing adoption agency shall attempt to place siblings together when appropriate for the children's needs and pre-existing parent(s) wishes.

(b) A child shall be placed with the adoptive family at the earliest time possible after being freed for placement or adoption.

(c) A child placing adoption agency shall have an individualized written adoptive placement and transition plan that includes the child's current caregivers, the adoptive parent(s), and the child, to facilitate the child's transition into the adoptive family and ensures the family's ability to meet the child's needs.

(i) The transition plan shall consider and include as applicable:

(A) the child's stated preferences;

(B) the child's identified religion;

(C) identification of services the family and child may need based on assessment information;

(D) statement of who is responsible for identifying services and who is responsible for paying for such services;

(E) time frames for transition that consider and accommodate the identified and potential needs of the child in preparing the child for placement; and

(F) developmentally appropriate counseling with the child to address to mitigate transition related emotional trauma.

(d) If a child placing adoption agency other than DCFS assumes custody of a child and the child is not able to be directly placed in an adoptive placement:

(i) the agency may temporarily place the child in a currently home studied adoptive home for up to 30 days; or

(ii) if the child needs temporary care for more than 30 days, the agency shall contract with a licensed foster care program or obtain a license to provide foster care services for children in its custody, in accordance with R501-12.

(e) A private child placing adoption agency shall obtain a copy of the foster home or facility license prior to placing a child, and shall retain the license in the child's case file.

(f) If a child is not placed within 30 days after

relinquishment or after determination of availability for adoption by the court, the agency shall document its efforts to screen the child with other child placing agencies and shall list the child with local, regional, and inter-state adoption exchanges

(5) Post Placement Service.

(a) The child placing agency shall monitor and support each placement until the adoption is final.

(b) An agency social worker shall contact the adoptive family within 2 weeks of the placement to offer support. This does not count towards the pre-finalization visit.

(c) Prior to finalization, a minimum of one in-home supervisory visit with both parents and child present shall be made by an agency social worker:

(i) to assess that the child and family are adjusting and child is receiving necessary care, nurturance, medical care, and services as needed.

(d) The agency shall monitor who has legal and physical responsibility for the child at all times.

(6) Disruption.

(a) If a disruption occurs, a child placing agency shall provide for the care of the child.

(i) The placement shall:

(A) be in a currently home studied adoptive home for no longer than 30 days unless it is the identified subsequent adoptive placement;

(B) be in a licensed or certified foster home governed by Rule R501-12; or

(C) be approved by a judge.

R501-7-9. Services to Adoptive Parents.

(1) The Division of Child and Family services shall comply with 62A-4a and R512 in regards to services provided to adoptive parent(s), including disclosing all allowable child/pre-existing parent(s) information to the prospective adoptive family.

(2) A child placing adoption agency other than the Division of Child and Family Services shall:

(a) provide the adoptive parent(s) orientation form to potential adoptive parent(s) who shall sign and initial the form and shall be offered the opportunity to ask clarifying questions prior to match or payment of any fees in excess of $500.00;

(i) adoptive parent(s) will be given the opportunity for questions/clarifications before initialing and signing the document;

(b) provide prospective adoptive parent(s) with a written description of their services, fees, policies and procedures;

(c) explain the adoption process and the pre-existing parent(s)' rights, including the status of any putative father, to the prospective adoptive parent(s);

(i) a copy of the Office provided pre-existing parent(s) adoptive orientation form shall be provided to adoptive parent(s) for information purposes with an acknowledgement that they have discussed and received this information;

(d) provide training as outlined in 62A-4a-609 in regards to high needs child, as required;

(e) per 62A-4a-607 the agency shall inform each prospective adoptive parent(s) that the state has children available for adoption and that adoption from the Division of Child and Family Services incurs no agency fees and adoption assistance may be available when adopting children in the custody of the state;

(f) inform adoptive parent(s) that when a child has a disability, the child may be eligible for SSI benefits and/or federal adoption assistance. The Agency shall refer the potential adoptive parent(s) to coordinate with the Division of People with Disabilities for further disability resources and with Division of Child and Family Services to apply for potential federal adoption assistance; and

(g) a child placing adoption agency shall inform prospective adoptive parent(s) of Utah's Mutual Consent Voluntary Adoption Registry, Section 78B-6-144.

(3) A home study completed by an adoption service provider as outlined in 78B-6-128-2(C) for each adoptive family shall include:

(a) a recommendation to the court regarding the suitability of the prospective adoptive parent(s) or placement of a child;

(b) a description of in-person interviews with the prospective adoptive parent(s), prospective adoptive parent(s)', children, and other individuals living in the home;

(c) criminal background and child abuse screening of adoptive applicants and other adults living in the home in accordance with R501-14, and Sections 53-10-108(4) and 78B-6-128;

(i) agencies must separately obtain the child abuse registry report through the Division of Child and Family Services in Utah and any out of state comparable entities in order to show compliance with 78B-6-128;

(d) written descriptions from at least two non-related and one related references regarding the character and suitability of the prospective adoptive parent(s) for parenting an adoptive child;

(e) a medical history and a doctor's report, based upon a doctor's physical examination of each applicant, made within two years prior to the date of the application;

(f) description of inspections of the home, to determine whether sufficient space and facilities exist to meet the needs of the child and whether basic health and safety standards are maintained; and

(g) description of documented income for each adoptive applicant and a written plan for adoptive applicants who work outside the home addressing how they shall provide security and responsible child care to meet individual child needs.

(4) The adoptive applicants shall be informed, in writing, and within ten business days after the decision is made, as to the acceptance or the reasons for the denial of their home study.

(a) The agency shall provide applicants with a written copy of the agency's appeal process, which shall include the right to submit a written appeal and request for reconsideration, upon order of the court in accordance with Section 78B-6-128.

(5) A child placing adoption agency shall select applicants who:

(a) are able to provide the continuity of a caring relationship;

(b) are informed with regard to a child's ethnic, religious, cultural, and racial heritage; and

(c) understand the needs of a child at various developmental stages.

(6) The agency's policies regarding the consideration of religion and marital status in the selection of adoptive families shall be clearly stated in its initial consultation with prospective adoptive parent(s). This disclosure shall also be clearly stated in writing on the adoptive parent(s)' application for services forms.

(7) The agency shall verify that an applicant's income is sufficient to provide for a child's needs.

(8) The agency shall not reject an applicant solely based upon the applicant's choice to work outside the home. Applicants who work outside the home shall provide a written plan describing how they shall provide security and responsible child care to meet the individual child's needs.

(9) Except when authorized by court order pursuant to Section 78B-6-128, a child placing adoption agency shall not place a child in an adoptive home until the home study and

each adult's criminal and abuse background screenings have been approved.

(10) Matching.

(a) Disclose all allowable child/pre-existing parent(s) information to the prospective adoptive family.

(b) Ensure known special needs are disclosed and referrals and information are provided as necessary to prepare the family to meet the long term needs of the child.

(c) A child placing adoption agency shall not make a legal risk placement unless the prospective adoptive parent(s) have first given their written consent, indicating that they have been fully informed of the specific risks involved.

(d) Develop the capacities of the parents to meet the ongoing needs of the child according to the child's needs and the transition plan.

(e) Matches may only occur once sufficient non-identifying information sharing has occurred to allow for informed decision making by both parties.

(11) Placement.

(a) A child placing adoption agency shall provide continuing support to the child and the adoptive family after placement and before finalization of the adoption, to include:

(i) providing or making referrals to services such as counseling, crisis intervention, respite care, and support groups; and

(ii) monitoring the child's adjustment and development.

(b) The frequency of home visits, office contacts, telephone calls, and other contacts by the child placing adoption agency shall depend on the needs of the child and the adoptive family and may vary depending whether the child is an infant, an older child, or a child with medical or other challenges, and whether the adoptive parent(s) are faced with unanticipated problems.

(c) The first contact after placement shall take place within two weeks of placement.

(d) A minimum of one face-to-face supervisory home visit after the initial two week contact shall take place before finalization.

(12) Disruption.

(a) The agency may remove the child for the adoptive placement due to circumstances that may impair the child's security in the family or jeopardize the child's physical and emotional development, including but not limited to incompatibility; mental illness; seriously incapacitating illness; the death of one of the adoptive parent(s); the separation or divorce of the adoptive parent(s); the abuse, neglect, or rejection of the child; the lack of attachment to the child; or a request by the adopting parents to remove the child.

(b) If a child is removed from an adoptive home by a child placing adoption agency, the adoptive parent(s) shall be entitled to appeal the removal decision.

(i) The agency shall provide the adoptive parent(s) written notice of their right to appeal and the procedure for appeal.

(13) Finalization.

(a) A child placing adoption agency shall provide assistance in finalizing the adoption.

R501-7-10. Intercountry Adoptions.

(1) All intercountry adoptions are considered high needs per 62A-4a-601 and require compliance with 62A-4a-609.

(2) In addition to complying with all other rules, laws and statutes regarding adoption, a child placing adoption agency that is a primary provider of inter-country placement services shall document that it has complied with all applicable laws and regulations of the United States and the child's country of origin, and including:

(a) the agency is Hague accredited by a Department of State approved accrediting body;

(b) the child is legally freed for adoption in the country of origin;

(c) the agency verifies and maintains documentation and agreements regarding the credentials and qualifications of all associates working in their behalf in foreign countries; and

(d) information was provided to the adopting parents about naturalization and US citizenship proceedings.

(3) A child placing adoption agency that provides intercountry adoption services shall:

(a) comply with all fee requirements from R501-7-6;

(b) establish additional policies and procedures to be provided to the adoptive parent applicant(s) regarding:

(i) agency and adoptive parent(s) responsibilities regarding intercounty adoption;

(ii) post adopt responsibilities;

(iii) identification and disclosure of medical risks in intercountry adoption;

(iv) service planning; and

(v) establish an official and recorded method of fund transfers to avoid the use of direct cash transactions to pay for adoption services in other countries;

(c) additionally include in the written agency fee disclosure required in R501-7-6 the following:

(i) itemization of all services and total cost of providing adoption in the child's country of origin and disclosure of whether the fees are paid directly or through the agency to include:

(A) foreign country/legal fees;

(B) cost of documents required by the agency and by the foreign government as well as costs of apostille or authentication of these documents;

(C) required fees paid to USCIS;

(D) estimated costs of travel to the foreign country;

(E) translation of documents provided to the foreign adoption officials;

(F) costs of child care;

(G) parent education costs;

(H) adopted child passport;

(I) USCIS-required medical exam costs;

(J) immunization expenses; and

(K) any other miscellaneous fees that may apply;

(ii) itemization of any mandatory payments to child welfare programs in the country of origin including:

(A) any fixed contributions amounts;

(B) intended use of payments; and

(C) manner in which the transaction will be recorded and accounted for;

(d) provide all applicants with written policies governing refunds;

(e) notify adoptive applicants within ten business days when information is received that a foreign country is suspending its adoption program;

(f) verify and maintain documentation regarding the credentials and qualifications of agents working in their behalf in foreign countries; and

(g) in addition to adoptive parent(s) and child file content requirements in R501-7-11, intercountry adoption files shall also include:

(i) signed agency agreements and/or contracts;

(ii) USCIS approval to proceed with a foreign adoption;

(iii) copies of adoption documents required by the adoption officials in the foreign country;

(iv) copies of all child information provided by the foreign country;

(v) post-adoption reports required by the foreign country; and

(vi) copy of the adoption finalization from the foreign country.

R501-7-11. Administrative Documentation.

(1) Provisions of this section do not apply to the Division of Child and Family Services as they governed by their own rules, statutes, and documentation requirements that are more restrictive and extensive than those outlined here, including 78A-6-306 Shelter Hearing, 307 Placement, 310 Adjudication hearing, 312 Reunification services, 314 Permanency hearing and 316 Termination of parental rights.

(2) Adoptive Parent(s) Files shall cross-reference all related files and shall contain:

(a) signed and dated application for service including agency disclosure of religion and marital status polices on the application;

(b) signed and dated adoptive parent(s) adoptive orientation form as required and provided by DHS Office of Licensing;

(c) proof that the content of the pre-existing parent(s) adoption orientation form was provided to adoptive parent(s);

(d) proof of compliance with 62A-4a-607 regarding the availability of children in state custody for adoption;

(e) itemized written fee disclosure statement as described in Section R501-7-6 signed and dated by prospective adoptive parent(s) and agency representative prior to entering any agreements as outlined in;

(f) proof of identification or documented due diligence to determine identity;

(g) copies of marriage certificates, divorce papers, custody and visitation orders, proof of US citizenship;

(h) proof that all allowable child/pre-existing parent(s) information was shared with adoptive parent(s);

(i) voluntary consent agreement acknowledging conflict of interests per R501-7-4 (A);

(j) documentation and itemization of all reasonable and actual adoption-related expenses that exceed $25.00 charged to the adoptive parent(s) as outlined in R501-7-6 to include:

(i) written agreement and justification for any expenses charged to the prospective adoptive parent(s) outside the fee disclosure statement;

(ii) affidavit signed by adoptive parent(s) and agency representative outlining itemized actual expenditures made on behalf of the pre-existing parent(s) as outlined in fees disclosures section R501-7-6;

(k) record of all payments received and disbursements made;

(l) home study/pre placement evaluation as outlined in R501-7-9 and 78B-6-128;

(i) and including a child abuse registry report obtained from all applicable child welfare agencies per R501-7-9(3)(c)(i);

(m) case notes describing all services provided;

(n) physician report for each prospective adoptive parent;

(o) background clearances for prospective adoptive parent(s) and all adults over age 18 residing in the home;

(p) proof of ability to provide health care for an adopted child;

(q) 4 letters of reference;

(r) documentation of all requests for information or sharing of information to include:

(i) post adopt information exchange with pre-existing parent(s); and

(ii) post adopt contact terms with pre-existing parent(s);

(s) transition plan for child transition to adoptive placement;

(t) written consent to legal risk placement if applicable;

(u) documentation of the initial agency contact with the adoptive family within 2 weeks of placement;

(v) documentation of one in-home face-to-face supervisory visit prior to finalization post two week visit;

(w) original or certified copy of the order of adoption;

(x) referral to Mutual Consent Registry;

(y) signed declaration of each potential birth father to be filed with the court per 78B-6-110.5; and

(z) any other documentation required in order to show compliance with this Rule.

(3) Pre-existing parent(s) files shall cross reference all related files and shall contain:

(a) signed and dated application for service to include declaration of birth mother's husband or any alleged father's relationship to the child in accordance with 78B-6-110.5;

(b) proof of identification or documented due diligence to determine identity;

(c) signed and dated pre-existing parent(s) adoptive orientation form as required and provided by DHS Office of Licensing;

(d) declaration, certificate or written statement of putative registry search and disclosure of search results from each state identified by the birth mother in compliance with 78B-6-110.5 Sections 1 and 2; and any communications with potential birth fathers;

(e) documentation of any requests for information or sharing of information;

(f) genetic and social history, and health history;

(g) case notes describing services provided including pre relinquishment counseling;

(h) original or certified copies of relinquishment transfer or decree of termination of birth mother and birth father rights per 78B-6-125 (or the state governing relinquishment);

(i) proof that non-identifying information was provided re: the adoptive parent(s);

(j) proof of compliance with 78B-6-143 and 78B-6-144;

(k) copies of marriage certificates, divorce papers, custody and visitation orders, if any;

(l) certified copies of death certificates, if any, of pre-existing parent(s);

(m) pre-existing parent(s) written agreements or refusals of:

(i) waiver of confidentiality;

(ii) authorization of release of information;

(iii) future third party searcher;

(iv) post adopt information exchange with adoptive parent(s);

(v) post adopt contact terms;

(n) verification that all itemized goods and services billed to the adoptive parent(s) were actually provided to and signed upon receipt to the pre-existing parent(s);

(o) documentation of other alternative payment sources, including public assistance;

(p) referral to Mutual Consent Registry; and

(q) any other documentation required in order to show compliance with this rule.

(4) Child Files shall cross reference all related files and shall contain:

(a) needs assessments, evaluations, family background study of current and historical physical, psychological, genetic and developmental health information as required in R501-7-8 A and B;

(b) individualized assessment determining which adoptive family was selected and why as a means to meet all of the identified wishes and needs of all involved;

(c) case notes describing all services provided and referred;

(d) copies of any DHS licenses for children placed in outside agency foster care;

(e) transition plan for child to adoptive placement; and

(f) any other documentation required in order to show compliance with this rule.

(5) File maintenance.

(a) In the event that any records required in this Rule are not obtained, the child placing adoption agency shall provide documentation of its efforts to obtain those records.

(b) All case files shall be retained for a minimum of 100 years from the date the case is closed.

(c) If not continuing to operate and incapable of maintaining their own files for 100 years, the agency shall notify the Office of Licensing and post publicly where the records shall be stored;

(i) it is permissible for a closed child placing adoption agency to transfer closed adoptive files to another licensed child placing for maintenance as long as the chain of control is clear and transparent to the Office and prior clients, there is good reason to believe that the files will be maintained according to law.

(ii) the agency has a written plan involving a secondary entity for contact and file maintenance in the event that the agency changes ownership or ceases to provide child placement adoption services, and notify the Office of Licensing and each client where the records shall be stored; and

(iii) enable record retrieval by individuals with a right to access them.

(d) All adoption records shall be confidential and shall be maintained in a secure location when not in active use;

(i) adoption records shall be accessible only by authorized agency employees or agents;

(ii) no information shall be shared with any person without the appropriate consent forms, except as required by law.

(e) Records regarding the adoptive parents, with the exception of reference letters, are not sealed and information in adoption files can be provided to adoptive parent(s) upon request.

(f) A child placing adoption agency shall maintain and provide accurate annual statistics describing the number of applications received the number of children, pre-existing parent(s), and adoptive parent(s) served, and the number of adoptions and disruptions, and the number of children in agency custody.

R501-7-12. Compliance.

(1) A licensee that is in operation on the effective date of this Rule shall be given 60 days to achieve compliance with this Rule.

KEY: licensing, human services, child placing
May 2, 2018 62A-2-101 et seq.
Notice of Continuation October 18, 2012

R510. Human Services, Aging and Adult Services.
R510-200. Long-Term Care Ombudsman Program Policy.
R510-200-1. Authority.

(1) Operation of the State Long-Term Care Ombudsman Program is a joint responsibility of the State Long-Term Care Ombudsman, the Division, and local AAAs. Authority to administer the LTCOP is derived from the Older Americans Act (OAA) Title VII: Allotments for Vulnerable Elder Rights Protection Activities and UC 62A-3-201 et seq.

R510-200-2. Purpose.

(1) The State Long-Term Care Ombudsman Program is created for the purpose of promoting, advocating, and ensuring the adequacy of care received, and the quality of life experienced by residents of long-term care facilities within the State.

(2) This provision does not limit the authority of the State Long-Term Care Ombudsman Program to provide ombudsman services to populations other than residents of long-term care facilities so long as the appropriations under the Act are utilized to serve residents of long-term care facilities, as authorized by the Act.

R510-200-3. Definitions.

(1) "Area Agency on Aging" hereinafter "AAA" is as defined in UC 62A-3-101.

(2) "Direct Supervision" means a supervisor is present at all times, either physically or by telephone.

(3) "Division" is as defined in UC 62A-3-101.

(4) "Family Council" is the organized forum for families, as a group, to influence the quality of care for the residents.

(5) "Government Agency" is as defined in UC 62A-3-202.

(6) "Immediate Family" means a member of the household or a relative with whom there is a close personal or significant financial relationship.

(7) "Long-Term Care Ombudsman," hereinafter "LTCO" means the employees or volunteers designated by the State Long-Term Care Ombudsman to fulfill the duties of the State Long-Term Care Ombudsman Program. They are advocates for resident rights to help protect the quality of life and quality of care for anyone who resides in a long-term care facility.

(8) "Long-Term Care Ombudsman Program," hereinafter "LTCOP" means the Local LTCOP and includes its employees, officers, agents, and volunteers, which are designated by the Division to implement the LTCOP within the defined geographic area of the AAA or Provider Agency.

(9) "Long-Term Care Facility" is as defined in UC 62A-3-202.

(10) "Office of the State Long-Term Care Ombudsman," hereinafter "Office," means the organizational unit in a State or territory which is headed by a SLTCO.

(11) "Provider Agency" is defined as an entity designated by the SLTCO to provide ombudsman services in a particular area.

(12) "Resident" is defined as an individual who resides in a long-term care facility.

(13) "Resident Council" is an independent, organized group of residents living in a long-term care facility that meets on a regular basis to discuss concerns, develop suggestions on improving services, and plan social activities.

(14) "Resident Representative" means, excluding any intention to expand the scope of authority of any resident representative beyond that authority specifically authorized by the resident, State or Federal law, or a court of competent jurisdiction, any of the following:

(a) an individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making, access medical, social, or other personal information of the resident, manage financial matters, or receive notifications;

(b) a person authorized by State or Federal law (including agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications;

(c) legal representative; or

(d) the court-appointed guardian or conservator of a resident.

(15) "Resident Rights" means the basic human rights that residents of long-term care facilities are entitled to regardless of residency in such facilities.

(16) "State Long-Term Care Ombudsman," hereinafter "SLTCO," means the individual who heads the Office and is responsible to personally or through representatives of the Office, advocate for residents.

(17) "State Long-Term Care Ombudsman Program," hereinafter "SLTCOP," means the program through which the functions and duties of the Office are carried out, consisting of the ombudsman, the Office headed by the ombudsman, and the representatives of the Office.

(18) "Willful Interference" means actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the ombudsman from performing any of his or her responsibilities, or from performing any of the duties of the Office.

R510-200-4. Program Administration.

(1) Division.

(a) shall establish a State Office of Long-Term Care Ombudsman (Office). The Office is a distinct entity, separately identifiable, and located within or connected to the Division.

(b) shall require that the SLTCO serve on a full-time basis.

(c) shall not require or request the ombudsman to be responsible for leading, managing, or performing the work of non-ombudsman services or programs except on a time-limited, intermittent basis.

(d) shall ensure that the SLTCO meets minimum qualifications, including demonstrated expertise in:

(i) long-term services and supports or other direct services for older persons or other residents of long-term care facilities;

(ii) consumer-oriented public policy advocacy;

(iii) leadership and program management skills; and

(iv) negotiation and problem resolution skills.

(e) shall ensure that the SLTCO complies with the relevant provisions of the Older Americans Act (OAA) and this rule;

(f) shall ensure that the SLTCO has sufficient authority to fully perform all the functions, responsibilities, and duties of the Office;

(g) shall provide opportunities for training for the SLTCO in order to maintain expertise to serve as an effective advocate for residents;

(h) shall provide personal supervision and management of the SLTCO;

(i) shall integrate the goals and objectives of the Office into the State plan;

(j) shall provide elder rights leadership;

(k) ensure that mechanisms are in place to prohibit and investigate allegations of willful interference, retaliation, and reprisals:

(i) by a long-term care facility, other entity, or

individual with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the Office; or

(ii) by a long-term care facility, other entity, or individual against the ombudsman or representatives of the Office for fulfillment of the functions, responsibilities, or duties enumerated in this rule.

(l) shall provide appropriate sanctions with respect to willful interference, retaliation and reprisals;

(m) shall not have or maintain personnel policies or practices which prohibit the ombudsman from performing the functions and responsibilities of the ombudsman; and

(n) may require that the SLTCO or other employees or volunteers of the Office adhere to the other personnel policies and procedures of the Division which are otherwise lawful.

(2) SLTCO.

(a) the SLTCO is responsible for:

(i) oversight of the statewide LTCOP;

(ii) providing training to local LTCO staff and volunteers;

(iii) provision of public information regarding the LTCOP;

(iv) working with Federal agencies, the State Legislature, other units of State government agency, and other agencies to obtain funding and other resources;

(v) developing cooperative relationships among agencies involved in long-term care;

(vi) resolving conflicts among agencies regarding long-term care;

(vii) assuring consistent, statewide reporting of LTCOP activities;

(viii) monitoring local LTCOPs on an annual basis, or as needed as determined by the SLTCO to ensure that LTCOP goals are being met;

(ix) providing technical assistance to local LTCOPs;

(x) maintaining close communication and cooperation in the LTCO statewide network;

(xi) recommending rules governing implementation of the LTCOP; and

(xii) providing overall leadership for the Utah LTCOP.

(b) the SLTCO shall propose to the State agency, hereinafter "Division" policies, procedures, and standards for administration of the ombudsman program including:

(i) leadership and personal oversight of the statewide LTCOP, including:

(A) final approval in hiring of local LTCO Representatives of the Office;

(B) final approval and/or determination in decertification of local LTCO Representatives;

(C) monitoring the performance of local Ombudsman entities; and

(D) evaluating statewide LTCOP performance.

(c) identify, investigate, and resolve complaints that:

(i) are made by, or on behalf of, residents; and

(ii) relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees), of:

(A) providers, or representatives of providers, of long-term care services;

(B) public agencies; or

(C) health and social service agencies.

(d) provide services to assist the residents in protecting the health, safety, welfare, and rights of the residents;

(e) inform residents about means of obtaining services provided by the Ombudsman Program;

(f) ensure that residents have regular and timely access to the services provided through the Office and that the residents and complaints receive timely responses from the representatives of the Office to complaints;

(g) represent the interests of the residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(h) long-term care advocacy:

(i) prioritize abuse, gross neglect, exploitation, and time-sensitive complaints;

(ii) coordinate with statewide and national advocacy organizations involved in long-term care issues; and

(iii) maintain awareness of current issues and trends in long-term care.

(i) provide administrative and technical assistance to ombudsman entities to assist the entities in participating in the program;

(j) practice vigilance regarding laws and regulations that pertain to the Office by:

(i) analyze, facilitate public comment on, recommend any changes in, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental agency policies and actions, that pertain to the health, safety, welfare, and rights of the residents;

(k) the SLTCO and representatives of the Office must be excluded from State lobbying prohibitions that conflict with OAA provisions. They must have the ability, without representing the positions of the State, Division or other entity housing the Office, to make independent determinations and establish positions and opinions of the office regarding:

(i) disclosure of information maintained by the LTCOP;

(ii) recommendations to changes in laws, regulations, policies, and actions; and

(iii) provision of information to public and private agencies, legislators, the media, and others, regarding the problems and concerns of residents and recommendations related to those problems and concerns.

(l) providing for the certification and training of local LTCO to carry out LTCOP services of investigating and resolving complaints, conducting consultations, and providing information about the LTCOP;

(m) through adoption of memoranda of understanding and other means, the SLTCO shall lead state-level coordination and support appropriate local ombudsman entity coordination, between the Ombudsman Program and other entities with responsibilities relevant to the health, safety, well-being, or rights of residents of long-term care facilities.

(3) Fiscal Management.

(a) the SLTCO shall determine the use of fiscal resources appropriated or otherwise available for the operation of the Office by:

(i) where local ombudsman entities are designated, the ombudsman shall approve the allocations of Federal and State funds provided to such entities, subject to applicable Federal and State laws and policies; and

(ii) the ombudsman shall determine that program budgets and expenditures of the Office and local ombudsman entities are consistent with laws, policies, and procedures governing the Ombudsman Program.

(4) Annual Report.

(a) the SLTCO shall independently develop and provide final approval of an annual report. Such report shall:

(i) describe the activities carried out by the Office in the year for which the report is prepared;

(ii) contain analysis of Ombudsman Program data;

(iii) describe evaluation of the problems experienced by, and the complaints made by, or on behalf of, residents of

long-term care facilities;

(iv) contain policy, regulatory, and/or legislative recommendations for improving quality of the care and life of the residents; protecting the health, safety, welfare, and rights of the residents; and resolving resident complaints and identified problems or barriers;

(v) contain analysis of the success of the Ombudsman Program. Including success in providing services to residents of long-term care facilities (nursing homes and assisted living facilities);

(vi) describe barriers that prevent the optimal operation of the Ombudsman Program; and

(vii) be provided to the following committees of the Utah State Legislature:

(A) House Health and Human Services Committee;

(B) Senate Health and Human Services Committee; and

(C) Social Services Appropriations Committee.

(b) in order to complete the required annual report, the SLTCO shall collect an annual report from each local ombudsman entity. Such report shall adhere to the guidelines set forth in this section.

(5) Information and Assistance.

(a) the SLTCO shall provide information and referrals regarding long-term care issues and the LTCOP to the general public, residents, community organizations, and other agencies.

(6) Technical Assistance.

(a) the SLTCO shall:

(i) provide specialized technical assistance, consultation, training, and resources to local LTCOs, provider agencies, and the Division related to the operation of the LTCOP;

(ii) provide statewide LTCOP data as available;

(iii) monitoring of the local LTCOP;

(iv) maintain activities and complaint data for the statewide LTCOP regarding Program components; and

(v) may make site visits or assign a designee to evaluate local LTCO Entities.

(7) Central Registry.

(a) the SLTCO shall maintain a central registry of all local ombudsmen. The registry shall retain the following information on each:

(i) the ombudsman's name, address, and telephone number;

(ii) a summary of the ombudsman's qualifications;

(iii) the AAA with which the ombudsman is associated;

(iv) the most recent date of certification;

(v) any conflict of interest; and

(vi) any information pertaining to any decertification actions and the results of those actions.

R510-200-5. Program Components.

(1) Program Components.

(a) each local LTCOP shall provide services to protect the health, safety, welfare and rights of residents.

(b) the following services, known as Program Components, shall be performed in accordance with the following procedures and standards and as directed by the Office of the SLTCO:

(i) intake, investigation, and complaint processing;

(ii) access to resident's records;

(iii) preparation and maintenance of records;

(iv) information and assistance;

(v) community education;

(vi) routine visits;

(vii) advocacy;

(viii) interagency coordination;

(ix) resident and family council activities;

(x) advisory council development;

(xi) volunteer management; and

(xii) consultations.

R510-200-6. Area Agency on Aging/Provider Agency Responsibilities.

(1) The AAA/Provider Agency shall:

(a) administer the contract for the daily operation of the local LTCOP in its service area, including:

(i) meet the criteria to administer the local LTCOP contract;

(ii) fiscal and Program monitoring of the local LTCOP in order to assess provision of LTCO services pursuant to the contract;

(iii) provide annually a fiscal report to the SLTCO;

(iv) provide an annual report to the SLTCO. Such report shall:

(A) describe the activities carried out by the AAA/Provider Agency for the year in which the report is prepared;

(B) contain analysis of the LTCOP data for the area covered by the AAA/Provider Agency;

(C) describe evaluation of the problems experienced by, and the complaints made by, or on behalf of, residents of long-term care facilities for the area covered by the AAA/Provider Agency;

(D) contain analysis of the successes and failures of the LTCOP for the area covered by the AAA/Provider Agency; and

(E) describe barriers that prevent the optimal operation of the LTCOP in the area covered by the AAA/Provider Agency.

(v) monitoring local LTCOP attainment of its goals and objectives as stated in the Local LTCOP Annual Plan; and

(vi) ensure that all long-term care facilities in the coverage area of the AAA/Provider Agency are visited at least quarterly for a non-complaint related walk-through.

(b) support the local LTCOP by:

(i) providing opportunities for the local LTCOP and other aging and social services organizations to collaborate to promote the health, safety, welfare and rights of residents;

(ii) making referrals to the local LTCOP;

(iii) promoting awareness of LTCO services to consumers and the general public within the service area; and

(iv) supporting the local LTCOP in systems advocacy on behalf of residents of long-term care facilities.

(c) assure that local LTCOP data is provided to the Office of the SLTCO in the format required;

(d) prohibit disclosure of the identity of any complainant or resident of a long-term care facility with respect to LTCO files or records;

(e) provide a transition plan to minimize disruption in LTCO services to residents of long-term care facilities when the contract for the local LTCOP is terminated or not renewed;

(f) perform each of its responsibilities in administering the local LTCOP in accordance with all applicable Federal and State laws, regulations, and rules, as directed by the SLTCO;

(g) act as the sole provider of LTCO services in the service area designated through contract;

(h) operate the local LTCOP in accordance with the provisions of the contract for LTCO services with the Division;

(i) provide LTCO staff in addition to the LTCO Supervisor if necessary in order to fulfill the program components and maintain or exceed the level of services provided in the service area during the previous fiscal year;

(j) restrict access to records located with the Provider Agency to certified LTCO staff only;

(k) assure LTCO attendance at certification training and

all mandatory statewide LTCO trainings;

(l) provide professional development opportunities for LTCO staff;

(m) provide staff support as needed for the operation of the LTCOP such as fiscal management, clerical, and telephone coverage;

(n) arrange, in consultation with the SLTCO, for temporary provision of LTCO services in the service area when the LTCO staff of the AAA/Provider Agency are unavailable or the staff position is vacant;

(o) request a temporary waiver from the SLTCO if, due to unusual circumstances, it anticipates it will be unable to comply with any of these responsibilities;

(p) shall not have or maintain personnel policies or practices which prohibit a representative of the LTCOP from performing the required duties; and

(q) may require that representatives of the LTCOP adhere to the other personnel policies and procedures of the AAA/Provider Agency, which are otherwise lawful.

R510-200-7. Long-Term Care Ombudsman Responsibilities.

(1) Certified Long-Term Care Ombudsman Responsibilities.

(a) the SLTCO and representatives of the Office shall be excluded from abuse reporting requirements including when the reporting would disclose identifying information of a resident or complainant without consent or court order, with the exception of:

(i) if the SLTCO or LTCO personally witnesses suspected abuse, gross neglect, or exploitation of a resident, the ombudsman shall seek communication of informed consent from such resident to disclose resident-identifying information to appropriate agencies; or

(ii) if resident is unable to communicate consent, the ombudsman shall follow the consent protocol outlined in section R510-200-20.

(b) providing LTCO services to protect the health, safety, welfare and rights of residents of long-term care facilities in accordance with the provisions of the Federal and State laws governing the LTCO and in accordance with the provisions of the Provider Agency contract for LTCO services;

(c) fulfilling the program components outlined in contractual agreement;

(d) documenting LTCO activities and case work as required by the rules, regulations, and requests by the SLTCO;

(e) visit all long-term care facilities in the coverage area of the AAA/Provider Agency at least quarterly for a non-compliant related walk through;

(f) prohibiting inappropriate access to LTCO records in the possession of the LTCOP;

(g) completing data entry into the ombudsman computer program by:

(i) including case information in all fields of:

(A) case management;

(B) activities;

(C) consultations; and

(D) other required information.

(h) assuring all data is updated, completed, and dispensed to the SLTCO for NORS and other reporting requests or requirements;

(i) performing each responsibility in accordance with all applicable Federal and State laws, regulations, and policies, and keeping the SLTCO informed of all critical issues as they arise; and

(j) follow complaint process procedures as follows:

(i) investigate complaints and develop an action plan to resolve the complaint;

(ii) provide supervision over the implementation of the action plan and any follow-up determined necessary;

(iii) set complaint response priorities;

(iv) assign complaints to staff, including volunteers; and

(v) provide case consultations as requested.

(k) actions that are outside the scope of authority of a LTCO and are not the responsibility of a LTCO include:

(i) transporting a client;

(ii) providing clients services that should be provided by the facility in which they reside;

(iii) acting as a guardian;

(iv) acting as a payee;

(v) signing consent forms for survey, medication, or restraints;

(vi) signing medical directives; and

(vii) receiving client power of attorney.

R510-200-8. Volunteer Management.

(1) This rule incorporates by reference UC 62A-3-203; UC 62A-3-204.

(2) AAA/Provider Agency Role.

(a) the local Provider Agency of the LTCOP shall develop written procedures for recruitment, training, and oversight of volunteers with the express approval of the SLTCO.

(b) the procedures shall be consistent with the Ombudsman Program including training and certification requirements as set forth by the SLTCO.

(3) SLTCO Role.

(a) the SLTCO shall provide technical assistance to assist each local LTCOP in developing and maintaining its volunteer program.

(4) LTCO Staff Role.

(a) LTCO staff must ensure direct supervision of the LTCO volunteer program; include all LTCO volunteers within their defined geographic area of the AAA or Provider Agency.

(5) LTCO Volunteer Role.

(a) a volunteer who has met the certification requirements shall:

(i) work under the direct supervision of a LTCO staff person as designated by the LTCO supervisor;

(ii) be qualified to perform ombudsman responsibilities including provision of the program components;

(iii) provide appropriate documentation and reporting requirements to the local LTCOP of all activities done on behalf of the LTCOP; and

(iv) perform his or her responsibilities in accordance with all applicable Federal and State laws, rules, regulations, policies, and procedures.

R510-200-9. Designation of Service Providers.

(1) This rule incorporates by reference UC 62A-3-204.

(2) Designation of Ombudsman Programs: the SLTCO may designate provider agencies to provide ombudsman services throughout Utah.

(3) Criteria for Designation as a Provider Agency: to be eligible for designation as a Provider Agency, an entity must:

(a) be a government agency or nonprofit entity;

(b) not have any organizational conflicts of interest identified in R510-200-14 without an appropriate remedy of conflict of interest approved by SLTCO.

(c) have demonstrated to the satisfaction of the SLTCO personally, or a representative of the Office with final approval from the SLTCO, the capability to carry out the responsibilities of the Office; and

(d) meet all requirements of this Rule.

(4) Process for Designation when the AAA Serves as

the Provider Agency.

(a) the SLTCO may designate the AAA as the Provider Agency where:

(i) the AAA meets the criteria for designation;

(ii) the AAA is not otherwise prohibited from fulfilling the duties of the Provider Agency; and

(iii) the execution date (State fiscal year) of the AAA's contract with the Division to provide LTCOP services shall constitute the effective date of the designation.

(5) Process by which the AAA sub-contracts with and designates another entity as the Provider Agency.

(a) the AAA may enter into a contract with a Provider Agency for the provision of the LTCOP services in their designated geographical service area. Said contract must:

(i) specify the service area;

(ii) require the Provider Agency to adhere to all applicable Federal and State laws, regulations, and policies; and

(iii) provide that the contract automatically terminates if the AAA or the Provider Agency is de-designated by the SLTCO.

(b) the execution date (State fiscal year) of the Provider Agency's contract with the AAA to provide LTCOP Services shall constitute the effective date of the designation.

(c) should the contract between the Provider Agency and the AAA to provide LTCOP services not be renewed or be terminated for any reason, the AAA shall immediately notify the SLTCO.

(6) Process for designation of a Provider Agency, where the Division contracts directly with the Provider Agency.

(a) where the contract for the LTCOP services is not with or through the AAA, the SLTCO may designate a Provider Agency as follows:

(i) Division shall issue a Request for Proposal (RFP), approved by the SLTCO, seeking an entity to provide LTCOP services within a particular service area. The RFP shall identify the criteria for designation as a Provider Agency and shall request submission of documents supporting the entity's claim to meet these criteria; and

(ii) Division shall require that all responding entities develop an ombudsman services plan setting forth:

(A) the goals and objectives of such entity in providing LTCOP services;

(B) a description of how each Program Component, from section R510-200-5, SLTCOP Program Administration, shall be met including its staffing plan for the local LTCOP; and

(C) a description of the resources, which will be provided to assist in the operation of the local LTCOP.

(b) Division may contract with a Provider Agency to provide LTCOP services. Such contract must:

(i) specify the service area;

(ii) require the Provider Agency to adhere to all applicable Federal and State laws, regulations, and policies; and

(iii) state that the contract will be automatically terminated if the provider is de-designated by the SLTCO.

(c) the execution date of the Provider Agency's contract with the Division to provide ombudsman services shall be the effective date of the designation.

R510-200-10. De-Designation of Service Providers.

(1) Criteria for De-designation.

(a) the SLTCO may de-designate an entity, including an AAA, as a Provider Agency for one or more of the following reasons:

(i) failure to continue to meet the criteria for designation;

(ii) existence of a conflict of interest with the LTCOP as outlined in section R510-200-14, Conflicts of Interest;

(iii) failure to disclose any conflict of interest;

(iv) violation of SLTCO confidentiality requirements as outlined in section R510-200-24, Confidentiality;

(v) failure to provide adequate LTCO services;

(vi) failure to fill a vacant ombudsman position;

(vii) failure to use funds designated for the LTCOP for LTCO services or as directed by the SLTCO as outlined in section R510-200-4, Program Administration;

(viii) failure to adhere to the terms of the contract for the provision of ombudsman services; or

(iv) failure to adhere to applicable Federal and State laws and regulations.

(2) Process for De-designation of a Provider Agency.

(a) when an AAA serves as a Provider Agency, the process to de-designate the Provider Agency shall be as follows:

(i) the SLTCO shall send notice of the intent to de-designate to the AAA. Notice shall include the reason for de-designation;

(ii) the Provider Agency shall respond in writing to the notice within ten business days, outlining its plan to reach compliance; and

(iii) after ten business days have passed, and at its sole discretion, SLTCO may amend or terminate the contract between the AAA and the Division.

(b) when an AAA contracts with a Provider Agency, the process to de-designate the Provider Agency shall be as follows:

(i) the SLTCO shall send notice of the intent to de-designate to the AAA and the Provider Agency. Notice shall include the reason for de-designation;

(ii) the AAA and SLTCO shall provide for the continuation of ombudsman services by ensuring that either the SLTCO or the AAA are providing services to that specific area;

(iii) the Provider Agency shall respond within ten business days, outlining its plan to reach compliance; and

(iv) after ten business days have passed, and at the discretion of the AAA and the SLTCO, an AAA may terminate its contract for LTCO services with the Provider Agency.

(c) when a Provider Agency contracts directly with the Division, the process to de-designate the Provider Agency shall be as follows:

(i) the SLTCO shall send notice of the intent to de-designate to the Provider Agency. Notice shall include the reason for de-designation;

(ii) the SLTCO shall ensure the provision of continued ombudsman services;

(iii) the Provider Agency shall respond in writing to the notice within ten business days, outlining its plan to come into compliance;

(iv) after ten business days have passed, and at its sole discretion, the SLTCO may terminate the contract with the Provider Agency; and

(v) when immediate de-designation is deemed necessary, the Provider Agency shall respond in writing to the notice of immediate de-designation within five business days, outlining its plan to come into compliance.

(3) Voluntary Withdrawal of a Provider Agency.

(a) a Provider Agency may voluntarily relinquish its designation by:

(i) providing written notice 90 days in advance of the date of relinquishment of designation to the SLTCO and AAA; and

(ii) maintaining and performing program activities during the 90 days.

(4) Continuation of Ombudsman Services.

(a) when a Provider Agency is in the process of appealing its de-designation or has relinquished its designation:

(i) the SLTCO or the AAA, if applicable, may arrange for the provision of ombudsman services until a new Provider Agency is designated;

(ii) the Provider Agency shall, at the sole discretion of the SLTCO, surrender any equipment and supplies purchased with State or Federal funds designated for LTCO services; and

(iii) the Provider Agency shall surrender the balance of any advanced State or Federal monies to the AAA, or to the SLTCO where the AAA serves as the Provider Agency.

(5) Appeal Procedures of De-Designation.

(a) the Provider Agency may file an appeal with the Director of the Division to have complaints heard regarding any de-designation activities by:

(i) contacting the Director in writing within ten business days of the SLTCO final decision for de-designation; and

(ii) address directly:

(A) the stated reason for de-designation;

(B) how the Provider Agency has made corrections and come into compliance;

(C) how said corrections qualify the Provider Agency for re-designation; and

(D) sub-contracted agencies must use this process to appeal directly to the AAA.

(b) where the Director of the Division denies the appeal for re-designation, final appeal may be made to the State of Utah Department of Human Services Deputy Director by:

(i) contacting the Deputy Director in writing within ten business days of the Division Director's denial; and

(ii) address directly:

(A) the stated reason for de-designation;

(B) the stated reason for denial of appeal for re-designation;

(C) how the Provider Agency has made corrections and come into compliance; and

(D) how said corrections qualify the Provider Agency for re-designation.

R510-200-11. Certification of an Individual as an Ombudsman.

(1) Criteria for certification as an ombudsman.

(a) to be certified as a LTCO, an individual must:

(i) demonstrate ability to carry out the responsibilities of a LTCO;

(ii) ombudsman staff, with the exception of volunteers and staff hired prior to July 1, 2018, must have a bachelor's degree in social work or related field and/or three years of experience in a related field or approval from the SLTCO if the best candidate does not have the degree or experience;

(iii) have taken and passed a criminal background check through the Utah Department of Public Safety Bureau of Criminal Identification (BCI) paid for by the individual, or the corresponding AAA, or the contract provider;

(iv) be reviewed in the Adult Protective Services (APS) Perpetrator registry as incorporated by reference UC 62A-3-311 to ensure APS has not registered a supported finding against the individual for abuse, neglect, or exploitation;

(v) be free of conflicts of interest;

(vi) meet the minimum qualifications for the applicable LTCO position;

(vii) complete the certification training requirements;

(viii) complete the certification testing requirement as soon as possible, but no later than six months after beginning the certification training that is approved by the SLTCO; and

(ix) must have a general knowledge of long-term care facilities and/or gerontology, long-term care, health care, legal or human service programs, advocacy, complaint and dispute resolution, mediation, or investigation.

(2) Notification of Certification.

(a) provided that all certification requirements have been met, the SLTCO shall:

(i) send a State authorized certification badge to the individual being designated as a LTCO within 30 days of completion of certification requirements.

(3) Training and Certification Requirements for ombudsman.

(a) there is one tier of Ombudsmen, the following requirements apply for both paid staff and volunteers:

(i) to become a certified ombudsman, 40 hours of classroom training is required in addition to any previous classroom training and 20 hours of job shadowing. Appropriate training shall be established by and at the sole discretion of the SLTCO; and

(ii) the position of certified ombudsman requires multiple examinations. These exams:

(A) require scores of 70% or higher;

(B) failure to achieve 70% will result in the opportunity for the examinee to retake the exams once within 30 days;

(C) failure to achieve 70% on a second attempt will result in a requirement to receive further training; or

(D) failure to achieve 70% on a third attempt will result in the examinee's disqualification for certification.

(4) Recertification.

(a) the SLTCO will provide for a minimum of 24 hours LTCO specific training annually including:

(i) a two day annual mandatory training for all certified LTCO; or

(ii) an attendance exception may be granted by the SLTCO at his discretion.

(b) for first year LTCO, the required initial training will accrue toward the annual training requirement.

(c) with documentation of attendance, community training related to the long-term care population can serve to meet annual training requirements in lieu of State sponsored LTCO training.

(d) to be re-certified as a LTCO, an individual must:

(i) fulfill LTCO responsibilities as outlined in R510-200-7, Long-Term Care ombudsman Responsibilities;

(ii) renew certification each year by completing a minimum of 24 hours of continued education, as approved by SLTCO; and

(iii) pass a criminal background check through the Utah Department of Public Safety BCI every three years, or at the request of the SLTCO, paid for by the corresponding AAA or contract provider.

(e) after any absence of 12 months or more, the LTCO must complete the full required certified ombudsman training

R510-200-12. De-Certification of an Individual as an Ombudsman.

(1) Criteria for de-certifying an ombudsman.

(a) the SLTCO shall de-certify a LTCO for any of the following reasons:

(i) failure of the individual to meet and/or maintain the criteria for certification;

(ii) existence of a conflict of interest;

(iii) intentional failure of the individual to disclose any conflict of interest;

(iv) performing a function not recognized or sanctioned by the LTCOP;

(v) violation of the confidentiality requirements;

(vi) failure to fulfill LTCO responsibilities as outlined in R510-200-7, Long-Term Care Ombudsman Responsibilities;

(vii) falsifying records;

(viii) failure to follow the direction of the SLTCO, or

designee, regarding LTCO procedures and practices;

(ix) a change in employment duties which is incompatible with LTCO duties; or

(x) separation from the LTCOP including:

(A) termination of employment by the Provider Agency;

(B) non-fulfillment of job responsibilities;

(C) termination or non-renewal of Provider Agency's contract for provision of LTCO services; or

(D) failure to act in accordance with applicable Federal and State laws and regulations.

(2) Process to de-certify an ombudsman.

(a) prior to de-certifying, the SLTCO shall:

(i) consult with the relevant AAA and/or Provider Agency to consider remedial actions that could be taken to avoid de-certification; and

(ii) discuss with the relevant AAA and/or Provider Agency the impact of the action which led to de-certification.

(b) the SLTCO shall provide written notice of intent to the LTCO to be de-certified and the Provider Agency. Such notice shall:

(i) specify the reasons for the intended de-certification; and

(ii) set for the effective date of the de-certification.

(3) Upon completion of the decertification actions, the SLTCO shall record the actions and results in the central registry.

R510-200-13. Refusal to Certify an Individual as an Ombudsman.

(1) Criteria for Refusal to Certify an Individual as an ombudsman.

(a) the SLTCO shall refuse to certify an individual as a LTCO for any of the following reasons:

(i) it is determined by the SLTCO that the individual does not exhibit the necessary skills for the position;

(ii) failure of the individual to meet and/or maintain the criteria for certification;

(iii) existence of a conflict of interest;

(iv) failure of the individual to disclose any conflict of interest; or

(v) falsifying records.

(2) Process for Refusal to Certify an Individual as an ombudsman.

(a) prior to refusing to certify, the SLTCO shall:

(i) consult with the relevant AAA and/or Provider Agency to consider remedial actions that could be taken to avoid refusal to certify.

(b) the SLTCO shall refuse to certify an individual as a LTCO by providing written notice of such refusal to the administrating agency supervisor. Such notice shall:

(i) specify the reasons for the refusal to certify; and

(ii) set forth the effective date of such refusal.

R510-200-14. Conflicts of Interest.

(1) A conflict of interest exists in the LTCOP when interests intrude upon, interfere with, or threaten to negate the ability of the LTCO to advocate without compromise on behalf of long-term care facility residents. The LTCO shall have no conflict of interest that would interfere with performing the function of this position.

(2) Organizational Conflicts.

(a) organization conflicts arise when the LTCOP is placed with a service provider that:

(i) is responsible for licensing, surveying, or certifying long-term care facilities (45 CFR 1324.21(a)(1));

(ii) is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities ((OAA Sec. 712(f)(2)(A)(ii)) and (45 CFR 1324.21(a)(2)); NOTE: OAA citation does not have "or individuals with disabilities");

(iii) is responsible for licensing, certifying, or surveying long-term care services in the State (OAA Sec. 712(f)(2)(A)(i));

(iv) has any ownership or investment interest (represented by equity, debt, or other financial relationship) in, or receives grants or donations from, a long-term care facility (45 CFR 1324.21(a)(3));

(v) has governing board members with any ownership, investment or employment interest in long-term care facilities (45 CFR 1324.21(a)(4));

(vi) provides long-term care to residents of long-term care facilities, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities (45 CFR 1324.21(a)(5));

(vii) provides long-term care services, including programs carried out under a Medicaid waiver approved under section 1115 of the Social Security Act (42 U.S.C. 1315) or under subsection (b) or (c) of section 1915 of the Social Security Act (42 U.S.C. 1396n), or under a Medicaid State plan amendment under subsection (i), (j), or (k) of section 1915 of the Social Security Act (42 U.S.C. 1396n) (OAA Sec. 712(f)(2)(A)(iii));

(viii) provides long-term care case management (OAA Sec. 712(f)(2)(A)(iv));

(ix) provides long-term care coordination or case management for residents of long-term care facilities (45 CFR 1324.21(a)(6));

(x) sets reimbursement rates for long-term care facilities (45 CFR 1324.21(a)(7));

(xi) sets rates for long-term care services (OAA Sec. 712(f)(2)(A)(v));

(xii) provides adult protective services (OAA Sec. 712(f)(2)(A)(vi) and (45 CFR 1324.21(a)(8));

(xiii) is responsible for eligibility determinations for the Medicaid program carried out under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (OAA Sec. 712(f)(2)(A)(vii));

(xiv) is responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long-term care facilities (45 CFR 1324.21(a)(9));

(xv) conducts preadmission screening for placements in facilities described in clause (ii) (OAA Sec. 712(f)(2)(A)(viii); 45 CFR 1324.21(a)(10) language has essentially the same meaning;

(xvi) makes decisions regarding admission or discharge of individuals to or from such facilities (OAA Sec. 712(f)(2)(A)(ix); 45 CFR 1324.21(a)(11) language has essentially the same meaning);

(xvii) provides guardianship, conservatorship or other fiduciary or surrogate decision making services for residents of long-term care facilities (45 CFR 1324.21(a)(12));

(xviii) any other service (e.g., Name of Service) provided by the agency that could pose a potential or actual conflict of interest, including other work done by LTCOP employees;

(xix) any other perceived or actual conflicts of interest from the resident/consumer/general public perspective with the LTCOP; or

(xx) where there is a shared "front door" to the agency where the LTCOP is located, how the agency determines where to direct calls, emails, or other contacts that come in to the agency.

(3) Individual ombudsman conflicts.

(a) conflicts for a LTCO include the following:

(i) involvement in the licensing or certification of a long-term care facility or provision of a long-term care

service, including solicitation of employment by LTCO or a member of his/her immediate family;

(ii) ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed LTC facility or LTC service by LTCO or a member of his/her immediate family;

(iii) employment or solicitation of employment of LTCO or a member of his/her immediate family by a LTC facility; participation in the management of a LTC facility by LTCO or a member of his/her immediate family;

(iv) receipt of, or right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a LTC facility by LTCO or a member of his/her immediate family;

(v) accepting any gifts or gratuities, including meals, from a LTC facility or resident or resident representative or being named as the beneficiary of an estate, will, or trust of resident, or resident representative;

(vi) accepting money or any other consideration from anyone other than the Provider Agency or other entity designated by the Office for the performance of an act in the regular course of LTC ombudsman duties;

(vii) provision of services with conflicting responsibilities while serving as a LTCO, such as adult protective services; discharge planning; serving as guardian, agent under power of attorney or other surrogate decision-maker for LTC residents in the service area;

(viii) participation in pre-admission screening or case management for LTC residents;

(ix) serving residents of a facility in which an immediate family member resides; or

(x) participation in activities which negatively impact the LTCO's ability to serve residents, or are likely to create a perception that the LTCO's interest is other than as a resident advocate.

(b) under no circumstances shall a LTCO be appointed or employed who has been employed by or participating in the management of a long-term care facility within the previous twelve months.

(4) Completing a Conflict of Interest Agreement.

(a) to ensure compliance with conflict of interest standards:

(i) all staff and volunteers requesting ombudsman certification will update their conflict of interest information upon hiring and then annually at the beginning of the Federal Fiscal Year (FFY), and on an as needed basis as determined by the SLTCO, to affirm that they are in compliance; and

(ii) SLTCO will review conflict of interest with all LTCO annually at the beginning of FFY.

(5) Remedying Conflict.

(a) where an actual or potential conflict of interest within the LTCOP has been identified, all agents of the AAAs, provider agencies, and LTCOs have an affirmative duty to notify the SLTCO of said conflict.

(b) the SLTCO shall determine whether appropriate actions may be taken to sufficiently remedy the conflict.

(c) a conflict can be sufficiently remedied only:

(i) where the existence of the conflict does not and cannot interfere with any duties of the LTCOP; and

(ii) where the conflict is not likely to alter the perception of the LTCOP as an independent advocate for residents of long-term care facilities.

(6) Remedying Organizational Conflict.

(a) where organizational conflicts have been identified within an AAA, Provider Agency, or governing board, the following steps shall be taken to ensure the conflict can be sufficiently remedied:

(i) a written remedial plan shall be developed within ten business days of identification of the conflict to the SLTCO;

(ii) the remedial plan must identify the actual conflict and provide assurances, which shall mitigate the negative impact of the conflict on the LTCOP;

(iii) the AAA, Provider Agency, or governing board shall cease all LTCO activities during the remedial period; and

(iv) the remedial plan must be mutually agreed upon and signed by the agency in which the conflict exists and by the SLTCO.

(7) Remedying individual ombudsman conflicts.

(a) where individual conflicts have been identified, the following steps shall be taken to ensure the conflict can be sufficiently remedied:

(i) development of a written remedial plan:

(A) where the individual is an applicant for a position as a LTCO, a plan shall be developed before the individual is hired for the position;

(B) where the individual is an applicant for certification as a volunteer ombudsman, a plan shall be developed before the individual is certified; or

(C) where the individual is a LTCO staff or volunteer, a plan shall be developed within ten business days of identification of the conflict to the SLTCO. No action shall be taken by the individual on behalf of the LTCOP until the plan is submitted to the SLTCO.

(ii) the remedial plan must:

(A) identify the actual conflict; and

(B) provide assurances, which shall mitigate the negative impact of the conflict on the LTCOP.

(iii) the remedial plan must be mutually agreed upon between the individual LTCO and the SLTCO; and

(iv) ombudsmen are not permitted to serve residents in facilities with which they have a conflict of interest except at the determination of the SLTCO.

(8) Failure to Identify or Remedy a Conflict of Interest.

(a) failure on the part of a LTCO or Provider Agency to identify and report to the SLTCO a conflict of interest may:

(i) be grounds for refusal to certify;

(ii) may result in the de-certification of the LTCO and/or the AAA/Provider Agency; or

(iii) may result in the termination of the LTCO or termination of the contract between the LTCOP and the AAA/Provider Agency.

(b) existence of an un-remedied conflict of interest could be grounds for:

(i) the de-certification of the LTCOP headed by the AAA/Provider Agency and termination of the contract between the AAA/Provider Agency and the LTCOP;

(ii) de-certification of an LTCO; or

(iii) termination of an LTCO.

(c) appeals may be made following the Grievance Procedure process found in part R510-200-16.

(9) Division, AAAs, and Provider Agencies.

(a) when considering the employment or appointment of an individual as the LTCO, Division, AAAs and Provider Agencies shall:

(i) take reasonable steps to avoid employing or appointing an individual who has an unremedied conflict of interest or who has a member of the immediate family with an unremedied conflict of interest;

(ii) take reasonable steps to avoid assigning an individual to perform duties which would constitute an unremedied conflict of interest;

(iii) establish a process for periodic review and identification of conflicts of the ombudsman and representatives of the Office; and

(iv) take steps, as outlined, to remove or remedy conflicts.

R510-200-15. Records.

(1) This rule incorporates by reference UC 62A-3-206.

(2) Access to resident/facility records:

(a) the SLTCOP is a Health Oversight Agency, thus the Health Insurance Portability and Accountability Act of 1996 (HIPAA) does not preclude release by covered entities of resident private health information or other resident identifying information to the Ombudsman program, including residents:

(i) medical records;

(ii) social records;

(iii) room numbers;

(iv) names;

(v) administrative records;

(vi) policies;

(vii) documents to which the resident or general public has access;

(viii) all long-term care facility licensing and certification records maintained by the State; and

(ix) other resident records.

(b) each LTCO has access to records of the local LTCOP for which he or she serves; and

(c) for the purpose of providing temporary coverage for another local LTCOP, a LTCO may have access to the LTCO records of the other local LTCOP to the extent necessary to provide such coverage.

(3) Division, AAA, and Provider Agency access to records:

(a) the Department of Human Services (DHS), Division, and the relevant AAA and/or Provider Agency may review records, which reflect the activities of the LTCOP;

(b) Division, AAA, or Provider Agency may not review records that disclose the identity of any resident or complainant, except for the SLTCO; and

(c) no State agency, AAA, or Provider Agency may require a LTCO to disclose the identity of a complainant or resident except as specifically provided by Federal or State law.

(4) Maintenance of LTCO records and the LTCO reporting system:

(a) maintaining records through an ombudsman computer program, a statewide uniform reporting system to collect and analyze data relating to complaints, cases, and activities in long-term care facilities;

(b) any paper documentation shall be scanned into the ombudsman computer program.

R510-200-16. Grievance Procedures.

(1) Concerns.

(a) all concerns that individuals may have regarding the LTCOP shall be documented and include:

(i) outcomes; and

(ii) relevant actions.

(2) Timeliness.

(a) all grievances shall be submitted in writing to the Division/AAA/Provider Agency administering the LTCOP.

(b) the procedure for submitting a grievance is as follows:

(i) LTCO:

(A) complaints about LTCO shall be directed to the local LTCOP Supervisor;

(B) program supervisor shall notify the SLTCO as soon as the complaint is made;

(C) program supervisor shall investigate the complaint within ten business days;

(D) nature of complaint and investigation shall be documented;

(E) response back to the complainant shall be given within ten business days following the completion of the initial complaint investigation;

(F) response shall include name and contact information of the SLTCO to ensure ease of appeal;

(G) all confidential information shall be withheld from the Director of the AAA/Provider Agency to ensure that the LTCOP operates independently of the AAA/Provider Agency;

(H) outcome shall be documented; and

(I) program supervisor shall notify the SLTCO of the outcome.

(ii) SLTCO:

(A) a complaint regarding the SLTCO shall be forwarded to the Director of the Division;

(B) the Director shall investigate the complaint within ten business days;

(C) the nature of the complaint and the investigation shall be promptly documented by the office of the Director of the Division;

(D) all confidential information shall be withheld from the Director of the Division to ensure that the LTCOP operates independently of the Division;

(E) response back to the complainant shall be given within ten business days following the completion of the initial complaint investigation;

(F) the outcome shall be documented.

R510-200-17. Legal Counsel.

(1) Provision of Adequate Legal Counsel.

(a) Division shall provide for the services of a Legal Services Developer.

(b) the Division hired Legal Services Developer shall not represent or provide legal advice to an AAA/Provider Agency or a local LTCO, or individual resident. However, the Legal Services Developer ensures legal representation for individuals using licensed attorneys, not employed by the Division, throughout the State.

(c) the State Attorney General's Office shall act as legal counsel to the SLTCOP and the SLTCO.

(d) the State Attorney General's Office shall not represent or provide legal advice to an AAA/Provider Agency or a local LTCOP.

(e) the AAA/Provider Agency is required to provide legal representation for their local LTCO for programmatic purposes.

(f) the SLTCOP shall not provide legal representation for residential matters.

R510-200-18. Guardianship.

(1) Long-Term Care Ombudsman Program Responsibilities to a Guardian.

(a) if a resident has a legal guardian, the LTCO must work with the guardian.

(b) if the LTCO believes that the guardian is not acting in the best interest of the resident, they will contact their immediate supervisor, AAA, or the SLTCO for assistance to advocate for resident rights.

R510-200-19. Emergency Preparedness.

(1) Emergency Preparedness Planning.

(a) the SLTCO together with the local LTCO throughout the State shall develop a plan to assist residents of long-term care facilities in the event of an emergency. Such a plan includes:

(i) coordinating activities and developing emergency preparedness plans relevant to the particular service areas;

(ii) supporting the local ombudsman entity with emergency preparedness including:

(A) information sharing;

(B) resource sharing;

(C) training;

(D) participation in exercises; and

(E) facilitation of relationships with local healthcare coalitions, public health agencies, and any other relevant agencies prior to, during, and after an emergency.

(iii) the SLTCO shall coordinate with representatives of the LTCOP to determine capacity and the support needed to plan and prepare for emergencies.

R510-200-20. Intake, Investigation, and Complaint Processing.

(1) This rule incorporates by reference UC 62A-3-206.

(2) General.

(a) the local LTCOP shall identify, investigate and attempt to resolve validated complaints made by or on behalf of residents of long-term care facilities.

(3) Response to the Complaint.

(a) when a LTCO receives information regarding a complaint, the LTCO shall determine:

(i) the type of complaint using the National Ombudsman Reporting System (NORS) complaint categories as provided in the ombudsman computer program;

(ii) what outcome the complainant or resident of the long-term care facility is seeking;

(iii) what attempts have already been made to resolve the complaint;

(iv) whether the complaint is appropriate for LTCO activity;

(v) examples of complaints which are not appropriate for LTCO activity include those which:

(A) do not directly impact a resident of a long-term care facility;

(B) are outside the scope of authority of the LTCOP; or

(C) would place the LTCOP in the position of having an actual or perceived conflict of interest with a resident or residents.

(vi) the LTCO may seek resolution of complaints in which the rights of one resident and the rights of another resident appear to be in conflict.

(b) determine/affirm the following with the complainant:

(i) alternatives for handling the complaint;

(ii) option of complainant to personally take appropriate action, with LTCO assistance if needed;

(iii) communicate that the LTCO role is to act in accordance with the long-term care facility resident's wishes; and

(iv) maintain the resident's confidentiality.

(c) source of complaint made directly to the LTCO:

(i) complaints may be filed with the LTCOP by residents of long-term care facilities, families or friends of residents, long-term care facility staff, or any other person or agency; and

(ii) complaints may be made anonymously to the LTCOP.

(d) ombudsman-generated complaints:

(i) a LTCO shall file a complaint when the LTCO has personal knowledge of an action, inaction, or decision that may adversely affect the health, safety, or rights of residents of long-term care facilities and no other person has made a complaint.

(e) timeliness of responses to complaints:

(i) LTCO investigations shall be initiated within three business days;

(ii) the LTCOP is not an emergency response system. Emergency situations should be referred to local law enforcement by calling 911.

(f) ombudsman advocacy is resident focused:

(i) the LTCO shall discuss the complaint with the resident of the long-term care facility in order to:

(A) determine the resident's perception of the complaint;

(B) determine the resident's wishes with respect to resolution of the complaint;

(C) advise the resident of his/her resident rights;

(D) work with the resident in developing a plan of action; and

(E) when resident consent is refused or withdrawn, the LTCO shall record the refusal or withdraw of consent.

(g) resident is unable to provide consent:

(i) the LTCO shall advocate for the wishes of a resident of a long-term care facility to the extent that the resident can express them, even if the resident has limited decision-making capacity; or

(ii) where a resident is unable to provide consent to a LTCO to work on a complaint directly involving the resident, the LTCO shall:

(A) seek advice from the resident's representative, guardian, POA, spouse, or family member; or

(B) if the LTCO determines that the resident's representative, guardian, POA, spouse, or family member is not acting in the resident's best interest, the LTCO shall seek evidence to indicate what the resident would have desired and, where such evidence is available, work to effectuate that desire.

(4) Investigation Procedures.

(a) the LTCO is not required to verify a complaint in order to seek a resolution on behalf of the resident of a long-term care facility. Resident perception is a sufficient basis upon which an LTCO can seek resolution.

(b) the LTCO investigates a complaint in order to verify the accuracy and truth of the complaint:

(i) a complaint is verified when the LTCO determines that the circumstances described in the complaint are substantiated or generally accurate; and

(ii) because a LTCO works on behalf of residents of long-term care facilities, the LTCO gives the benefit of the doubt to the resident's perspective.

(c) the LTCO shall seek any information required on an as needed basis to complete the investigation.

(d) to verify a complaint, the LTCO shall take one or more of the following steps, as appropriate given the nature of the complaint:

(i) research relevant laws, rules, regulations, and policies;

(ii) personally observe and analyze the evidence;

(iii) interview the resident and/or complainant;

(iv) interview staff, administration, other residents and families;

(v) identify relevant agencies and interview and/or obtain information from their staff; and

(vi) examine relevant records.

(e) facility visits can be unannounced, and occur at any hour provided the LTCO identifies him/herself upon entering the premises as a person authorized to investigate complaints.

(f) the local LTCO may choose to give notice if deemed appropriate, in either case the ombudsman shall:

(i) upon arrival at the facility or agency, present official identification to the administration or designated person in charge;

(ii) identify any factors that may interfere with the investigation;

(iii) start the investigatory process to establish as clearly as possible what has happened, why it has happened, who or what is responsible for resolving the complaint, and possible solutions to the problem;

(iv) interview the resident, as well as other residents, staff, family, friends and physicians as deemed necessary;

(v) make phone calls, on-site observation, review resident records, and make collateral contacts with other agencies and professionals;

(vi) take any other appropriate investigatory actions within the purview of the LTCOP;

(vii) during the course of the investigation, the local LTCO shall look for credible evidence, which supports or refutes the complaint. Evidence may be directly observed by the LTCO or indirectly gathered from statements from reliable sources; and

(viii) LTCO shall be provided privacy by the facility or agency during all aspects of the investigative process.

(5) Plan of Action.

(a) upon verifying a complaint, the LTCO shall determine a plan of action to resolve the complaint.

(b) the LTCO advocates on behalf of or with the resident in discussing the complaint with the appropriate facility, staff, or other relevant party and together, they develop an agreement that resolves the complaint.

(c) the LTCO shall attempt to resolve the dispute directly with the appropriate staff of the facility unless the LTCO and the resident determine that another strategy would be more advantageous.

(6) Complaint Referrals.

(a) a LTCO shall make a referral to another agency when:

(i) the resident gives permission, or, if resident is unable, responsible party gives permission, or, if the LTCO determines that the resident's representative, guardian, POA, spouse, or family member is not acting in the resident's best interest, the LTCO shall seek evidence to indicate what the resident would have desired and, where such evidence is available, work to effectuate that desire; and

(ii) one or more of the following applies:

(A) another agency has statutory responsibility to support or assist the resident (e.g. Adult Protective Services (APS) or Medicaid Fraud);

(B) the action to be taken in the complaint is outside of the LTCO's scope of authority (e.g. Department of Health, Licensing);

(C) the LTCO needs additional assistance in order to achieve resolution of the complaint; or

(D) if it is determined that additional expertise may benefit the resident (e.g. mental health or disability services, etc.).

(b) a LTCO may encourage resident or complainants to directly contact the appropriate regulatory agency to file a complaint and offer information and assistance to residents or complainants in making such contact.

(7) Closing a Complaint or Case.

(a) the complaint or case may be closed when any of the following occurs:

(i) the complaint has been resolved to the satisfaction of the resident of the long-term care facility;

(ii) the LTCO has determined, after investigation, that the complaint:

(A) cannot be verified; or

(B) was made in bad faith.

(iii) further activity by the LTCO is unlikely to produce satisfaction for the resident;

(iv) the complaint is not appropriate for LTCO activity;

(v) after referral the LTCO anticipates no further response regarding the complaint from the agency to which the referral was made;

(vi) the resident, who has capacity, requests that the LTCO close the case; or

(vii) when the resident lacks capacity and the LTCO determines that the resident's representative, guardian, POA, spouse, or family member is not acting in the resident's best interest, the LTCO shall seek evidence to indicate what the resident would have desired and, where such evidence is available, work to effectuate that desire.

(8) Abuse, Neglect, and Exploitation Complaints.

(a) upon receiving an abuse, neglect or exploitation complaint the LTCO shall inform the complainant that in order to meet the State of Utah mandated reporting requirement he/she must:

(i) directly call APS Intake; or

(ii) directly call local law enforcement.

(b) if the case also involves resident rights issues, the LTCO shall provide ombudsman services to the identified client.

(9) Documentation of Complaints.

(a) all LTCO complaints and documentation shall be entered into the ombudsman computer program.

(10) Consent.

(a) in order to access resident files maintained in a facility, the resident or resident representative must communicate informed consent orally, visually, written, or through auxiliary aids.

(b) the date and method of obtaining the verbal consent shall be documented in the case file.

(c) if a request for verbal consent is denied by the resident or their legal representative, the LTCO shall not access the records.

(d) if the request for verbal consent is unsuccessful for any reason other than specific denial by the resident or legal representative, the LTCO may proceed to access the records. The reasons for not obtaining consent shall be documented in the case file.

(e) if the request for verbal consent cannot be given by the resident and it is determined that the resident's legal representative is not acting in the resident's best interest, the LTCO may proceed to access the records. Such attempts shall be documented.

R510-200-21. Public Education.

(1) In addition to receiving and investigating complaints, local LTCOPs are mandated by Federal and State statute to provide public education regarding long-term care issues.

(2) Public education may include activities such as frequent presence in facilities, community advocacy, attendance at family or resident councils, technical assistance and in service to long-term care facilities, community organizations, and public information presentations.

R510-200-22. Resident and Family Councils.

(1) The LTCO shall offer assistance with the development of resident and family councils.

(2) The LTCO shall promote resident councils in each long-term care facility in the service area by ongoing education and trainings.

(3) Where a long-term care facility does not have an active resident council, the local LTCO shall assist the residents and the facility in developing said council.

(4) Where a long-term care facility does not have an active family council, the local LTCO shall assist family members in developing an active family council.

R510-200-23. Routine Visits.

(1) The LTCO shall monitor the condition of residents during routine visits.

(a) routine visits to facilities may, and occasionally should, be unannounced.

(b) timing of routine visits shall be staggered so that facilities have no basis to predict the timing of the visit.

(c) the LTCO shall provide information regarding services offered by the LTCOP during routine visits.

(2) LTCO observations of conditions in the facility which adversely affect the health, safety, welfare, or rights of

residents of the long-term care facility shall be documented as ombudsman-generated complaints if no other person has lodged a complaint.

(3) The LTCO shall assure that the facility posts the LTCOP posters, provided by the SLTCO, in the facility so they are visible to all residents, family, and staff.

(4) The LTCO shall ensure resident access to an ombudsman.

(a) LTCO presence in facilities should be as frequent as possible to ensure that all residents have access to an ombudsman.

(b) LTCO presence should be increased in facilities with a history of serious and/or frequent complaints.

(c) the local LTCO shall visit every long-term care facility in their service area at least one time per quarter.

R510-200-24. Confidentiality.

(1) Disclosure of identifying information

(a) all record requests shall be processed in accordance with UC 62A-3-207.

(b) the SLTCO shall have the sole authority in making decisions concerning the disclosure of the files, records, and other information (physical, electronic, or other formats) maintained by the Ombudsman program (includes cases and activities of the LTCOP). No disclosure of such information shall be done without the prior approval of the SLTCO or his/her representative. This includes information maintained by local ombudsmen and volunteer ombudsmen. Such files, records and other information are the property of the Office

(c) disclosure of identifying information of any resident with respect to whom the ombudsman program maintains files, records, or information is strictly prohibited, unless:

(i) the resident or resident representative communicates informed consent orally, visually, written, or through auxiliary aids and such consent is documented contemporaneously by a LTCO; or

(ii) if the SLTCO determines that the resident's representative, guardian, POA, spouse, or family member is not acting in the resident's best interest, the LTCO shall seek evidence to indicate what the resident would have desired and, where such evidence is available, work to effectuate that desire; or

(iii) the disclosure is required by court order.

(2) Disclosure of complainant information

(a) this rule incorporates by reference UC 62A-3-207.

(b) disclosure of identifying information of any complainant with respect to whom the ombudsman program maintains files, records, or information is strictly prohibited, unless they provide approval of informed consent. Informed consent can be obtained either orally, visually, written, or through auxiliary aids and such consent is documented contemporaneously by a LTCO.

KEY: elderly, ombudsman, LTCO
May 30, 2018 62A-3-201 to 208
Notice of Continuation June 30, 2017 62A-3-104

R527. Human Services, Recovery Services.
R527-303. Automatic Payment Withdrawal.
R527-303-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107. Pursuant to Section 62A-11-703(6), the Office of Recovery Services/Child Support Services (ORS/CSS) shall make rules specifying eligibility requirements to enter into alternative payment agreements.

2. The purpose of this rule is to specify how ORS/CSS will determine the eligibility of an obligor to make child support payments via automatic payment withdrawal from a bank account in lieu of income withholding.

R527-303-2. Automatic Payment Withhdrawal.

1. Pursuant to Section 62A-11-703, ORS/CSS may enter into an alternative payment agreement with an obligor which provides for payment of child support via electronic funds transfer from the obligor's account at a financial institution in lieu of income withholding.

2. In order to be eligible to enter into an alternative payment agreement with ORS/CSS, an obligor:

a. must have a verified address in the Office of Recovery Services Information System;

b. must not have been disqualified from using the alternative payment agreement in the last 12 months; and,

c. may not be an obligor on an active outgoing intergovernmental case.

3. The ORS/CSS Director or designee may exercise his/her discretion to terminate any agreement for abuse or cause.

KEY: child support, electronic funds transfer, automatic payment withdrawal
May 8, 2018 **62A-1-111**
62A-11-107
62A-11-703

R539. Human Services, Services for People with Disabilities.
R539-1. Eligibility.
R539-1-1. Purpose.

(1) The purpose of this rule is to provide:

(a) procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part 1; and

(b) notice to Applicants of hearing rights and the hearing process.

R539-1-2. Authority.

(1) This rule establishes procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part 1.

(2) The procedures of this rule constitute the minimum requirements for eligibility for Division funding. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

R539-1-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101.

(2) In addition:

(a) "Agency Action" means an action taken by the Division that denies, defers, or changes services to an Applicant applying for, or a person receiving, Division funding;

(b) "Applicant" means an individual or a representative of an individual applying for determination of eligibility;

(c) "Brain Injury" means any acquired injury to the brain and is neurological in nature. This would not include those with deteriorating diseases such as Multiple Sclerosis, muscular dystrophy, Huntington's chorea, ataxia, or cancer, but would include cerebral vascular accident;

(d) "Department" means the Department of Human Services;

(e) "Division" means the Division of Services for People with Disabilities;

(f) "Electronic Surveillance" is observing or listening to persons, places, or activities with the aid of electronic devices such as cameras, web cams, global positioning systems, motion detectors, weight detectors or microphones, in real time.

(g) "Electronic Surveillance Certification" is documentation signed by members of the Provider Human Rights Committee that contains the location of the site under surveillance, description of the types of surveillance to be used, names of persons to be under surveillance and signed consent from each person affected as required by Subsections R539-3-7(3) and R539-3-7(4).

(h) "Form" means a standard document required by Division rule or other applicable law;

(i) "Guardian" means someone appointed by a court to be a substitute decision maker for a person deemed to be incompetent of making informed decisions;

(j) "Hearing Request" means a written request made by a person or a person's representative for a hearing concerning a denial, deferral or change in service;

(k) "ICF/ID" means Intermediate Care Facility for People with Intellectual Disability;

(l) "Person" means someone who has been found eligible for Division funding for support services due to a disability and who is waiting for or receiving services at the present time;

(m) "Qualifying Acquired Neurological Brain Injury" means an eligible International Classification of Diseases code diagnosis from the most recent revision of the classification, clinical modification, as outlined in Division Directive 1.40 Qualifying Acquired Brain Injury Diagnoses.

(n) "Related Conditions" means a severe, chronic disability that meets the following conditions:

(i) It is attributable to:

(A) Cerebral palsy or epilepsy; or

(B) Any other condition, other than mental illness, found to be closely related to intellectual disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of people with intellectual disability, and requires treatment or services similar to those required for these persons.

(ii) It is manifest before the person reaches age 22.

(iii) It is likely to continue indefinitely.

(iv) It results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care.

(B) Understanding and use of language.

(C) Learning.

(D) Mobility.

(E) Self-direction

(F) Capacity for independent living.

(o) "Representative" means the person's legal representative including the person's parents if the person is a minor child, a court appointed guardian or a lawyer retained by the person;

(p) "Resident" is an Applicant or Guardian who is physically present in Utah and provides a statement of intent to reside in Utah.;

(q) "Support" is assistance for portions of a task allowing a person to independently complete other portions of the task or to assume increasingly greater responsibility for performing the task independently;

(r) "Support Coordinator" is an employee of the Division or an individual contracted with the Division to provide assistance in assessing the needs of, and developing services and supports for, persons receiving Division funding. Support Coordinators complete written documentation of supports and assist with monitoring the appropriate spending of a person's annual budget, as well as monitor the quality of the services provided.

(s) "Team Member" means members of the person's circle of support who participate in the planning and delivery of services and supports with the Person. Team members may include the Person applying for or receiving services, his or her parents, Guardian, the support coordinator, friends of the Person, and other professionals and Provider staff working with the Person; and

(t) "Waiver" means the Medicaid approved plan for a state to provide home and community-based services to persons with disabilities in lieu of institutionalization in a Title XIX facility, the Division administers three such waivers; the intellectual disabilities or related conditions waiver, the brain injury waiver and physical disabilities waiver.

R539-1-4. Non-Waiver Services for People with Intellectual Disabilities or Related Conditions.

(1) The Division will serve those Applicants who meet the definition of a person with a disability in Subsections 62A-5-101(8).

(2) When determining functional limitations in the areas listed below for Applicants ages 7 and older, age appropriate abilities must be considered.

(a) Self-care - An Applicant who requires assistance, training and/or supervision with eating, dressing, grooming, bathing or toileting.

(b) Expressive and/or Receptive Language - An Applicant who lacks functional communication skills, requires the use of assistive devices to communicate, or does

not demonstrate an understanding of requests or is unable to follow two-step instructions.

(c) Learning - An Applicant who has a valid diagnosis of Intellectual Disability based on the criteria found in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(d) Mobility - An Applicant with mobility impairment who requires the use of assistive devices to be mobile and who cannot physically self-evacuate from a building during an emergency without the assistive device.

(e) Capacity for Independent Living - An Applicant (age 7-17) who is unable to locate and use a telephone, cross streets safely, or understand that it is not safe to accept rides, food or money from strangers. An adult who lacks basic survival skills in the areas of shopping, preparing food, housekeeping, or paying bills.

(f) Self-direction - An Applicant (age 7-17) who is significantly at risk in making age appropriate decisions. An adult who is unable to provide informed consent for medical/health care, personal safety, legal, financial, habilitative, or residential issues and/or who has been declared legally incompetent. A person who is a significant danger to self or others without supervision.

(g) Economic self-sufficiency - (This area is not applicable to children under 18.) An adult who receives disability benefits and who is unable to work more than 20 hours a week or is paid less than minimum wage without employment support.

(3) Applicant must be diagnosed with an intellectual disability or related conditionas set forth in Section 62A-5-101(8).

(a) Applicants who have a primary diagnosis of mental illness, hearing impairment and/or visual impairment, learning disability, behavior disorder, substance use disorder or personality disorder do not qualify for services under this rule.

(4) The Applicant, parent of a minor child, or the Applicant's Guardian must be a resident of the State of Utah prior to the Division's final determination of eligibility.

(5) The Applicant or Applicant's Representative shall be provided with information about all service options available through the Division as well as a copy of the Division's Guide to Services.

(6) It is the Applicant's or Applicant's Representative's responsibility to ensure that the appropriate documentation is provided to the intake worker to determine eligibility.

(7) The following documents are required to determine eligibility for non-waivered intellectual disability or related conditions services.

(a) A Division Eligibility for Services Form 19 completed by the designated staff. For children under seven years of age, Eligibility for Services Form 19C, completed by the designated staff within the Division office, will be accepted in lieu of the Eligibility for Services Form 19. The staff member will indicate on the Eligibility for Services Form 19C that the child is at risk for substantial functional limitation in three areas of major life activity due to intellectual disability or related conditions; that the limitations are likely to continue indefinitely; and what assessment provides the basis of this determination.

(b) Inventory for Client and Agency Planning (ICAP) assessment shall be completed by the Division;

(c) Social History completed by or for the Applicant within one year of the date of application;

(d) Psychological Evaluation provided by the Applicant or, for children under seven years of age, a Developmental Assessment may be used as an alternative; and

(e) Supporting documentation for all functional limitations identified on the Division Eligibility for Services Form 19 or Division Eligibility for Services Form 19C shall be gathered and filed in Applicant's record. Additional supporting documentation shall be required when eligibility is not clearly supported by the above-required documentation. Examples of supporting documentation include, but are not limited to, mental health assessments, educational records, neuropsychological evaluations, and medical health summaries.

(8) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to Applicant or Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(9) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, Division staff shall determine the Applicant eligible or ineligible for funding for non-waiver intellectual disability or related conditions services within 90 days of receiving the required documentation.

(10) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(11) People receiving services will have their eligibility re-determined on an annual basis. If people are determined to no longer be eligible for services, a transition plan will be developed to discontinue services and ensure health and safety needs are meet.

(12) This section does not apply to Applicants who meet the separate eligibility criteria for physical disability and brain injury outlined in Subsections R539-1-6 and R539-1-8 respectively.

(13) Persons not participating in a Waiver or Persons participating in a Waiver but receiving non-Waiver services may have reductions in non-Waiver service packages or be discharged from non-Waiver services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-5. Medicaid Waiver Eligibility for People with Intellectual Disability or Related Conditions.

(1) Matching federal funds may be available through the Community Supports Waiver for People with Intellectual Disabilities or Related Conditions to provide an array of home and community-based services that an eligible person needs.

(2) Within appropriations from the Legislature, as set forth by UT Code Subsections 62A-5-102(3) and (4), persons may be found eligible for Waiver funding according to the following methods:

(a) A person's needs score, as determined by the Division's needs assessment tool, identifies the person as ranking among persons with the most critical needs.

(b) A person is identified by the Division as a person whose only need is respite services.

(i) The Division determines that a person only needs respite services by:

(A) Identifying those persons who, according to the Division's records, have indicated that the person is in need of respite services only;

(B) Conducting an additional needs assessment to update the person's needs score and determine if the person is in need of additional services beyond respite.

(ii) Persons identified by the Division as needing only respite services will be grouped together, from which the Division shall randomly select persons, using a simple random sampling method.

(3) Pursuant to Section R414-510, where the Department of Health determines that sufficient funds are available, a person meeting the eligibility requirements set forth by the Department of Health in Subsection R414-510-3 may receive Medicaid Home and Community-Based Waiver Services by transitioning out of an ICF/ID into the Community Supports Waiver for People with Intellectual Disabilities or Related Conditions.

(4) Pursuant to Section R414-502, where the Department of Health determines that a person meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid Home and Community-Based Waiver program, a person may be found eligible for funding through the Community Supports Waiver for People with Intellectual Disabilities or Related Conditions when all other eligibility requirements of Section R414-502 are met.

(5) Persons who are found eligible for funds through the Medicaid Home and Community-Based Waiver for People with Intellectual Disabilities or Related Conditions may choose not to participate in the Waiver. Persons who choose not to participate in the Waiver will receive only the state funded portion of the budget the person would have received had the person participated in the Waiver.

R539-1-6. Non-Waivered Services for People with Physical Disabilities.

(1) The Division will serve those Applicants who meet the eligibility requirements for physical disabilities services. To be determined eligible for non-waivered Physical Disabilities Services, the Applicant must:

(a) Have the functional loss of two or more limbs;

(b) Be 18 years of age or older;

(c) Have at least one personal attendant trained or willing to be trained and available to provide support services in a residence that is safe and can accommodate the personnel and equipment (if any) needed to adequately and safely care for the Person; and

(d) Be medically stable and have a physical disability.

(e) Have their physician document that the Person's qualifying disability and need for personal assistance services are attested to by a medically determinable physical impairment which the physician expects will last for a continuous period of not less than 12 months and which has resulted in the individual's functional loss of two or more limbs, to the extent that the assistance of another trained person is required in order to accomplish activities of daily living/instrumental activities of daily living;

(f) Be capable, as certified by a physician, of selecting, training and supervising a personal attendant;

(g) Be capable of managing personal financial and legal affairs; and

(h) Be a resident of the State of Utah.

(2) Applicants seeking non-Waiver funding for physical disabilities services from the Division shall apply directly to the Division's State Office, by submitting a completed Physical Disabilities Services Application Form 3-1 signed by a licensed physician.

(3) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant indicating that the intake case will be placed in inactive status.

(a) The Applicant may activate the application at any time thereafter by providing the remaining required information.

(b) The Applicant shall be required to update information.

(4) When all necessary eligibility documentation is received from the Applicant and the Applicant is determined eligible, the Applicant will be assessed by a Nurse Coordinator, according to the Physical Disabilities Needs Assessment Form 3-2 and the Minimum Data Set-Home and Community-based (MDS-HC), and given a score prior to placing a Person into services. The Physical Disabilities Nurse Coordinator shall:

(a) use the Physical Disabilities Needs Assessment Form 3-2 to evaluate each Person's level of need;

(b) determine and prioritize needs scores;

(c) rank order the needs scores for every Person eligible for service, and

(d) if funding is unavailable, enter the Person's name and score on the Physical Disabilities wait list.

(5) The Physical Disabilities Nurse Coordinator assures that the needs assessment score and ranking remain current by updating the needs assessment score as necessary. A Person's ranking may change as needs assessments are completed for new Applicants found to be eligible for services.

(6) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant of eligibility determination and placement on the pending list. The Applicant may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(7) This does not apply to Applicants who meet the separate eligibility criteria for intellectual disability or related condition and brain injury outlined in Subsections R539-1-4 and R539-1-8 respectively.

(8) Persons not participating in a waiver or Persons participating in a waiver but receiving non-waiver services may have reductions in non-waiver service packages or be discharged from non-waiver services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-7. Medicaid Waiver Eligibility for People with Physical Disabilities.

(1) Matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities to provide an array of home and community-based services that an eligible person needs.

(2) Within appropriations from the Legislature, as set forth by UT Code Subsections 62A-5-102(3) and (4), persons with physical disabilities may be found eligible for Waiver funding according to the following methods:

(a) A person's needs score, as determined by the Division's needs assessment tool, identifies the person as ranking among persons with the most critical needs.

(b) A person who is eligible for waiver service through the Medicaid Home and Community-Based Waiver for People with Disabilities is not eligible for respite services.

(3) Pursuant to Section R414-502, where the Department of Health determines that an applicant meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or

equivalent care provided through a Medicaid Home and Community-Based Waiver program, an applicant may be found eligible for funding through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities when all other eligibility requirements of Section R414-502 are met.

(4) Persons who are found eligible for funds through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities may choose not to participate in the Waiver. Persons who choose not to participate in the Waiver will receive only the state funded portion of the budget the person would have received had the person participated in the Waiver.

R539-1-8. Non-Waiver Services for People with Brain Injury.

(1) The Division will serve those Applicants who meet the eligibility requirements for brain injury services. To be determined eligible for non-waiver brain injury services the Applicant must:

(a) have a documented qualifying acquired neurological brain injury from a licensed physician (MD or DO).

(b) Be 18 years of age or older;

(c) score between (36 and 136) on the Comprehensive Brain Injury Assessment Form 4-1.

(d) meet at least three of the functional limitations listed under number (4).

(2) Applicants with functional limitations due solely to mental illness, substance use disorder or deteriorating diseases like Multiple Sclerosis, Muscular Dystrophy, Huntington's Chorea, Ataxia or Cancer are ineligible for non-waiver services.

(3) Applicants with intellectual disability or related conditions are ineligible for these non-waiver services.

(4) In addition to the definitions in Section 62A-5-101(2) and (8), eligibility for brain injury services will be evaluated according to the Applicant's functional limitations as described in the following definitions:

(a) Memory or Cognition means the Applicant's brain injury resulted in substantial problems with recall of information, concentration, attention, planning, sequencing, executive level skills, or orientation to time and place.

(b) Activities of Daily Life means the Applicant's brain injury resulted in substantial dependence on others to move, eat, bathe, toilet, shop, prepare meals, or pay bills.

(c) Judgment and Self-protection means the Applicant's brain injury resulted in substantial limitation of the ability to:

(i) provide personal protection;

(ii) provide necessities such as food, shelter, clothing, or mental or other health care;

(iii) obtain services necessary for health, safety, or welfare;

(iv) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(d) Control of Emotion means the Applicant's brain injury resulted in substantial limitation of the ability to regulate mood, anxiety, impulsivity, agitation, or socially appropriate conduct.

(e) Communication means the Applicant's brain injury resulted in substantial limitation in language fluency, reading, writing, comprehension, or auditory processing.

(f) Physical Health means the Applicant's brain injury resulted in substantial limitation of the normal processes and workings of the human body.

(g) Employment means the Applicant's brain injury resulted in substantial limitation in obtaining and maintaining a gainful occupation without ongoing supports.

(5) The Applicant shall be provided with information concerning service options available through the Division and a copy of the Division's Guide to Services.

(6) The Applicant or the Applicant's Guardian must be physically present in Utah and provide evidence of residency prior to the determination of eligibility.

(7) It is the Applicant's or Applicant's Representative's responsibility to provide the intake worker with documentation of brain injury, signed by a licensed physician;

(8) The intake worker will complete or compile the following documents as needed to make an eligibility determination:

(a) Comprehensive Brain Injury Assessment Form 4-1, Sections A through L; and

(b) Brain Injury Social History Summary Form 824L, completed or updated within one year of eligibility determination;

(9) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant or the Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at any time thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(10) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, Division staff shall determine the Applicant eligible or ineligible for funding for brain injury supports.

(11) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(12) Persons receiving Brain Injury services will have their eligibility re-determined on an annual basis. Persons who are determined to no longer be eligible for services will have a transition plan developed to discontinue services and ensure that health and safety needs are met.

R539-1-9. Medicaid Waiver Eligibility for People with Acquired Brain Injury.

(1) Matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury to provide an array of home and community-based services that an eligible person needs.

(2) Within appropriations from the Legislature, as set forth by UT Code Subsections 62A-5-102(3) and (4), persons may be found eligible for Waiver funding according to the following methods:

(a) A person's needs score, as determined by the Division's needs assessment tool, identifies the person as ranking among persons with the most critical needs.

(b) A person is identified by the Division as a person whose only need is respite services.

(i) The Division determines that a person only needs respite services by:

(A) Identifying those persons who, according to the Division's records, have indicated that the person is in need of respite services only;

(B) Conducting an additional needs assessment to update the person's needs score and determine if the person is in need of additional services beyond respite.

(ii) Persons identified by the Division as needing only respite services will be grouped together, from which the Division shall randomly select persons, using a simple random sampling method.

(3) Pursuant to Section R414-502, where the Department of Health determines that an applicant meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid Home and Community-Based Waiver program, an applicant may be found eligible for funding through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury when all other eligibility requirements of Section R414-502 are met.

(4) Persons who are found eligible for funds through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury may choose not to participate in the Waiver. Persons who choose not to participate in the Waiver will receive only the state funded portion of the budget the person would have received had the person participated in the Waiver.

R539-1-10. Graduated Fee Schedule.

(1) Pursuant to Subsections 62A-5-105(2)(b) and(c) the Division establishes a graduated fee schedule for use in assessing fees to individuals. The graduated fee schedule shall be applied to Persons who do not meet the Medicaid eligibility requirements for Waiver services. Family size and gross income shall be used to determine the fee. This rule does not apply to Persons who qualify for Medicaid waiver funding but who choose to have funding reduced to the state match per R539-1-5(5), R539-1-7(4), and R539-1-9(4) rather than participate in the Medicaid Waiver.

(a) Persons who do not participate in a Medicaid Waiver who do not meet Waiver level of care must apply for a Medicaid Card within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver who meet Waiver level of care must apply for determination of financial eligibility using Form 927 within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver shall provide the Support Coordinator or Nurse Coordinator with the financial determination letter within 10 days of the receipt of such documentation. Persons who do not participate in a Medicaid Waiver and who fail to comply with these requirements shall have funding reduced to the state match rate.

(b) Persons who do not participate in a Medicaid Waiver due to financial eligibility, must be reduced to the state match rate.

(c) Persons who only meet the general eligibility requirements, as per Sections R539-1-4, R539-1-6, and R539-1-8, must report all cash assets (stocks, bonds, certified deposits, savings, checking and trust amounts), annual income and number of family members living together using Division Form 2-1G. Persons with Discretionary Trusts are exempt from the Graduated Fee Schedule as per Subsection 62A-5-110(6). The Form 2-1G shall be reviewed at the time of the annual planning meeting. The Person / family shall return Form 2-1G to the support coordinator prior to delivery of new services. Persons / families currently receiving services will have 60 days from receiving notice of this rule to return a completed and signed Form 2-1G to the Division. Persons / families who complete the Division Graduated Fee Assessment Form 2-1G shall be assessed a fee no more than 3% of their income. If the form is not received within 60 days of receiving notice of this rule, the Person will have funding reduced to the state match rate.

(d) Cash assets, income and number of family members will be used to calculate available income (using the formula: (assets + income) / by the total number of family members = available income). Available income will be used to determine the fee percent (0 percent to 3 percent). The annual fee amount will be calculated by multiplying available income by the fee percent. Persons who do not participate in a Medicaid Waiver, who only meet general eligibility requirements, and have available incomes below 300 percent of the poverty level will not be assessed a fee. Persons with available incomes between 300 and 399 percent of poverty will be assessed a 1 percent fee, Persons with available incomes between 400 and 499 percent of poverty will be assessed a 2 percent fee and those with available income over 500 percent of poverty will be assessed a 3 percent fee.

(e) No fee shall be assessed for a Person who does not participate in a Medicaid Waiver and who receives funding for less than 31 percent of their assessed need. A multiplier shall be applied to the fee of Persons who do not participate in a Medicaid Waiver and who receive 31 to 100% percent of their assessed need.

(f) If a Person's annual allocation is at the state match rate, they will not be assessed a fee.

(g) Only one fee will be assessed per family, regardless of the number of children in the family receiving services. Persons who do not participate in a Medicaid Waiver under the age of 18 shall be assessed a fee based upon parent income. Persons who do not participate in a Medicaid Waiver over the age of 18 shall be assessed a fee based upon individual income and assets.

(h) If the Person is assessed a fee, the Person shall pay the Division of Services for People with Disabilities or designee 1/12th of the annual fee by the end of each month, beginning the following month after the notice of this rule was sent to the Person.

(i) If the Person fails to pay the fee for six months, the Division may reduce the Person's next year annual allocation to recover the amount due. If a Person can show good cause why the fee cannot be paid, the Division Director may grant exceptions on a case-by-case basis.

R539-1-11. Social Security Numbers.

(1) The Division requires persons applying for services to provide a valid Social Security Number. The Division adopts the same standard as Sections R414-302 and 42 CFR 435.910, 2014 ed., which is incorporated by reference.

KEY: human services, disabilities, social security numbers

October 23, 2017	**62A-5-103**
Notice of Continuation October 23, 2017	**62A-5-105**

R590. Insurance, Administration.
R590-219. Credit Scoring.
R590-219-1. Authority.

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a) in which the commissioner may make rules to implement the provisions of this title. Also, specific authority is provided in Subsection 31A-22-320(3) to enforce the provisions of Section 31A-22-320.

R590-219-2. Scope and Purpose.

This rule sets forth minimum standards for all property and casualty insurers doing private passenger automobile business in Utah that use credit history or an insurance score as part of their underwriting criteria or rating plans.

R590-219-3. Definitions.

In addition to the definitions in Section 31A-1-301 and 31A-22-320, the following definition shall apply for the purposes of this rule:

(1)(a) "Initial underwriting" shall include:

(i)deciding whether or not to issue a policy to the consumer;

(ii) the amount and terms of the coverage;

(iii) the duration of the policy;

(iv) the rates or fees charged; and

(v) those additional drivers related to the named insured or spouse by blood, marriage, adoption, or guardianship who were emancipated prior to becoming an additional driver in the named insured's household.

(b) "Initial underwriting" shall not include additional vehicles or drivers added to the household of a current auto insurance policyholder of the insurer, provided:

(i) the additional vehicle is owned by the named insured, spouse or persons related to the named insured by blood, marriage, adoption, or guardianship that are residents of the named insured's household;

(ii) the additional driver is related to the named insured or spouse by blood, marriage, adoption, or guardianship and is a resident of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere.

(iii) a divorced spouse or child where an insurer has a record of the driving history from an existing policy.

(2) "Adverse action" shall have the same meaning as defined in the Fair Credit Reporting Act, 15 U.S.C. sec.1681 et seq. An adverse action includes the following:

(a) cancellation, denial or non-renewal of insurance coverage;

(b) charging a higher premium than would have been offered if the credit history or credit score had been more favorable, whether the charge is by:

(i) application of a rating rule;

(ii) assignment to a rating category within a single insurer, into which insureds with substantially like risk or exposure factors and expense elements are placed for purposes of determining rate or premium, that does not have the lowest available rates;

(iii) placement with an affiliate insurer that does not offer the lowest rates available to the consumer within the affiliate group of insurers; or

(iv) a reduction or an adverse or unfavorable change in the terms of coverage or amount of insurance owing to a consumer's credit history or insurance score.

(c) A reduction or an adverse or unfavorable change in the terms of coverage occurs when:

(i) coverage provided to the consumer is not as broad in scope as coverage requested by the consumer but available to other insureds of the insurer or any affiliate; or

(ii) the consumer is not eligible for benefits such as dividends that are available through affiliate insurers.

R590-219-4. Insurer's Obligation If Credit Information Is Used.

(1) An insurer must comply with all notification requirements of the federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq. If any adverse action is taken, the insurance company must provide to the applicant or insured:

(a) the identity, telephone number, and address of any consumer-reporting agency from which a credit report was obtained;

(b) notification of the applicant's or insured's right to receive a free copy of their credit report from the consumer reporting agency for a period of 60 days from the date of application; and

(c) notification of the applicant's or insured's right to lodge a dispute with the consumer-reporting agency and have erroneous information corrected in accordance with the Fair Credit Reporting Act.

(2) After an adverse action is taken, if it is later determined that the initial information in the credit report was incorrect, the insurance company, at the request of the applicant or insured, shall underwrite or rate the policy again using the correct information. If the insurer determines that the insured has overpaid premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.

(3) An insurer shall establish procedures that allow consumers or their insurance producers to request that a person's credit history or score be re-examined if a correction has been made to the consumer's credit report.

(4) An insurer shall refrain from penalizing consumers on new and renewal policies issued on or after the effective date of this rule based on identity theft; credit inquiries not initiated by the consumer; insurance-related inquiries; medical related collection accounts, if the information can be identified on a credit report; and multiple lender inquiries, if captured on a credit report as being from the home mortgage industry and made within a 30 day period, unless only one inquiry is considered.

R590-219-5. Prohibited Uses of Credit Information.

Insurers may not use credit information:

(1) to cancel or non-renew any private passenger auto insurance policy that has been in effect for 60 days or more;

(2) for initial underwriting, unless risk related factors, other than credit information, are considered;

(3) to determine rates as part of a filed rating plan for private passenger auto insurance, except to provide a premium discount or similar reduction in rates and, when an insurer issues a new or renewal policy on or after the effective date of this rule with a discount based on credit, that discount shall not be removed or reduced based on credit information only;

(4) to cancel or non-renew an existing private passenger auto insurance policy which has been in effect for 60 days or more, nor decline or refuse to issue a new policy or coverage for an additional vehicle owned by the named insured or persons related to the named insured by blood, marriage, adoption, or guardianship who are residents of the named insured's household; or

(5) to cancel or non-renew an existing private passenger auto insurance policy which has been in effect for 60 days or more when adding a newly licensed driver who is related to the named insured by blood marriage, adoption, or guardianship, and continues to be a resident of the named insured's household.

R590-219-6. Offer of Placement.

An offer of placement with an affiliated insurance company is not considered a cancellation, non-renewal, declination, or refusal to issue a policy.

R590-219-7. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 45 days from the rule's effective date.

R590-219-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance, credit scoring
June 13, 2003 31A-2-201
Notice of Continuation May 4, 2018 31A-22-320

R590. Insurance, Administration.
R590-222. Life Settlements.
R590-222-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to the authority provided in Subsection 31A-2-201(3), authorizing rules to implement the provisions of Title 31A, and Section 31A-36-119, authorizing rules to implement the provisions of Title 31A, Chapter 36.

R590-222-2. Purpose and Scope.

The purpose of this rule is to implement procedures for licensure of life settlement providers and producers, provider annual reports, disclosures, advertising, reporting of fraud, prohibited practices, standards for life settlement payments, and procedures for requests for verification of coverage.

This rule applies to all life settlement providers and producers and to insurers whose policies are being settled.

R590-222-3. Incorporation by Reference.

The following appendices are hereby incorporated by reference within this rule and are available at www.insurance.utah.gov/legalresources/currentrules.html:

(1) Appendix A, Utah Life Settlement Provider Initial Application, dated 2009.

(2) Appendix B, Utah Life Settlement Provider Annual Report, dated 2009.

(3) Appendix C, NAIC Life Settlement brochure Selling Your Life Insurance Policy, dated 2004.

(4) Appendix D, NAIC Verification of Coverage for Life Insurance Policies, dated 2004.

(5) Appendix E, Utah Life Settlement Provider Renewal Application, dated 2013.

R590-222-4. Definitions.

In addition to the definitions in Section 31A-1-301 and 31A-36-102, the following definitions apply to this rule:

(1) For purposes of this rule, "insured" means the person covered under the policy being considered for settlement.

(2) "Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.

R590-222-5. License Requirements.

(1) Life Settlement Provider License.

(a) A person may not perform, or advertise any service as a life settlement provider in Utah, without a valid license.

(b) A life settlement provider license shall be issued on an annual basis upon:

(i) the submission of a complete initial or renewal application; and

(ii) the payment of the applicable fees under Section 31A-3-103.

(c) An applicant for a license shall:

(i) use the application form prescribed by the commissioner and available on the department's website. For the initial application, see Appendix A and for the renewal application, see Appendix E;

(ii) with an initial application, provide a copy of the applicant's plan of operation that is to:

(A) describe the market the applicant intends to target;

(B) explain who will produce business for the applicant and how these people will be recruited, trained, and compensated;

(C) estimate the applicant's projected Utah business over the next 5 years;

(D) describe the corporate organizational structure of the applicant, its parent company, and all affiliates;

(E) describe the procedures used by the applicant to insure that life settlement proceeds will be sent to the owner within three business days as required by Subsection 31A-36-110 (3); and

(F) describe the procedures used by the applicant to insure that the identity, financial information, and medical information of an insured are not disclosed except as authorized under Section 31A-36-106;

(iii) with an initial application, provide the antifraud plan as required by Section 31A-36-117;

(iv) with both an initial and renewal application, provide any other information requested by the commissioner; and

(v) with both an initial and renewal application, provide evidence of financial responsibility in the amount of $250,000 in the form of a surety bond issued by an insurer authorized in this state. The surety bond shall be in the favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud or conviction of unfair practices by the life settlement provider;

(A) The evidence of financial responsibility shall remain in force for as long as the licensee is active.

(B) The bond shall not be terminated or reduced without 30 days prior written notice to the licensee and the commissioner.

(C) The commissioner may accept as evidence of financial responsibility, proof that a surety bond, in accordance with the requirements in subsection 1(c)(v), has been filed with the commissioner of any other state where the life settlement provider is licensed as a life settlement provider as long as the benefits provided by the surety bond extend to this state.

(d) The commissioner may refuse to issue or renew a license of a life settlement provider if any officer, one who is a holder of more than 10% of the provider's stock, partner, or director fails to meet the standards of Title 31A, Chapter 36.

(e) If, within the time prescribed, a life settlement provider fails to pay the renewal fee, fails to submit the renewal application, or fails to submit the report required in Section R590-222-6, the nonpayment or failure to submit shall:

(i) result in lapse of the license; and

(ii) subject the provider to administrative penalties and forfeitures.

(f) If a life settlement provider has, at the time of license renewal, life settlements where the insured has not died, the life settlement provider shall:

(i) renew or maintain its current license status until the earlier of the following events:

(A) the date the life settlement provider properly assigns, sells, or otherwise transfers the life settlements where the insured has not died; or

(B) the date that the last insured covered by a life settlement transaction has died;

(ii) designate, in writing, either the life settlement provider that entered into the life settlement or the producer who received commission from the life settlement, if applicable, or any other life settlement provider or producer licensed in this state, to make all inquiries to the owner, or the owner's designee, regarding health status of the insured or any other matters.

(g) The commissioner shall not issue a license to a nonresident life settlement provider unless a written designation of an agent for service of process is filed and maintained with the commissioner.

(2) Life Settlement Producer license.

Life settlement producers shall be licensed in accordance

with Title 31A, Chapter 23a with a life insurance line of authority.

R590-222-6. Annual Report.

(1) By March 1 of each calendar year, each life settlement provider licensed in this state shall submit a report to the commissioner. Such report shall be limited to all life settlement transactions where the owner is a resident of this state.

(2) This report shall be submitted in the format in Appendix B and contain the following information for the previous calendar year for each life settlement contracted during the reporting period:

(a) a coded identifier;

(b) policy issue date;

(c) date of the life settlement;

(d) net death benefit settled;

(e) amount available to the policyholder under the terms of the policy at the time of the settlement; and

(f) net amount paid to owner.

(3) The completed report is to be submitted by email to life.uid@utah.gov.

R590-222-7. Payment Requirements.

(1) Payment of the proceeds of a life settlement pursuant to Subsection 31A-36-110(3) shall be by means of wire transfer to an account designated by the owner or by certified check or cashier's check.

(2) Payment of the proceeds to the owner pursuant to a life settlement shall be made in a lump sum except where the life settlement provider has purchased an annuity or similar financial instrument issued by a licensed life insurance company or bank, or an affiliate of either. Retention of a portion of the proceeds, not disclosed or described in the life settlement by the life settlement provider or escrow agent, is not permissible without written consent of the owner.

R590-222-8. Disclosures.

(1) As required by Subsection 31A-36-108(1), the disclosure, which is to be provided no later than the time of the application for the life settlement, shall be provided in a separate document that is signed by the owner and the life settlement provider or producer, and shall contain the following information:

(a) There are possible alternatives to a life settlement, including any accelerated death benefits, loans, or other benefits offered under the owner's life insurance policy.

(b) Some or all of the proceeds of the life settlement may be taxable under federal and state income taxes, and assistance should be sought from a professional tax advisor.

(c) Proceeds of the life settlement could be subject to the claims of creditors.

(d) Receipt of the proceeds of a life settlement may adversely affect the owner's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.

(e) The owner has the right to rescind a life settlement within 15 calendar days after the receipt of the life settlement proceeds by the owner as provided by Subsection 31A-36-109(7). If the insured dies during the rescission period, the settlement is deemed to have been rescinded. Rescission is subject to repayment of all life settlement proceeds and any premiums, loans and loan interest to the life settlement provider.

(f) Funds will be sent to the owner within three business days after the life settlement provider has received the insurer or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.

(g) Entering into a life settlement may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the owner. Assistance should be sought from a financial adviser.

(h) Disclosure to an owner shall include distribution of a copy of the National Association of Insurance Commissioners (NAIC) Life Settlement brochure, dated 2004, that describes the process of life settlements, see Appendix C.

(i) The disclosure document shall contain the following language: "All medical, financial or personal information solicited or obtained by a life settlement provider or producer about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the life settlement between the owner and the life settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."

(j) Following execution of a life settlement, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number. This contact shall be limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less. All such contacts shall be made only by a life settlement provider licensed in the state in which the owner resided at the time of the life settlement, or by the authorized representative of a duly licensed life settlement provider.

(2) A life settlement provider shall provide the owner with at least the following disclosures no later than the date the life settlement is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement or in a separate document signed by the owner and provide the following information:

(a) The affiliation, if any, between the life settlement provider and the issuer of the insurance policy to be settled.

(b) The document shall include the name, business address and telephone number of the life settlement provider.

(c) The amount and method of calculating the compensation paid or to be paid to the life settlement producer or any other person acting for the owner in connection with the transaction. The term "compensation" includes anything of value paid or given for the placement of a policy.

(d) If an insurance policy to be settled has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be settled, the owner shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with an insurance producer or the insurer issuing the policy for advice on the proposed life settlement.

(e) State the dollar amount of the current death benefit payable to the life settlement provider under the policy or certificate. If known, the life settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the extent to which the owner's interest in those benefits will be transferred as a result of the life settlement.

(f) State the name, business address, and telephone number of the independent third party escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

(3) If the life settlement provider transfers ownership or

changes the beneficiary of the insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within 20 days after the change.

R590-222-9. Standards for Evaluation of Reasonable Payments.

The life settlement provider is responsible for assuring that the net proceeds from the life settlement exceed the benefits that are available at the time of the life settlement under the terms of the policy including cash surrender, long-term care, and accelerated death benefits.

R590-222-10. Requests for Verification of Coverage.

(1) Insurers, authorized to do business in this state, whose policies are being settled, shall respond to a request for verification of coverage from a life settlement provider or producer within 30 calendar days of the date a request is received, subject to the following conditions:

(a) a current authorization consistent with applicable law, signed by the policyholder or certificate holder, accompanies the request;

(b) in the case of an individual policy, submission of a form substantially similar to the NAIC Verification of Coverage for Life Insurance Policies, dated 2004, which has been completed by the life settlement provider or producer in accordance with the instructions on the form, see Appendix D;

(c) in the case of group insurance coverage:

(i) submission of a form substantially similar to the NAIC Verification of Coverage for Life Insurance Policies dated 2004, which has been completed by the life settlement provider or producer in accordance with the instructions on the form, see Appendix D; and

(ii) which has previously been referred to the group policyholder and completed to the extent the information is available to the group policyholder.

(2) An insurer whose policy is being settled may not charge a fee for responding to a request for information from a life settlement provider or producer in compliance with this rule in excess of any usual and customary charges to policyholders, certificate holders or insureds for similar services.

(3) The insurer whose policy is being settled shall send an acknowledgment of receipt of the request for verification of coverage to the policyholder or certificate holder and, where the policyholder or certificate holder is other than the insured, to the insured. The acknowledgment may contain a general description of any accelerated death benefit or similar benefit that is available under a provision of or rider to the life insurance contract.

R590-222-11. Advertising.

(1) This section shall apply to advertising of life settlements, related products, or services intended for dissemination in this state. Failure to comply with any provision of this section is determined to be a violation of Section 31A-36-112.

(2) The form and content of an advertisement of a life settlement shall be sufficiently complete and clear so as to avoid misleading or deceiving the reader, viewer, or listener. It shall not contain false or misleading information, including information that is false or misleading because it is incomplete.

(3) Information required to be disclosed shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(4) An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the omission or use has the capacity, tendency or effect of misleading or deceiving owners, as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence.

(5) An advertisement shall not use the name or title of an insurer or an insurance policy unless the affected insurer has approved the advertisement.

(6) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable or in any manner an incorrect or improper practice.

(7) The words "free," "no cost," "without cost," "no additional cost", "at no extra cost," or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

(8) Testimonials, appraisals or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the life settlement product or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective owners as to the nature or scope of the testimonials, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, the life settlement licensee makes, as its own, all the statements contained therein, and the statements are subject to all the provisions of this section.

(a) If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the party making use of the testimonial, appraisal, analysis or endorsement, either directly or through a related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(b) An advertisement shall not state or imply that a life settlement benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the life settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the life settlement licensee, or receives any payment or other consideration from the life settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(c) When an endorsement refers to benefits received under a life settlement, all pertinent information shall be retained for a period of five years after its use.

(9) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

(10) An advertisement shall not disparage insurers, life settlement providers, life settlement producers, life settlement investment agents, anyone who may recommend a life settlement, insurance producers, policies, services or methods of marketing.

(11) The name of the life settlement licensee shall be clearly identified in all advertisements about the licensee or its life settlement, products or services, and if any specific life settlement is advertised, the life settlement shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name and administrative office address of the life settlement provider shall be shown on the application.

(12) An advertisement shall not use a trade name, group designation, name of the parent company of a life settlement licensee, name of a particular division of the life settlement

licensee, service mark, slogan, symbol or other device or reference without disclosing the name of the life settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the life settlement licensee, or to create the impression that a company other than the life settlement licensee would have any responsibility for the financial obligation under a life settlement.

(13) An advertisement shall not use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective owners into believing that the solicitation is in some manner connected with a government program or agency.

(14) An advertisement may state that a life settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that a competing life settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the department of insurance to find out if the state requires licensing and, if so, whether the life settlement provider or producer is licensed.

(15) An advertisement shall not create the impression that the life settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its life settlements are recommended or endorsed by any government entity.

(16) The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

(17) An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the U.S. government endorses, approves or favors:

(a) any life settlement licensee or its business practices or methods of operations;

(b) the merits, desirability or advisability of any life settlement;

(c) any life settlement; or

(d) any life insurance policy or life insurance company.

(18) If the advertisement emphasizes the speed with which the settlement will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the owner.

(19) If the advertising emphasizes the dollar amounts available to owners, the advertising shall disclose the average purchase price as a percent of face value obtained by owners contracting with the licensee during the past six months.

R590-222-12. Reporting of Fraud.

(1) A person engaged in the business of life settlements under Title 31A, Chapter 36, that knows or has reasonable cause to suspect that any person has violated or will violate any provision of Section 31A-36-113, shall, upon acquiring the knowledge, promptly notify the commissioner and provide the commissioner with a complete and accurate statement of all of the relevant facts and circumstances. Any other person acquiring such knowledge may furnish the information to the commissioner in the same manner. The report is a protected communication and when made without actual malice does not subject the person making the report to any liability whatsoever. The commissioner may suspend, revoke, or refuse to renew the license of any person who fails to comply with this section.

R590-222-13. Prohibited Practices.

(1) A life settlement provider or producer shall obtain from a person that is provided with patient identifying information a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured for the disclosure. Notwithstanding the foregoing, if a life settlement provider or producer is served with a subpoena and, therefore, compelled to produce records containing patient identifying information, it shall notify the owner and the insured in writing at their last known addresses within five business days after receiving notice of the subpoena.

(2) A life settlement provider shall not also act as a life settlement producer in the same life settlement, whether entitled to collect a fee directly or indirectly.

(3) A life settlement producer shall not seek or obtain any compensation from the owner without the written agreement of the owner obtained prior to performing any services in connection with a life settlement.

(4) A life settlement provider or producer shall not unfairly discriminate in the making or soliciting of life settlements, or discriminate between owners with dependents and without dependents.

(5) A life settlement provider or producer shall not pay or offer to pay any finder's fee, commission or other compensation to any insured's physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to the owner, or to any other person acting as an agent of the owner, other than a life settlement producer, with respect to the life settlement.

R590-222-14. Filing of Forms.

(1) All forms to be used for a life settlement shall be filed with the commissioner prior to use. The department is not required to review each form and does not provide approval for a filing. The forms will be identified as "filed for use" when submitted to the department with all requirements. The forms to be filed include the life settlement, disclosure to the owner, notice of intent to settle, verification of coverage, and application.

(2) A form filing consists of:

(a) a cover letter on the licensee's letterhead that provides the following:

(i) a list of the forms being filed by title and any identification number given the document;

(ii) a description of the filing; and

(iii) an indication whether the form:

(A) is new; or

(B) replacing or modifying a previously filed form; if so, describe the changes being made, the reason, and the date previously filed; and

(b) a copy of each form to be filed.

(3) The form filing and any responses must be submitted via email to life.uid@utah.gov.

(4) If a filing has been rejected, the filing must be resubmitted as a new filing.

(5) If a Filing Objection Letter has been issued, the response must include:

(a) a new cover letter identifying the changes made; and

(b) one copy of the revised form.

(6) Companies may request the status of their filing by email, telephone, or mail after 30 days from the date of submission.

R590-222-15. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 30 days from the rule's effective date.

R590-222-16. Penalties.

A person found, after an administrative proceeding, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-222-17. Severability.

If any provision or clause of this rule or its application to any person or situation is held to be invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance, life settlement
September 23, 2013 31A-2-201
Notice of Continuation May 4, 2018 31A-36-119

R590. Insurance, Administration.
R590-223. Rule to Recognize the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits.
R590-223-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3), 31A-17-402(1) and 31A-22-408(11).

R590-223-2. Purpose.

The purpose of this rule is to recognize, permit and prescribe the use of the 2001 Commissioners Standard Ordinary (CSO) Mortality Table in accordance with Sections 31A-17-504, 31A-22-408 and R590-198-5.

R590-223-3. Definitions.

A. "2001 CSO Mortality Table" means mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC, 2nd Quarter 2002. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

B. "2001 CSO Mortality Table (F)" means mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

C. "2001 CSO Mortality Table (M)" means mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

D. "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

E. "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

F. The tables identified in Subsections R590-223-3.A through E are hereby incorporated by reference within this rule and are available for public inspection at the Insurance Department during normal business hours.

R590-223-4. 2001 CSO Mortality Table.

A. At the election of the company for any one or more specified plans of insurance and subject to the conditions stated in this rule, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after July 1, 2003 and before the date specified in Subsection R590-223-4.B to which Subsections 31A-17-504(1)(c), 31A-22-408(6)(d)(viii)(VI), R590-198-5.A and R590-198-5.B are applicable. If the company elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

B. Subject to the conditions stated in this rule, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on and after January 1, 2009, to which Subsections 31A-17-504(1)(c), 31A-22-408(6)(d)(viii)(VI), R590-198-5.A and R590-198-5.B are applicable.

R590-223-5. Conditions.

A. For each plan of insurance with separate rates for smokers and nonsmokers an insurer may use:

(1) composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits;

(2) smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by Section 31A-17-511 and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or

(3) smoker and nonsmoker mortality to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

B. For plans of insurance without separate rates for smokers and nonsmokers, the composite mortality tables shall be used.

C. For the purpose of determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, the 2001 CSO Mortality Table may, at the option of the company for each plan of insurance, be used in its ultimate or select and ultimate form, subject to the restrictions of Section R590-223-6 and Valuation of Life Insurance Policies Rule R590-198 relative to use of the select and ultimate form.

D. When the 2001 CSO Mortality Table is the minimum reserve standard for any plan for a company, the actuarial opinion in the annual statement filed with the commissioner shall be based on an asset adequacy analysis in conformance with the requirements of Section R590-162-8. The commissioner may exempt a company from this requirement if it only does business in this state and in no other state.

R590-223-6. Applicability of the 2001 CSO Mortality Table to Rule R590-198.

A. The 2001 CSO Mortality Table may be used in applying R590-198 in the following manner, subject to the transition dates for use of the 2001 CSO Mortality Table in Section R590-223-4:

(1) Subsection R590-198-3.A.(2)(b): The net level reserve premium is based on the ultimate mortality rates in the 2001 CSO Mortality Table.

(2) Subsection R590-198-4.B: All calculations are made using the 2001 CSO Mortality Table, and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in Subsection R590-223-6.A.(4). The value of "$q_{x+k+t-1}$" is the valuation mortality rate for deficiency reserves in policy year k+t, but using the unmodified select mortality rates if modified select mortality rates are used in the computation of deficiency reserves.

(3) Subsection R590-198-5.A: The 2001 CSO Mortality Table is the minimum standard for basic reserves.

(4) Subsection R590-198-5.B: The 2001 CSO Mortality Table is the minimum standard for deficiency reserves. If select mortality rates are used, they may be multiplied by X percent for durations in the first segment, subject to the conditions specified in Subsections R590-198-5.B.(3)(a) through (i). In demonstrating compliance with those conditions, the demonstrations may not combine the results of tests that utilize the 1980 CSO Mortality Table with those tests that utilize the 2001 CSO Mortality Table, unless the combination is explicitly required by rule or necessary to be in compliance with relevant Actuarial Standards of Practice.

(5) Subsection R590-198-6.C: The valuation mortality table used in determining the tabular cost of insurance shall be the ultimate mortality rates in the 2001 CSO Mortality Table.

(6) Subsection R590-198-6.E.(4): The calculations specified in Subsection R590-198-6.E shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

(7) Subsection R590-198-6.F.(4): The calculations specified in Subsection R590-198-6.F shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

(8) Subsection R590-198-6.G.(2): The calculations specified in Subsection R590-198-6.G shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

(9) Subsection R590-198-7.A.(1)(b): The one-year valuation premium shall be calculated using the ultimate mortality rates in the 2001 CSO Mortality Table.

B. Nothing in this section shall be construed to expand the applicability of R590-198 to include life insurance policies exempted under Subsection R590-198-3.A.

R590-223-7. Gender-Blended Tables.

A. For any ordinary life insurance policy delivered or issued for delivery in this state on and after July 1, 2003, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the company for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this Section of the rule.

B. The company may choose from among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the NAIC in December 2002

C. It shall not, in and of itself, be a violation of Subsection 31A-23-302(3) for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis.

R590-223-8. Separability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected.

KEY: insurance reserves and nonforfeitures

June 13, 2003	**31A-2-201**
Notice of Continuation May 4, 2018	**31A-17-402**
	31A-22-408

R590. Insurance, Administration.
R590-266. Utah Essential Health Benefits Package.
R590-266-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(3)(a) and 31A-2-212(5) wherein the commissioner is directed to adopt a rule for purposes of designating the essential health benefits for Utah.

R590-266-2. Purpose and Scope.

(1) The purpose of this rule is to designate an essential health benefits package in Utah as required by Section 1302 of the Patient Protection and Affordable Care Act of 2010, the Health Care Education Reconciliation Act of 2010, and related federal regulations and guidance (PPACA).

(2) This rule applies to all non-grandfathered individual and small employer health benefit plans issued or renewed on or after January 1, 2014.

R590-266-3. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purpose of this rule:

(1) "Essential health benefits" means the following health care service categories that must be included in non-grandfathered individual and small employer health benefit plans beginning January 1, 2014:

(a) ambulatory patient services;

(b) emergency services;

(c) hospitalization;

(d) maternity and newborn care;

(e) mental health and substance use disorder services, including behavioral health treatment;

(f) prescription drugs;

(g) rehabilitative and habilitative services and devices;

(h) laboratory services;

(i) preventive and wellness services and chronic disease management; and

(j) pediatric services, including oral and vision care.

(2) "Grandfathered health plan" means an individual or small employer health benefit plan that:

(a) was in existence when the PPACA was enacted on March 23, 2010;

(b) has not had any significant changes that reduce benefits or increase costs to consumer including:

(i) a significant cut or reduction in benefits, such as excluding coverage for people with diabetes;

(ii) an increase in co-pays by more than $5, adjusted annually for medical inflation, or a percentage equal to medical inflation plus 15%;

(iii) the employer reduces contributions by more than five percentage points; or

(iv) reducing annual dollar limits, or adding a new limit; and

(c) the insured has received notification from the carrier that their health benefit plan is a grandfathered plan.

(3) "Habilitative" means health care services that help a person keep, learn, or improve skills and functioning for daily living. Habilitative services may include physical therapy, occupational therapy, speech-language pathology, and other services.

(4) "Non-Grandfathered health plan" means an individual or small employer health benefit plan:

(a) that is issued after the PPACA was enacted on March 23, 2010; or

(b) a grandfathered health plan that has made significant changes that reduce benefits or increase costs to consumers that has caused the plan to lose the grandfathered status as provided in (2)(b).

(5) "Rehabilitative" means the treatment of disease, injury, developmental delay, or other cause, by physical agents and methods to assist in the rehabilitation of normal physical bodily function, that is goal-oriented and where the person has potential for functional improvement and ability to progress.

(6) "Utah Essential Health Benefits Package" means the benefits designated in this rule by the commissioner as essential health benefits in non-grandfathered plans for the purposes of the PPACA in Utah.

R590-266-4. Utah Essential Health Benefits.

(1)(a) The commissioner hereby designates the PEHP Utah Basic Plus plan as the Utah Essential Health Benefits Package for purposes of the PPACA in Utah.

(b) The PEHP Utah Basic Plus 2013 Plan as incorporated herein and available at https://insurance.utah.gov/consumer/health/reform.

(c) The PEHP Utah Basic Plus 2013 Plan was issued on July 1, 2013. Some of the benchmark plan benefits may not comply with current state or federal requirements.

(2)(a) Except as provided in Subsection (b) and (c), an individual or small employer carrier who issues or renews a non-grandfathered plan on or after January 1, 2014, must include at a minimum the benefits of the Utah Essential Health Benefits Package.

(b) A carrier may substitute coverage provided in the Utah Essential Health Benefits Package as long as substitutions are actuarially equivalent and complies with the standards set forth in 42 CFR 457.431.

(c) A health benefit plan may exclude the pediatric dental essential health benefit if there is at least one carrier offering a certified stand-alone dental plan that provides the pediatric dental essential health benefit in the PEHP Utah Basic Plus 2013 Plan.

(3) This rule does not prohibit an individual or small employer carrier from offering a non-grandfathered plan with benefits in addition to the Utah Essential Health Benefits Package.

R590-266-5. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-266-6. Severability.

If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: essential health benefit, insurance
January 10, 2018 31A-30-201(3)(a)
Notice of Continuation October 16, 2017 31A-2-212(5)

R651. Natural Resources, Parks and Recreation.
R651-103. Electronic Meetings.
R651-103-1. Purpose and Authority.

This rule is established under the authority of Title 52; Chapter 4; Section 207 to provide the standards and procedures for electronic meetings of the Board of Parks and Recreation; the Off-highway Vehicle Advisory Council; the Recreational Trails Advisory Council and the Boating Advisory Council.

R657-39-2. Definitions.

(1) Terms used in this rule are defined as follows:

(a) "Anchor location" means the physical location from which:

(i) An electronic meeting originates; or

(ii) The participants are connected.

(b) "Electronic meeting" means a public meeting convened or conducted by means of a conference using electronic communications.

R651-103-3. Electronic Meetings.

(1) Section 52-4-207 authorizes a public body to convene or conduct an electronic meeting provided written procedures are established for such meetings. This rule establishes procedures for conducting Board and Advisory Council meetings by electronic means.

(2) The following provisions govern any meeting at which one or more Board or Advisory Council members appear telephonically or electronically pursuant to Section 52-4-207:

(a) If one or more members participate in a public meeting electronically or telephonically, public notices of the meeting shall specify:

(i) The members participating in the meeting electronically and how they will be connected to the meeting;

(ii) The anchor location where interested persons and the public may attend, monitor, and participate in the open portions of the meeting;

(iii) The meeting agenda; and

(iv) The date and time of the meeting.

(b) Written or electronic notice of the meeting and the agenda shall be posted or provided no less than 24 hours prior to the meeting:

(i) At the anchor location;

(ii) On the Utah Public Notice Website; and

(iii) To at least one newspaper of general circulation within the state or to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

(c) Notice of the possibility of an electronic meeting shall be given to board members at least 24 hours before the meeting. In addition, the notice shall describe how a member may participate in the meeting electronically or telephonically.

(d) When notice is given of the possibility of a board member appearing electronically or telephonically, any board member may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the board.

(i) At the commencement of the meeting, or at such time as any board member initially appears electronically or telephonically, the chair should identify for the record all those who are appearing telephonically or electronically.

(ii) Votes by members of the board who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Utah Department of Natural Resources, 1594 West North Temple, Salt Lake City, Utah.

(i) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected.

(ii) The anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

R651-103-4. Board and Council Emergency Meetings.

(1) There are times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Section 52-4-202(1) cannot be met. Pursuant to Section 52-4-202(5), the notice requirements in Section 52-4-202(1) may be disregarded when unforeseen circumstances require the board or any of the advisory councils to meet and consider matters of an emergency or urgent nature.

(2) The following procedure shall govern any emergency meeting:

(a) No emergency meeting shall be held unless an attempt has been made to notify all of the members of the board of the proposed meeting and a majority of the convened members vote in the affirmative to hold such an emergency meeting.

(b) Public notice of the emergency meeting shall be provided as soon as practicable and shall include at a minimum the following:

(i) Posting of the date, time, and place of the meeting and the topics to be considered:

(A) At the offices of the division;

(B) On the division's web page; and

(C) At the location where the emergency meeting will be held.

(ii) If members of the board appear electronically or telephonically, notice shall comply with the requirements of R651-103-3 to the extent practicable.

(c) In convening the meeting and voting in the affirmative to hold such an emergency meeting, the board shall affirmatively state and find what unforeseen circumstances have rendered it necessary for the board to hold an emergency meeting to consider matters of an emergency or urgent nature such that the ordinary public notice of meetings provisions of Section 52-4-202 could not be followed.

KEY: electronic meetings, procedures
May 22, 2018 **52-4-207**

R671. Pardons (Board of), Administration.
R671-312A. Commutation Procedures Applicable to Persons Sentenced to Death Before April 26, 1992.
R671-312A-1. Scope of Rule.

Board of Pardons and Parole Administrative Rule R671-312 governs all petitions and proceedings when a petition for commutation of a death sentence is filed by or on behalf of a person sentenced to death for a capital felony in this state. In addition to the rules of general applicability set forth in Rule R671-312, this rule R671-312A governs commutation petitions and proceedings when a death sentence commutation petition concerns a person who was sentenced to death before April 26, 1992.

R671-312A-2. Eligibility.

(1) A person sentenced to death, or that person's counsel, may file a petition for commutation of a death sentence no later than seven days after the sentencing court has issued a judgment of death or a warrant of execution.

(2) If any appeal of the petioner's conviction or sentence is filed or litigated on behalf of the petitioner, including any collateral challenges or lawsuits, the commutation petition shall be filed within seven days after completion of all such appeals of the conviction or sentence and collateral challenges or lawsuits, including, but not limited to all proceedings seeking post-conviction relief, habeus corpus relief, or other proceedings for extraordinary relief.

(3) Failure of any petitioner or counsel to comply with this rule, all other Board rules, or any Board directive or order may result in the summary denial of the petition and cancellation of any scheduled hearing.

(4) Any act, omission, pleading, or other filing by a petitioner or counsel that the Board determines is meant to delay, hinder, or disrupt the Board's commutation process or proceedings may result in the summary denial of the petition and cancellation of any scheduled hearing.

R671-312A-3. Petition Requirements.

(1)(a) The commutation petition shall be signed by the petitioner, under oath, and filed with the Board's Administrative Coordinator at the offices of the Board no later than seven days after the sentencing court signs a warrant setting an execution date.

(b) If the petitioner is represented by counsel, the petitioner's counsel shall also sign the petition.

(c) If the petitioner is represented by counsel, counsel shall comply in all respects with Rule R671-103, Attorneys.

(d) The petitioner or counsel shall hand-deliver a copy of the petition to the Utah Attorney General or designee. Additional copies of the petition may be served in any manner calculated to accomplish actual notice to the state, and may include facsimile transmission, electronic mail, or other electronic transmission.

(2) The commutation petition shall include:

(a) the petitioner's name, date of birth, and Department of Corrections offender number;

(b) the name, address, telephone number, and e-mail address of any counsel representing the petitioner in the commutation proceeding;

(c) a certified copy of the Judgment, Conviction and Sentence for which commutation is petitioned;

(d) a certified copy of the Warrant setting the execution date applicable to the petitioner and for which commutation is petitioned;

(e) a statement specifying whether or not the conviction and sentence for which commutation is petitioned was appealed; and if so, a copy of any applicable appellate decision;

(f) a statement specifying whether or not the conviction and sentence for which commutation is petitioned was the subject of any complaint, petition, or other court filing or litigation seeking collateral remedies, post-conviction relief, a writ of habeus corpus, or any other extraordinary relief; and if so, a copy of all applicable final orders, rulings, determinations and appellate decisions regarding such litigation;

(g) a statement of the reasons or grounds which the petitioner believes support the commutation of the death sentence; and

(h) copies of all written evidence upon which the petitioner intends to rely at the hearing along with the names of all witnesses the petitioner intends to call and a summary of their anticipated testimony.

(3) If the petitioner previously received a commutation hearing, the petition shall include a statement reciting what, if any, new, significant, and previously unavailable information exists which supports commutation and the reasons the petitioner believes this information supports a second, subsequent, or new hearing.

(4) Within seven days of receiving the petition, the State of Utah, by and through the Attorney General or designee, shall file a response to the petition. The State shall file it's response to the commutation petition with the Board and hand deliver a copy of the response to the petitioner and counsel, if represented.

(a) The state's response shall include copies of all written evidence, the names of any witnesses, and a summary of the anticipated testimony upon which the State intends to rely to rebut the petitioner's claim that the sentence of death should be commuted.

(b) The Board may request either the petitioner or the state to provide additional information.

R671-312A-4. Preliminary Determinations and Procedures.

(1) The Board, after considering the original commutation petition and the state's response, may grant a commutation hearing or may deny the petition without further pleadings, response, hearing, or submissions.

(2) The Board shall issue an order either granting or denying a commutation hearing. The Board's order shall be delivered to the petitioner, counsel, and the state's counsel, either by mail or electronic mail.

(3) If the Board grants a commutation hearing, the Board Chair or a Board Member designated by the Chair, will:

(a) schedule and hold a pre-hearing conference with the petitioner's counsel and the state's counsel in order to schedule the commutation hearing;

(b) identify the witnesses to be called;

(c) clarify the issues to be addressed; and

(d) take any other action deemed necessary and appropriate to conduct the commutation hearing and proceedings.

R671-312A-5. Commutation Hearing Procedures.

(1) Pursuant to Utah Constitution, Art. VII, Section 12, and Utah Code Ann., Section 77-27-5, a commutation hearing must be held before the full Board.

(2) Notice of the commutation hearing shall be sent to:

(a) the victim's representatives;

(b) the police agency which investigated the offenses for which commutation has been petitioned;

(c) the office or agency responsible for the prosecution of the offenses for which commutation has been petitioned; and

(d) the court which originally imposed the sentence for the offenses for which commutation has been petitioned.

(3) Public notice of the commutation hearing will also be made via the Board's internet website, and the State of Utah Public Meeting and Notice website.

(4) If not otherwise called as a witness, a victim representative, as defined by Section R671-203-1, shall be afforded the opportunity to attend the commutation hearing and to present testimony regarding the commutation petition, in accordance with, and subject to the provisions of Subsections R671-203-4 A through C, and F.

(5) A commutation hearing is not adversarial and neither party is allowed to cross-examine the other party's witnesses. However, the Board may ask questions freely of any witness, the petitioner, the petitioner's counsel, or the state's counsel.

(6) The Utah Rules of Evidence do not apply to a commutation hearing. However, all evidence and testimony sought to be introduced by the parties must be relevant to the issues to be decided by the Board. The Board, through the Board Chair, will make all final determinations regarding evidence or testimony admissibility, relevance, or exclusion.

(7) In conducting the commutation hearing:

(a) The Board Chair or designee will place all witnesses under oath and may impose a time limit on each party for presenting its case.

(b) The Board will record the commutation hearing in accordance with Subsection 77-27-8(2).

(c) Rule R671-302, News Media and Public Access to Hearings, will govern media and public access to the hearing.

(d) The Board may take any action it considers necessary and appropriate to maintain the order, decorum, and dignity of the hearing.

(e) During the commutation hearing, no person, including either party, the petitioner, any witness, either party's counsel, or any other person associated with or employed by a party or counsel, may approach any member of the Board without leave from the Chair.

R671-312A-6. Commutation Decision.

(1) The Board shall determine by majority decision whether to grant or deny the commutation petition.

(2) The decision of the Board granting or denying commutation following a hearing shall be delivered by mail or electronic mail to the parties and published by the Board in the same manner as other Board decisions.

(3) The decision of the Board will also be filed with the court that entered the sentence or conviction that is the subject of the commutation petition.

KEY: capital punishment, commutation

May 22, 2013	**Art VII, Sec 12**
Notice of Continuation May 11, 2018	**77-19-8**
	77-27-2
	77-27-4
	77-27-5
	77-27-5.5
	77-27-8
	77-27-9
	77-27-9.5.

R671. Pardons (Board of), Administration.
R671-312B. Commutation Procedures Applicable to Persons Sentenced to Death After April 26, 1992.
R671-312B-1. Scope of Rule.

Board of Pardons and Parole Administrative Rule R671-312 governs all petitions and proceedings when a petition for commutation of a death sentence is filed by or on behalf of a person sentenced to death for a capital felony in this state. In addition to the rules of general applicability set forth in Rule R671-312, this rule R671-312B governs commutation petitions and proceedings when a death sentence commutation petition concerns a person who was sentenced to death after April 26, 1992.

R671-312B-2. Eligibility.

(1) A person sentenced to death, or that person's counsel, may file a petition for commutation of a death sentence no later than seven days after the sentencing court has issued a judgment of death or a warrant of execution.

(2) If any appeal of the petioner's conviction or sentence is filed or litigated on behalf of the petitioner, including any collateral challenges or lawsuits, the commutation petition shall be filed within seven days after completion of all such appeals of the conviction or sentence and collateral challenges or lawsuits, including, but not limited to all proceedings seeking post-conviction relief, habeus corpus relief, or other proceedings for extraordinary relief.

(3) Failure of any petitioner or counsel to comply with this rule, all other Board rules, or any Board directive or order may result in the summary denial of the petition and cancellation of any scheduled hearing.

(4) Any act, omission, pleading, or other filing by a petitioner or counsel that the Board determines is meant to delay, hinder, or disrupt the Board's commutation process or proceedings may result in the summary denial of the petition and cancellation of any scheduled hearing.

R671-312B-3. Petition Requirements.

(1)(a) The commutation petition shall be signed by the petitioner, under oath, and filed with the Board's Administrative Coordinator at the offices of the Board no later than seven days after the sentencing court signs a warrant setting an execution date.

(b) If the petitioner is represented by counsel, the petitioner's counsel shall also sign the petition.

(c) If the petitioner is represented by counsel, counsel shall comply in all respects with Rule R671-103, Attorneys.

(d) The petitioner or counsel shall hand-deliver a copy of the petition to the Utah Attorney General or designee. Additional copies of the petition may be served in any manner calculated to accomplish actual notice to the state, and may include facsimile transmission, electronic mail, or other electronic transmission.

(2) The commutation petition shall include:

(a) the petitioner's name, date of birth, and Department of Corrections offender number;

(b) the name, address, telephone number, and e-mail address of any counsel representing the petitioner in the commutation proceeding;

(c) a certified copy of the Judgment, Conviction and Sentence for which commutation is petitioned;

(d) a certified copy of the Warrant setting the execution date applicable to the petitioner and for which commutation is petitioned;

(e) a statement specifying whether or not the conviction and sentence for which commutation is petitioned was appealed; and if so, a copy of any applicable appellate decision;

(f) a statement specifying whether or not the conviction and sentence for which commutation is petitioned was the subject of any complaint, petition, or other court filing or litigation seeking collateral remedies, post-conviction relief, a writ of habeus corpus, or any other extraordinary relief; and if so, a copy of all applicable final orders, rulings, determinations, and appellate decisions regarding such litigation;

(g) a statement of the reasons or grounds which the petitioner believes support the commutation of the death sentence;

(h) a statement certifying whether any of the reasons stated as reasons or grounds for commutation have been reviewed by a court or courts of competent jurisdiction, and if reviewed by any court, a citation to the record indicating such review;

(i) a statement, if new information is alleged, explaining why the information is considered new, why the information was not or could not have been reviewed during the judicial process, and why the information is not still subject to judicial review;

(j) a statement, if legal or constitutional reasons for commutation are claimed, setting forth the reasons that the provisions of Utah Code Ann. Section 77-27-5.5(6) do not prohibit the Board from considering the purported legal or constitutional issues; and

(k) copies of all written evidence upon which the petitioner intends to rely at the hearing along with the names of all witnesses the petitioner intends to call and a summary of their anticipated testimony.

(3) If the petitioner previously received a commutation hearing, the petition shall include a statement reciting what, if any, new, significant, and previously unavailable information exists which supports commutation and the reasons the petitioner believes this information supports a second, subsequent, or new hearing.

(4) Within seven days of receiving the petition, the State of Utah, by and through the Attorney General or designee, shall file a response to the petition. The State shall file it's response to the commutation petition with the Board and hand deliver a copy of the response to the petitioner and counsel, if represented.

(a) The state's response shall include copies of all written evidence, the names of any witnesses, and a summary of the anticipated testimony upon which the State intends to rely to rebut the petitioner's claim that the sentence of death should be commuted.

(b) The Board may request either the petitioner or the state to provide additional information.

R671-312B-4. Preliminary Determinations and Procedures.

(1) If the Board believes that it cannot consider the claims pursuant to Utah Code Ann. Section 77-27-5.5, it shall deny the petition.

(2) If the Board determines the petition does not present a substantial issue for commutation, it shall deny the petition.

(3) If the Board determines the petition presents a substantial issue for commutation, which has not, or could not have been reviewed by the judicial process, the Board may grant a commutation hearing or deny the petition without further pleadings, response, hearing, or submissions.

(4) The Board shall issue an order either granting or denying a commutation hearing. The Board's order shall be delivered to the petitioner, counsel, and the state's counsel, either by mail or electronic mail.

(5) If the Board grants a commutation hearing, the Board Chair or a Board Member designated by the Chair, will:

(a) schedule and hold a pre-hearing conference with the

petitioner's counsel and the state's counsel in order to schedule the commutation hearing;

(b) identify the witnesses to be called;

(c) clarify the issues to be addressed; and

(d) take any other action deemed necessary and appropriate to conduct the commutation hearing and proceedings.

R671-312B-5. Commutation Hearing Procedures.

(1) Pursuant to Utah Constitution, Art. VII, Section 12, and Utah Code Ann., Section 77-27-5, a commutation hearing must be held before the full Board.

(2) Notice of the commutation hearing shall be sent to:

(a) the victim's representatives;

(b) the police agency which investigated the offenses for which commutation has been petitioned;

(c) the office or agency responsible for the prosecution of the offenses for which commutation has been petitioned; and

(d) the court which originally imposed the sentence for the offenses for which commutation has been petitioned.

(3) Notice of the commutation hearing will be provided to the public via the Board's internet website, and the State of Utah Public Meeting and Notice website.

(4) If not otherwise called as a witness, a victim representative, as defined by Rule R671-203-1, shall be afforded the opportunity to attend the commutation hearing, and to present testimony regarding the commutation of the death sentence, in accordance with, and subject to the provisions of Subsections R671-203-4 A through C, and F.

(5) A commutation hearing is not adversarial and neither party is allowed to cross-examine the other party's witnesses. However, the Board may ask questions freely of any witness, the petitioner, the petitioner's counsel, or the state's counsel.

(6) The Utah Rules of Evidence do not apply to a commutation hearing. However, all evidence and testimony sought to be introduced by the parties must be relevant to the issues to be decided by the Board. The Board, through the Board Chair, will make all final determinations regarding evidence or testimony admissibility, relevance, or exclusion.

(7) In conducting the commutation hearing:

(a) The Board Chair or designee will place all witnesses under oath and may impose a time limit on each side for presenting its case.

(b) The Board will record the commutation hearing in accordance with Subsection 77-27-8(2).

(c) Rule R671-302, News Media and Public Access to Hearings, will govern media and public access to the hearing.

(d) The Board may take any action it considers necessary and appropriate to maintain the order, decorum, and dignity of the hearing.

(e) During the commutation hearing, no person, including either party, the petitioner, any witness, either party's counsel or any other person associated with or employed by a party or counsel, may approach any member of the Board without leave from the Chair.

R671-312B-6. Commutation Decision.

(1) The Board shall determine by majority decision whether to grant or deny the commutation petition.

(2) The decision of the Board granting or denying commutation following a hearing shall be delivered by mail or electronic mail to the parties and published by the Board in the same manner as other Board decisions.

(3) The decision of the Board will also be filed with the court that entered the sentence or conviction that is the subject of the commutation petition.

KEY: capital punishment, commutation

May 22, 2013 **Art VII, Sec 12**
Notice of Continuation May 11, 2018 **77-19-8**
77-27-2
77-27-4
77-27-5
77-27-5.5
77-27-8
77-27-9
77-27-9.5.

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-350. Certificate of Eligibility.
R722-350-1. Purpose.

The purpose of these rules is to establish procedures by which a petitioner may seek a certificate of eligibility pursuant to Title 77 Chapter 40. Fees established by the bureau in accordance with Section 77-40-106 to be paid by applicants are available on request.

R722-350-2. Authority.

Section 77-40-111 authorizes the department to promulgate rules to implement procedures for the application and issuance of certificates of eligibility.

R722-350-3. Definitions.

Terms used in this rule are defined in Section 77-40-102.

R722-350-4. Application for a Certificate of Eligibility.

(1)(a) An application for a certificate of eligibility must be made in writing to the bureau by filing out the application form established by the bureau.

(b) An application form must be accompanied by a payment of the application fee established by the bureau in the form of cash, check, money order, or credit card.

(2)(a) Upon receipt of a completed application form and payment of the application fee, the bureau shall review each criminal episode contained on the petitioner's criminal history, in its entirety, to determine whether the petitioner meets the requirements for a certificate of eligibility found in Sections 77-40-104 and 77-40-105.

(b) In making its determination, the bureau shall also review all federal, state and local criminal records, to which it has access.

(3) If the bureau has insufficient information to determine if the petitioner meets the requirements for a certificate of eligibility, the bureau may request that the petitioner submit additional information.

(4) If the bureau is unable to obtain disposition information regarding the petitioner's criminal history or cannot determine whether the petitioner meets the requirements for a certificate of eligibility found in Sections 77-40-104 and 77-40-105, the bureau shall send a letter to the petitioner, at the address indicated on the application form, indicating that the petitioner may obtain a special certificate for each criminal episode upon the payment of the issuance fee established by the bureau, per special certificate.

(5) If the bureau determines that the petitioner meets the requirements for the issuance of a certificate of eligibility found in Section 77-40-104, the bureau shall send the certificate of eligibility to the petitioner, at the address indicated on the application form, unless the charges were dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and Diversion.

(6) If the bureau determines that the petitioner meets the requirements for the issuance of a certificate of eligibility under any other circumstances, the bureau shall send a letter to the petitioner, at the address indicated on the application form, indicating that the petitioner must pay the issuance fee established by the bureau for each certificate of eligibility.

(7) If the bureau determines that the petitioner does not meet the criteria for the issuance of a certificate of eligibility, the bureau shall send a letter to the petitioner, at the address indicated on the application form, which describes the reasons why the petitioner's application was denied and notifies the petitioner that the petitioner may seek agency review of the bureau's decision by following the procedures outlined in R722-350-4.

R722-350-5. Agency Review of a Decision to Deny an Application for a Certificate of Eligibility.

(1) A petitioner may seek review of the denial of an application for a certificate of eligibility, as provided by Section 63G-4-301, by mailing a written request for review to the bureau within 30 days from the date the denial letter is issued.

(2) The request for review must:

(a) be signed by the petitioner;

(b) state the specific grounds upon which relief is requested;

(c) state the date upon which it was mailed; and

(d) include documentation which supports the petitioner's request for review.

(3) An employee of the bureau shall be designated to review the petitioner's written request, any accompanying documents supplied by the petitioner, and the materials contained in the application file to determine whether the petitioner meets the requirements for the issuance of a certificate found in Section 77-40-104 and 77-40-105.

(4)(a) Within a reasonable time after receiving the request for review, the bureau shall issue a final written order on review, which shall be mailed to the petitioner at the address indicated on the application.

(b) If upon further review the bureau is unable to determine whether the petitioner meets the requirements for a certificate of eligibility found in Sections 77-40-104 and 77-40-105, the bureau shall send a letter to the petitioner, at the address indicated on the application form, indicating that the petitioner may obtain a special certificate for each criminal episode upon the payment of the issuance fee established by the bureau, per special certificate.

(c) If further review indicates that the petitioner meets the requirements for the issuance of a certificate of eligibility found in Section 77-40-104, the bureau shall send a certificate of eligibility to the petitioner, unless the charges were dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and Diversion.

(d) If further review indicates that the petitioner meets the requirements for the issuance of a certificate of eligibility under any other circumstances, the order shall indicate that the petitioner must pay the issuance fee established by the bureau for each certificate of eligibility.

(e) If further review indicates that the petitioner does not meet the requirements for the issuance of a certificate, the order shall describe the reasons why the bureau's decision was upheld and notify the petitioner that the petitioner's opportunity to review the bureau's decision is limited to review by the district court as described in R722-350-5.

R722-350-6. Judicial Review.

A petitioner may seek judicial review of the bureau's final written order on review denying an application for a certificate of eligibility, as provided by Section 63G-4-402, by filing a complaint in the district court within 30 days from the date that the bureau's final written order is issued.

KEY: expungement, certificate of eligibility

January 10, 2018	**77-40-111**
Notice of Continuation September 17, 2015	**77-40-102**
	77-40-104
	77-40-105
	77-40-106

R746. Public Service Commission, Administration.
R746-1. Public Service Commission Administrative Procedures Act Rule.
R746-1-101. Title and Organization.

This rule R746-1 is:

(1) known as the "Public Service Commission Administrative Procedures Act Rule"; and

(2) organized into the following Parts:

(a) Part 100: General provisions;

(b) Part 200: Complaints and pleadings;

(c) Part 300: Motions;

(d) Part 400: Pre-hearing briefs, comments, and testimony;

(e) Part 500: Discovery;

(f) Part 600: Confidential and highly confidential information;

(g) Part 700: Hearings; and

(h) Part 800: Post-hearing proceedings.

R746-1-102. Authority.

This rule is adopted under Utah Code Section 54-1-1.

R746-1-103. Definitions.

(1) "Applicant" means any person:

(a) applying for a license, right, or authority; or

(b) requesting agency action from the Commission.

(2) "Commission" is defined at Utah Code Subsection 54-2-1(4).

(3) "Complainant" means a person that files a complaint with the Commission, pursuant to R746-1-201.

(4) "Division" means the Division of Public Utilities, State of Utah Department of Commerce.

(5) "Intervenor" means a person that:

(a) files with the Commission a petition for intervention in a pending matter; and

(b) receives Commission approval to participate as a party.

(6) "Office" means the Office of Consumer Services, State of Utah Department of Commerce.

(7) "Party" means a person that is entitled to participate in a proceeding, pursuant to Utah Code Subsection 63G-4-103(1)(f).

(8) "Person" is defined at Utah Code Subsection 63G-4-103(1)(g).

(9) "Presiding officer" is defined at Utah Code Subsection 63G-4-103(1)(h).

(10)(a) "Proceeding" or "adjudicative proceeding" means an action before the Commission, initiated by:

(i) a notice of agency action, pursuant to Utah Code Subsection 63G-4-201(1)(a);

(ii) a request for agency action, pursuant to Utah Code Subsection 63G-4-201(1)(b); or

(iii) a filing made pursuant to Utah Code Subsection 54-7-12(5).

(b) "Proceeding" does not include:

(i) an informal or preliminary inquiry or investigation undertaken by the Commission to determine whether a proceeding is warranted; or

(ii) rulemaking pursuant to Utah Code Title 63G, Chapter 3, the Utah Administrative Rulemaking Act.

(11) "Respondent" means a person:

(a) against whom a notice of agency action or request for agency action is directed; or

(b) required, or permitted by statute, to respond to an application, petition, or other request for agency action.

(12) "Responsive pleading" means any rejoinder to an initial pleading, including:

(a) an answer;

(b) a protest or opposition; or

(c) other similar filing.

R746-1-104. Designation of Adjudicative Proceedings.

(1) The following requests for agency action shall be adjudicated as informal proceedings:

(a) an unopposed application for a certificate of public convenience and necessity;

(b) a request for acknowledgment or approval of a telecommunications utility's name change; and

(c) an unopposed request for acknowledgment or approval of a merger, acquisition, or similar organizational restructuring that does not alter or affect the services provided by a telecommunications utility.

(2) A request for agency action not listed in Subsection R746-1-104(1) shall be adjudicated as a formal proceeding.

R746-1-105. Utah Rules of Civil Procedure.

The Utah Rules of Civil Procedure and case law interpreting these rules are persuasive authority in Commission adjudications unless otherwise provided by:

(1) Title 63G, Chapter 4, Administrative Procedures Act;

(2) Utah Administrative Code R746; or

(3) an order of the Commission.

R746-1-106. Computation of Time.

(1) Unless Subsection R746-1-106(2) applies, periods of time in Commission proceedings shall be computed pursuant to Utah Code Sections 68-3-7 and 68-3-8.

(2) Subsection R746-1-106(1) is superseded by any conflicting:

(a) order of the Commission;

(b) statute; or

(c) rule.

R746-1-107. Representation of Parties.

(1) A party may:

(a) be represented by:

(i) an attorney licensed to practice in Utah; or

(ii) an attorney licensed in a foreign state, if the attorney provides the Commission with a certificate of good standing from the state where licensed;

(b) represent oneself individually; or

(c) if not an individual, represent itself through an officer or employee.

(2) An attorney who appears pursuant to Subsection R746-1-107(1)(a)(ii) is not required to:

(a) apply for pro hac vice admission to the Utah State Bar; or

(b) partner with counsel licensed in Utah.

R746-1-108. Intervention.

(1) A person that wishes to intervene in a proceeding shall comply with Utah Code Section 63G-4-207.

(2) A person that is granted intervenor status:

(a) shall comply with the scheduling order issued in the docket; and

(b) may not file public comments unless the Commission's scheduling order provides for the filing of comments by a party.

R746-1-109. Deviation from Rules.

(1) A party may move the Commission to deviate from a specified rule.

(2) The party making the motion to deviate has the burden to demonstrate that the rule imposes a hardship that outweighs the benefit(s) of the rule.

R746-1-110. Electronic Meetings.

(1) An electronic meeting may be scheduled:
(a) by the Commission on its own initiative; or
(b) at the request of an interested person who is unable to attend in person.
(2) A person who requests an electronic meeting pursuant to R746-1-110(1)(b) shall submit the request to the Commission at least three business days prior to the scheduled meeting date and time.
(3) A quorum of the Commission is not required to be present at a single anchor location for an electronic meeting.
(4) Any number of separate connections for participants is allowed for an electronic meeting, unless the Commission limits the number of separate connections based on available equipment capability or other relevant and reasonable considerations.
(5) An electronic meeting will not be separately noticed solely to inform the public that one or more participants, including Commissioners, will participate telephonically.

R746-1-111. Minutes of Open Meetings.
(1) The Commission's written decision or order issued after the hearing held in a docket shall constitute its approved minutes for purposes of the Open and Public Meetings Act.
(2) The hearing transcript may augment the Commission's approved minutes to clarify any requirement of Utah Code Ann. Section 52-4-203 that is not contained in the written decision or order.

R746-1-201. Complaints.
A person who files a complaint with the Commission shall demonstrate:
(1) the person has attempted to work with the utility to resolve the complaint;
(2) the Division has reviewed the complaint and determined that the person has exhausted the Division's informal complaint resolution process; and
(3) the complaint has been served on the public utility, pursuant to R746-1-203(1)(f).

R746-1-202. Title of Pleadings.
(1) This Subsection R746-1-202 does not apply to complaints.
(2) A person that files a pleading shall include the following information in the title:
(a)(i) name and bar number of attorney preparing the pleading; or
(ii) if no attorney is involved, name of the person signing the pleading;
(b) address, telephone number, and e-mail address of the person identified in Subsection R746-1-202(2)(a);
(c) nature of the request;
(d) description of the action or relief requested;
(e) type of pleading; and
(f) docket number, if known.

R746-1-203. Form and Content of Complete Filing.
(1) In order to be considered complete, a filing other than a complaint shall:
(a) be presented as a functional and searchable spreadsheet document, portable document file (PDF), or other electronic word processing document, as applicable;
(b) unless Subsection R746-1-203(5) applies, be filed electronically:
(i) by e-mail to psc@utah.gov, if the filing is strictly non-confidential; or
(ii) through the Commission's secure file transfer protocol (SFTP) server;
(c) be identified by an electronic file name that includes the following information, as applicable, in the following order:
(i) docket number;
(ii) identification of the type of filing, such as:
(A) testimony, specified as:
(I) confidential or redacted; and
(II) direct, rebuttal, surrebuttal, etc.;
(B) exhibit or workpaper:
(I) including exhibit or workpaper number; and
(II) specified as confidential or redacted;
(C) motion, including description; or
(D) response or reply to specified motion;
(iii) last name of the person providing the content of the filing; and
(iv) name of the party on whose behalf the filing is made;
(d) be type-written in 12-point font, double spaced, and in a format that, if printed, would require 8-1/2 x 11-inch paper;
(e) per Utah Rule of Civil Procedure 11, be signed by an individual who has read the filing and believes that it is supported in fact and in law, which individual may include:
(i) the party;
(ii) the party's counsel; or
(iii) other authorized representative of the party; and
(f) include a certificate of service:
(i) stating that a true and correct copy of the filing was served upon each of the parties;
(ii) identifying the manner of service; and
(iii) identifying the date of service.
(2)(a) An electronic filing that does not comply with R746-1-203(1)(c) shall be rejected and, if re-filed, may be deemed untimely.
(b) In creating an electronic filing name pursuant to R746-1-203(1)(c), a person may use abbreviations that are reasonably calculated to convey the required information.
(3) An initial pleading shall:
(a) comply with Utah Code Subsection 63G-4-201(3)(a); and
(b) if a statute, rule, regulation, or other authority requires the Commission to act within a specific time period, include a specific section setting forth:
(i) a reference or citation to the statute, rule, regulation, or other authority;
(ii) the applicable time period; and
(iii) the expiration date of the applicable time period, identified by day, month, and year.
(4) A person that is requested by the Commission or by another party to provide a paper copy of a filing shall do so within a reasonable time.
(5)(a) A person that is unable to use e-mail or the Commission's SFTP server for electronic filing may file by paper or by disc if:
(i) the filing is accompanied by a motion for permission to deviate from the electronic filing rule; and
(ii) if submitted on paper, the filing is typed in a font of at least 12 points and double-spaced on 8-1/2 by 11-inch paper.
(b) If the SFTP server is unable to receive a document on the day it is due, the filing shall be deemed timely if uploaded to the SFTP server during business hours of the first business day on which the SFTP server again becomes available.

R746-1-204. Effective Date of Filing.
(1) If filed with the Commission during regular business hours, a complete filing is effective on the date filed.
(2) If filed with the Commission after regular business hours, a complete filing is effective on the next business day.

R746-1-205. Amendment of Complaint or Initial Pleading.

(1) A party that has filed a complete and effective complaint or initial pleading may amend the filing without leave of the Commission at any time before:

(a) a responsive pleading has been filed; or

(b) the time for filing a responsive pleading has expired.

(2) If a defect in a complaint or initial pleading does not affect the substantial rights of the parties, it does not require amendment.

(3) After a responsive pleading has been filed or the deadline for filing a responsive pleading has passed, a party may amend an initial pleading only with leave from the Commission.

R746-1-206. Responsive Pleadings.

A response to a complaint or an initial pleading shall be filed in accordance with Utah Code Section 63G-4-204, unless the Commission establishes a different response deadline.

R746-1-301. Motions.

Unless otherwise ordered by the Commission, briefing on a motion shall be as follows:

(1) Any response shall be filed within 15 days of the service date of the motion.

(2) Any reply shall be filed within 10 days of the service date of the response.

R746-1-401. Pre-hearing Briefs, Comments, and Testimony - General Requirements.

(1) A party to a docket may file briefs, comments, or testimony, as applicable, only as required or permitted in the Commission's scheduling order, or as otherwise directed by the Commission.

(2) Pre-hearing filings and accompanying exhibits shall:

(a) utilize a sequential line numbering system; and

(b) comply with Subsection R746-1-203(1).

(3) If a filing includes any calculation, the calculation shall be provided in the original format with formulas intact.

R746-1-402. Pre-hearing Testimony - Inclusion in Record.

(1)(a) A party may move the Commission to accept pre-hearing testimony into evidence without having it read under oath.

(b) Any such motion shall be subject to objection and argument.

(2) Pre-hearing testimony that is entered into evidence shall be subject to cross-examination.

R746-1-501. Discovery.

(1) Parties shall attempt to complete informal discovery through written requests for information and records (data requests).

(2) If a party considers informal discovery pursuant to Subsection R746-1-501(1) to be insufficient, the party may move the Commission for formal discovery according to Rules 26 through 37 of the Utah Rules of Civil Procedure, with the following exceptions and modifications:

(a)(i) If no responsive pleading is required in a proceeding, parties may begin discovery immediately upon the filing and service of an initial pleading.

(ii) If a responsive pleading is required, discovery shall not begin until ten days after the time limit for filing the responsive pleading.

(b) Rule 26(a)(4) of the Utah Rules of Civil Procedure, which restricts discovery, shall not apply. The opinions, conclusions, and data developed by experts engaged by parties shall be freely discoverable unless a protective order is issued by the Commission.

(c) Discovery requests, regardless of how denominated, discovery responses, and transcripts of depositions shall not be filed with the Commission.

(d) Any reference in an applicable Rule of Civil Procedure to "the court" shall be considered a reference to the Commission.

(3) On request from a party or on the presiding officer's own initiative, the presiding officer may include in a scheduling order deadlines for:

(a) filing a petition for intervention;

(b) objecting to a discovery request;

(c) responding to a discovery request;

(d) serving disclosures of evidence to be presented at hearing;

(e) completing discovery;

(f) filing dispositive and evidentiary motions; and

(g) filing pre-hearing testimony.

(4) An intervenor shall serve any request for discovery on the other parties to the docket.

(5) A party that requires a subpoena for discovery purposes shall:

(a) present the subpoena to the Commission for signature; and

(b) serve the subpoena pursuant to Utah Rule of Civil Procedure 45(b)(1).

R746-1-601. Identification of Information Claimed to Be Confidential or Highly Confidential in Commission Proceedings.

(1) A party to a docket may request that information provided to another party or included in the record be treated as confidential by:

(a) placing the information on a document with yellow background;

(b) highlighting the information with shading, text boxes, borders, asterisks, or other conspicuous formatting; and

(c) including the following designation, as applicable, on each page containing confidential information:

(i) "CONFIDENTIAL - - SUBJECT TO UTAH PUBLIC SERVICE COMMISSION RULES R746-1-602 and 603"; or

(ii) "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER".

(2)(a) A person that files or is requested to provide information that the person considers to be highly confidential shall promptly:

(i) negotiate with the other parties mutually agreeable protections; or

(ii) petition the Commission for an order granting additional protective measures.

(b) The petitioning party shall set forth:

(i) the particular basis for the claim;

(ii) the specific, additional protective measures requested, which may include restricting or prohibiting specific individuals from accessing information; and

(iii) the reasonableness of the requested, additional protection.

(c) Any other party may oppose the petition or propose alternative protective measures.

(d) If the Commission grants a petition for additional protective measures, the party providing the highly confidential information shall:

(i) place the information on a document with a pink background;

(ii) highlight the information with shading, text boxes, borders, asterisks, or other conspicuous formatting; and

(iii) include the following designation, as applicable, on each page containing highly confidential information:

(A) "HIGHLY CONFIDENTIAL - - SUBJECT TO UTAH PUBLIC SERVICE COMMISSION RULES R746-1-602 and 603"; or

(B) "HIGHLY CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER".

(3) A person that files with the Commission a document containing confidential or highly confidential information shall:

(a) file a redacted version for public access; and

(b) ensure that the line numbering and formatting in the redacted version match, as closely as practicable, that appearing in the unredacted version.

R746-1-602. Persons Entitled to Review Confidential and Highly Confidential Information.

(1)(a) The following persons are entitled to receive and review confidential and highly confidential information:

(i) Commission, including counsel and staff;

(ii) Division, including counsel and staff; and

(iii) Office, including counsel and staff.

(b)(i) Except as provided in Subsection R746-1-602(2), the following persons are entitled to receive and review confidential and highly confidential information after signing a non-disclosure agreement:

(A) counsel or other designated representative of each party, including, to the extent reasonably necessary, the counsel's or representative's:

(I) paralegals;

(II) administrative assistants; and

(III) clerical staff;

(B) persons designated by a party as an expert witness, including, to the extent reasonably necessary, the experts':

(I) administrative assistants; and

(II) clerical staff;

(C) persons employed by the parties, to the extent reasonably necessary; and

(D) any other person that signs a non-disclosure agreement.

(ii) Subsection R746-1-602(1)(b)(i) is superseded by any conflicting:

(A) agreement of the parties; or

(B) order of the Commission.

(c) The non-disclosure agreement required under Subsection R746-1-602(1)(b) shall read substantially as follows: "I have reviewed Public Service Commission of Utah Rule R746-1-603 and/or the Protective Order entered by the Public Service Commission of Utah in Docket No. XX-XXX-XX with respect to the review and use of confidential information and agree to comply with the terms and conditions of the rule and/or Protective Order."

(2)(a) A person, including an expert who is employed or retained by a party, may not receive confidential or highly confidential information if, in performing the person's normal job functions, the person could use the information to the competitive disadvantage of the person providing the information.

(b) The party that wishes to restrict or deny access to confidential or highly confidential information under Subsection R746-1-602(2)(a) has the burden to demonstrate the competitive disadvantage claimed.

R746-1-603. Treatment of Confidential and Highly Confidential Information.

(1) A person that receives confidential or highly confidential information may not use or disclose the information except:

(a) for the purpose of the Commission proceeding in which it was obtained, provided that the use within the Commission proceeding maintains confidentiality; or

(b) outside of a Commission proceeding, as required by law, provided that the person complies with Subsection R746-1-603(2).

(2) A person that is required by law to disclose confidential or highly confidential information outside of a Commission proceeding shall, prior to providing the information:

(a) give notice of the disclosure requirement, by telephone and in writing, to the person that first provided the information; and

(b) cooperate with the person that first provided the information to obtain a protective order or similar assurance of confidentiality.

(3) Notes made pertaining to, or as the result of, a review of confidential or highly confidential information shall be treated according to this Subsection R746-1-603.

R746-1-604. Challenge to Claim of Confidentiality.

(1) A party may challenge another party's claim of confidentiality by filing a motion for an in camera proceeding.

(2) If granted, the record of an in camera proceeding shall be marked, as applicable, substantially as follows:

(a) "CONFIDENTIAL--SUBJECT TO RULE R746-1-604"; or

(b) "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER".

(3)(a) An in camera hearing may be transcribed only upon:

(i) agreement of the parties; or

(ii) order of the Commission.

(b) Any transcription of an in camera hearing shall be separately bound, segregated, and withheld from any person not a party to the in camera hearing.

(4) Following an in camera hearing, if the Commission issues an order overturning a party's claim of confidentiality, the order:

(a) shall be subject to Utah Code Section 63G-4-301; and

(b) shall go into effect no sooner than 10 days after issuance.

R746-1-605. Receipt of Confidential and Highly Confidential Information into Evidence.

(1)(a) A party that considers it necessary to discuss confidential information in a filing shall, to the extent possible, refer to the information by title, exhibit number, or other non-confidential description.

(b) A party that is not able to comply with Subsection R746-1-605(1)(a) shall:

(i) place the confidential information in a separate section of the filing;

(ii) mark the separate section "CONFIDENTIAL"; and

(iii) ensure that the confidential section of the filing is served only on:

(A) counsel of record or other designated representative of the party (one copy each) who has signed a nondisclosure agreement;

(B) counsel for the Division; and

(C) counsel for the Office.

(2)(a) A party that proposes to use another person's confidential or highly confidential information as evidence in a Commission proceeding shall arrange with the owner of the information circumstances that will allow the information to be used while keeping trade secrets and proprietary material confidential.

(b) If efforts taken pursuant to Subsection R746-1-605(2)(a) fail, the owner of the information shall move the Commission to segregate and withhold any portion of the

record that would reveal trade secrets or proprietary information.

(c) If the Commission grants a motion to segregate and withhold a record, the moving party shall mark the record, as applicable, substantially as follows:

(i) "CONFIDENTIAL/HIGHLY CONFIDENTIAL--SUBJECT TO PUBLIC SERVICE COMMISSION OF UTAH RULE R746-1-605"; or

(ii) "CONFIDENTIAL/HIGHLY CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER".

(3) A party that considers it necessary to discuss a segregated confidential record during a Commission proceeding shall move the Commission for an in camera hearing.

(4)(a) Other than the Division, the Office, and counsel for a party, a person that obtains another person's confidential or highly confidential information during a proceeding shall, within 30 days after the docket is concluded:

(i) return to the owner of the information all records in the party's possession that reference the confidential information; or

(ii) certify that the information has been:

(A) turned over, in its entirety, to the person's counsel; or

(B) destroyed.

(b) The Division, the Office, and counsel for a party may retain confidential information as part of notes, workpapers, and other documents:

(i) constituting work product; and

(ii) subject to privilege or other applicable disclosure restriction.

R746-1-606. Commission Compliance with the Utah Government Records Access and Management Act.

(1) A party's marking information as confidential or highly confidential does not ensure a classification of "private," "protected," or "classified" under the Utah Government Records Access and Management Act, Utah Code Title 63G, Chapter 2.

(2) A party whose confidential or highly confidential information is requested pursuant to Utah Code Title 63, Chapter 2, shall collaborate with the Commission to determine how the information should be classified under the statute.

R746-1-701. Witness Subpoenas.

(1) A party that wishes to subpoena a witness for hearing shall:

(a) file the subpoena with the presiding officer at least 20 days prior to hearing;

(b) serve the subpoena on the witness pursuant to Utah Rule of Civil Procedure 45(b)(1); and

(c) pay the witness the statutory mileage and witness fees, unless the witness waives payment.

(2) Failure to obey the Commission's subpoena shall be considered contempt pursuant to Utah Code Subsection 54-7-23(2).

R746-1-702. Continuance of Scheduled Hearing.

(1) A person requesting to continue a scheduled hearing shall demonstrate that:

(a) the request is supported by good cause; or

(b) all parties stipulate to the continuance.

(2) Unless otherwise ordered by the presiding officer, any objection to a request for continuance shall be filed no later than five days following the date on which the request is filed and served.

R746-1-703. Closing a Hearing.

A party that wishes to close a hearing shall comply with Utah Code Subsection 54-3-21(4).

R746-1-704. Public Witness Evidence.

(1) A person not a party to a docket may:

(a) file comments prior to hearing; or

(b) appear during any public witness portion of a hearing to provide unsworn testimony.

(2) A party to a docket may file comments only if the Commission's scheduling order provides for the filing of comments by a party.

R746-1-705. Exhibits Offered at Hearing.

(1) Parties shall:

(a) mark their exhibits before hearing;

(b) provide the original of each exhibit to the court reporter, if applicable; and

(c) provide a copy of each exhibit to:

(i) the presiding officer; and

(ii) each party.

(2) If an exhibit offered at hearing contains information claimed to be confidential or highly confidential, the party offering the exhibit shall comply with Subsection R746-1-605.

R746-1-801. Post-hearing Proceedings.

(1) Proceedings on review shall be in accordance with Utah Code Section 54-7-15.

(2) A person that challenges a finding of fact in a proceeding brought under Subsection R746-1-801(1) shall marshal the record evidence that supports the challenged finding, as set forth in State v. Nielsen, 2014 UT 10, Sections 33-44, 326 P.3d 645.

(3) Following the filing of a petition pursuant to Subsection R746-1-801(1), opposing parties may file responsive memoranda or pleadings within 15 days.

(4) A petition for rehearing pursuant to Utah Code Section 54-7-15 is required in order for a party to exhaust its administrative remedies prior to appeal.

KEY: public utilities, administrative proceedings, electronic filings and meetings, confidential information

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R850. School and Institutional Trust Lands, Administration.
R850-40. Easements.
R850-40-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302 and 53C-4-203 which authorize the director to establish rules for the issuance of easements on, through, and over trust land, and to establish price schedules for this use.

R850-40-150. Planning.

The agency shall:

1. Submit proposed easements for review by the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review; and

2. Evaluate and respond to comments received through the RDCC process.

R850-40-200. Easements Issued on Trust Lands.

1. The agency may issue exclusive, non-exclusive, and conservation easements on trust lands if the agency determines such action would be in the best interests of the trust beneficiaries.

R850-40-250. Determination of the Status of Temporary Easements and Rights-of-Entry.

1. In order to determine the existence and continuation of any temporary easements or rights-of-entry granted pursuant to Section 72-5-203 on a specific parcel of trust land (the subject property), the agency may undertake the notification process set forth in R850-40-250(2). This evaluation does not adjudicate the status of any highway crossing the subject property that may have been established pursuant to any federal statute, such as R.S. 2477. Highways established in accordance with the requirements of federal law, including R.S. 2477, prior to the state taking title to the subject property are recognized as valid existing rights.

2. In order to determine the existence of a statutory temporary easement or right-of-entry on the subject property, the agency shall give notice to responsible authorities, as defined in Subsection 72-5-202(1). This notice is intended to provide information to any responsible authority wishing to assert a temporary easement or right-of-entry on the process used to file an application to make such temporary easement or right-of-entry permanent (the "application"). The application must contain a description of the facts which lead the applicant to believe that a statutory temporary easement or right-of-entry exists on the subject property, and other information that may be required by the agency to verify the assertion. Notice shall be provided as follows:

(a) Certified notice shall be mailed by the agency to the Attorney General and the executive body of the county in which the subject property is located. This notice shall include the legal description of the subject property and a map showing its location. The executive body of the county shall have 30 days from the date of the notice within which to submit an application.

(b) Notice to other responsible authorities who may have an interest in the subject property shall be given through publication at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county where the subject property is located. In addition to the legal description of the subject property, the advertisement shall put responsible authorities on notice that the agency may take action extinguishing the temporary easement or right-of-entry. Other responsible authorities shall have 30 days from the first date of publication within which to submit the application.

3. Upon the receipt of an application to convert a temporary easement or right-of-entry into an authorized easement or right-of-entry, the agency shall evaluate the request pursuant to the fiduciary responsibilities of the agency. Prior to the agency approving or rejecting an application, if any, the agency shall review the supporting documentation submitted by the applicant. The agency shall consider material submitted by any responsible authority pursuant to the applicant's appropriate statutory authority. If no application is received after notice is given pursuant to R850-40-250(2), or if an application to make the temporary easement or right-of-entry permanent is not approved, any statutory temporary easement or right-of-entry on the subject property shall automatically be extinguished. The agency will not sell trust lands for at least 14 days after a final decision to disapprove an application to make a statutory temporary easement or right-of-entry permanent.

R850-40-300. Easement Acquisition.

1. Easements across trust lands may be acquired only by application and grant made in compliance with these rules and the laws applicable thereto.

2. Easements, or other interests in trust lands, may not be acquired by:

(a) prescription,

(b) adverse possession, or

(c) any other legal doctrine except as provided by statute.

R850-40-400. Easement Charges.

The charge for any easement granted or renewed under these rules, including those granted to municipal or county governments or agencies of the state or federal government, may be based on either the market value of the use or the market value of the land encumbered by the easement.

R850-40-600. Minimum Charges for Easements.

The agency may establish a minimum charge for an easement based on the cost incurred by the agency in administering the easement.

R850-40-700. Application Procedures.

1. All applications shall be made on agency forms. The filing of an application form is deemed to constitute the applicant's offer to purchase an easement under the conditions contained in the conveyance document and these rules.

2. Application approval by the director constitutes acceptance of the applicant's offer.

3. The easement shall be executed by the applicant and returned to the agency within 60 days from the date of applicant's receipt of the written easement. Failure to execute and return the documents to the agency within the 60-day period may result in cancellation of the conveyance and the discharge of any obligation of the agency arising from the approval of the application.

R850-40-800. Term of Easements.

Easements granted under these rules shall normally be for no greater than a 30 year term. Longer or shorter terms may be granted upon application if the director determines that such a grant is in the best interest of the trust beneficiaries.

R850-40-900. Conveyance Documents.

1. Each easement shall contain provisions necessary to ensure responsible surface management, including, the following provisions: the rights of the grantee, rights reserved to the grantor; the term of the easement; payment obligations; reporting of technical and financial data;

reservation for mineral exploration and development and other compatible uses; operation requirements; grantee's consent to suit in any dispute arising under the terms of the easement or as a result of operations carried on under the easement; procedures of notification; transfers of easement interest by grantee; terms and conditions of easement forfeiture; and protection of the Trust Lands Administration from liability from all actions of the grantee.

2. In addition to the requirements of R850-40-900(1), conservation easements shall specify the resource(s) which is being protected and the conditions under which the conservation easement may be terminated.

R850-40-1000. Bonding Provisions.

1. Prior to the issuance of an easement, or for good cause shown at any time during the term of the easement, upon 30 days written notice, the applicant or grantee, as the case may be, may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the easement.

2. All bonds posted on easements may be used for payment of all monies due to the agency for costs of reclamation and compliance with all other terms and conditions of the easement, and rules pertaining to the easement. The bond shall be in effect even if the grantee has conveyed all or part of the easement interest to a sublessee, assignee, or subsequent operator until the grantee fully satisfies the easement obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

3. Bonds may be increased in reasonable amounts, at any time as the agency may decide, provided grantor first gives grantee 30 days' written notice stating the increase and the reason(s) for the increase.

4. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) Other forms of surety as may be acceptable to the agency.

R850-40-1100. Conflict of Use.

The agency reserves the right to issue non-exclusive easements or leases, or to dispose of the property by sale or exchange, on land encumbered by existing easements.

R850-40-1200. Amendments.

Any holder of an existing easement desiring to change any of the terms of, or the alignment described in the grant shall make application following the same procedure as is used to make an application for a new easement. An amendment fee pursuant to R850-4 must accompany the amendment request.

R850-40-1300. Renewal of Easement.

Prior to the expiration date of any easement, an application may be submitted for a renewal of the grant upon payment of the consideration as may then be required.

R850-40-1400. Removal of Sand and Gravel.

The removal of ordinary sand and gravel or similar materials from the land by grantee is not permitted except when the grantee has applied for and received a materials purchase permit.

R850-40-1500. Removal of Trees.

Forest products shall not be cut or removed from the easement unless and until a small forest product permit or a timber contract as provided for in agency rules has been obtained.

R850-40-1600. Easement Assignments.

1. An easement may be assigned to any person, firm, association, or corporation qualified under R850-3-200, provided that:

(a) the assignment is approved by the agency;

(b) if the easement term is perpetual, the easement shall be amended so that the term is 30 years beginning as of the original effective date. However, if the remaining number of years on an easement so amended is less than 15 years, the ending date of the easement shall be set so that there will be 15 years remaining in the easement; and

(c) payment is made of either:

i) the difference in easement rental between what was originally paid for the easement and what the agency would charge for the easement at the time the application for assignment is submitted, or

ii) alternate consideration established by, and at the discretion of, the director. In allowing for any alternate consideration the director may consider the following factors:

A) the consideration established under R850-40-1600(1)(c)(i) would create an undue financial burden upon the applicant, or

B) the assignment facilitates an agency objective.

2. An assignment shall take effect the date of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the easement to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

3. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, land involved, and the name and address of the assignee and, for the purpose of this rule shall include any agreement which transfers control of the easement to a third party.

4. An assignment shall be executed according to agency procedures.

5. An assignment is not effective until approval is given by the agency. Any assignment made without such approval is void.

6. Assignments made for no consideration in money, services, or goods, to include assignments made to affiliates (e.g. wholly owned subsidiaries) of the easement grantee, and to include inter vivos or testamentary assignments made to immediate family members (parents, spouse, children, grandchildren, and full siblings) and assignments from and to business entities wholly owned by an immediate family member or members, may be exempt from the requirement to pay the difference in easement rental established under R850-40-1600(1)(c)(i).

R850-40-1700. Termination of Easement.

1. Any easement granted by the agency may be terminated in whole or in part for failure to comply with any term or condition of the conveyance document or applicable laws or rules.

2. Upon determination by the director that an easement is subject to termination pursuant to the terms of the grant or applicable laws or rules, the director shall issue an appropriate instrument terminating the easement.

R850-40-1800. Abandonment.

1. To facilitate the determination of an abandonment of easement, the grantee shall pay an administrative charge every

three years during the term of the easement as provided in R850-4. The requirement to pay this administrative charge shall apply if:

(a) the easement is an existing easement in agency records as of December 31, 2017, and

(b) the easement term is perpetual, and

(c) the requirement to pay this administrative charge was effective and included as a contract term at the time the easement was granted, and

(d) the grantee is not a governmental entity. Governmental entities include but are not limited to municipal or county governments or agencies of the state or federal government.

2. The grantee shall not be required to pay this administrative charge for all easements issued or renewed on or after January 1, 2018.

3. This administrative charge shall not be construed as rent.

4. The agency may accept payment of the administrative charge submitted by any easement grantee.

KEY: natural resources, management, surveys, administrative procedures

May 8, 2018 **53C-1-302**

Notice of Continuation June 27, 2017 **53C-2-201(1)(a)**

53C-4-203

R850. School and Institutional Trust Lands, Administration.
R850-50. Range Management.
R850-50-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-5-102 which authorize the Director of the School and Institutional Trust Lands Administration to establish rules prescribing standards and conditions for the utilization of forage, the qualifications of a grazing permittee, and related improvement of range resources on trust lands.

R850-50-150. Planning.

1. Pursuant to Section 53C-2-201(1)(a), the issuance of grazing permits carries no planning obligations by the agency beyond existing rule-based analysis and approval processes.

2. Range improvement projects authorized pursuant to this section carry the following planning obligations beyond existing rule-based analysis and approval processes:

(a) to the extent required by the Memorandum of Understanding with the State Planning Coordinator, the agency shall submit the proposal for review by the Resource Development Coordinating Committee (RDCC); and

(b) evaluate and respond to comments received through the RDCC process.

3. Applications for modified grazing permits which do not involve surface disturbing activities are governed by paragraph 1, above. Applications for modified grazing permits which involve surface disturbing activities are subject to the planning obligations set forth in paragraph 2, above.

R850-50-200. Grazing Management.

1. Management of trust lands used for grazing purposes is based upon carrying capacity which permits optimum forage utilization and seeks to maintain or improve range conditions.

2. Carrying capacity shall be established after consideration of historical stocking rates, forage utilization, range condition, trend, and climatic conditions.

3. In order to fulfil its constitutional mandate to its beneficiaries, the agency may set, and change, at its discretion, season of use, duration (time) of use, and intensity of use, as well as numbers, distribution, and kind of livestock which are allowed by a grazing permit.

R850-50-300. Applications.

1. Grazing permit applications may be accepted on all trust lands not otherwise subject to a grazing permit unless the land has been withdrawn from grazing or has been determined to be unsuitable for grazing.

2. Trust lands may be deemed unsuitable for grazing if it is determined that:

(a) range conditions render it incapable of supporting economic grazing practices;

(b) grazing would substantially interfere with another use that is better able to provide for the support of the beneficiaries; or

(c) the agency's management costs would be excessive.

3. The determination to accept grazing permit applications is at the sole discretion of the director.

R850-50-400. Permit Approval Process.

1. On trust lands that are unpermitted and which are available for grazing, applications may be solicited through any method the agency determines appropriate, including notification of adjacent landowners and other permittees in an allotment.

2. On trust lands subject to an expiring grazing permit, competing applications shall be accepted from April 1 to April 30, or the next working day if either of these days is a weekend or holiday, of the year in which the permit terminates.

(a) All expiring and terminated grazing permits shall be posted on the agency's website by January 1 of the year in which the permit expires or the year after the permit was terminated, provided that the permitted property has been determined to be available for grazing by the agency. The website notice shall include any reimbursable investment made by an existing permittee on a range improvement. Notice that expiring grazing permits may be found on the agency's website may also be published.

(b) Grazing permits issued on trust lands acquired through an exchange with the federal government (after the expiration of the federal permit) shall not be subject to the provisions of this rule for two successive 15-year terms unless the permit has been sold or otherwise terminated.

3. A person holding an expiring grazing permit shall have the right to renew the permit, provided that no competing applications are received, by submitting a completed application along with the first year's rent and other applicable fees.

4. Persons desiring to submit a competing application must do so on forms acceptable to the agency. Forms are available at the offices listed in R850-6-200(2)(b) or from the agency's website. Applications must include:

(a) a non-refundable application fee;

(b) a one-time bonus bid; and

(c) an amount determined by the agency pursuant to R850-50-1100(7), which will be required to reimburse the holder of an authorized range improvement project should the competing application be accepted.

5. Bonus bids and range improvement reimbursements shall be refunded to unsuccessful applicants. Upon establishment of the yearly rental rate, the successful applicant shall be required to submit the first year's rental and other required fees.

6. Applications shall be evaluated by the agency and may be accepted only if the agency determines that the applicant's grazing activity will not create unmanageable problems of trespass, range and resource management, or access.

(a) For purposes of this evaluation, adjoining permittees and lessees, adjoining property owners, and adjoining federal permittees may be considered acceptable as competing applicants unless specific problems are demonstrated.

(b) Applicants not meeting the requirements in (a) above, whose uses would not unreasonably conflict with the uses of other permittees in the area, may nevertheless be accepted if the size of the grazing area, the access to the grazing area, and other factors demonstrate that the applicant is able to utilize the area without adverse impact on the range resources, adjoining lands, or beneficiaries of affected trust lands.

(c) For purposes of evaluating an applicant's acceptability as a grazing permittee, the agency may consider:

(i) the applicant's ability to maintain any water rights appurtenant to the lands described in the application;

(ii) the applicant's ownership of private land in the area;

(iii) the applicant's ownership of grazing privileges in the BLM or Forest Service allotment where the trust land is located;

(iv) the type and number of livestock owned by the applicant; and

(v) management costs to the agency should the application be approved.

7. The holder of a permit which is expiring, on which a competing application has been received, shall have a

preference right to permit the property provided he agrees to pay an amount equal to the highest bonus bid submitted by a competing applicant.

(a) In the event that the existing permittee fails to match the highest bonus bid, the permittee may be refunded the value of the amount the permittee contributed to the cost of any approved range improvement project at the expense of the successful bonus bid applicant.

(b) In the event that all, or a portion of, the property on which a bonus bid was submitted is sold, exchanged, or otherwise made unavailable, the permittee shall receive the refund of a prorated amount of the bonus bid based on the AUMs lost to the use of the permittee.

R850-50-500. AUM Assessments and Annual Adjustments.

1. An annual assessment shall be charged for each AUM authorized by the agency. This assessment shall be established by the board and shall be reviewed annually and adjusted if appropriate.

2. The annual assessment for lands designated as "High Value Grazing Lands" will be at a higher amount than trust lands not so designated. High Value Grazing Lands are typically, but not necessarily, contained in a named land block. Blocked or scattered lands may be designated as High Value Grazing Land through a Director's Finding.

3. In the event that the agency acquires High Value Grazing Lands through an exchange with the federal government, the application of the agency's annual assessment to the holders of grazing privileges on the acquired land shall be phased in over a five-year period in equal increments after the term of the federal permit has expired.

4. The application of the agency's annual assessment on lands acquired through an exchange with the federal government, and not designated as High Value Grazing Lands, shall be phased in over a three-year period in equal increments after the term of the federal permit has expired.

5. Failure to pay the annual assessment within the time prescribed shall automatically work a forfeiture and termination of the permit and all rights thereunder.

R850-50-600. Grazing Permit Terms.

1. Grazing permits shall be issued for a maximum of 15 years and shall contain the following:

(a) terms, conditions, and provisions that shall protect the interests of the trust beneficiaries with reference to securing the payment to the agency of all amounts owed;

(b) terms, conditions, and provisions that shall protect the range resources from improper and unauthorized grazing uses; and

(c) other terms, conditions, and provisions that may be deemed necessary by the agency or board in effecting the purpose of these rules and not inconsistent with any of its provisions.

2. The agency may terminate or suspend grazing permits, in whole or in part, after 30 days' notice by certified mail to the permittee when:

(a) a violation of the terms of the permit, or of these rules, including trespass as defined in R850-50-1400, has occurred;

(b) the agency, in its sole discretion, has identified a higher and better use for the permitted property;

(c) the agency intends to dispose of the permitted property; or

(d) any management problems arise as determined at the sole discretion of the agency.

R850-50-700. Reinstatements.

Trust land on which a grazing permit has been terminated and which is ineligible for reinstatement pursuant to R850-5-500(1)(c) may be advertised as available pursuant to R850-50-400(2). If the agency does not advertise the property, the person previously holding the permit may apply for a new permit by submitting an application and all applicable fees.

R850-50-800. Grazing Permits--Legal Effect.

1. A grazing permit transfers neither right, title, or interest in any lands or resources, nor any exclusive right of possession and grants only the authorized utilization of forage.

2. Locked gates on trust land, without written approval, are prohibited. If such approval is granted, keys shall be supplied to the agency and other appropriate parties requiring access to the area as approved by the agency, including those with fire and regulatory responsibilities.

R850-50-900. Non-Use Provisions.

1. The granting of non-use shall be at the discretion of the agency.

2. Applications for non-use must be submitted in advance or, if the trust land is within a federal grazing allotment, as soon as notification of non-use is received from the applicable federal agency.

3. Applications for non-use must be accompanied by the application fee and by any documentation which is the basis for the request. In the event the non-use application is approved, any annual assessment paid for the year shall be applied to the permittee's next year's annual assessment.

4. Non-use shall not be approved for periods of time exceeding one year except when the director finds that a longer period of time would be in the best interests of the beneficiaries.

5. Non-use for personal convenience with no payment of the annual assessment shall not be approved.

R850-50-1000. Assignment and Subleasing of Grazing Permits.

1. Permittee shall not assign, or sublease, in whole or in part, or otherwise transfer, dispose of, or encumber any interest in a permit without the written consent of the agency. To do so shall automatically, and without notice, work the forfeiture and termination of the permit.

2. The approval of a sublease shall be subject to the following restrictions:

(a) An annual assessment equal to 50% of the difference between the base AUM assessment established under R850-50-500, and the AUM payment received by the permittee through the sublease, multiplied by the number of AUMs subleased, or a $1.00 per AUM minimum assessment, whichever is greater, shall be charged for the approval of any sublease.

(b) Applications to sublease a grazing permit shall only be approved after a determination that the sub-lessee meets the requirements of R850-50-400(6).

(c) Sublease approvals are valid for a maximum period of five years.

3. The approval of an assignment shall be subject to the following restrictions:

(a) A determination that the assignee meets the requirements of R850-50-400(6).

(b) A payment, based on the number of AUMs transferred multiplied by $10.00, shall be paid to the agency prior to the approval of any assignment or partial assignment. Assignments made for no consideration in money, services, or goods, to include inter vivos or testamentary assignments made to immediate family members (parents, spouse, children, grandchildren, and full siblings) and assignments

from and to business entities wholly owned by an immediate family member or members, may be exempt from this additional payment. In such cases, a minimum assignment fee as listed on the Master Fee Schedule shall be assessed.

(c) For purposes of this rule, a shareholder or member of a grazing association or cooperative shall be deemed a permittee and subject to the requirements of R850-50-1000(3)(a). In order to facilitate the enforcement of this rule, each grazing association or cooperative shall submit a list of all members to the agency annually prior to June 30. This list shall include each member's contact information and the number of AUMs allowed.

4. The agency's consent to allow a mortgage agreement or collateral assignment is for the convenience of the permittee.

5. The mortgage agreement or collateral assignment shall:

(a) not exceed the remaining term of the permit; and

(b) contain an acknowledgment by the lender that the grazing permit is terminable pursuant to R850-50-600(2) and R850-50-1000(1) and that the agency assumes no liability in providing such consent.

R850-50-1100. Range Improvement Projects.

1. Applications for range improvement projects shall be submitted for approval on appropriate forms and shall be approved or denied by the agency based on a written finding.

2. A range improvement project must be approved by the agency in writing before construction begins. Line cabins and similar structures will not be authorized as range improvement projects. They may, however, be authorized by a special use lease pursuant to R850-30.

3. Agency authorization for range improvement projects shall be valid for periods of time not to exceed two years from the date the applicant is notified of the authorization. Extensions of time may be granted only when the director finds that an extension of time would be in the best interests of the beneficiaries.

4. Range improvements constructed or placed upon trust land become the property of the agency.

5. Range improvements shall not be authorized if they would be:

(a) located on a parcel that the agency has determined has potential for sale, lease, or exchange and the possibility exists that improvements may encumber these actions;

(b) located on a parcel designated for disposal;

(c) unnecessary or uneconomical as determined by the agency; or

(d) determined by the agency to be ordinary maintenance.

6. Range improvements which are necessary to rehabilitate lands whose forage production has been diminished by poor grazing practices or poor stewardship of the permittee shall not be considered a reimbursable improvement but rather a requirement to keep the grazing permit in effect.

7. Authorized Range Improvement Projects:

(a) shall be depreciated using schedules consistent with typical schedules published by the USDA Natural Resources Conservation Service or any other depreciation schedules approved by the board; and

(b) do not grant any vested property interest to the permittee.

8. In the event that the property, on which an approved range improvement is located is sold, exchanged, or withdrawn from use, the permittee shall receive no more than the amount the permittee contributed towards the original cost of the range improvement project, minus the indicated depreciation amount; or in the alternative, may be allowed 90 days to remove improvements pursuant to Section 53C-4-202(6).

9. If the range improvement project is designed to increase carrying capacity, the permittee shall agree to pay for the increase in AUMs annually starting no later than two years after project completion. The agency may allow any increase in fees to be phased in at 20% per year.

10. The agency may participate in the cost of designated range improvement projects, or maintenance of existing range improvement projects, by providing funding in amounts and at rates determined by the agency.

11. The agency's cost/share portion of the project may be in the form of project materials. In these instances, the permittee shall be required to provide all necessary equipment and manpower to complete the project to specifications required by the agency.

R850-50-1200. Additional Leases.

If the agency determines that there is unused forage available on a parcel of trust land resulting from temporary conditions, it may issue an additional permit or permits. These permit(s) shall be issued in accordance to R850-50-400. Existing permittees shall have a first right of refusal to unused forage.

R850-50-1300. Rights Reserved to the Agency.

In all grazing permits, the agency shall expressly reserve the right to:

1. issue mineral leases, special use leases, timber sales, materials permits, easements, rights-of-entry, and any other interest in the trust land;

2. issue permits for the harvesting of seed from plants on the trust land. If loss of use occurs from harvesting activities, a credit for the amount of loss shall be made to the following year's assessment;

3. enter upon and inspect the trust land or to allow scientific studies upon trust land at any reasonable time;

4. allow the public the right to use the trust land for purposes and periods of time permitted by policy and rules. However, nothing in these rules purports to authorize trespass on private land to reach trust land;

5. require that all water rights on trust land be filed in the name of the agency and to require express written approval prior to the conveyance of water off trust land;

6. require a permittee, when an agency-owned water right is associated with the grazing permit, to ensure that the water right, to the extent allowed under the permit, is maintained in compliance with state law;

7. close roads for the purpose of range or road protection, or other administrative purposes;

8. dispose of the property without compensation to the permittee, subject to R850-50-1100(7); and

9. terminate the grazing permit pursuant to R850-50-600(2).

R850-50-1400. Trespass.

1. Unauthorized activities which occur on trust land shall be considered trespass and damages shall be assessed pursuant to 53C-2-301. These activities include:

(a) the use of forage at times and at places not authorized by the permit;

(b) the use of forage in excess of that authorized by the permit;

(c) grazing or trailing livestock on or across trust land without a valid permit or right-of-entry;

(d) the dumping of garbage or any other material on the trust land; and

(e) allowing another person to graze or trail livestock on the permitted property without the express written consent of

the agency.

2. The permittee shall cooperate with the agency in taking civil action against the owners of trespass livestock to recover damages for lost forage and other damages.

R850-50-1500. Trailing Livestock Across Trust Land.

1. The trailing of livestock across trust land by a person not holding a grazing permit may be authorized if no other reasonable means of access is available.

2. Written approval in the form of a right-of-entry shall be obtained in advance from the agency.

3. The authorization to trail livestock across trust land shall restrict and limit the route, the number and type of animals, and the time and duration, which shall not exceed two consecutive days, of the trailing.

R850-50-1600. Modified Grazing Permit.

1. At the discretion of the director, the agency may issue modified grazing permits in instances where the proposed use is grazing related but is more intensive than livestock grazing alone and when improvements, if any, are primarily temporary in nature. Such uses may include camps, corrals, feed yards, irrigated livestock pastures, or other related uses.

2. Modified grazing permits shall be subject to the following terms and conditions:

(a) The term of a modified grazing permit shall be no longer than 15 years and contain terms, conditions, and provisions the agency, in its discretion, deems necessary to protect the interest of the trust beneficiaries.

(b) A modified grazing permit is subject to termination pursuant to R850-50-600(2).

(c) The annual rental for a modified grazing permit shall be based on the fair market value of the permitted property. Fair market value of the permitted property and annual rental rates shall be determined by the agency pursuant to R850-30-400. Periodic rental reviews may be completed pursuant to R850-30-400(5).

(d) Upon termination of the modified grazing permit, the permittee shall be allowed 90 days to remove any personal property.

(e) Prior to the issuance of a modified grazing permit, or for good cause shown at any time during the term of the modified grazing permit, the applicant or permittee may be required to post a bond with the agency in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the permit. Any bond posted pursuant to this rule is subject to R850-30-800(2) through (4).

R850-50-1700. Supplemental Feeding.

1. Supplemental livestock feeding may be permitted subject to:

(a) written authorization by the agency;

(b) the designation of a specific area, length of time, number, and class of livestock; and

(c) a determination that this shall not inflict long term damage upon the property.

2. The agency may assess an additional fee for authorized supplemental feeding or may require the permittee to obtain a modified grazing permit.

3. Emergency supplemental feeding shall be allowed for ten days prior to notification.

4. The forage used for supplemental feeding shall be certified weed free.

KEY: administrative procedures, range management
May 8, 2018 53C-1-302(1)(a)(ii)
Notice of Continuation June 27, 2017 53C-2-201(1)(a)
53C-5-102

R907. Transportation, Administration.
R907-80. Disposition of Surplus Land.
R907-80-1. Authorities.

The Department of Transportation makes this rule pursuant to Utah Code sections 72-5-111, 72-5-117, 72-5-404, 78B-6-520.3, and 78B-6-521, which authorize the Executive Director to prescribe the terms and conditions for the sale or exchange of surplus right of way, and to make rules to ensure that the value of the real property is consistent with the proposed price and other terms of the purchase, sale, or exchange. Property or property interests that involve federal requirements must be sold or exchanged in accordance with the requirements of 23 C.F.R. 710.409.

R907-80-2. Definitions.

1. "Appraisal" means the same as it is defined in Utah Code section 61-2G-102(1)(a).

2. "Bidder" means a person who offers to pay a certain amount of money in exchange for title to an interest in real or personal property the Department offers for sale.

3. "Confirmable Delivery Method" means any method of delivering documents that provides a way to confirm they were delivered to the intended party or location.

4. The "Department" means the Utah Department of Transportation.

5. The "Director" means the Executive Director of the Utah Department of Transportation or the Executive Director's designee.

6. "First right of refusal" means the same as "right of first refusal" and "right of first consideration."

7. "Minimum acceptable selling price" means a price established by the Department based upon the market value of the property as established by an appraisal or other means; plus, costs associated with preparing the property for and executing the sale, such as the costs of advertising, appraising, performing environmental assessments, and processing the transaction.

8. As used in this rule, "surplus land," "surplus property," or "land" mean an estate in real property to which the Department is the owner and the Director has declared to be surplus.

9. The "Transportation Commission" or "Commission" means the Utah Transportation Commission.

10. A "Utah Public Entity" means a political subdivision of the State, an agency of the state, a county, a municipality, or a special services district of the state, a county, or municipality.

R907-80-3. Sales or Exchange Initiation Process.

In determining the appropriateness of a parcel of surplus land for sale or exchange, the Department may consider nominations by interested parties.

R907-80-4. Sales Deposits.

Should the Department evaluate a parcel of surplus land for sale or exchange due to a nomination by an interested party, the interested party making such nomination may be required to deposit funds in an amount determined by the Department to be used to offset costs incurred in preparing the parcel for sale. In the event the interested party making the deposit is the successful buyer of such Land, the Department will subtract the deposit amount from the total of the purchase price and fees charged to the buyer for preparing the Land for sale. In the event the person making the deposit is not the successful buyer of such property or the property is not offered for sale, the Department will refund the deposit.

R907-80-5. Methods of Sale.

1. The Department may sell Land or assets using one of

the methods described below:

(a) A public sale mail and live auction pursuant to R907-80-7,

(b) A negotiated sale pursuant to R907-80-10, or

(c) A negotiated exchange pursuant to R907-80-11.

(d) A public sale online or web-based auction pursuant to R907-80-8.

2. The Department will execute sales and exchanges pursuant to rule R933-1-4.

R907-80-6. Public Sale Notice and Advertising - Mail and Live Auctions.

1. The Department may notify the public about the sale of surplus property by commercially feasible methods, including publication of a notice in one or more newspapers of general circulation in the county in which the sale is proposed at least 15 days before the deadline to submit bids pursuant to the requirements of R907-80-7.

2. The notice and any associated advertising will include a general description of the parcel including township, range, and section, and any other information that may create interest in the sale. The Department must also identify the desired form of payment.

3. The Department may advertise public sales using any other methods the Director has determined may increase the potential for additional competition at the sale.

R907-80-7. Public Sale - Mail and Live Auctions.

Public sale, mail and live auctions will be conducted as follows:

1. The Comptroller's Office of the Department will accept sealed bids by any means of delivery until 5:00 P.M. the day prior to the auction.

2. The officer conducting the auction will accept sealed bids by personal delivery on the day of the auction up until the beginning of the auction.

3. A sealed bid must contain deposit funds in an amount determined and advertised by the Department, as required by R907-80-4 to purchase the subject property. The Department may require this deposit to consist of certified funds. Bids and bid deposits must be a specified dollar amount. The Department has the right to reject any bid however submitted.

4. The Department may require buyers who have defaulted on certificates of sale in the past to make larger deposits or submit sealed bids in the form of certified funds even if such a requirement is not contained in the notice of sale.

5. The officer conducting the auction will open all sealed bids after declaring that the auction has started. After determining which sealed bid is highest, the officer will allow all bidders willing to bid more than the highest sealed bid received to participate in live bidding. Live bids must be for more than the amount of the highest sealed bid, subject to those terms and conditions set forth in R907-80-7(6). Persons who submit sealed bids eligible to participate in the live bidding will also be allowed to participate by telephone, subject to the terms and conditions of R907-80-7(6).

6. Bids less than the minimum acceptable selling price will be disqualified, and the bidder will not be eligible for live bidding even if such bids would otherwise meet those requirements in R907-80-7(4) or (6).

7. All bids, whether sealed or live, constitute a valid offer to purchase. An attempt to withdraw a sealed bid after the first sealed bid has been opened, or an attempt to withdraw or amend an live bid may result in the forfeiture of the bid deposit and any other remedy afforded the Department at law or equity.

8. At the conclusion of the auction and subject to the terms of R907-80-8, the successful bidder must sign a written offer agreement prepared by the Department that states the terms included in the public sale notice.

9. If the successful bidder defaults on the offer agreement, or otherwise fails to meet the requirements of R907-80-12, and upon approval by the Director, the property may be offered for sale to the person whose bid was second highest at the auction provided that the terms of the sale meet or exceed the minimum acceptable selling price established for the subject property. The second highest bidder will have 30 days from the date of the Department's offer to submit the purchase price balance plus costs required by R907-80-10(5).

10. Third parties owning authorized improvements on the parcel at the time of the sale will be allowed 90 days from the date of the sale to remove the improvements. This provision is not applicable when such improvements are permitted under a valid existing right of record when such right survives the sale of the parcel, or the improvements are subject to a separate lease agreement.

R907-80-8. Online or Web-based Public Sale Auctions.

The Department may establish an online or web-based application to use in conducting public sale auctions. The Department may subscribe to or use a commercially available online or web-based service to use in conducting public sale auctions, or it may subscribe to or use an online or web-based service provided by a public entity for conducting public sale auctions. The executive director or designee must provide written approval to use the online or web-based application or service the Department uses for public sale auctions.

R907-80-9. First Right of Refusal.

(1) If the Department does not use any portion of a parcel of property it acquires from a private party for transportation purposes, the Department must allow the original grantor an opportunity to repurchase the property at the original purchase price to the grantor before the Department may sell the parcel of property to another buyer as required by Utah Code Section 72-5-111.

(a) The Department must send a written offer by certified mail to the original grantor at the original grantor's last known address, to sell the acquired property to the original grantor at the Department's acquisition price.

(b) The original grantor of the parcel of property may assign this first right of refusal to another person before the Department may sell the parcel of property to another buyer. The original grantor or the assignee must notify the department of an assignment of the first right of refusal by certified mail to the current office address of the executive director.

(c) The original grantor or the assignee must accept the Department's offer by certified mail within 90 days of the date the original grantor receives the Department's offer. If the Department does not receive an acceptance of it's offer within 90 the days, it is free to sell or exchange the parcel to someone other than the original buyer or assignee.

(d) The original grantor or the assignee may waive the first right of refusal at any time.

(2) The Department must offer to sell property or an interest in property that it acquired by condemnation or threat of condemnation to the original grantor before it may sell to another buyer as required by Utah Code Section 78B-6-521.

(a) The Department will offer the holder of this first right of refusal the opportunity to purchase the property or property interest for a price equal to the highest offer received at auction plus all costs associated with preparing and bringing to auction the property or property interest.

(b) The Department may contact the holder of this first right of refusal of its decision to sell at auction the property or property interest to provide the holder an opportunity to

purchase the property or property interest for an amount equal to the appraised value plus all costs associated with preparing the property or property right for sale or waive the right by providing the Department a written waiver.

(c) Should the holder refuse to accept the Department's offer to sell or waive the right, the Department will contact the holder as soon as reasonably possible after the auction ends and offer the property or property interest to the holder for a price equal to the highest offer received at auction plus all associated costs.

(d) The holder of the right will have 90 days to accept or assign the offer to another buyer. Assigning the right will not extend the 90 days allowed to accept the offer.

(e) If the holder of the right does not accept or assign the Department's offer within the 90 days, the Department is free to sell the property or property interest to the highest bidder.

(f) If the holder accepts the Department's offer, the holder must close the purchase in accordance with R907-80-14.

R907-80-10. Negotiated Sales, Justifications, Procedures, and Public Notice.

1. The Department may dispose of surplus land by negotiated sale when the Executive Director or designee determines such a sale serves the best interests of the State. The Department may sell surplus land or other property by negotiated sale if:

(a) The buyer is a Utah public entity, and the property is being transferred for a public use,

(b) the buyer of the surplus land also owns adjoining land, or

(c) the executive director or designee determines a negotiated sale is in the best interest of the state and the Department.

2. The Department may list, or contract with an agent or broker to list for sale a property or property interest on a commercial listing service if the executive director or designee determines doing so is in the best interest of the state. The Department will utilize a standard procurement process to select an agent or broker.

3. In the event a party submits a competing offer or offers to purchase the property from the Department, the Department must evaluate the offer or offers and accept the offer that best serves interests of the State. If the Department receives multiple offers, the executive director or designee may determine that the best interests of the state requires the Department to request best and final offers from all offerors. A written justification statement that articulates the reasoning used to determine the offer that best serves the interests of the State must be a part of all negotiated sales files.

3. The Department may require a buyer of surplus land purchased through a negotiated sale to reimburse the Department for costs incurred in preparing the parcel for sale. These costs may include, but are not limited to costs for advertising, appraisal, environmental assessments, and a sale processing charge.

R907-80-11. Negotiated Exchanges.

1. The Department may exchange real property for other real property with a Utah Public Entity, an individual, business, private enterprise, or not-for-profit organization.

2. The Transportation Commission must approve exchanges made to acquire land the Department needs for highway use as required by Utah Code Section 72-5-111(1)(c).

3. Real property exchange transactions are not subject to competitive solicitation procedures.

4. Exchanges of surplus real property must comply with state law. Exchanges of real property involving the Department and a Utah public entity must follow the requirements of the Interlocal Cooperation Act, Utah Code sections 11-13-101 through 608.

5. The financial consideration received for any real property exchange to an individual, business, private enterprise, or not-for-profit organization must be equal to or higher than the current market value of the Department's real property, as determined by any reasonable means.

6. Real property received in an exchange must be free from all liens, encumbrances, and clouds on title unless the Director determines after review that accepting the property is in the best interests of the State. The Director's justification for accepting property with a lien, encumbrance, or cloud on title must be in writing.

R907-80-12. Contracts of Sale or Exchange.

1. The Department will prepare and deliver a contract of sale to the buyer following a public auction sale or upon concurrence of the parties in a negotiated sale or an exchange. This contract must contain the legal description of all subject property or properties, and include:

(a) Information regarding the amount paid or the values of the properties exchanged;

(b) The identities of buyer of the land or the entity or entities participating in the exchange with the Department;

(c) Provisions for remedies the Department may elect in the event of a default; and

(d) Any other terms, covenants, deed restrictions, or conditions that the Department considers appropriate.

2. Buyers or persons participating in a property exchange must execute contracts of sale or exchange and return them to the Department within 20 days from the date the Department delivers the contract. If the Department does not receive the contract within the 20-day period, the Department will send notice by a confirmable delivery method to the buyer or exchanging party giving notice that after 10 days the transaction may be canceled with all monies received by the Department, including any deposit made, will be forfeited to the Department. Notification of this forfeiture provision must accompany the transmittal of the contract.

3. The Department reserves the right to cancel a sale or exchange of surplus land for any reason prior to execution of the contract by the Director.

4. The Department will issue a quit claim deed to the appropriate person upon payment in full or all amounts owed to the Department and surrender of the original contract of sale or exchange for any tract of land sold or exchanged.

R907-80-13. Competition Protection.

1. Collusion between bidders or between a bidder and an employee or agent of the Department to affect a public sale auction is prohibited. Anyone having reason to believe that a public sale auction conducted under this rule may have been affected by collusion between bidders or between one or more bidders and an employee or agent of the Department must report that information to the attorney general as soon as reasonably possible.

2. Should an adjudicative body determine that collusion intended to affect a public sale auction conducted under this rule has occurred, the resulting sale will be voidable by the Department.

R907-80-14. Closings.

1. All auction sales, negotiated sales, or negotiated exchanges must go through this closing process.

2. Transactions must be closed within 60 days after the date of the contract unless good cause exists to delay the closing. Information intended to show that good cause that

warrants delaying a closing exists must be provided in writing to the Director within 30 days after the date of the contract. The Director must determine if good cause to delay exists.

3. A minimum of 3% security deposit on a negotiated sale will be required to be held in escrow.

4. If closing does not complete within 60 days after the date of the contract, the deposit money becomes non-refundable if the Director decides good cause to delay does not exist.

5. If closing is not complete within the 60 days after the date of the contract and the Director determines that good cause to delay does not exist, the buyer still wishes to buy the property, and the Department agrees to allow the buyer more time to complete the purchase, the buyer must provide an additional 7% security deposit to the Department to be held in escrow and the parties will have an additional 30 days after the date of the contract to close.

6. If the buyer does not provide the additional 7% security deposit required by R907-80-13(5) within 5 business days after the date the Department agrees to allow the buyer more time to complete the purchase, the purchase contract is voidable, and the Department may contact the next highest bidder who will then have an opportunity to purchase the property.

7. If closing is not complete within the additional 60 days allowed by R907-80-13(5), all deposit money becomes non-refundable, the contract becomes voidable and the Department may provide the next highest bidder an opportunity to purchase the property.

8. The executive director or designee has authority to extend time frames allowed to close a transaction if he or she determines that doing so serves the best interest of the state.

9. The closing of a real property transaction may be conducted at a title company provided the buyer pays for all related costs. If a title company is used for closing, the Department will instruct the company to record the deed, and after recording, send it to the Department of Transportation, Director of Right of Way.

10. Only the Executive Director or designee is authorized to sign closing papers, real property contracts, or deeds.

KEY: surplus land, negotiated exchanges, public sales auctions, negotiated sales
May 9, 2018 **72-5-117**
72-5-111
72-5-404

R916. Transportation, Operations, Construction.
R916-2. Prequalification of Contractors.
R916-2-1. Authority and Purpose.

This rule establishes procedures for prequalifying contractors desiring to submit bids and proposals for Utah Department of Transportation construction projects. This rule is authorized under Utah Code Ann. Sections 72-1-201 and 63G-6a-106(3)(a).

R916-2-2. Definitions.

(1) Terms used in this rule are defined in Section 72-1-102.

(2) "Board" means the prequalification board, consisting of 4 positions: Department of Transportation Comptroller, Director of Construction and Materials, an engineer for construction, and the Prequalification Specialist, or designees.

(3) "Applicant" means any person who submits an application for prequalification.

R916-2-3. Prequalification.

(1) Contractors desiring to submit bids or proposals for construction contracts shall be prequalified by the Department to ensure they have the resources and capability to successfully complete awarded contracts. Prequalification is not required for projects that have an advertised estimate of $3,000,000 or less.

(a) Prequalification information is due at least 20 calendar days before submitting a proposal or bid on projects of more than $3,000,000.

(b) The Department may change an Applicant's prequalification status at any time if the Department receives favorable or unfavorable information about the Applicant's job work performance or financial performance.

(c) The prequalification amount limits the size of individual contracts and type of work for which a prequalified contractor may submit proposals or bids.

(2) Qualification ratings establish the type of construction work contractors may be permitted to perform and the maximum total dollar value of contracts contractors are allowed to undertake at any one time if not classified as unlimited.

(3) Applicants who attain a total prequalification of $50,000,000 will be classified as unlimited. The Department will audit or review each Applicant's prequalification at least annually; more often if circumstances warrant, as determined by the Department or the Applicant.

(4) The Department will base an Applicant's prequalification ratings on the Applicant's:

(a) experience;

(b) past performance and safety record;

(c) personnel; and

(d) analysis of certified audited or reviewed financial statements, including balance sheet, income statements, assets including equipment, cash flow, and changes in financial condition.

(e) If current financial statements on file are reviewed and not audited, the Department may accept financial statements for the same period in lieu of the required certified audited financial statements; however, providing reviewed financial statements will result in a prequalification rating based on one-half the financial factor allowed if the applicant provides audited financial statements.

(5) An applicant may submit a guaranty of financial support provided by an affiliated but independent entity. The Department will provide applicants a guarantee agreement form for this purpose. Applicants that submit a guaranty of financial support must submit the Department's guarantee agreement form with their applications. The guarantee may increase an applicant's adjusted equity by a maximum of 50%

of the applicant's calculated adjusted equity in the formula, as determined by the Department.

(6) The applicant may only provide the experience and past performance of the applicant and must submit financial reports that accurately represent the past financial performance and present financial condition of the applicant.

(7) The Department may reject an application and not pre-qualify an Applicant if the Applicant:

(a) fails to provide all requested information;

(b) provides false, misleading, or incorrect information;

(c) has now or in the past had an officer, member or owner who was convicted of a felony;

(d) is now or has been suspended or debarred by any governmental entity;

(e) has failed to complete a construction contract as the prime contractor;

(f) has an average contractor rating over the past 5 projects that falls below 70%;

(g) has been convicted or held liable for any crime or civil offense that involved collusive or deceptive activity related to a procurement process; or

(h) otherwise fails to meet the Department's requirements.

(8) This rule shall be administered to ensure that Applicants possess adequate financial resources to provide complete performance of contracts awarded to them by the Department, and to foster and protect competition in the Department's bidding processes.

(9) The Department will not accept any pledges.

R916-2-4. Joint Venture.

(1) Joint ventures must submit a letter of intent to the Department's Prequalification Board Specialist prior to bidding as a joint venture. The letter must state whether the joint venture partners intend to bid on a single project, or on multiple projects. If the intent is to bid on a single project, the letter of intent must identify the project by the Departments project number. If the intent is to bid on multiple projects, the letter must request approval to bid as a continuing joint venture. Approval to bid as a continuing joint venture will expire one year after the date the Department grants approval. Joint ventures must submit their letter of intent together with an executed copy of their joint venture agreement at least 20 working days before the scheduled bid opening, or the first scheduled bid opening a continuing joint venture intends to bid. The Department will consolidate individual prequalification amounts for joint venture bids or proposals.

(2) Applicants must obtain the following under the joint venture designation before bid openings:

(a) Bid bond; and

(b) UDOT Contractor identification and password.

R916-2-5. Prequalification Board.

(1) The Prequalification board is established to:

(a) direct the prequalification of contractors;

(b) review and analyze prequalification applications; and

(c) establish the amount and type of prequalification work classifications to be granted to contractors.

KEY: bids, contracts, prequalification, contractor rating
May 9, 2018 72-1-102
Notice of Continuation August 3, 2016 72-1-201
63G-6a-106(3)(a)

R920. Transportation, Operations, Traffic and Safety.
R920-6. Traction Device/Tire Chain Requirements.
R920-6-1. Purpose.

The purpose of this rule is to establish the conditions under which the Utah Department of Transportation and law enforcement agencies will require traction devices to traverse highway segments impacted by winter weather. The use of traction devices when conditions warrant increases the likelihood that drivers safely traverse the road and reduces the likelihood that drivers create a hazard or hamper road maintenance.

R920-6-2. Authority.

The Department promulgates this rule pursuant to Utah Transportation Code sections 72-1-201, 72-3-102, 72-6-114, and 72-4-101 through 72-4-137; and Utah Motor Vehicle Act sections 41-6a-302 and 41-6a-1636.

R920-6-3. Definitions.

As used in this rule:

(1) "UDOT" means the Utah Department of Transportation

(2) "UHP" means Utah Highway Patrol

(3) "Traction Devices" are devices that improve traction of tires on icy or snowy road by placing high friction objects between the tires and the road. Examples include tire chains, sand distribution devices, tire studs and other devices similar in function.

(4) "Traction Device Equipped" describes a vehicle equipped as follows:

(a) Any size vehicle with traction devices on all drive tires. An exception is allowed in the case of dual tires, where traction devices are required for at least one of the two tires in the dual mounting.

(b) As an alternative to R920-6-3(4)(a), a vehicle less than 12000 GVW equipped with Three Peak Mountain Snowflake (3PMSF) snow tires on all wheels will be considered traction device equipped.

(5) "Four wheel drive" for the purposes of this rule consists of four-wheel and all-wheel drive autos and light trucks with mounted M+S (all-season) or 3 peak mountain snowflake (3PMSF) snow tires on all wheels.

(6) "Class I Traction Segment" is a defined part of a highway where UDOT, UHP or designated local law enforcement may require vehicles over 12,000 GVW to provide traction devices.

(7) "Class II Traction Segment" is a defined part of a highway where UDOT, UHP or designated local law enforcement may require traction devices or four-wheel-drive for all vehicles. Class II traction segments may also be operated as a Class I when conditions warrant.

R920-6-4. Provisions.

(1) At the request of one of UDOT's Region Directors or their designee, UDOT's Traffic and Safety Division will issue a Traffic Engineering Order (TEO) that establishes each designated traffic segment and identifies its class.

(2) UDOT's Division of Traffic and Safety will maintain and publish a list of designated traction segments and their class on UDOT's website. UDOT will communicate any changes to the list to:

(a) UDOT Region offices,

(b) UHP,

(c) county offices, and

(d) local law enforcement agencies.

(3) When road surface conditions warrant, as determined by UDOT, UHP or designated local law enforcement agency, no vehicle will be allowed or permitted the use of the highway unless:

(a) For Class I Traction Segments, vehicles over 12,000 GVW shall be traction device equipped, and

(b) for Class II Traction Segments, all vehicles shall be traction device equipped or four-wheel drive as defined in this rule.

(4) Travelers are notified when traction devices are required via road signs and UDOT's traveler information systems.

R920-6-5. Responsibilities.

(1) The decision to require traction devices is made by UDOT, UHP or a designated local law enforcement agency. The agency deciding to require traction devices notifies the other agencies involved.

(2) UHP and/or a designated local law enforcement agency enforces the traction device requirements.

(3) UDOT communicates traction device requirements to the public.

(4) Personnel authorized to enforce this rule may permit vehicles that do not meet traction device requirements to travel a traction segment of the highway if authorized person believes they may do so without endangering public safety, creating a hazard, or interfering with highway maintenance operations.

(5) UDOT notifies relevant public agencies when traction segment designations change.

(6) All authority shall rest with the Executive Director of UDOT or his designee to control use of highways where avalanche danger and other threats to the public safety are concerned.

(7) The UDOT Region Director or their designee work with UHP and/or local law enforcement agencies in establishing working criteria for enforcement of this rule.

KEY: designated highways, snow, tires, traction devices
May 8, 2018 **41-6a-1636**
Notice of Continuation July 7, 2017 **72-1-201**
72-3-102
72-6-114
41-6a-302

R986. Workforce Services, Employment Development.
R986-600. Workforce Innovation and Opportunity Act.
R986-600-601. Authority for Workforce Innovation and Opportunity Act (WIOA) and Other Applicable Rules.

(1) The Department provides services to eligible clients under the authority granted in the Workforce Innovation and Opportunity Act, (WIOA) 20 CFR 610 allowing states to select a one-stop operator through a sole source selection. Funding is provided by the federal government through the WIOA. Utah is required to file a State Plan to obtain the funding. A copy of the State Plan is available at Department administrative offices and on the Internet. The regulations contained in 20 CFR 603, 20 CFR 651 through 20 CFR 652, 20 CFR 676 through 20 CFR 678 (2016) are also applicable.

(2) The provisions of Rule R986-100 apply to WIOA unless expressly noted otherwise in these rules even though R986-100 refers to public assistance and WIOA funding does not meet the technical definition of public assistance. The residency requirements of R986-100-106 and the additional penalty under R986-100-118 do not apply.

R986-600-602. Workforce Innovation and Opportunity Act.

(1) The goal of WIOA is to increase a client's occupational skills, employment, retention and earnings; to decrease welfare dependency; support alignment of education and economic development; increase prosperity of clients, employers and community; and to improve the quality of the workforce and national productivity.

(2) WIOA is for clients who need assistance finding employment to achieve self-sufficiency.

(3) Services are available for the following groups: adults, dislocated workers, and youth.

R986-600-603. Youth Services.

(1) The goals of WIOA youth services are to reconnect out-of-school youth to education and employment, provide options for improving educational and skill competencies; to provide effective connections to employers; to ensure access to mentoring, training opportunities and support services; to provide incentives for achievement; and to provide opportunities for leadership, citizenship and community service.

(2) WIOA youth services may be available to;

(a) in School Youth, age 14 through 21, who are low income and who have one or more barriers including those that interfere with the ability to complete an educational program or to secure and hold employment,

(b) out of School Youth, age 16 through 24 and who have one or more barriers including: school dropout, attendance issues, offender, homeless, runaway, foster care, aged out of foster care, pregnant or parenting, or disabled, and

(c) out of School Youth, age 16 through 24, who are low income and who have one or more barriers including: Native American, child of incarcerated parent(s), substance abuse issues, victim of domestic violence, or refugee.

(3) An incentive may be paid to provide recognition of achievement to eligible youth.

R986-600-604. Adults, Youth, and Dislocated Workers.

The Department offers four levels of service for adults, youth and dislocated workers:

(1) basic career services;

(2) individualized career services;

(3) training services; and

(4) follow-up services that, if requested, may be provided after receiving individualized or training services for a minimum of 12 months for all youth; or for a maximum of

12 months following the adult's or dislocated worker's first date of unsubsidized employment.

R986-600-605. Basic Career Services.

Basic career services include:

(1) registration for services;

(2) providing the following informational resources:

(a) outreach, intake, and orientation to, and information about, available services, including resource and referral services;

(b) local, regional and national labor market information including job vacancy listings and occupations in demand and the skills necessary to obtain those jobs and occupations;

(c) performance measures with respect to the one-stop delivery system and

(d) performance information and program cost for eligible training providers and programs.

(3) job development;

(4) rapid response services;

(5) bonding;

(6) assessment of skill levels, aptitudes, abilities, and supportive service needs;

(7) job search and placement assistance, and where appropriate, career counseling and workshops;

(8) Referral to and coordination of activities with other programs and services within the one-stop delivery system and other community programs, and

(9) determining if a client is eligible for, and assistance in, applying for: WIOA funded programs, unemployment insurance benefits, financial aid assistance available for training and educational programs not funded under WIOA, SNAP, other supportive services such as child care, medical services, and transportation.

R986-600-606. Individualized Career Services.

(1) Individualized career services available to clients consist of:

(a) an assessment as provided in R986-600-620;

(b) development of an employment plan as provided in R986-600-621;

(c) case management, career counseling and career planning;

(d) in depth testing and formal assessment;

(e) workforce preparation activities and prevocational services; and

(f) financial literacy services.

(2) The following individualized career services may be available to eligible adults, dislocated workers and youth:

(a) English language acquisition;

(b) out-of-area job search and relocation assistance;

(c) supportive services;

(d) unpaid internships; and

(e) employment internship opportunities.

(3) Additional individualized career services available to youth include:

(a) leadership development;

(b) mentoring;

(c) comprehensive guidance and counseling;

(d) entrepreneurial skills training;

(e) alternative school; and

(f) summer youth employment internship opportunities.

R986-600-607. Training Services.

Training services include basic education, employment related education and work site learning.

R986-600-608. Eligibility Requirements, General Definition.

(1) Basic career services are available to all clients. There are no eligibility requirements for basic career services offered by the Department.

(2) Eligibility requirements for individualized career services, may be determined before an adult, youth, or dislocated worker can receive services.

(3) Eligibility requirements for training and follow-up services must be determined before an adult, youth or dislocated worker can receive services.

(4) A client is required to sign and date the training program agreement for the program in which he or she is enrolled.

R986-600-609. Citizenship and Employment Authorization Requirements.

A client seeking individualized career or training services must be a citizen of the United States or be employment eligible in the United States. Employment eligible is defined by the WIOA Act, section 188 (a)(5) as citizens and nationals of the US, lawfully admitted permanent resident aliens, refugees, asylees, parolees and other immigrants authorized by the U.S. Attorney General to work in the US.

R986-600-610. Selective Service Registration Requirements.

Male applicants and recipients who are 18 and older must be in compliance with Selective Service registration requirements to receive individualized career or training services.

R986-600-611. Factors Used for Determining Priority.

(1) Priority will be given to recipients of public assistance, other low income clients and individuals who are basic skills deficient for WIOA Adult individualized career and training services. Other criteria may be applied if funding is limited as determined by the Governor's State Workforce Development Board (SWDB).

(2) In the event WIOA Youth funds are limited, priority will be given to clients who have two or more barriers as determined by the SWDB.

(3) Veterans and covered persons, as determined by federal law, will receive priority over non-veterans.

R986-600-612. Eligibility for Individualized Career Services.

(1) Individualized career services are available to adults who:

(a) are unemployed and are determined by the Department to be in need of more individualized career services to obtain employment; or

(b) are employed and are determined by the Department to be in need of more individualized career services to obtain employment that leads to self-sufficiency. Self-sufficiency for WIOA Adult is defined as 100% of the Lower Living Standard Income Level (LLSIL) for the specified family size.

(2) Individualized career services are available to dislocated workers who are:

(a) unemployed and are determined by the Department to be in need of more individualized career services to obtain employment; or

(b) employed and are determined by the Department to be in need of more individualized career services to obtain employment that leads to self-sufficiency. Self-sufficiency for WIOA Dislocated Worker is defined as 80% of the client's layoff wage.

R986-600-613. Income Eligibility.

(1) Dislocated workers do not need to meet income eligibility requirements.

(2) Applicants for youth and adult programs must meet income eligibility requirements.

(3) A client is deemed to have met the income eligibility requirements for youth services, and adult services, if the client is;

(a) receiving, has received, or has been determined eligible to receive SNAP at any time during the six months prior to the application date. This does not apply if the client only received expedited SNAP;

(b) currently receiving financial assistance from the Department or TANF funds from another state;

(c) homeless;

(d) currently receiving SSI;

(e) in foster care; or

(f) basic skills deficient.

(4) If a client is not eligible under paragraphs (1) or (2) above, the client must meet the low income eligibility guidelines in this rule.

(5) Up to 5% of the youth clients served do not need to meet the income eligibility requirements but must have barriers as determined by the Department. A list of current, eligible barriers is available at the Department.

R986-600-614. How to Determine Who Is Included in the Family.

(1) Family size must be determined to establish income eligibility for adult and youth services. Family size is determined by counting the maximum number of family members in a single residence during the six months prior to the date of application, not including the current month. Family members included in the income determination:

(a) a husband and wife and dependent children;

(b) parent(s)or legal guardian(s) and dependent children;

(c) a husband and wife, if there are no dependent children, and

(d) two people living in a single residence who are not married but have children in common.

(e) dependent is defined as the client's statement that the child is claimable as an IRS dependent.

(2) A client can be considered a "family" of one, if the client is living alone or with a family member and has a disability that substantially limits one or more major life activities.

(3) The income of the parent or guardian is not counted for a client who is over the age of 19 and the parents cannot claim him or her as an IRS dependent.

R986-600-615. Assets.

Assets are not counted when determining eligibility for WIOA services but will be considered in determining whether the client has a need for WIOA funding.

R986-600-616. Countable Income.

(1) Countable income is total gross income from all sources with the exceptions listed below under "Excludable Income". If income is not specifically excluded, it is counted. Countable income, for WIOA purposes includes:

(a) gross wages and salaries including severance pay and payment of accrued vacation leave;

(b) net receipts from self-employment, including farming;

(c) pensions and retirement income including railroad and military retirement;

(d) strike benefits from union funds;

(e) workers' compensation benefits;

(f) alimony;

(g) any insurance, annuity, or disability, payments other than SSI or veterans disability,

(h) merit-based scholarships, fellowships, and assistantships;

(i) dividends;

(j) interest;

(k) net rental income;

(l) net royalties, including tribal payments from casino royalties;

(m) periodic receipts from estates or trusts;

(n) net gambling or lottery winnings;

(o) tribal payments;

(p) disaster relief employment wages;

(q) on the job training wages reimbursed by the Department;

(r) Social Security Retirement Benefits and Social Security Disability Income which does not include old-age retirement or SSI; and

(s) all training stipends not listed in R986-600-616(2) as excludable income.

(2) Excludable Income. Income that is not counted in determining eligibility:

(a) cash payments under a Federal, state or local public assistance program, including FEP, FEPTP, GA, RRP payment, or EA,

(b) SSI, Old-Age Retirement Benefits, and Survivor's Benefits paid by the Social Security Administration;

(c) payments received from any governmental entity for adoption assistance,

(d) child support;

(e) unemployment compensation;

(f) capital gains;

(g) veterans disability payments other than retirement;

(h) educational financial assistance including Pell grants, work-study and needs-based scholarship assistance;

(i) foster care payments,

(j) tax refunds,

(k) gifts,

(l) loans,

(m) lump-sum inheritances,

(n) one-time insurance payments or compensation for injury,

(o) earned income credit from the IRS,

(p) military service member income, including military pay, military allowances and stipends and military reserve pay;

(q) reparation payments, including German reparation payments, Radiation Exposure Compensation Act payments, and Black Lung Compensation payments;

(r) guardianship subsidies as paid by a governmental entity;

(s) employment internship opportunity wages reimbursed to the employer by the Department;

(t) stipends received from VISTA, Peace Corps, Foster Grandparents Program, Retired Senior Volunteer Program, Youth Works, Americorps, and Job Corp;

(u) non-cash benefits such as employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, federal noncash benefits programs such as Medicare, Medicaid, SNAP, school lunches and housing assistance; and

(v) other amounts specifically excluded by federal statute.

R986-600-617. How to Calculate Income.

(1) To determine if a client meets the income eligibility standards, all income from all sources of all family members during the six months prior to the application date is counted. If necessary, the Department can make a year-to-date estimate based on available records.

(2) The family is income eligible if the annual income

meets the higher of:

(a) the poverty line as determined by the U. S. Department of Human Services, or

(b) 70% of the LLSIL as determined by the U. S. Department of Labor and available at the Department of Workforce Services.

R986-600-618. Dislocated Worker.

(1) A dislocated worker is a client who meets one of the following criteria:

(a)(i) has been laid off through no fault of his or her own, and

(A) is eligible for or has exhausted unemployment compensation entitlement, or

(B) has been employed for a duration sufficient to demonstrate attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under unemployment compensation law, and

(ii) is unlikely to return to the client's previous industry or occupation. 'Unlikely to return' means the client lacks the skills to re-enter the industry or occupation, or declares that he or she will not return to that industry or occupation.

(b) has received a notice of layoff;.

(c) Was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which the client resides or because of natural disasters;

(d) Is a displaced homemaker. A WIOA displaced homemaker is a client who has been providing unpaid services to family members in the home and who:

(i) has been dependent on the income of another family member but is no longer supported by that income; and

(ii) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment;

(e) was laid off from military service and

(i) is eligible for or has exhausted unemployment compensation entitlement,

(ii) is unlikely to return to the previous industry or occupation, and

(iii) was discharged from the military service under conditions other than dishonorable; or

(f) is defined by the Department of Veteran Affairs as a covered person who left employment in order to relocate because of an assignment change of the military service member, and

(i) is eligible for or has exhausted unemployment compensation entitlement, or

(ii) has been employed for a duration sufficient to demonstrate attachment to the workforce but is not eligible for unemployment compensation due to insufficient earnings or having performed services not covered for unemployment compensation, and

(iii) is unlikely to return to the client's previous industry or occupations.

(2) The displacement must be no more than 24 months prior to the date of application.

(3) There are no income or asset requirements for dislocated worker eligibility.

(4) If the Department is providing services under a National Reserve Discretionary Grant, additional eligibility requirements must be met.

R986-600-619. Participation Requirements.

Payment of any and all financial assistance, individualized career and/or training services is contingent upon the client participating, to the maximum extent possible, in assessment and evaluation, and the completion of a negotiated employment plan.

R986-600-620. Participation in Obtaining an Assessment.

(1) When the Department determines that a client has a need for individualized career services, an employment counselor/case worker may be assigned to assess the needs of the client.

(2) When the Department determines a client has a need for training services an employment counselor will be assigned to assess the needs of the client.

(3) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

R986-600-621. Requirements of an Employment Plan.

(1) A client is required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan.

(2) The goal of the employment plan is obtaining employment.

(3) An employment plan consists of activities designed to help a client become employed.

(4) The employment plan may require that the client:

(a) search for employment.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(g) participate in rehabilitative services as prescribed by the state Office of Rehabilitation.

(5) The client must meet the performance expectations of each activity in the employment plan in order to remain eligible for certain individualized career or training services.

(6) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which may include providing ongoing information and or documentation relative to their progress and providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(7) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(8) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

R986-600-622. Additional Requirements of an Employment Plan for Youth.

(1) Employment plans for all youth must reflect intentions to assist with preparing for post-secondary education and/or employment; finding effective connections to the job market and employers, and understanding the links between academic and occupational learning.

(2) The goal of the youth program is to reconnect out-of-school youth to education and employment and assist in-school youth with completing education through:

(a) placement in employment or postsecondary education;

(b) attainment of a degree or certificate; and/or

(c) literacy and numeracy gains for out-of-school youth who are basic skill deficient.

R986-600-623. Individualized Career and Training Services as Part of an Employment Plan.

(1) A client's participation in training services is limited per exposure to the lesser of;

(a) 24 months which need not be continuous and which can be waived by a Department supervisor based on individual circumstances, or

(b) the completion of the education and training goals of the employment plan.

(2) Education and training will only be supported when the client meets appropriateness as provided in R986-600-624.

(3) Additional payments and/or services may be allowed under certain circumstances based on individual need provided they are necessary and appropriate to enable the client to participate in activities authorized under WIOA.

R986-600-624. Appropriateness for Training Services.

(1) To be eligible for training services, the client must:

(a) have met the funding priority requirements for individualized career services as listed in R986-600-611; and

(b) be deemed appropriate for training services by the Department. To be deemed appropriate, the client must:

(i) have been determined by the Department to be in need of training services,

(ii) have the skills and qualifications to successfully complete the selected training program,

(iii) select a program of training that is directly linked to employment opportunities in the area in which they plan to work, and

(iv) be unable to obtain grant assistance from other sources to pay the costs of such training or the other grant assistance is pending. If the client's PELL grant is pending when training services are provided, and later the PELL grant is awarded, the client must reimburse the Department for those training costs.

(2) A client who does not meet the requirements listed in subsection (1) of this section will be denied training services by the Department.

R986-600-625. Funding.

(1) When a client is approved for individualized career or training services, the Department will estimate the anticipated cost to the Department associated with those services and reserve that amount for accounting purposes. This amount may be revised and/or rescinded by the Department at any time without prior notice to the client.

(2) The Department issues an electronic benefit transfer card (card) to each eligible individualized career and/or training service client to pay for training, supportive services, and incentives.

(3) The client must prove that all funds received from the Department were spent as intended. Proof may require receipts. If a client is found to have been ineligible for funds, made unauthorized use of Department funds, or cannot prove how those funds were spent, the client will be responsible for repayment of the overpayment.

(4) Amounts remaining on the card after 30 days of inactivity are subject to expungement.

R986-600-626. The Right to Appeal a Denial of Services.

If an applicant or a client who is currently receiving services is denied services the client or applicant can request a hearing as provided in Rules R986-100-123 through R986-100-135.

R986-600-652. Eligibility Requirements for Training Providers and Programs.

(1) Training providers must apply for a specific program/s, and be found eligible, to be included on the Utah Eligible Training Provider List (ETPL).

(2) The following training providers can apply to be included in the ETPL;

(a) post-secondary institutions,

(b) registered apprenticeship programs,

(c) other public or private providers of training services, or

(d) providers of adult education and literacy activities including English as a Second Language.

(3) Training provider requirements.

(a) All training providers seeking initial eligibility must have been in business as a training provider and have provided training to students for at least two years.

(b) Training providers, with the exception of government entities and basic education providers, must be registered with the Utah Division of Consumer Protection as a Post-Secondary Proprietary School. The only acceptable reasons for exemption from registration as a post-secondary proprietary school are for those schools governed by an accrediting body which oversees program instruction.

(4) Training providers must apply for eligibility for each training program they wish to have included on the ETPL.

(5) Training programs are defined as one or more courses or classes, or a structured regimen that leads to;

(a) an industry recognized post-secondary credential,

(b) employment,

(c) high school diploma or GED, or

(d) a measurable skill gain toward credential or employment.

(6) Training programs can be delivered in-person, online or in a blended approach.

(a) Online training is only eligible if it;

(i) is part of a curriculum where lessons are assigned, completed and returned,

(ii) requires students to interact with instructors, and

(iii) requires students to take periodic tests.

(b) Self-directed online training that is not instructor-led is not eligible.

(7) Training programs must submit performance data that includes data from at least one training class that has completed and/or graduated from the program and the students have been tracked for at least 3 months after completing the program. If a training program has not operated for at least three months after the first class has graduated, the provider must submit letters verifying the need for trained employees from at least three local businesses that hire employees that need the type of training offered.

(8) Out of state training providers that do not have a training location in Utah may apply to be on the Utah ETPL only if they maintain provider and program eligibility on the ETPL in the state where their main or corporate office is located.

(9) Utah may enter into reciprocal agreements with other states to utilize the ETPL from those states. The agreement allows Utah clients to select a training program from another state's ETPL.

(10) The Department will not pay for training costs that are incurred prior to the training program being found eligible.

(11) when applying and while on the ETPL, training providers must agree to abide by the Training Provider Terms and Conditions Agreement which is provided as part of the application process.

(12) A training provider shall not be eligible to be included on the ETPL if:

(a) The training provider was previously removed from the ETPL due to noncompliance with these rules or is a successor to a training provider that was previously removed from the ETPL due to noncompliance with these rules, and the removal period has not expired or the conditions for reinstatement have not been met;

(b) The training provider was previously removed from another state's ETPL due to noncompliance with that state's ETPL rules or is a successor to a provider that was previously removed from another state's ETPL due to noncompliance with that state's ETPL rules, and the training provider has not been reinstated to that state's ETPL;

(c) The training provider lacks the required accreditation, licensing, registration, and certification to operate any program the training provider seeks to operate;

(d) The training provider has lost its good standing status, or is a successor to a training provider that has lost its good standing status, with the Division of Consumer Protection; or

(e) The training provider owes an overpayment to the Department or is a successor to a training provider that owes an overpayment to the Department.

(13) Notwithstanding Subsection (12)(e) above, the Department may include on the ETPL a training provider that owes an overpayment to the Department if:

(a) The overpayment did not result from the training provider intentionally supplying inaccurate information or substantially violating Title I of WIOA or the WIOA regulations; and

(b) The training provider has entered into a payment plan approved by the Department and is current in making required payments on the overpayment.

(14) For purposes of these rules, the following definitions apply:

(a) "Acquire" means to come into possession or control of, or obtain the right to use, an asset by any legal means, including gift, lease, repossession, or purchase. For purposes of this section, "acquire" does not include a purchase of an asset through a bankruptcy proceeding if the court places restrictions on the transfer of liabilities to the purchaser.

(b) "Asset" means any property, tangible or intangible, that has value, including but not limited to the acquisition of a business or trade name, customers, accounts receivable, intellectual property rights, goodwill, employees, or an agreement by a predecessor not to compete.

(c) "Control" means to have the right to direct the general operations of a training provider.

(d) "Manage" means to have the right to control or direct the day-to-day educational or training operations of a training provider.

(e) "Substantially all" means ninety percent or more of the value of a training provider.

(f) "Successor" means a person or entity that acquires the business or substantially all of the assets of a current or former training provider, or that is owned, managed, or controlled by the same principal(s) as a current or former training provider.

R986-600-653. Applying for Initial Training Provider and Program Eligibility.

(1) Training providers must submit the following information for each program for which they are seeking eligibility:

(a) training provider contact information,

(b) training program description and requirements,

(c) connection with in-demand industry sectors and occupations,

(d) license or accreditation, if applicable,

(e) equal opportunity grievance procedure,

(f) aggregate performance data for every graduating class in the last full school year for every student,

(g) a list of all contractors or subcontractors the training provider intends to utilize for any aspect of the program, together with contact information for each contractor or subcontractor,

(h) the cost of attendance for the program, including tuition, fees, and any other costs, and

(i) any other information, documentation and/or verification requested by the Department.

(2) The training provider will be notified once an eligibility decision is made. If an application is denied, the notification will include information on the appeals process as described in R986-600-659.

R986-600-654. Registered Apprenticeships.

(1) All U.S. Department of Labor (DOL) Registered Apprenticeships located in Utah are eligible to be included on the ETPL. In order to provide funding for classroom training, the registered apprenticeship sponsor must be listed on the ETPL.

(2) Registered apprenticeship program sponsors must request to be included on the list verbally, through email or hard copy.

(3) Registered apprenticeship sponsors must submit information on the sponsor, program and training provider. Registered apprenticeship sponsors are not required to submit performance standards.

(4) Any registered apprenticeship will be removed from the ETPL if it loses its registration voluntarily or involuntarily.

(5) If a registered apprenticeship program sponsor is determined to have provided inaccurate information or to have substantially violated any provision of WIOA, they will be removed from the ETPL.

R986-600-655. Informed Client Choice.

The ETPL contains information for a client to make an informed choice based on performance data, the connections the training has with in-demand occupations, and cost.

R986-600-656. Continued Eligibility Requirements for Training Providers and Programs.

(1) Training programs receive initial eligibility for up to one year. To remain on the ETPL, the training provider must complete an application for continued eligibility and submit it before the expiration of the last month of eligibility.

(2) Training providers must renew eligibility annually or more often as instructed by the Department.

(3) If a training provider already on the list adds a new program, it must apply for approval of that program. The renewal date for the new program will be coordinated with the provider's other program or programs so all programs for that provider renew at the same time.

(4) If any of the information provided in R986-600-653 changes, the provider must notify the Department.

(5) To remain eligible for the ETPL, training providers must continually comply with the following obligations:

(a) Provide services in an ethical, professional and timely manner;

(b) Not rely solely on funds from the Department to remain in business, which is defined as not having more than 20% of students funded by the Department at any one time;

(c) Not use the Department's logo, or market, advertise, or imply the existence of a relationship with the Department, without express written approval by the Department;

(e) Not recruit on Department premises without Department Manager or Director approval;

(f) Not use Department approval or prospective

approval as a condition for accepting a student, reviewing a student's application, assessing a cost or fee to a student, or otherwise making any type of decision regarding a student's enrollment or standing in the training program;

(g) Acknowledge and accept responsibility for all actions or inaction of any contractor or subcontractor the training provider uses, including not charging students directly for any costs imposed by a contractor or subcontractor's failure to provide services or make payments to the training provider;

(h) Not contact Department employment counselors unless the contact is regarding an individual student in common and the student has signed a Department Release of Information form;

(i) Submit to and cooperate with all Department audits and requests for information, including site visits;

(j) Not expect or require a minimum number of Department referred customers;

(k) Follow all applicable laws to operate as a school, including having any required accreditation, licensing, registration, and certification;

(l) Respond to Department complaints and requests within 48 hours of receiving the complaint or request;

(m) Notify the Department within 10 days of any change to the services the training provider is providing, including but not limited to:

(i) Material changes in the coverage or availability of the courses or programs being offered;

(ii) Changes in the location(s) where courses or programs are being offered or held;

(iii) Changes in the cost of attendance, including changes in tuition, fees, or any other cost imposed or required by the training provider;

(iv) Changes in accreditation, approval, certification, or licensing, including the commencement of formal or informal action or investigation to potentially remove or change accreditation, approval, certification, or licensing;

(v) Changes in the identity or status of contractors or subcontractors being used;

(vi) Changes in the ownership, management, or control of the training provider; and

(vii) Changes to the provider's refund policy, grievance procedure, or limited English proficiency plan;

(n) Ensure that all physical facilities necessary for operation as a school are adequate for that purpose and are compliant with all applicable laws, including the Americans with Disabilities Act and related authorities;

(o) Abide by the Department's Equal Opportunity Clause and equal opportunity and nondiscrimination requirements contained in Section 188 of the Workforce Innovation and Opportunity Act, including allowing yearly Equal Opportunity monitoring by the Department;

(p) Post the Department's Equal Opportunity Notice;

(q) Notify the State of Utah Finance Division of any changes to the training provider's bank account or mailing information;

(r) Provide Department-approved students with progress and attendance reports upon request;

(s) Comply with all applicable consumer protection laws, including but not limited to the Utah Postsecondary Proprietary School Act, Utah Code Ann. Section 13-34-101 et seq., and the Utah Postsecondary School State Authorization Act, Utah Code Ann. Section 13-34a-101 et seq.;

(t) Remain in good standing with the Division of Consumer Protection;

(u) Report to the Department within 10 days any action or investigation by the Division of Consumer Protection of which the training provider becomes aware;

(v) Report to the Department within 10 days any adverse action or investigation against the training provider in any other state;

(w) Submit annual performance data on WIOA-funded students as required by the Department and according to deadlines set by the Department;

(x) Not report any false or inaccurate information to the Department; and

(y) Abide by the Training Provider Terms and Conditions Agreement.

(6) Contracted and subcontracted providers must meet the same requirements as a primary training provider.

R986-600-657. Applying for Continued Eligibility Training Provider and Program Eligibility.

(1) Training providers must certify that all the information previously provided for each program for which they are seeking continued eligibility is current and correct.

(2) As part of continued eligibility the provider must submit performance data by program according to the deadlines set by the Department, including aggregate data for all students participating in or attending ETPL-approved programs.

(3) The Department will also consider the provider's past compliance with the Training Provider Terms and Conditions Agreement when determining continued eligibility.

(4) Programs that do not meet the minimum standards or provide the required information by the renewal date will be removed from the ETPL. If a provider is unable to complete the renewal requirements, an extension may be granted if the delay is due to exceptional circumstances or circumstances that are beyond the provider's control. The request for an extension must be submitted 30 days before the renewal deadline or as soon as possible.

(5) Training providers will be notified of the decision on continued eligibility. If an application is denied, the notification will include information on the appeals process as described in R986-600-659.

R986-600-658. Training Provider Terms and Conditions, Noncompliance.

(1) Training providers must agree to comply with the Training Provider Terms and Conditions Agreement. If a training provider does not follow the Terms and Conditions Agreement, the provider and all of its programs will be removed from the ETPL.

(2) If a training provider reports false or inaccurate information during the initial or continued eligibility process or substantially violates a provision of Title I of WIOA or its implementing regulations, including Equal Opportunity (EO) regulations, the training provider and all of its programs will be removed from the ETPL. The Department may also do an onsite visit to ensure compliance with WIOA and EO regulations. Removal from the ETPL under this subsection shall be for a period of at least two years.

(3) If a provider has been removed from the ETPL the Department will not pay for any additional training costs for any current or future clients until the training provider is eligible to reapply for ETPL initial eligibility.

(4) If a training provider has been removed from the ETPL, they will be notified if they will be eligible to reapply for initial eligibility and when they can submit a new application.

(5) If a training provider or program fails to comply with these rules, the Department may:

(a) Remove the training provider or program from the ETPL for a set period of time, not to exceed two years;

(b) Remove the training provider or program from the ETPL until the training provider or program can establish

compliance with these rules and any rehabilitative measures established by the Department; or

(c) Take any lesser action.

(6) Any removal from the ETPL under these rules applies to the training provider or program that is removed as well as any successor training provider or program.

(7) A training provider that receives Department funds during any period of noncompliance with these rules shall be liable to repay all Department funds received during the period of noncompliance. If the training provider's removal from the ETPL does not fall under Subsection (2) above, the Department may, in its discretion, suspend or waive all or part of an overpayment.

R986-600-659. Training Provider or Program Appeals.

(1) A training provider or program may appeal a denial of eligibility, overpayment, removal from ETPL approved status, or other adverse action by submitting a written appeal to the Department within 30 days from the decision date.

(2) Appeal proceedings under this section are designated as informal proceedings for purposes of Utah Code Ann. Section 63G-4-202.

(3) Appeal hearings shall be conducted according to the procedures set forth in Rule R986-100-124 through R986-100-133, unless those procedures are incompatible with the nature of an ETPL hearing.

(4) Further appeals from the decision of an ALJ or hearing officer may be made as set forth in Rule R986-100-135.

(5) EO findings are reviewed by the Department executive director for a final decision.

(6) Training providers and programs will be notified of the final decision.

(7) Actions taken by the Department against a training provider or program shall remain in force during the pendency of an appeal unless the appeal results in the reversal of the Department action.

KEY: SNAP, WIOA, Workforce Innovation and Opportunity Act
May 8, 2018 35A-5
Notice of Continuation September 3, 2015