R25. Administrative Services, Finance.
R25-10. State Entities' Posting of Financial Information to the Utah Public Finance Website.
R25-10-1. Purpose.

The purpose of this rule is to establish procedures related to the posting of the participating state entities' financial information to the Utah Public Finance Website (UPFW).

R25-10-2. Authority.

This rule is established pursuant to Subsection 63A-3-404, which authorizes the Division of Finance to make rules governing the posting of financial information for participating state entities on the UPFW after consultation with the Utah Transparency Advisory Board.

R25-10-3. Definitions.

(1) "Utah Public Finance Website" (UPFW) means the website created in UCA 63A-3-402 which is administered by the Division of Finance and which permits Utah taxpayers to view, understand, and track the use of taxpayer dollars by making public financial information available on the internet without paying a fee.

(2) "Participating state entities" means the state of Utah, including its executive, legislative, and judicial branches, its departments, divisions, agencies, boards, commissions, councils, committees, and institutions, including institutions of higher education such as colleges, universities, and the Utah College of Applied Technology, and includes all component units of these entities as defined by the Governmental Accounting Standards Board (GASB).

(3) "Division" means the Division of Finance of the Department of Administrative Services.

R25-10-4. Public Financial Information.

(1) Participating state entities shall submit detail revenue and expense transactions from their general ledger accounting system to the UPFW at least quarterly and within one month after the end of the fiscal quarter. The detail transactions for all participating state entities that are recorded in the central general ledger of the State, FINET, shall be submitted by the Division.

(2) Participating state entities will submit employee compensation detail information on a basis consistent with its fiscal year to the UPFW at least once per year and within three months after the end of the fiscal year. The employee compensation detail information that is recorded in the central payroll system of the State that is operated by the Division will be submitted by the Division.

(a) Employee compensation detail information will, at a minimum, break out the following amounts separately for each employee:

(i) Total wages or salary

(ii) Total benefits only, benefit detail is not allowed

(iii) Incentive awards

(iv) Reimbursements

(v) Leave paid, if recorded separately from wages or salary in the participating state entity's payroll system.

(b) In addition, the following information will be submitted for each employee:

(i) Name

(ii) Hourly rate

(iii) Gender

(iv) Job title

(3) Entities must not submit any data to the UPFW that is classified as private, protected, or controlled by UCA 63G-2, Government Records Management Act. All detail transactions or records are required to be submitted; however, the words "not provided" shall be inserted into any applicable data field in lieu of private, protected, or controlled information.

R25-10-5. UPFW Data Submission Procedures.

(1) Entities must submit data to the UPFW according to the file specifications listed below.

(a) The public financial information required in R25-10-4 will be submitted to the UPFW in a pipe delimited text file. The detail file layout is available from the Division and is posted on the UPFW under the Helps and FAQs tab.

(b) Data will be submitted to the UPFW at the detail transaction level. However, the detailed transactions for compensation information for each employee may be summarized into transactions that represent an entire fiscal year.

(c) Each transaction submitted to the website must contain the information required in the detail file layout including:

(i) Organization - Categorizes transactions within the entity's organization structure. At least 2 levels of organization will be submitted but not more than 10 levels.

(ii) Category - Categorizes transactions and further describes the transaction type. At least 2 levels of category will be submitted but not more than 7 levels.

(iii) Fund - Categorizes transactions by fund types and individuals funds. At least 1 but not more than 4 levels of fund will be submitted.

KEY: Utah Public Financial Website, transparency, state employees, finance
July 8, 2015 **63A-3-404**
Notice of Continuation June 25, 2014

R33. Administrative Services, Purchasing and General Services.
R33-6. Bidding.
R33-6-101. Competitive Sealed Bidding; Multiple Stage Bidding; Reverse Auction.

(1) Competitive Sealed Bidding shall be conducted in accordance with the requirements set forth in Sections 63G-6a-601 through 63G-6a-612. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(2) The conducting procurement unit is responsible for all content contained in the competitive sealed bidding, multiple stage bidding, and reverse auction solicitation documents, including:

(a) reviewing all schedules, dates, and timeframes;

(b) approving content of attachments;

(c) providing the issuing procurement unit with redacted documents, as applicable;

(d) assuring that information contained in the solicitation documents is public information; and

(e) understanding the description of the procurement item(s)being sought, all criteria, requirements, factors, and formulas to be used for determining the lowest responsible and responsive bidder.

(3)(a) The award of a contract shall be to the lowest responsive and responsible bidder who meets the objective criteria described in the invitation for bids.

(b) Bids shall be based on the lowest bid for the entire term of the contract, excluding renewal periods.

(c) Unless an exception is authorized in writing by the chief procurement officer or head of a procurement unit with independent procurement authority, cost may not be divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods.

R33-6-102. Bidder Submissions.

(1) The invitation for bids shall include the information required by Section 63G-6a-603 and shall also include a "Bid Form" or forms, which shall provide lines for each of the following:

(a) the bidder's bid price;

(b) the bidder's acknowledged receipt of addenda issued by the procurement unit;

(c) the bidder to identify other applicable submissions; and

(d) the bidder's signature

(2) Bidders may be required to submit descriptive literature and/or product samples to assist the chief procurement officer or head of a procurement unit with independent procurement authority in evaluating whether a procurement item meets the specifications and other requirements set forth in the invitation to bid.

(a) Product samples must be furnished free of charge unless otherwise stated in the invitation for bids, and if not destroyed by testing, will upon written request within any deadline stated in the invitation for bids, be returned at the bidder's expense. Samples must be labeled or otherwise identified as specified in the invitation for bids by the procurement unit.

(3) The provisions of Rule R33-7-105 shall apply to protected records.

(4) Bid, payment and performance bonds or other security may be required for procurement items as set forth in the invitation for bids. Bid, payment and performance bond amounts shall be as prescribed by applicable law or must be based upon the estimated level of risk associated with the procurement item and may not be increased above the estimated level of risk with the intent to reduce the number of qualified bidders.

(5) All bids must be based upon a definite calculated price

(a) "Indefinite quantity contract" means a fixed price contract for an indefinite amount of procurement items to be supplied as ordered by a procurement unit, and does not require a minimum purchase amount, or provide a maximum purchase limit;

(b) "Definite quantity contract" means a fixed price contract that provides for the supply of a specified amount of goods over a specified period, with deliveries scheduled according to a specified schedule; and

(c) Bids may not be based on using another bidder's price, including a percentage discount, formula, other amount related to another bidder's price, or conditions related to another bid or acceptance of an entire bid or a portion of a bid.

R33-6-103. Pre-Bid Conferences and Site Visits.

(1) Mandatory pre-bid conferences and site visits may be held to explain the procurement requirements in accordance with the following:

(a) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-bid conferences and site visits must require mandatory attendance by all bidders.

(b) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-bid conferences and site visits allowing optional attendance by bidders are not permitted.

(c) A pre-bid conference may be attended via the following:

(i) attendance in person;

(ii) teleconference participation;

(iii) webinar participation;

(iv) participation through other electronic media approved by the chief procurement officer or head of a procurement unit with independent procurement authority.

(d) Mandatory site visits must be attended in person.

(e) All pre-bid conferences and site visits must be attended by an authorized representative of the person or vendor submitting a bid and as may be further specified in the procurement documents.

(f) The solicitation must state that failure to attend a mandatory pre-bid conference shall result in the disqualification of any bidder that does not have an authorized representative attend the entire duration of the mandatory pre-bid conference.

(g) The solicitation must state that failure to attend a mandatory site visit shall result in the disqualification of any bidder that does not have an authorized representative attend the entire duration of the mandatory site visit.

(h) At the discretion of the conducting procurement unit, audio or video recordings of pre-bid conferences and site visits may be used.

(i) Listening to or viewing audio or video recordings of a mandatory pre-bid conference or site visit may not be substituted for attendance. If the chief procurement officer or the head of a procurement unit with independent procurement authority grants an exception to the mandatory requirement in writing, the procurement unit may require all bidders that do not have an authorize representative in attendance for the entire pre-bid conference or site visit to review any audio or video recording made.

(2)(a) If a pre-bid conference or site visit is held, the conducting procurement unit shall maintain:

(i) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;

(ii) minutes of the pre-bid conference or site visit; and

(iii) copies of any documents distributed by the conducting procurement unit to the attendees at the pre-bid conference or

site visit.

(b) The issuing procurement unit shall publish as an addendum to the solicitation:

(i) the attendance log;

(ii) minutes of the pre-bid conference or site visit;

(iii) copies of any documents distributed to attendees at the pre-bid conference or site visit; and

(iv) any verbal modifications made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.

R33-6-104. Addenda to Invitation for Bids.

Prior to the submission of bids, a procurement unit may issue addenda which may modify any aspect of the Invitation for Bids.

(a) Addenda shall be distributed within a reasonable time to allow prospective bidders to consider the addenda in preparing bids.

(b) After the due date and time for submitting bids, at the discretion of the chief procurement officer or head of a procurement unit with independent procurement authority, addenda to the Invitation for Bids may be limited to bidders that have submitted bids, provided the addenda does not make a substantial change to the Invitation for Bids that, in the opinion of the chief procurement officer or head of a procurement unit with independent procurement authority, likely would have impacted the number of bidders responding to the Invitation for Bids.

R33-6-105. Bids and Modifications to a Bid Received After the Due Date and Time.

(1) Bids and modifications to a bid submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason, except as determined in R33-6-105(4).

(2) When submitting a bid or modification electronically, bidders must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If a bidder is in the middle of uploading a bid when the closing time arrives, the system will stop the process and the bid or modification to the bid will not be accepted.

(3) When submitting a bid or modification to a bid by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means) bidders are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a bid or modification to a bid being late.

(a) All bids or modifications to bids received by physical delivery will be date and time stamped by the procurement unit.

(4) To the extent that an error on the part of the procurement unit or an employee of a procurement unit results in a bid or modification to a bid not being received by the established due date and time, the bid or modification to a bid shall be accepted as being on time.

R33-6-106. Errors in Bids.

The following shall apply to the correction or withdrawal of an inadvertently erroneous bid, or the cancelation of an award or contract that is based on an unintentionally erroneous bid. A decision to permit the correction or withdrawal of a bid or the cancellation of any award or a contract under this Rule shall be supported in a written document, signed by the in the chief procurement officer or head of a procurement unit with independent procurement authority.

(1) Errors attributed to a bidder's error in judgment may not be corrected.

(2) Provided that there is no change in bid pricing or the cost evaluation formula, errors not attributed to a bidder's error in judgment may be corrected if it is in the best interest of the procurement unit and correcting the mistake maintains the fair treatment of other bidders.

(a) Examples include:

(i) missing signatures,

(ii) missing acknowledging receipt of an addendum;

(iii) missing copies of professional licenses, bonds, insurance certificates, provided that copies are submitted by the deadline established by the chief procurement officer or head of a procurement unit with independent procurement authority to correct this mistake;

(iv) typographical errors;

(v) mathematical errors not affecting the total bid price; or

(vi) other errors deemed by the chief procurement officer or head of a procurement unit with independent procurement authority to be immaterial or inconsequential in nature.

(3) The chief procurement officer or head of a procurement unit with independent procurement authority shall approve or deny, in writing, a bidder's request to correct or withdraw a bid.

(4) Corrections or withdrawal of bids shall be conducted in accordance with Section 63G-6a-605.

R33-6-107. Errors Discovered After the Award of Contract.

(1) Errors discovered after the award of a contract may only be corrected if, after consultation with the chief procurement officer or head of a procurement unit with independent procurement authority and the attorney general's office or other applicable legal counsel, it is determined that the correction of the mistake does not violate the requirements of the Utah Procurement Code or these administrative rules.

(2) Any correction made under this subsection must be supported by a written determination signed by the chief procurement officer or the head of a procurement unit with independent procurement authority.

R33-6-108. Re-solicitation of a Bid.

(1) Re-solicitation of a bid may occur only if the chief procurement officer or head of a procurement unit with independent procurement authority determines that:

(a) A material change in the scope of work or specifications has occurred;

(b) procedures outlined in the Utah Procurement Code were not followed;

(c) additional public notice is desired;

(d) there was a lack of adequate competition; or

(e) other reasons exist that are in the best interests of the procurement unit.

(2) Re-solicitation may not be used to avoid awarding a contract to a qualified vendor in an attempt to steer the award of a contract to a favored vendor.

R33-6-109. Only One Bid Received.

(1) If only one responsive and responsible bid is received in response to an Invitation for Bids, including multiple stage bidding, an award may be made to the single bidder if the procurement officer determines that the price submitted is fair and reasonable as set forth in R33-12-603 and R33-12-604, and that other prospective bidders had a reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise, the bid may be rejected and:

(a) a new invitation for bids solicited;

(b) the procurement canceled; or

(c) the procurement may be conducted as a sole source under Section 63G-6a-802.

R33-6-110. Multiple or Alternate Bids.

(1) Multiple or alternate bids will not be accepted, unless otherwise specifically required or allowed in the invitation for

bids.

(2) If a bidder submits multiple or alternate bids that are not requested in the invitation for bids, the chief procurement officer or head of a procurement unit with independent procurement authority will only accept the bidder's primary bid and will not accept any other bids constituting multiple or alternate bids.

R33-6-111. Methods to Resolve Tie Bids.

(1) In accordance with Section 63G-6a-608, in the event of tie bids, the contract shall be awarded to the procurement item offered by a Utah resident bidder, provided the bidder indicated on the invitation to bid form that it is a Utah resident bidder.

(2) If a Utah resident bidder is not identified, the preferred method for resolving tie bids shall be for the chief procurement officer or head of a procurement unit with independent procurement authority by tossing a coin in the presence of a minimum of three witnesses with the firm first in alphabetical order being heads.

(3) Other methods to resolve a tie bid described in Section 63G-6a-608 may be used as deemed appropriate by the chief procurement officer or head of a procurement unit with independent procurement authority.

R33-6-112. Publication of Award.

(1) The issuing procurement unit shall, on the day on which the award of a contract is announced, make available to each bidder and to the public a notice that includes:

(a) the name of the bidder to which the contract is awarded and the price(s) of the procurement item(s); and

(b) the names and the prices of each bidder to which the contract is not awarded.

R33-6-113. Multiple Stage Bidding Process.

Multiple stage bidding shall be conducted in accordance with the requirements set forth in Section 63G-6a-609, Utah Procurement Code.

(1) The chief procurement officer or head of a procurement unit with independent procurement authority may hold a pre-bid conference as described in Rule R33-6-103 to discuss the multiple stage bidding process or for any other permissible purpose.

R33-6-114. Technology Acquisitions for Executive Branch Procurement Units.

(1) For executive branch procurement units, the Invitation for Bids may state that at any time during the term of a contract, the acquiring agency may undertake a review in consultation with the Utah Technology Advisory Board and the Department of Technology Services to determine whether a new technology exists that is in the best interest of the acquiring agency, taking into consideration cost, life-cycle, references, current customers, and other factors and that the acquiring agency reserves the right to:

(a) negotiate with the contractor for the new technology, provided the new technology is substantially within the original scope of work;

(b) terminate the contract in accordance with the existing contract terms and conditions; or

(c) conduct a new procurement for an additional or supplemental contract as needed to take into account new technology.

(2) Subject to the provisions of Section 63G-6a-802, the trial use or testing of new technology may be permitted for a duration not to exceed the maximum time necessary to evaluate the technology.

KEY: government purchasing, sealed bidding, multiple stage bidding, reverse auction
July 9, 2015 **63G-6a**
Notice of Continuation July 8, 2014

R33. Administrative Services, Purchasing and General Services.
R33-7. Request for Proposals.
R33-7-101. Conducting the Request for Proposals Standard Procurement Process.

Request for Proposals shall be conducted in accordance with the requirements set forth in Sections 63G-6a-701 through 63G-6a-711, Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-7-102. Content of the Request for Proposals.

(1) In addition to the requirements set forth under Section 63G-6a-703, the request for proposals solicitation shall include:

(a) a description of the format that offerors are to use when submitting a proposal including any required forms; and

(b) instructions for submitting price.

(2) The conducting procurement unit is responsible for all content contained in the request for proposals solicitation documents, including:

(a) reviewing all schedules, dates, and timeframes;

(b) approving content of attachments;

(c) providing the issuing procurement unit with redacted documents, as applicable;

(d) assuring that information contained in the solicitation documents is public information; and

(e) understanding the scope of work, all evaluation criteria, requirements, factors, and formulas to be used in determining the scoring of proposals; and

(f) for executive branch procurement units the requirements of Section 63G-6a-402(6).

R33-7-103. Multiple Stage RFP Process.

(1) In addition to the requirements set forth under Section 63G-6a-710, the multiple stage request for proposals solicitation shall include:

(a) a description of the stages and the criteria and scoring that will be used to evaluate proposals at each stage; and

(b) the methodology used to determine which proposals shall be disqualified from additional stages.

R33-7-104. Exceptions to Terms and Conditions Published in the RFP.

(1) Offerors requesting exceptions and/or additions to the Standard Terms and Conditions published in the RFP must include the exceptions and/or additions with the proposal response.

(2) Exceptions and/or additions submitted after the date and time for receipt of proposals will not be considered unless there is only one offeror that responds to the RFP, the exceptions and/or additions have been approved by the Attorney General's Office or other applicable legal counsel, and it is determined by the head of the issuing procurement unit that it is not beneficial to the procurement unit to republish the solicitation.

(3) Offerors may not submit requests for exceptions and/or additions by reference to a vendor's website or URL

(4) A procurement unit may refuse to negotiate exceptions and/or additions:

(a) that are determined to be excessive;

(b) that are inconsistent with similar contracts of the procurement unit;

(c) to warranties, insurance, indemnification provisions that are necessary to protect the procurement unit after consultation with the Attorney General's Office or other applicable legal counsel;

(d) where the solicitation specifically prohibits exceptions and/or additions; or

(e) that are not in the best interest of the procurement unit.

(5) If negotiations are permitted, a procurement unit may negotiate exceptions and/or additions with offerors, beginning in order with the offeror submitting the fewest exceptions and/or additions to the offeror submitting the greatest number of exceptions and/or additions. Contracts may become effective as negotiations are completed.

(6) If, in the negotiations of exceptions and/or additions with a particular offeror, an agreement is not reached, after a reasonable amount of time, as determined by the procurement unit, the negotiations may be terminated and a contract not awarded to that offeror and the procurement unit may move to the next eligible offeror.

R33-7-105. Protected Records.

(1) The following are protected records and may be redacted by the vendor subject to the procedures described below in accordance with the Governmental Records Access and Management Act (GRAMA) Title 63G, Chapter 2 of the Utah Code. (a) Trade Secrets, as defined in Section 13-24-2 of the Utah Code.

(b) Commercial information or non-individual financial information subject to the provisions of Section 63G-2-305(2).

(c) Other Protected Records under GRAMA.

(2) Process For Requesting Non-Disclosure. Any person requesting that a record be protected shall include with the proposal or submitted document:

(a) a written indication of which provisions of the proposal or submitted document are claimed to be considered for business confidentiality or protected (including trade secrets or other reasons for non-disclosure under GRAMA); and

(b) a concise statement of the reasons supporting each claimed provision of business confidentiality or protected.

R33-7-106. Notification.

(1) A person who complies with Rule R33-7-105 shall be notified by the procurement unit prior to the public release of any information for which a claim of confidentiality has been asserted.

(2) Except as provided by court order, the procurement unit to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under Rule R33-7-105 but which the procurement unit or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. This Rule R33-7-106 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

(3) Any allowed disclosure of public records submitted in the request for proposal process will be made only after the selection of the successful offeror(s) has been made public in compliance with Section 63G-6a-709.5.

R33-7-107. Process for Submitting Proposals with Protected Business Confidential Information.

(1) If an offeror submits a proposal that contains information claimed to be business confidential or protected information, the offeror must submit two separate proposals:

(a) One redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and

(b) One non-redacted version for evaluation purposes clearly marked as "Protected Business Confidential."

(i) Pricing may not be classified as business confidential and will be considered public information.

(ii) An entire proposal may not be designated as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY" and shall be considered non-responsive unless the offeror removes the designation.

R33-7-201. Pre-Proposal Conferences and Site Visits.

(1) Mandatory pre-proposal conferences and site visits may be held to explain the procurement requirements in accordance with the following:

(a) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-proposal conferences and site visits must require mandatory attendance by all offerors.

(b) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-proposal conferences and site visits allowing optional attendance by offerors are not permitted.

(c) A pre-proposal conference may be attended via the following:

(i) attendance in person;

(ii) teleconference participation;

(iii) webinar participation;

(iv) participation through other electronic media approved by the chief procurement officer or head of a procurement unit with independent procurement authority.

(d) Mandatory site visits must be attended in person.

(e) All pre-proposal conferences and site visits must be attended by an authorized representative of the person or vendor submitting a proposal and as may be further specified in the procurement documents.

(f) The solicitation must state that failure to attend a mandatory pre-proposal conference shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory pre-proposal conference.

(g) The solicitation must state that failure to attend a mandatory site visit shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory site visit.

(h) At the discretion of the conducting procurement unit, audio or video recordings of pre-proposal conferences and site visits may be used.

(i) Listening to or viewing audio or video recordings of a mandatory pre-proposal conference or site visit may not be substituted for attendance. If the chief procurement officer or the head of a procurement unit with independent procurement authority grants an exception to the mandatory requirement in writing, the procurement unit may require all offerors that do not have an authorize representative in attendance for the entire pre-proposal conference or site visit to review any audio or video recording made.

(2)(a) If a pre-proposal conference or site visit is held, the conducting procurement unit shall maintain:

(i) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;

(ii) minutes of the pre-proposal conference or site visit; and

(iii) copies of any documents distributed by the conducting procurement unit to the attendees at the pre-proposal conference or site visit.

(b) The issuing procurement unit shall publish as an addendum to the solicitation:

(i) the attendance log;

(ii) minutes of the pre-proposal conference or site visit;

(iii) copies of any documents distributed to attendees at the pre-proposal conference or site visit; and

(iv) any verbal modifications made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.

R33-7-301. Addenda to Request for Proposals.

Addenda to the Request for Proposals may be made for the purpose of:

(a) making changes to:

(i) the scope of work;

(ii) the schedule;

(iii) the qualification requirements;

(iv) the criteria;

(v) the weighting; or

(vi) other requirements of the Request for Proposal.

(b) Addenda shall be published within a reasonable time prior to the deadline that proposals are due, to allow prospective offerors to consider the addenda in preparing proposals. Publication at least 5 calendar days prior to the deadline that proposals are due shall be deemed a reasonable time. Minor addenda and urgent circumstances may require a shorter period of time.

(2) After the due date and time for submitting a response to Request for Proposals, at the discretion of the chief procurement officer or head of a procurement unit with independent procurement authority, addenda to the Request for Proposals may be limited to offerors that have submitted proposals, provided the addenda does not make a substantial change to the Request for Proposals that, in the opinion of the chief procurement officer or head of a procurement unit with independent procurement authority likely would have impacted the number of Offerors responding to the original publication of the Request for Proposals.

R33-7-401. Modification or Withdrawal of Proposal Prior to Deadline.

A proposals may be modified or withdrawn prior to the established due date and time for responding.

R33-7-402. Proposals and Modifications, Delivery and Time Requirements.

Except as provided in Rule R33-7-402(3), the following shall apply:

(1) proposals and modifications to a proposal submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason.

(2) When submitting a proposal or modification to a proposal electronically, offerors must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If an offeror is in the middle of uploading a proposal when the closing time arrives, the system should stop the process and the proposal or modification to a proposal will not be accepted.

(3) When submitting a proposal or modification to a proposal by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means) offerors are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a proposal or modification to a proposal being late.

(a) All proposals or modifications to proposals received by physical delivery will be date and time stamped by the procurement unit.

(4) To the extent that an error on the part of the procurement unit or an employee of a procurement unit results in a proposal or modification to a proposal not being received by the established due date and time, the proposal or modification to a proposal shall be accepted as being on time.

R33-7-403. Errors in Proposals.

The following shall apply to the correction or withdrawal

of an unintentionally erroneous proposal, or the cancellation of an award or contract that is based on an unintentionally erroneous proposal. A decision to permit the correction or withdrawal of a proposal or the cancellation of an award or a contract shall be supported in a written document, signed by the chief procurement officer or head of a procurement unit with independent procurement authority.

(1) Mistakes attributed to an offeror's error in judgment may not be corrected.

(2) Unintentional errors not attributed to an offeror's error in judgment may be corrected if it is in the best interest of the procurement unit and correcting the error maintains the fair treatment of other offerors.

(a) Examples include:

(i) missing signatures,

(ii) missing acknowledgement of an addendum;

(iii) missing copies of professional licenses, bonds, insurance certificates, provided that copies are submitted by the deadline established by the chief procurement officer or head of a procurement unit with independent procurement authority to correct this mistake;

(iv) typographical errors;

(v) mathematical errors not affecting the total proposed price; or

(vi) other errors deemed by the chief procurement officer or head of a procurement unit with independent procurement authority to be immaterial or inconsequential in nature.

(3) Unintentional errors discovered after the award of a contract may only be corrected if, after consultation with the chief procurement officer or head of a procurement unit with independent procurement authority and the attorney general's office or other applicable legal counsel, it is determined that the correction of the error does not violate the requirements of the Utah Procurement Code or these administrative rules.

R33-7-501. Evaluation of Proposals.

(1) The evaluation of proposals shall be conducted in accordance with Part 7 of the Utah Procurement Code.

(2) An evaluation committee may ask questions of offerors to clarify proposals provided the questions are submitted and answered in writing. The record of questions and answers shall be maintained in the file.

(3)(a) The evaluation of cost in an RFP shall be based on the entire term of the contract, excluding renewal periods.

(b) Unless an exception is authorized in writing by the chief procurement officer or head of a procurement unit with independent procurement authority, cost should not be divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods.

(c) Whenever practicable, the evaluation of cost should include maintenance and service agreements, system upgrades, apparatuses, and other components associated with the procurement item.

R33-7-501a. Minimum Score Thresholds.

(1) An executive branch conducting procurement unit shall establish minimum score thresholds to advance proposals from one stage in the RFP process to the next, including contract award.

(2) Minimum score thresholds must be set forth in the RFP and clearly describe the minimum score threshold that proposals must achieve in order to advance to the next stage in the RFP process or to be awarded a contract.

(3)(a) Thresholds may be based on:

(i) Minimum scores for each evaluation category;

(ii) The total of each minimum score in each evaluation category based on the total points available; or

(iii) A combination of (i) and (ii).

(b) Thresholds may not be based on:

(i) A natural break in scores that was not defined and set forth in the RFP; or

(ii) A predetermined number of offerors.

R33-7-502. Correction or Withdrawal of Proposal.

(1) In the event an offeror submits a proposal that on its face appears to be impractical, unrealistic or otherwise in error, the chief procurement officer or head of a procurement unit with independent procurement authority may contact the offeror to either confirm the proposal, permit a correction of the proposal, or permit the withdrawal of the proposal, in accordance with Section 63G-6a-706.

(2) Offerors may not correct errors, deficiencies, or incomplete responses in a proposal that has been determined to be not responsible, not responsive, or that does not meet the mandatory minimum requirements stated in the request for proposals in accordance with Section 63G-6a-704.

R33-7-503. Interviews and Presentations.

(1) Interviews and presentations may be held as outlined in the RFP.

(2) Offerors invited to interviews or presentations shall be limited to those offerors meeting minimum requirements specified in the RFP.

(3) Representations made by the offeror during interviews or presentations shall become an addendum to the offeror's proposal and shall be documented. Representations must be consistent with the offeror's original proposal and may only be used for purposes of clarifying or filling in gaps in the offeror's proposal.

(4) The chief procurement officer or head of a procurement unit with independent procurement authority shall establish a date and time for the interviews or presentations and shall notify eligible offerors of the procedures. Interviews and presentations will be at the offeror's expense.

R33-7-601. Best and Final Offers.

Best and Final Offers shall be conducted in accordance with the requirements set forth in Section 63G-6a-707.5, or the Utah Procurement Code. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(1) The best and final offers (BAFO) process is an optional step in the evaluation phase of the request for proposals process in which offerors are requested to modify their proposals.

(a) An evaluation committee may request best and final offers when:

(i) no single proposal addresses all the specifications;

(ii) all or a significant number of the proposals received are unclear and the evaluation committee requires further clarification;

(iii) additional information is needed in order for the evaluation committee to make a decision;

(iv) the differences between proposals in one or more categories are too slight to distinguish;

(v) all cost proposals are too high or over the budget;

(vi) multiple contract awards are necessary to achieve regional or statewide coverage for a procurement item under an RFP and there are insufficient cost proposals within the budget to award the number of contracts needed to provide regional or statewide coverage.

(2) Only offerors meeting the minimum qualifications or scores described in the RFP are eligible to respond to best and final offers.

(3) Proposal modifications submitted in response to a request for best and final offers may only address the specific issues and/or sections of the RFP described in the request for best and final offers.

(a) Offerors may not use the best and final offers process to correct deficiencies in their proposals not addressed in the request for best and final offers issued by the procurement unit.

(4) When a request for best and final offers is issued to reduce cost proposals, offerors shall submit itemize cost proposals clearly indicating the tasks or scope reductions that can be accomplished to bring costs within the available budget.

(a) The cost information of one offeror may not be disclosed to competing offerors during the best and final offers process and further, such cost information shall not be shared with other offerors until the contract is awarded.

(b) A procurement unit shall ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals.

(5) The best and final offers process may not be conducted as part of the contract negotiation process. It may only be conducted during the evaluation phase of the RFP process.

(6) A procurement unit may not use the best and final offers process to allow offerors a second opportunity to respond to the entire request for proposals.

(7) If a proposal modification is made orally during the interview or presentation process, the modification must be confirmed in writing.

(8) A request for best and final offers issued by a procurement unit shall:

(a) comply with all public notice requirements provided in Section 63G-6a-406;

(b) include a deadline for submission that allows offerors a reasonable opportunity for the preparation and submission of their responses;

(c) indicate how proposal modifications in response to a request for best and final offers will be evaluated;

(9) If an offeror does not submit a best and final offer, its immediately previous proposal will be considered its best and final offer;

(10) Unsolicited best and final offers will not be accepted from offerors.

R33-7-701. Cost-benefit Analysis Exception: CM/GC.

(1) A cost-benefit analysis is not required if the contract is awarded solely on the qualifications of the construction manager/general contractor and the management fee described in Section 63G-6a-708 provided:

(a) a competitive process is maintained by the issuance of a request for proposals that requires the offeror to provide , at a minimum:

(i) a management plan;

(ii) references;

(iii) statements of qualifications; and

(iv) a management fee.

(b) the management fee contains only the following:

(i) preconstruction phase services;

(ii) monthly supervision fees for the construction phase; and

(iii) overhead and profit for the construction phase.

(c) the evaluation committee may, as described in the solicitation, weight and score the management fee as a fixed rate or a fixed percentage of the estimated contract value.

(d) the contract awarded must be in the best interest of the procurement unit.

R33-7-701a. Cost-Benefit Analysis.

(1) A cost-benefit analysis conducted under Utah Code 63G-6a-708 shall be based on the entire term of the contract, excluding any renewal periods.

R33-7-702. Only One Proposal Received.

(1) If only one proposal is received in response to a request for proposals, the evaluation committee shall score the proposal and may:

(a) conduct a review to determine if:

(i) the proposal meets the minimum requirements;

(ii) pricing and terms are reasonable as set forth in R33-12-603 and R33-12-604; and

(iii) the proposal is in the best interest of the procurement unit.

(b) if the evaluation committee determines the proposal meets the minimum requirements, pricing and terms are reasonable, and the proposal is in the best interest of the procurement unit, the procurement unit shall issue a justification statement as set forth in 63G-6a-708 and may make an award.

(c) If an award is not made, the procurement unit may either cancel the procurement or resolicit for the purpose of obtaining additional proposals.

R33-7-703. Evaluation Committee Procedures for Scoring Criteria Other Than Cost.

(1)(a) In accordance with Utah Code 63G-6a-704, the conducting procurement unit shall conduct an initial review of any applicable pass/fail minimum requirements set forth in the RFP to determine whether proposals are responsive and responsible or in violation of the Utah Procurement Code prior to submitting proposals to the evaluation committee. Examples of pass/fail minimum requirements include:

(i) Timeliness of receipt of proposals

(ii) Qualifications;

(iii) Certifications;

(iv) Licensing;

(v) Experience;

(vi) Compliance with State or Federal regulations;

(vii) Services provided;

(viii) Product availability;

(ix) Equipment;

(x) Other pass/fail minimum requirements set forth in the RFP.

(b) The evaluation committee may not evaluate proposals deemed non-responsive, nonresponsible or disqualified for violations of the Utah Procurement Code under (1)(a).

(c) In accordance with Utah Code 63G-6a-704, an evaluation committee may, after the initial pass/fail review by the conducting procurement unit or at any time during the RFP process, reject a proposal if it is determined that the person submitting the proposal is not responsible or the proposal is not responsive.

(2) In accordance with Utah Code 63G-6a-707, the evaluation committee shall evaluate each responsive and responsible proposal that has not been disqualified from consideration under the provisions of this chapter, using the criteria described in the request for proposals using the following procedures:

(a) Prior to the scoring of proposals, a procurement officer from the issuing procurement unit will meet with the evaluation committee and any staff that will have access to the proposals to:

(i) discuss the evaluation and scoring process to ensure that each committee member has a clear understanding of the scoring process and how points will be assigned;

(ii) discuss requirements regarding conflicts of interests, the appearance of impropriety, and the importance of confidentiality;

(iv) discuss the scoring sheet and evaluation criteria set forth in the RFP; and

(v) provide a copy of Administrative Rule R33-7-703 to the evaluation committee and any staff that will have access to the proposals.

(b) Once the proposals have been received and it is clear which offerors are involved in the RFP process, all members of the evaluation committee must sign a written statement

certifying that they do not have a conflict of interest as set forth in Utah Code 63G-6a-707 and administrative rule R33-24-107

(3) Unless an exception is authorized by the head of the issuing procurement unit, in order to avoid cost influencing the evaluation committee's scoring of non-price criteria, in accordance with Utah Code 63G-6a-707, costs may not be revealed to the evaluation committee until after the committee has finalized its scoring on all other technical non-price criteria in the RFP.

(4) After receipt of proposals, each committee member shall independently, as described in R33-7-705, read and score each proposal based on the technical non-price criteria set forth in the RFP to assess the completeness, quality, and desirability of each proposal.

(a) proposals must be evaluated solely on the stated criteria listed in the RFP.

(i) past performance ratings and references may be considered if listed as evaluation criteria in the RFP;

(ii) personal bias based on prior experience with a procurement item or the offeror cannot be considered in scoring proposals, except as provided in the RFP;

(iii) personal favoritism for a vendor or bias against a vendor cannot be considered in scoring proposals; and

(iv) subsections (ii) and (iii) shall not be construed to prevent a committee member from having a bias based on their review of a proposal in regard to the criteria in the solicitation. Evaluators are encouraged to request technical support from the conducting procurement unit or the issuing procurement unit when conducting their independent assessments and scoring.

(a) any request for technical support shall be submitted in writing to the conducting procurement unit or the issuing procurement unit.

(b) After the proposals have been evaluated and scored by individual committee members, the entire committee shall meet to discuss the proposals, if applicable conduct interviews, resolve any factual disagreements, and arrive at the final scoring. All committee members must be present to take any official action.

(i) If a committee member does not attend an evaluation committee meeting, the member shall be removed from the evaluation committee and the remainder of the committee may proceed with the evaluation, provided there are at least three evaluation committee members remaining.

(c) During committee discussions, each member may change their initial scoring. If additional information or clarification is needed from an offeror, the committee may, with approval by the issuing procurement unit, request information or clarification from an offeror. Such request will only be approved if it can be done in a manner that is fair to all offerors.

(d) At any time during the evaluation process, the evaluation committee may, with the approval of the issuing procurement unit, request best and final offers from responsible and responsive offerors and evaluate those offers in accordance with Utah Code 63G-6a-708 and Administrative Rule R33-7-601.

(5) The evaluation committee may tally the final scores for criteria other than cost to arrive at a consensus score by the following methods:

(a) total of all of the points given by individual committee members; or

(b) an average of the individual scores.

(c) The evaluation committee shall turn in a completed sheet, signed and dated by each evaluation committee member.

(6) The evaluation committee shall submit its final recommended scores for all criteria other than cost to the issuing procurement unit.

(7) The issuing procurement unit shall follow the procedures set forth in Utah Code 63G-6a-707(5) pertaining to the following:

(a) reviewing the evaluation committee's final recommended scores for each proposal for all criteria other than cost;

(b) scoring cost based on the applicable scoring formula; and

(c) calculating the total combined score for each responsive and responsible proposal.

(8) The evaluation committee and the conducting procurement unit shall prepare the cost justification statement and any applicable cost-benefit analysis in accordance with Utah Code 63G-6a-708.

(9) The issuing procurement unit's role as a non-voting member of the evaluation committee will be to facilitate the evaluation process within the guidelines of the Utah procurement code and administrative rule.

(10) The issuing procurement unit may replace any member on the committee or reconstitute the committee in any way the issuing procurement unit deems appropriate to cure any impropriety. If the impropriety cannot be cured by replacing a member, then a new committee may be appointed or the procurement cancelled.

R33-7-704. Scoring of Evaluation Criteria, Other Than Cost, for Proposals Meeting Mandatory Minimum Requirements.

(1) The scoring of evaluation criteria, other than cost, for proposals meeting the mandatory minimum requirements in an RFP shall be based on a one through five point scoring system.

(2) Points shall be awarded to each applicable evaluation category as set forth in the RFP, including but not limited to:

(a) Technical specifications;
(b) Qualifications and experience;
(c) Programming;
(d) Design;
(e) Time, manner, or schedule of delivery;
(f) Quality or suitability for a particular purpose;
(g) Financial solvency;
(h) Management and methodological plan; and
(i) Other requirements specified in the RFP.

(3) Scoring Methodology:

(a) Five points (Excellent): The proposal addresses and exceeds all of the requirements described in the RFP;

(b) Four points (Very Good): The proposal addresses all of the requirements described in the RFP and, in some respects, exceeds them;

(c) Three points (Good): The proposal addresses all of the requirements described in the RFP in a satisfactory manner;

(d) Two points (Fair): The proposal addresses the requirements described in the RFP in an unsatisfactory manner; or

(e) One point (Poor): The proposal fails to addresses the requirements described in the RFP or it addresses the requirements inaccurately or poorly.

R33-7-705. Evaluation Committee Members Required to Exercise Independent Judgment.

(1)(a) Evaluators are required to exercise independent judgment in a manner that is not dependent on anyone else's opinions or wishes.

(b) Evaluators must not allow their scoring to be inappropriately influenced by another person's wishes that additional or fewer points be awarded to a particular offeror.

(c) Evaluators may seek to increase their knowledge before scoring by asking questions and seeking appropriate information from the conducting procurement unit or issuing procurement unit. Otherwise, evaluators should not discuss proposals or the scoring of proposals with other persons not on the evaluation committee.

(2)(a) The exercise of independent judgment applies not

only to possible inappropriate influences from outside the evaluation committee, but also to inappropriate influences from within the committee. It is acceptable for there to be discussion and debate within the committee regarding how well a proposal meets the evaluation criteria. However, open discussion and debate may not lead to coercion or intimidation on the part of one committee member to influence the scoring of another committee member.

(b) Evaluators may not act on their own or in concert with another evaluation committee member to inappropriately steer an award to a favored vendor or to disfavor a particular vendor.

(c) Evaluators are required to report any attempts by others to improperly influence their scoring to favor or disfavor a particular offeror.

(d) If an evaluator feels that the evaluator's independence has been compromised, the evaluator must recuse himself or herself from the evaluation process.

R33-7-802. Publicizing Awards.

(1) In addition to the requirements of Section 63G-6a-709.5, the following shall be disclosed after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:

(a) the contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under Rule R33-7-105;

(b) the unsuccessful proposals, except for those portions that are to be non-disclosed under Rule R33-7-105;

(c) the rankings of the proposals;

(d) the names of the members of any selection committee (reviewing authority);

(e) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings.

(f) the written justification statement supporting the selection, except for those portions that are to be non-disclosed under Rule R33-7-105.

(2) After due consideration and public input, the following has been determined by the Procurement Policy Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, and will not be disclosed by the governmental entity at any time to the public including under any GRAMA request:

(a) the names of individual scorers/evaluators in relation to their individual scores or rankings;

(b) any individual scorer's/evaluator's notes, drafts, and working documents;

(c) non-public financial statements; and

(d) past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the governmental entity. To the extent such past performance or reference information is included in the written justification statement; it is subject to public disclosure.

KEY: government purchasing, request for proposals, standard procurement process
July 9, 2015 63G-6a
Notice of Continuation July 8, 2014

R35. Administrative Services, Records Committee.
R35-1. State Records Committee Appeal Hearing Procedures.
R35-1-1. Scheduling Committee Meetings.

(1) The Executive Secretary shall respond in writing to the notice of appeal within seven business days.

(2) Two weeks prior to the Committee meeting or appeal hearing, the Executive Secretary shall post a notice of the meeting on the Utah Public Notice Website.

(3) One week prior to the Committee meeting or appeal hearing, the Executive Secretary shall post a notice of the meeting, indicating the agenda, date, time, and place of the meeting at the building where the meeting is to be held and at the Utah State Archives.

R35-1-2. Procedures for Appeal Hearings.

(1) The meeting shall be called to order by the Committee Chair.

(2) Opening statements shall be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present their opening statements before the Committee.

(3) Testimony shall be presented by the petitioner and the governmental entity. Each party shall be allowed twenty minutes to present testimony and evidence, to call witnesses, and to respond to questions from Committee members.

(4) Witnesses providing testimony shall be sworn in by the Committee Chair.

(5) Questioning of the witnesses and parties by Committee members is permitted.

(6) The governmental entity must bring the disputed records to the hearing to allow the Committee to view records in camera if it deems an in camera inspection necessary. If the records withheld are voluminous or the governmental entity contends they have not been identified with reasonable specificity, the governmental entity shall notify the Committee and the adverse party at least two days before the hearing and obtain approval from the Committee Chair to bring a representative sample of the potentially responsive records to the hearing, if it is possible to do so.

(7) Third party presentations may be permitted. Prior to the hearing, the third party shall notify the Executive Secretary of intent to present. Third party presentations shall be limited to five minutes.

(8) Closing arguments may be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present a closing argument and make rebuttal statements.

(9) After presentation of the evidence, the Committee shall commence deliberations. A Committee Member shall make a motion to grant or to deny the petitioner's request in whole or in part. Following discussion of the motion, the Committee Chair shall call for the question. The motion shall serve as the basis for the Committee Decision and Order. The Committee shall vote and make public the decision of the Committee during the hearing.

(10) The Committee may adjourn, reschedule, continue, or reopen a hearing on the motion of a member.

(11) Except as expressly authorized by law, there shall be no communication between the parties and the members of the Committee concerning the subject matter of the appeal before the hearing or prior to the issuance of a final Decision And Order. Any other oral or written communication from the parties to the members of the Committee, or from the members of the Committee to the parties, shall be directed to the Executive Secretary for transmittal.

(12) The following provisions govern any meeting at which one or more members of the Committee or a party appears telephonically or electronically, pursuant to Utah Code Section 52-4-207.

(a) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. The anchor location, unless otherwise designated in the notice, shall be at the offices of the Division of State Archives, Salt Lake City, Utah.

(b) If one or more Committee members or parties may be participating electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Committee not participating electronically or telephonically will be meeting and where interested persons and the public may attend and monitor the open portions of the meeting.

(c) When notice is given of the possibility of a member of the Committee appearing electronically or telephonically, any member of the Committee 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 Committee. At the commencement of the meeting, or at such time as any member of the Committee initially appears electronically or telephonically, the Committee Chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the Committee who are not at the physical location of the meeting shall be confirmed by the Committee Chair.

(13)(a) If the petitioner wishes to postpone the hearing or withdraw the appeal, the petitioner shall notify the Committee and the governmental entity in writing no later than two days prior to the scheduled hearing date.

(b) The Committee Chair has the discretion to grant or deny a petitioner's request to postpone a hearing based upon: (i) the reasons given by the petitioner in his or her request, (ii) the timeliness of the request, (iii) whether petitioner has previously requested and received a postponement, (iv) any other factor determined to protect the equitable interests of the parties.

(c) The Committee will ordinarily deny a governmental entity's request to postpone the hearing, unless the governmental entity has obtained the petitioner's prior consent to reschedule the hearing date.

R35-1-3. Issuing the Committee Decision and Order.

(1) The Decision and Order shall be signed by the Committee Chair and distributed by the Executive Secretary within seven business days after the hearing. Copies of each Decision and Order shall be distributed to the petitioner, the governmental entity and all other interested parties. The original order shall be maintained by the Executive Secretary. A copy of the order shall be made available for public access at the Utah State Archives website.

R35-1-4. Committee Minutes.

(1) Purpose. Utah Code Section 52-4-203 requires any public body to establish and implement procedures for the public body's approval of the written minutes of each meeting. This rule establishes procedures for the State Records Committee to approve the written minutes of each meeting.

(2) Authority. This rule is enacted under the authority of Utah Code Sections 52-4-203, 63G-3-201, and 63A-12-101 et seq.

(3) All meetings of the Committee shall be recorded. The recording of the open meeting shall be made available to the public within three business days. Access to the audio recordings shall be provided by the Executive Secretary on the Utah Public Notice Website.

(4) Approved written minutes shall be the official record of the meetings and appeal hearings and shall be maintained by the Executive Secretary.

(a) Written minutes shall be read by members prior to the next scheduled meeting, including electronic meetings.

(b) Written minutes from meetings shall be made available no later than one week prior to the date of the next regularly scheduled Committee meeting.

(c) When minutes are complete but awaiting official approval, they are a public record and must be marked as "Draft."

(d) At the next meeting, at the direction of the Committee Chair, minutes shall be amended and/or approved with individual votes recorded in the minutes. The minutes shall be then marked as "Approved."

(e) When the minutes are "Approved" they will be so noted in the printed and online versions. A copy of the approved minutes shall be made available for public access on the Utah Public Notice Website.

KEY: government documents, state records committee, records appeal hearings
July 31, 2015 63G-2-502(2)(a)
Notice of Continuation June 3, 2014

R35. Administrative Services, Records Committee.
R35-2. Declining Appeal Hearings.
R35-2-1. Authority and Purpose.

In accordance with Section 63G-2-502 and Subsection 63G-2-403(4), Utah Code, this rule establishes the procedure declining to schedule hearings by the Executive Secretary of the State Records Committee.

R35-2-2. Declining Requests for Hearings.

(1) In order to decline a request for a hearing under Subsection 63G-2-403(4), the Executive Secretary shall consult with the Committee Chair and at least one other member of the Committee as selected by the Chair.

(2) In any appeal to the Committee of a governmental entity's denial of access to records for the reason that the record is not maintained by the governmental entity, the petitioner shall provide sufficient evidence in the petitioner's statement of facts, reasons, and legal authority in support of the appeal, that the record was maintained by the governmental entity at one time, or that the governmental entity has concealed, or not sufficiently or improperly searched for the record. The Committee Chair shall determine whether or not the petitioner has provided sufficient evidence. If the Committee Chair determines that sufficient evidence has been provided, the Chair shall direct the Executive Secretary to schedule a hearing as otherwise provided in these rules. If the Committee Chair determines that sufficient evidence has not been provided, the Chair shall direct the Executive Secretary to not schedule a hearing and to inform the petitioner of the determination. Evidence that a governmental entity has disposed of the record according to retention schedules is sufficient basis for the Chair to direct the Executive Secretary to not schedule a hearing.

(3) In order to file an appeal, the petitioner must submit a copy of his or her initial records requests or a statement of the specific records requested if a copy is unavailable to the petitioner, as well as any denial of the records request. The Executive Secretary shall notify the petitioner that a hearing cannot be scheduled until the proper information is submitted.

(4) The Committee Chair and one other member of the Committee must both agree with the Executive Secretary's recommendation to decline to schedule a hearing. Such a decision shall consider the potential for a public interest claim as may be put forward by the petitioner under the provisions of Subsection 63G-2-403(11)(b), Utah Code. A copy of each decision to deny a hearing shall be retained in the file.

(5) The Executive Secretary's notice to the petitioner indicating that the request for a hearing has been denied, as provided for in Subsection 63G-2-403(4)(b)(ii)(A), Utah Code, shall include a copy of the previous order of the Committee holding that the records at issue are appropriately classified.

(6) The Executive Secretary shall report on each of the hearings declined at each regularly scheduled meeting of the Committee in order to provide a public record of the actions taken.

(7) If a Committee member has requested a discussion to reconsider the decision to decline a hearing, the Committee may, after discussion and by a majority vote, choose to reverse the decision and hold a hearing. Any discussion of reconsideration shall be limited to those Committee members then present, and shall be based only on two questions: whether the records being requested were covered by a previous order of the Committee, and/or whether the petitioner has, or is likely to, put forth a public interest claim. Neither the petitioner nor the agency whose records are requested shall be heard at this time. If the Committee votes to hold a hearing, the Executive Secretary shall schedule it on the agenda of the next regularly scheduled Committee meeting.

(8) The Executive Secretary shall compile and include in an annual report to the Committee a complete documented list of all hearings held, withdrawn, and declined.

KEY: government documents, state records committee, records appeal hearings
July 31, 2015 **63G-2-403(4)**
Notice of Continuation June 3, 2014

R35. Administrative Services, Records Committee.
R35-4. Compliance with State Records Committee Decisions and Orders.
R35-4-1. Authority and Purpose.

In accordance with Subsection 63G-2-403(14), Utah Code, this rule intends to establish the procedure for complying with an order of the State Records Committee.

R35-4-2. Notices of Compliance.

(1) The Executive Secretary of the Committee shall send an order of the Committee by certified mail to the petitioner and to the governmental entity ordered to produce records.

(2) Pursuant to Subsection 63G-2-403(15)(a), Utah Code, each governmental entity ordered by the Committee to produce records, shall file with the Executive Secretary either a notice of compliance, or a copy of the appellant's notice of intent to appeal the Committee order, no later than the thirtieth day following the date of the Committee order.

(3) The notice of compliance shall contain a statement, signed by the head of the governmental entity, that the records ordered to be produced have been delivered to the petitioner, and shall state the method and date of delivery.

(4) In the event a governmental entity fails to file a notice of compliance or a copy of the appellant's notice of intent to appeal the Committee order within the time frame specified, the Committee shall send written notice of the entity's noncompliance to the governor for executive branch agencies, to the Legislative Management Committee for legislative branch entities, to the Judicial Council for judicial branch entities, and to the mayor or chief executive officer of a local government for local or regional governmental entities.

(5) The Committee may also impose a civil penalty of up to $500 for each day of continuing noncompliance, but only after holding a discussion of the matter at issue, and obtaining a majority vote at a regularly scheduled Committee meeting. The non-complying governmental entity shall be heard at that meeting, with discussion being limited specifically to reasons for the neglectful, willful, or intentional act. Any civil penalty imposed shall be retroactive to the first date of noncompliance.

KEY: government documents, state records committee, records appeal hearings
July 31, 2015 63G-2-502(2)(a)
Notice of Continuation June 3, 2014

R35. Administrative Services, Records Committee.
R35-5. Subpoenas Issued by the Records Committee.
R35-5-1. Authority and Purpose.

In accordance with Subsection 63G-2-403(10), Utah Code, this rule intends to establish the procedures for issuing subpoenas by the State Records Committee.

R35-5-2. Subpoenas.

(1) In order to initiate a request for a subpoena, a party shall file a written request with the Committee Chair at least 16 days prior to a hearing. The request shall describe the purpose for which the subpoena is sought, and state specifically why, given that hearsay is available before the Committee, the individual being subpoenaed must be present.

(2) The Committee Chair shall review each subpoena request and grant or deny the request within three business days, based on the following considerations:

(a) a weighing of the proposed witness' testimony as material and necessary; or

(b) a weighing of the burden to the witness against the need to have the witness present.

(3) If the Committee Chair grants the request, the requesting party may obtain a subpoena form, signed, but otherwise blank, from the Executive Secretary. The requesting party shall fill out the subpoena and have it served upon the proposed witness at least seven business days prior to a hearing.

(4) A subpoenaed witness shall be entitled to witness fees and mileage reimbursement to be paid by the requesting party. Witnesses shall receive the same witness fees and mileage reimbursement allowed by law to witnesses in a state district court.

(5) A subpoenaed witness may file a motion to quash the subpoena with the Executive Secretary at least three business days prior to the hearing at which the witness has been ordered to be present, and shall simultaneously transmit a copy of that motion to the parties. Such motion shall include the reasons for quashing the subpoena, and shall be granted or denied by the Committee Chair based on the same considerations as outlined in Subsection R35-5-2(2). As part of the motion to quash, the witness must indicate whether a hearing on the motion is requested. If a hearing is requested, it shall be granted. All parties to the appeal have a right to be present at the hearing. The hearing must occur prior to the appeal hearing, and shall be heard by the Committee Chair. The hearing may be in person or by telephone, as determined by the Committee Chair. A decision on the motion to quash shall be rendered prior to the appeal hearing.

(6) If the Committee Chair denies the request for subpoena, the denial is final and unreviewable.

KEY: government documents, state records committee, records appeal hearings
July 31, 2015 63G-2-502(2)(a)
Notice of Continuation June 3, 2014

R35. Administrative Services, Records Committee.
R35-6. Expedited Hearing.
R35-6-1. Authority and Purpose.

In accordance with Subsection 63G-2-403(4)(a)(i), this rule establishes the procedure for requesting and scheduling an Expedited Hearing.

R35-6-2. Requests for an Expedited Hearing.

(1) A party appealing a records classification to the Committee may request that a hearing be scheduled to hear the appeal prior to ten business days after the date the notice of appeal is filed by making a written request to the Executive Secretary. A copy of this request shall also be mailed to the government entity.

(2) A written request shall include the reason(s) the request is being made.

(3) The Executive Secretary shall consult with the Committee Chair to decide whether an Expedited Hearing is warranted.

(4) The standard for granting an Expedited Hearing is "good cause shown." The Committee Chair shall take into account the reason for the request, and balance that against the burden to the Committee and the governmental entity.

R35-6-3. Scheduling the Expedited Hearing.

(1) In the event that an Expedited Hearing is granted, the Executive Secretary shall poll the Committee to determine a date upon which a quorum can be obtained.

(2) After settling on a date no sooner than seven days nor later than 16 days after the notice of appeal has been filed, the Executive Secretary shall contact the petitioner and governmental entity and schedule the hearing.

(3) The government entity shall file its response to the appeal with the Executive Secretary, and mail a copy to the petitioner no later than five days prior to the scheduled hearing. The Executive Secretary shall make this response available to the Committee as soon as possible.

R35-6-4. Holding the Expedited Hearing.

With the exception of the time frame for scheduling a hearing and providing responses, all other provisions governing hearings under the Government Records Access and Management Act (GRAMA) shall apply to Expedited Hearings.

KEY: government documents, state records committee, records appeal hearings
July 31, 2015 63G-2-502(2)
Notice of Continuation June 3, 2014

R68. Agriculture and Food, Plant Industry.
R68-6. Utah Nursery Act.
R68-6-1. Authority.

Promulgated under authority of Section 4-15-3.

R68-6-2. Terms Defined.

All terms used in these rules shall have the meaning set forth for such items in the Act.

R68-6-3. Labeling.

A. In order to identify nursery stock properly, whenever it is shipped, delivered, or transported to any purchaser, at least one label bearing the name, origin (state grown or propagated), size, variety, and grade (where applicable) shall be attached to each separate species or variety.

B. Whenever a grade or size designation is used or implied in labeling or in an advertisement referring to a kind of nursery stock for which grades or sizes have been established in these rules, the nursery stock so labeled or so advertised shall conform to the specifications of the particular grade or size as stated herein. Advertisements of such stock offered for sale in containers shall state plant grade or size, irrespective of the size of the container.

C. Non-established container stock shall be so identified by a water resistant tag on which the words "non-established container stock" are printed. The tags shall be not less than 2 x 4 inches in size with lettering of 24 point Gothic type. The minimum length of time the stock has been planted in the container or the date the stock was planted in the container must also be stated on the tag. The tag shall bear only the required labeling. It shall be the responsibility of the supplier of non-established container stock to adequately label such stock as provided herein.

D. All roses shall be labeled by grade for individual plants, bundles, or single lots.

R68-6-4. Condition of Nursery Stock.

A. Any nursery stock which, in the judgment of the Commissioner or his authorized agents, does not meet the following minimum indices of vitality shall be removed from sale.

1. Woody-stemmed deciduous stock, such as fruit and shade trees, rose bushes, and shrubs shall have moist tissue in the stem or stems and branches and shall have viable buds or unwilted growth sufficient to permit the nursery stock to live and grow in a form characteristic of the species when planted and given reasonable care, except that in the case of rose bushes each stem must show moist, green undamaged cambium in at least the first 8 inches above the graft. Any single stem on a rose bush not meeting this specification shall disqualify the entire plant: PROVIDED, that a bush may be pruned to comply with the specification if at least two stems meeting the specification remain and the grade designation is changed accordingly.

2. Hardy herbaceous biennials or perennial when in a wilted, rotted, or any other condition indicative of poor vitality shall not be sold or offered for sale in Utah.

3. Any bare-rooted or prepackaged woody-stemmed nursery stock having in excess of two inches of etiolated or otherwise abnormal growth from individual buds shall not be sold or offered for sale.

4. Balled and burlapped stock in a weakened condition as evidenced by dieback or dryness of earthball or foliage, or such stock having broken or loose earthballs shall not be sold or offered for sale.

5. Stock offered for sale in containers. The container shall be sufficiently rigid to hold the ball shape, protecting the root mass during shipment.

a. Container stock offered for sale shall be healthy, vigorous, well rooted, and established in the container in which it is sold. The tops of the plants shall be of good quality and in a healthy growing condition. Sufficient new fibrous roots shall have developed so that the root mass will retain its shape and hold together when removed from the container. This shall be evidenced in each case by the earthball of such stock remaining reasonably intact upon removing it from the container.

b. Non-established container stock offered for sale shall be deciduous stick which shows good top quality and a vigorous healthy growing condition. The potting media shall be capable of sustaining satisfactory plant growth. Evergreen stock shall not be offered for sale in containers unless it is well established in the container.

R68-6-5. Standards for Nursery Stock.

Nursery stock offered for sale in Utah shall meet the grade and size standards as published by the American Association of Nurseryman (AAN), in the PUBLICATION ENTITLED: American Standards for Nursery Stock, ANSI Z60.1-1996 approved November 6, 1996 which is incorporated by reference within this rule. Buyers and sellers of nursery stock shall refer to and use common terminology that is contained in and defined by this incorporated document, in order to facilitate transactions involving nursery stock in this state.

R68-6-6. Organizational Provisional Permit.

A. Special projects held by nonprofit educational, charitable, or service organizations may be exempt from payment of fees for nursery license provided the applicant provides an application for such.

B. All funds received from sales of such plants shall be used for the benefit of the organization or for improvement or beautification projects within the local community.

C. Plant materials distributed at these special projects shall meet the standards as described in R68-6-4 and R68-6-5.

D. No special project will be in direct competition with any licensed nursery.

E. Permit will be issued for on annual activity only. No fee required, but application must be completed and approved by the department before the project begins.

KEY: nurseries (agricultural)
September 15, 2004 4-15-3
Notice of Continuation July 29, 2015

R68. Agriculture and Food, Plant Industry.
R68-10. Quarantine Pertaining to the European Corn Borer.
R68-10-1. Authority.

A. Promulgated under authority of 4-2-2.

B. The fact has been determined by the Utah Commissioner of Agriculture and Food that a serious insect pest known as the European Corn Borer (Pyrausta nubilalis), not known to exist in the State of Utah, exists in the described infested areas, and the restricted products described are hosts or possible carriers of pests.

C. The Commissioner, by virtue of the authority in him vested by 4-2-2, does establish a quarantine setting forth the name of the pest against which the quarantine is established, the infested area, the products regulated, and specifying conditions governing shipments and issuance of certificates under which products may be shipped.

R68-10-2. Pest.

European Corn Borer (Pyrausta nubilalis)

R68-10-3. Areas Under Quarantine.

All States and Districts of the United States except the States of Alaska, Arizona, California, Hawaii, Idaho, Nevada, New Mexico, Oregon, and Washington.

R68-10-4. Infested Areas.

Entire States of Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Iowa, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, Wyoming, and the District of Columbia.

R68-10-5. Commodities Covered.

Restricted Products: Corn, broomcorn, sorghums, and sudangrass plants and all parts thereof, including seed and shelled grain, and stalks, ears, sweet corn on the cob, and all other parts (except seed for planting purposes and popcorn for human consumption when free from portions of plants or fragments capable of harboring larvae of European Corn Borer); beans in the pod, beets, celery, peppers (fruits), endive, Swiss chard, and rhubarb (cut or plants with roots); cut flowers and entire plants of aster, chrysanthemum, calendula, cosmos, hollyhock, marigold, zinnia, Japanese hop, dahlia (except tubers without stems), and gladiolus (except corms without stems), are hereby declared to be hosts or possible carriers of the pest herein quarantined against.

R68-10-6. Restrictions.

A. Definitions. As used in this section, the following words and terms shall be construed respectively to mean:

1. "Portions of plants or fragments capable of harboring larvae of European Corn Borer" - Any portion of a host plant of any shape or size which cannot be passed through a 1/2 inch square aperture, and any completely whole, round uncrushed section, portion, or piece of cob, stalk, or stem of one-inch or more in length and 3/16-inch or more in diameter.

2. "Official Certificate" - a document, issued by a duly authorized representative of the designated State Department of Agriculture and Food evidencing compliance with the provisions of this rule and setting forth all information and facts hereinafter required.

B. Certification is required on all shelled grain from areas under quarantine. Except as provided in paragraph E. below, each lot or shipment of shelled corn, broomcorn, sorghums and sudangrass grown in or shipped from the area under quarantine described in section 2. imported or brought into this state shall be accompanied by an official certificate evidencing compliance with one of the following conditions:

1. Certificates on shelled grain grown in or shipped from the infested area, must either affirm that said grain has been passed through a 1/2-inch mesh screen or less and is believed to be free from stalks, cobs, stems, or portions of plants or fragments capable of harboring larvae of the European Corn Borer, and further, that the car or truck was free from stalks, cobs, stems, or such portions of plants or fragments at the time of loading; or, affirm that said grain has been fumigated by a method and in a manner prescribed by the Utah Department of Agriculture and Food, and setting forth the date of fumigation, dosage schedule, and kind of fumigant used.

2. Certificates for shelled grain grown in and shipped from non-infested states under quarantine must be issued by the proper official of the state wherein such grain was produced, affirming that all such grain covered by said certificate is a product of said state wherein no European Corn Borer is known to exist and that its continued identity has been maintained to assure no blending or mixing with grain, plants, or portions thereof produced in or shipped from an infested area.

C. Any lot or shipment of shelled grain arriving in this state which is not accompanied by an official certificate as hereinbefore required, or which is certified on the basis of freedom from contamination with portions of plants or fragments capable of harboring larvae of European Corn Borer as defined above and which is found to be so contaminated, shall be deemed to be in violation of this quarantine.

D. All certificates issued in compliance with this quarantine shall also set forth the kind and quantity of the commodity constituting the lot or shipment covered thereby, the initials and number of the railway car or license number in the case of a truck, and the names and addresses of the shipper and consignee.

E. Small lots and packages of seed may be admitted without a certificate. Individual shipments or lots of one hundred pounds or less of clean shelled grain and seed covered by this quarantine, or comprised of packages of less than ten pounds, are hereby exempted from the certification requirements and will be admitted into this state subject to inspection and freedom from portions of plants or fragments capable of harboring European Corn Borer.

F. Stalks, ears, cobs, or other parts, fragments, or debris of corn, broomcorn, sorghums, and sudangrass may be admitted under a fumigation treatment certificate. Stalks, ears, cobs, or other parts, fragments, or debris of corn, broomcorn, sorghums, and sudangrass grown in or shipped from the area under quarantine imported as such or as packing or otherwise, will be admitted into the State of Utah only provided each lot or shipment is accompanied by an official certificate of the state of origin, affirming that all stalks, ears, cobs, or other parts, fragments, or debris of such plants accompanied thereby have been fumigated by a method and in a manner prescribed by the Commissioner, and setting forth the date and full particulars of the treatment applied; except, that stalks, ears, cobs, or other parts, fragments, or debris of said plants grown in and shipped from states under quarantine not listed in the infested area will be admitted into the State of Utah, provided each shipment or lot is accompanied by an official certificate of the state where produced, affirming that such product is a product of said state wherein no European Corn Borer is known to exist and that continued identity of the product has been maintained to assure no handling or storage in association with stalks, ears, cobs, or other parts, fragments, or debris of such plants grown in or shipped from infested areas herein described. All certificates issued in compliance with this paragraph must also set forth the kind and quantity of the commodity constituting the lot or

shipment covered thereby, the initials and number of the railway car or license number in the case of a truck, and the names and addresses of the shipper and consignee.

G. Certification is required on certain vegetable and ornamental plants and plant products produced in or shipped from an infested area. Except as provided in paragraph h. below, beans in the pod, beets, celery, peppers (fruits), endive, Swiss chard, and rhubarb (cut or plants with roots); cut flowers and entire plants of aster, chrysanthemum, calendula, cosmos, hollyhock, marigold, zinnia, Japanese hop, dahlia (except tubers without stems), and gladiolus (except corms without stems) produced in or shipped from the infested area will be admitted into the State of Utah, provided each lot or shipment is officially certified by a duly authorized official of the state where produced, evidencing that such plants, products, or cut flowers have been inspected or that the greenhouse or growing grounds where same were produced were inspected and no European Corn Borer was found, or that such plants, products, or cut flowers have been fumigated by a method and in a manner prescribed by the Utah Department of Agriculture and Food and setting forth the date of fumigation, dosage schedule, and kind of fumigant used. No restrictions are placed by this quarantine on the entry into Utah of such vegetable and ornamental plants and plant products produced in and shipped from any non-infested state.

H. Certain restricted products are conditionally exempt from certification. Certification requirements of paragraph G. above are hereby waived on individual shipments or lots of certain restricted vegetable, ornamental plants, and plant products described therein, under and subject to the following conditions:

1. In lots of shipments of ten (10) pounds or less--beans in the pod, beets, peppers (fruits), endive, Swiss chard, and rhubarb (cut or plants with roots).

2. During period of November 30th to May 1st - divisions without stems of the previous year's growth, rooted cuttings, seedling plants and cut flowers of aster, chrysanthemum, calendula, cosmos, hollyhock, marigold, zinnia, and Japanese Hop.

I. Manufactured or processed products are exempt from restriction. No restrictions are placed by this quarantine upon the movement of the restricted products herein defined which are processed or manufactured in such a manner as to eliminate all danger of carrying the pest herein quarantined against.

R68-10-7. Enforcing Powers.

A. Authorized agents of the Utah Department of Agriculture and Food shall refuse admittance into the State of Utah any quarantined products that do not meet the provisions of this quarantine.

B. Any shipment found within Utah in violation of this quarantine shall be treated to comply with this quarantine or be returned to the shipper at once. In either case, the shipper shall stand the expense incurred.

R68-10-8. Approved Fumigation Treatment for European Corn Borer Bulk Shelled Grain (corn, broomcorn, sorghum and sudangrass in railway cars or trucks).

Atmospheric fumigation for a period of 16 hours using methyl bromide at the following rates to be determined by the temperature of the product and interior of the car during the period of exposure.

TABLE

TEMPERATURE	LBS. PER 1,000 CU. FT.	
60 degrees F. and above	4	
55-59 degrees F.	4.5	
50-54 degrees F.	5	
45-49 degrees F.	5.5	
40-44 degrees F.	6	
35-39 degrees F.	6.5	(Hot gas method of
30-34 degrees F.	7	application must be
25-29 degrees F.	7.5	used at temperatures
20-24 degrees F. (minimum)	8	below 40 degrees F.)

R68-10-9. Requirements During Fumigation.

A. Truck and railway cars being used as fumigating chambers must be sealed in a manner to make them gas-tight.

B. Blowers shall be provided to circulate the gas throughout the space being fumigated.

C. When fumigation takes place below 40 degrees F., a hot gas method of fumigation must be used.

CAUTION: Methyl bromide (CH_3Br) is a colorless, odorless, volatile liquid which when released at ordinary temperatures is a gas injurious to all forms of animal life. Proper precautions should be observed by all persons when handling it. Contact the Utah Department of Agriculture and Food for further information.

KEY: plant diseases
1987 4-2-2
Notice of Continuation July 10, 2015

R70. Agriculture and Food, Regulatory Services.
R70-101. Bedding, Upholstered Furniture and Quilted Clothing.
R70-101-1. Authority and Purpose.

Pursuant to Section 4-10-3, this rule establishes the standards, practices and procedures for the manufacture, repair, sale, and distribution of bedding, upholstered furniture, quilted clothing products, and filling materials.

R70-101-2. Definitions.

1) "Clean" means free from stains, dirt, trash, filth, pulp, sludge, oil, grease, fat, skin, epidermis, excreta, vermin, insects, insect eggs, insect carcasses, contamination, hazardous materials, residual or objectionable substances or odors.

2) "Department" means the Utah Department of Agriculture and Food.

3) "Law Label or Label" means a tag attached to a product that provides information about the product to the consumer.

4) "Manufacture" means the making, processing, or preparing of new or secondhand bedding, upholstered furniture, quilted clothing, or filling material.

5) "Manufacturer" means a person who makes or has employees make any bedding, upholstered furniture, quilted clothing, filling material, or any part thereof.

6) "Non-resident" means a person licensed under these rules who does not have premises in the State of Utah.

7) "Person" means an individual, partnership, association, firm, auctioneer, trust, limited liability company, or corporation, and agents, and employees of them.

8) "Premises" means all places where bedding, upholstered furniture, quilted clothing, or filling material is sold, offered for sale, exposed for sale, stored, renovated or manufactured and the delivery vehicles used in their transportation.

9) "Supply dealer" means a person who manufactures, processes, or sells at wholesale any felt, batting, pads, or other filling, loose in bags, in bales or in containers, concealed or not concealed, intended for use in bedding, upholstered furniture, or quilted clothing.

10) "Second Hand Law Tag or Tag" means a tag attached to a product or filling material that has previously been used.

11) "Uniform Registry Number or URN" means the number issued by a state to be used on the law label of bedding, furniture, or filling materials to identify the manufacturing facility, person, or company.

R70-101-3. Application of Rule.

1) This rule shall apply to all persons engaged in the business of manufacturing, retailing, wholesaling, processing, repairing, and selling items of bedding, upholstered furniture, quilted clothing and filling materials, regardless of their point of origin.

R70-101-4. Licensing Requirements for Manufacturers, Repairers, and Wholesalers.

1) Any person, who advertises, solicits, or contracts to manufacture or repair bedding, upholstered furniture, quilted clothing, or filling materials shall secure a license from the department.

a) This license must be obtained before such products are offered for sale in Utah.

2) Any person seeking a license shall provide the following to the department:

a) a complete registration application form,

b) a sample of the identification label that will be used, and

c) a sample tag

i) wholesale bedding, upholstered furniture dealers, upholstery supply dealer, and quilted clothing manufacturers are exempted from providing a sample tag to the department.

3) A licensing fee will be assessed annually. This fee shall be paid before January 1 or a late fee will be assessed. All fees are listed in the department's fee schedule approved by the legislature.

R70-101-5. Revocation of License.

1) The department shall have the authority to suspend or revoke a license for any violation of these provisions.

2) A suspension or revocation shall be in accordance with section 4-1-5.

R70-101-6. Sanitation Requirements.

1) The premises, delivery equipment, machinery, appliances, and devices shall at all times be kept free from refuse, dirt, contamination, or insects.

2) No person shall use in the making, repairing, or renovating of bedding, upholstered furniture, or quilted clothing any filling material that:

a) contains any bugs, vermin or filth,

b) is not clean, or

c) contains burlap or other material that has been used for baling.

3) Bedding, quilted clothing, and filling materials shall be stored four inches off the floor.

4) New and used products shall be stored separately.

R70-101-7. Manufacturing, Wholesale, and Supply Dealer Labeling Requirements for Quilted Clothing.

1) The department adopts by reference the Rules and Regulations under the Textile Fiber Products Identification Act, Fur Products Labeling Act, and Wool Products Labeling Act found in 16 CFR parts 300, 301, and 303.

2) Articles of plumage-filled clothing shall meet the following label requirements:

a) Any label stating the contents of Down, Goose Down, or Duck Down shall also state the minimum percentage of Down, Goose Down, or Duck Down that is contained in the article. The down label is a qualified general label and shall include in parentheses the minimum percentage of down in the product which must be 75% or greater.

b) Down and Waterfowl Feathers: may be used to designate any plumage product containing between 50% (minimum) and 74% down and plumules. The percentage of both must be stated on the sewn-in label and hang tags,

c) Waterfowl Feathers and Down: may be used to designate any plumage product containing between 5% (minimum) and 49% down and plumules. The percentage of both must be stated on the sewn-in label and hang tags.

d) Waterfowl Feathers: may be used to designate any plumage product containing less than 5% down and plumules.

e) Quill Feathers are not permitted unless disclosed.

f) Other Plumage Products which do not meet the requirements for any of the above listed categories must be labeled accurately with each component listed separately in order of predominance.

3) The form of identification used on labels and tags shall be the same as those supplied to the department with the registration application.

R70-101-8. Filling Material.

1) All terms and definitions of filling materials shall be those terms which have been submitted and approved by International Association of Bedding Law Officials (IABFLO), except as otherwise required by this rule.

2) All plumage materials shall follow the standards as set forth in the "USA-2000 Labeling Standards- Down and Feather Products" and ASTM D-4522.

3) All other filling materials shall be clean.

4) "Imperfect, irregular foam" means any foam products

which show major imperfections or that fall below the foam manufacturer's usual standards or specifications and must be stated on the tag as "imperfect" or "irregular" along with the generic name of the foam.

5) "Imperfect, irregular fibers" shall mean fibers that have imperfections or that fall below the fiber manufacturer's usual standards or specification and must be stated on the tag as "imperfect" or irregular" along with the generic name of the fiber.

6) The terms "Prime", "Super", "Northern" and similar terms shall not be used unless the fill can be proved to be of superior quality and meet the terms of the qualifying statement.

R70-101-9. Generic Names, Grades, Descriptive Terms, and Definitions of Filling Material.

1) Filling material shall be described on the label and on the tag using the:

a) true generic name,

b) grade,

c) description terms, or

d) definitions of the filling material which have been approved by the department.

2) When more than one kind of filling material is used in a mixture, the percentage by weight shall be listed in order of predominance.

a) Federal fiber tolerance standards are applicable, except as pertains to plumage products.

b) Blends may be described in accordance with section 8 of this rule.

3) When different filling materials are used in various parts of the garment the areas of the garment shall be named, followed by the name of the filling material used in that area.

R70-101-10. Manufacturer Identification and Law Label Requirements For Bedding and Upholstered Furniture.

1) The form of identification used on labels and tags shall be the same as those supplied to the department with the registration application.

2) For articles of bedding and upholstered furniture, the law label shall use the format adopted by the IABFLO, as listed in the "Manual of Labeling Laws" of the International Sleep Products Association (ISPA). A copy of the current edition of the "Manual of Labeling Laws" is available for public inspection at the Utah Department of Agriculture and Food, 350 North Redwood Road, Salt Lake City, Utah.

(3) The law label for newly manufactured products shall meet the following requirements:

a) white on all sides of the label,

b) made of material that cannot be torn,

c) printed in black ink

d) printed in English,

e) printed clearly and legibly, and

f) firmly attached to the article

4) All required information shall be printed on one side of the label with the opposite side remaining blank.

5) Each law label shall state the following:

a) the phrase "UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY THE CONSUMER" shall appear in bold at the top of the label in capital letters no less than 1/8 inches in height,

b) the phrase "ALL NEW MATERIAL" shall appear in the next section in bold, capital letters no less the 1/8 inches in height, followed by the phrase "CONSISTING OF" followed by the filling contents in bold capital letters no less than 1/8 inch in height,

c) the phrase, "Certification is made that the materials in this article are described in accordance with law" shall appear in the next section of the tag,

d) the URN issued by the state in which the firm is first registered shall appear next, and

e) the name and complete address of the manufacturer, importer, or vendor of the article shall appear next.

6) The law label shall be easily accessible to the consumer for examination.

a) Products which are offered for sale in boxes or in some other packaging which make the law labels inaccessible shall reproduce a legible facsimile of the law label on the outer container or covering.

7) No mark, label, printed matter, illustration, sticker, or any other device shall be placed upon the label.

8) The firm's license with the state that issued the URN must be kept current for the number to be valid in the state of Utah.

9) Every firm doing business under more than one state-issued URN shall obtain a license for each number used on products that are offered for sale in Utah.

R70-101-11. Second Hand Law Tags and Tagging Requirements.

1) Tags for second hand materials shall be:

a) a minimum of 2 inches by 3 inches,

b) yellow on both sides of the tag,

c) made of material that cannot be torn,

d) printed in English,

e) printed in black ink,

f) printed clearly and legibly, and

g) firmly attached to the article.

2) All required information shall be printed on one side of the tag with the opposite side remaining blank.

3) Second hand tag shall contain the following information:

a) the phrase "UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY THE CONSUMER" shall appear in bold at the top of the label in capital letters, no less than 1/8 inch in height,

b) the phrase, "THIS ARTICLE CONTAINS SECOND HAND MATERIAL CONSISTING OF CONTENTS UNKNOWN" shall appear in the next section of the tag. The words "second hand material" and "contents unknown" shall be in capital letters, size not less than 1/8 inches in height,

c) the phrase, "Certification is made that the materials in this article are described in accordance with law" shall appear in the next section of the tag, and

d) the store name and complete corporate address shall appear next.

4) The tag shall be easily accessible to the consumer for examination.

5) No mark, label, printed matter, illustration, sticker, or any other device shall be placed upon the tag.

R70-101-12. Second Hand Tag and Tagging Requirements for Repaired, Reupholstered, and Renovated Products.

1) Tags for repaired, reupholstered, and renovated products shall be:

a) a minimum of 2 inches by 3 inches,

b) yellow on both sides of the tag,

c) made of material that cannot be torn,

d) have the required information printed on one side of the tag,

e) printed in English,

f) printed in black ink,

g) printed clearly and legibly, and

h) firmly attached to the article.

2) All required information shall be printed on one side of the tag with the opposite side remaining blank.

3) Second hand tag shall contain the following information:

a) the phrase, "UNDER PENALTY OF LAW THIS TAGE

NOT TO BE REMOVED EXCEPT BY THE CONSUMER" shall appear in bold at the top of the label in capital letters, no less than 1/8 inch in height,

b) the phrase, "THIS ARTICLE IS NOT FOR SALE OWNER'S MATERIAL" shall appear next in bold 1/8 inch in height,

c) the phrase, "CERTIFICATION IS MADE THAT THIS ARTICLE CONTAINS THE SAME MATERIAL IT DID WHEN RECEIVED FROM THE OWNER AND THAT ADDED MATERIALS ARE DESCRIBED IN THE ACCODANCE WITH LAW, AND CONSIST OF THE FOLLOWING:" followed by a description of the filling materials,

d) a description of the work that was done on the product,

e) the URN number,

f) the name and address of the renovator or repairer, and

g) the date of pick-up, owner's name, and address.

R70-101-13. Used Mattresses.

1) Retailers selling customer returns, refurbished, or used mattresses shall follow the second hand law tag requirements as set out in R70-101-11.

2) In addition, retailers must also display on such mattresses a tag stating "USED" in bold capital letters.

3) The Used tag shall be:

a) a minimum 3 inches by 6 inches,

b) yellow on both sides of the tag,

c) the font shall be a minimum of one inch in height,

d) printed in black ink, and

e) printed in English.

4) All required information shall be printed on one side of the tag with the opposite side remaining blank.

5) The USED tag shall be clearly visible to the consumer at all times.

R70-101-14. Variance.

1) The department may issue variances on labeling and tagging requirements.

2) Requests for a variance must be made to the department in writing and must contain the following information:

a) For what product you are requesting the variance,

b) where you are going to be using the variance,

c) an explanation of the need for a variance,

d) a description of how the variance will be used in practice, and

e) an example of the label or tag that will be used in place of the required label or tag.

3) Approval of variances will be given from the department in writing.

4) All variances shall be subject to a period of review.

R70-101-15. Making or Selling Material or Parts.

1) A person shall not purchase, make, process, prepare, or sell, directly or indirectly, at wholesale or retail, or otherwise, any filling material or other component parts to be used in bedding, upholstered furniture, or quilted clothing, unless such material appropriately tagged.

R70-101-16. Retailer Responsibilities.

1) Retailers shall:

a) ensure that any article of bedding, upholstered furniture, quilted clothing, or filling material they sell is labeled and tagged correctly,

b) comply with the department's laws and rules governing false and misleading advertisement, and

c) ensure that all manufacturers from whom they purchase products hold a valid license with the department.

2) Retailers shall provide the identity of the manufacturer or wholesaler of any article of bedding, upholstered furniture, quilted clothing, or filling material sold upon request of the department.

3) A retailer may register in lieu of the manufacturer or wholesaler if the manufacturer or wholesaler is not registered.

R70-101-17. Violation of this Rule.

1) Each improperly labeled or tagged article of bedding, upholstered furniture, quilted clothing, or filling material made or sold shall be a separate violation of this rule.

2) No person shall be in violation if he has received, from the person by whom the articles were manufactured or from whom they were received, a guarantee in good faith that the articles are not contrary to the provisions of these rules in the form prescribed by the Federal Textile Fiber Products Identification Act, Federal Wool Products Labeling Act, and the Federal Trade Commission Rules and Regulations.

3) No person shall remove, or cause to be removed, any tag, or device placed upon any article of bedding, upholstered furniture, quilted clothing, or filling material by an inspector.

4) No person may remove an article that has been condemned and ordered held on inspection notice.

5) No person shall interfere with, obstruct, or hinder any inspector of the department in the performance of their duties.

6) Any article of bedding, upholstered furniture, quilted clothing, or filling material manufactured or wholesaled by the manufacturer or wholesaler who is not registered may be withheld from sale until the manufacturer or wholesaler registers.

R70-101-18. Products Not Intended for Uses Subject to This Rule.

1) The Commissioner may exclude from this rule textile fiber products which:

a) Have insignificant or inconsequential textile fiber content, or

b) The disclosure of the textile fiber content is not necessary for the protection of the consumer.

KEY: quality control
July 22, 2015 **4-10-3**
Notice of Continuation March 16, 2015

R81. Alcoholic Beverage Control, Administration.
R81-3. Package Agencies.
R81-3-1. Definitions.

Package agencies are retail liquor outlets operated by private persons under contract with the department for the purpose of selling packaged liquor from facilities other than state liquor stores for off premise consumption. Package agencies are classified into five types:

Type 1 - A package agency under contract with the department which is operated in conjunction with a resort environment (e.g., hotel, ski lodge, summer recreation area).

Type 2 - A package agency under contract with the department which is in conjunction with another business where the primary source of income to the operator is not from the sale of liquor.

Type 3 - A package agency under contract with the department which is not in conjunction with another business, but is in existence for the main purpose of selling liquor.

Type 4 - A package agency under contract with the department which is located within a facility approved by the commission for the purpose of selling and delivering liquor to tenants or occupants of specific rooms which have been leased, rented, or licensed within the same facility. A type 4 package agency shall not be open to the general public. A type 4 package agency may also sell liquor other than in a sealed container (i.e. by the drink) as part of room service.

Type 5 - A package agency under contract with the department which is at a manufacturing facility that has been granted a manufacturing license by the commission.

The commission may grant type 4 package agency privileges to a type 1 package agency.

R81-3-2. Change of Location.

Any change of package agency location must be requested in writing and approved in advance by the commission.

R81-3-3. Bonds.

(1) No part of any surety bond required in Section 32B-2-604, may be withdrawn during the time the package agency contract is in effect. If the package agent fails to maintain a valid surety bond, the package agency contract shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in an automatic rescission of the package agency contract.

(2) A bond will be issued through the department for type 2 and 3 agencies.

R81-3-4. Change of Package Agent.

Pursuant to Section 32B-2-605(2), any change of the package agent designated in the department's package agency agreement is a violation of these rules and shall result in the immediate termination of the package agency contract.

R81-3-5. Reserved.

Reserved.

R81-3-6. Liquor Returns, Refunds and Exchanges.

(1) Purpose. This rule establishes guidelines for accepting liquor returns, refunds and exchanges.

(2) Application of Rule.

(a) Unsaleable Product. Unsaleable product includes product that is spoiled, leaking, contains foreign matter, or is otherwise defective. The department will accept for refund or exchange, liquor merchandise that is unsaleable subject to the following conditions and restrictions:

(i) Returns of unsaleable merchandise are subject to approval by the package agent to verify that the product is indeed defective.

(ii) The product must be returned within a reasonable time of the date of purchase. Discontinued products may not be returned. Vintages of wine that are not currently being retailed by the department may not be returned.

(iii) No refunds shall be given for wines returned due to spoilage such as corkiness, oxidation, and secondary fermentation, or due to the customer's unfamiliarity with the characteristics of the product. Such wines may only be exchanged for another bottle of the same product. Wine will not be accepted for refund or exchange if the return is a result of improper extraction of the cork.

(v) Unsaleable product shall be held at the package agency and accounted for in the same manner as breakage.

(b) Saleable Product. Package agents are authorized to accept saleable returned merchandise from licensees, single event permit holders, convention groups, and individual customers, subject to the following conditions and restrictions:

(i) Returns of saleable merchandise are subject to approval by the package agent. The customer may receive a refund or exchange of product for the return. Large returns will be accepted from licensees, single event permittees, convention groups and other organizations only if prior arrangements have been made with the package agent.

(ii) Returns should be made within a reasonable amount of time from the date of purchase, and all returned merchandise must be in good condition. Returns of $50.00 or more shall not be accepted without a receipt. Therefore, it is necessary for cashiers to print a receipt for all purchases of $50.00 or more. Signs should be posted at each cash register informing customers of this requirement. Merchandise shall be refunded at the price paid by the customer, or the current price, whichever is lower.

(iii) Wine and beer, due to their perishable nature and susceptibility to temperature changes, should be accepted back with caution. These products can only be returned if the package agent has personal knowledge of how they have been handled and stored.

(iv) If the total amount of the return is more than $500 the package agent shall fill out a "Returned Merchandise Acknowledgment Receipt" (LQ-45), and submit a copy to the office. A refund check will be processed at the office and mailed to the customer. Customers need to be informed that it generally takes three to six weeks to process payment.

(v) If the total value of the returned merchandise is more than $1,000, a 10% restocking fee shall be charged on the total amount.

(c) Unreturnable Products. The following items may not be returned:

(i) All limited item wines - wines that are available in very limited quantities.

(ii) Any products that have been chilled, over-heated, or label-damaged.

(iii) Outdated (not listed on the department's product/price list) and discontinued products.

(iv) Merchandise purchased by catering services.

(v) Unsaleable product shall be held at the package agency and accounted for in the same manner as breakage.

(d) A cash register return receipt shall be completed for each product return. The following information must be on the receipt: the customer's name, address, telephone number, driver's license number, and signature. The cashier must attach the receipt to the cash register closing report.

R81-3-7. Warning Sign.

All package agencies shall display in a prominent place a "warning sign" as defined in R81-1-2.

R81-3-8. Identification Guidelines to Purchase Liquor.

All package agencies shall accept only four forms of

identification to establish proof of age for the purchase of liquor by customers:

(1) A current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act or in accordance with the laws of another state;

(2) A current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, Identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(3) A current valid military identification card that includes date of birth and has a picture affixed; or

(4) A current valid passport.

If a person's age is still in question after presenting proof of age, the package agency may require the person to also sign a "statement of age" form as provided in 32B-1-405. The form shall be filed alphabetically by the close of business day, and shall be maintained on file for a period of three years.

R81-3-9. Promotion and Listing of Products.

(1) An operator or employee of a Type 1, 2, or 3 package agency, as defined in R81-3-1, may not promote a particular brand or type of liquor product while on duty at the package agency. An operator or employee may inform a customer as to the characteristics of a particular brand or type of liquor, provided the information is linked to a comparison with other brands or types.

(2) A package agency may not advertise alcoholic beverages on billboards except:

(a) a Type 1 package agency, as defined in R81-3-1, may provide informational signs on the premises of the hotel or resort directing persons to the location of the hotel's or resort's Type 1 package agency;

(b) a Type 2 package agency, as defined in R81-3-1, may provide informational signs on the premises of its business directing persons to the location of the Type 2 package agency within the business; and

(c) a Type 5 package agency, as defined in R81-3-1, may advertise the location of the winery, distillery, or brewery and the Type 5 package agency, and may advertise the alcoholic beverage products produced by the winery, distillery, or brewery and sold at the Type 5 package agency under the guidelines of R81-1-17 for advertising alcoholic beverages.

(3) A package agency may not display price lists in windows or showcases visible to passersby except:

(a) a Type 1 package agency, as defined in R81-3-1, may provide a price list in each guest room of the hotel or resort containing the code, number, brand, size and price of each item it carries for sale at the Type 1 package agency;

(b) a Type 4 package agency, as defined in R81-3-1, may provide a price list of the code number, brand, size, and price of each item it carries for sale to the tenants or occupants of the specific leased, rented, or licensed rooms within the facility; and

(c) a Type 5 package agency, as defined in R81-3-1, may provide a price list on the premises of the winery, distillery, or brewery, authorized tasting room, and at the entrance of the Type 5 package agency of the code, number, brand, size, and price of each liquor item it carries for sale at the Type 5 package agency.

R81-3-10. Non-Consignment Inventory.

Type 1, 4 and 5 package agencies shall be on a non-consignment inventory status where the agency owns the inventory.

R81-3-11. Application.

(1) No application for a package agency will be included on the agenda of a monthly commission meeting for consideration for issuance of a package agency contract until:

(a) The applicant has first met all requirements of Sections 32B-1-304 to 307 (qualifications to be a package agent), and 32B-2-602 and -604 and 32B-6-204 have been met (submission of a completed application, payment of application fee, written consent of local authority, evidence of proximity to certain community locations, a bond, a floor plan, and public liability insurance); and

(b) the department has inspected the package agency premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the 10th day of the month will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-3-12. Evaluation Guidelines of Package Agencies.

(1) The commission, after considering information from the applicant for the package agency and from the department, shall determine whether the package agency shall be classified and operated as a Type 1, 2, 3, 4, or 5 package agency,

(2) After a package agency has been classified and issued, a package agent or the department may request that the commission approve a change in the classification of the package agency. Information shall be forwarded to aid in its determination. If the commission determines that the package agency should be reclassified, it shall approve the request.

(3) Type 2 and 3 package agencies shall:

(a) serve a population of at least 6,000 people comprised of both permanent residents and tourists; and

(b) not be established or maintained within a one mile radius of another type 2 or 3 package agency unless it can be clearly demonstrated that it is in the best interest of the state to establish and maintain the outlet at that location.

(4) The department shall report to the commission on package agency operations as a regular agenda item at each monthly commission meeting. Any significant issues with respect to the operations of a particular package agency shall also be reported to the commission. Recommended closure by the department of a package agency due to payment delinquencies over 30 working days, significant inventory shortages, or any other significant operational deficiencies shall be calendared for the commission's consideration at its next regular monthly meeting or at a special meeting.

R81-3-13. Operational Restrictions.

(1) Hours of Operation.

(a) Type 1, 2, and 5 package agencies may operate from 10:00 a.m. until 12:00 midnight, Monday through Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department. Type 2 agencies shall be open for business at least seven hours a day, five days a week, except where closure is otherwise required by law. Type 5 package agencies may, in the discretion of the package agent, be open as early as 8:00 a.m. for sales to licensees with the approval of the department. Type 5 package agencies may also be open on Sundays and state and federal holidays if the package agency is located at a manufacturing facility licensed by the commission and the manufacturing facility holds a full-service restaurant license, a limited-service restaurant license, a beer-only restaurant license, or a dining club license.

(b) Type 3 package agencies may operate from 10:00 a.m. until 10:00 p.m., Monday through Saturday, but may remain

closed on Mondays in the discretion of the package agent. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department, provided the agency operates at least seven hours a day.

(c) Type 4 package agencies may operate from 10:00 a.m. until 1:00 a.m., Monday through Friday, and 10:00 a.m. until 12:00 midnight on Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department. A Type 4 package agency in a resort that is licensed under 32B-8, may operate 24 hours a day, Monday through Sunday to provide room service to guests of the resort.

(d) Any change in the hours of operation of any package agency requires prior department approval, and shall be submitted in writing by the package agent to the department.

(e)(i) A package agency shall not operate on a Sunday or legal holiday except to the extent authorized by 32B-2-605(13) which allows the following to operate on a Sunday or legal holiday:

(A) a package agency located in certain licensed wineries, breweries, and distilleries; and

(B) a package agency held by a resort that is licensed under 32B-8 that does not sell liquor in a manner similar to a state store which is limited to a Type 4 package agency.

(ii) If a legal holiday falls on a Sunday, the following Monday will be observed as the holiday by a Type 2 and 3 package agency.

(2) Size of Outlet. The retail selling space devoted to liquor sales in a type 2 or 3 package agency must be at least one hundred square feet.

(3) Inventory Size. Type 2 and 3 package agencies must maintain at least fifty code numbers of inventory at a retail value of at least five thousand dollars and must maintain a representative inventory by brand, code, and size.

(4) Access to General Public. Type 1, 2, and 3 package agencies must be easily accessible to the general consuming public.

(5) Purchase of Inventory. All new package agencies, at the discretion of the department, will purchase and maintain their inventory of liquor.

R81-3-14. Type 5 Package Agencies.

(1) Purpose. A type 5 package agency is for the limited purpose of allowing a winery, distillery, or brewery to sell at its manufacturing location the packaged liquor product it actually produces to the general public for off-premise consumption. This rule establishes guidelines and procedures for type 5 package agencies.

(2) Application of Rule.

(a) The package agency must be located at a manufacturing facility that has been granted a manufacturing license by the commission. For purpose of this rule, a manufacturing facility includes the parcel of land and/or building(s) leased or owned by the manufacturing licensee immediately surrounding the manufacturing premise.

(b) The package agency may only sell products produced at the winery, distillery, or brewery, and may not carry the products of other alcoholic beverage manufacturers.

(c) The product produced by the winery, distillery, or brewery and sold in the type 5 package agency need not be shipped from the winery, distillery, or brewery to the department warehouse and then back to the package agency. The bottles for sale may be moved directly from the manufacturer's storage area to the package agency provided that proper record-keeping is maintained on forms provided by the department. Records required by the department shall be kept current and available to the department for auditing purposes. Records must be maintained for at least three years. The package agency shall submit to the department a completed monthly sales report form which specifies the variety and number of bottles sold from the package agency. This report must be submitted to the department within the first five working days of the month. A club or restaurant purchases form must be filled out for every licensee purchase.

(d) Direct deliveries to licensees are prohibited. Products must be purchased and picked up by the licensees or their designated agents at the Type 5 package agency.

(e) The type 5 package agency shall follow the same laws, rules, policies, and procedures applicable to other package agencies as to the retail price of products.

(f) The days and hours of sale of the type 5 package agency shall be in accordance with 32B-2-605(13) and R81-3-13.

R81-3-15. Refusal of Service.

An employee of the package agency may refuse to sell liquor to any person whom the employee has reason to believe is purchasing or attempting to purchase liquor in violation of the Utah Alcoholic Beverage Control laws. The employee may also detain the person and hold the person's form of identification in a reasonable manner and for a reasonable length of time for the purpose of informing a peace officer of a suspected violation.

R81-3-16. Minors on Premises.

No person under the age of 21 years may enter a package agency unless accompanied by a parent, legal guardian, or spouse that is 21 years of age or older. Signs notifying the public of this rule shall be posted in a prominent place on the doors or windows of the package agency.

R81-3-17. Consignment Inventory Package Agencies.

(1) Purpose. At the discretion of the department, liquor may be provided by the department to a Type 2 and Type 3 package agency for sale on consignment pursuant to 32B-2-605(5). This rule provides the procedures for such consignment sales.

(2) Application of the Rule.

(a) Consignment Inventory.

(i) The initial amount of consignment inventory furnished to the package agency shall be established by the department's audit manager.

(ii) The consignment inventory amount shall be posted to the department's accounting system as "Consignment Inventory Account."

(iii) The consignment inventory amount shall be stated in the department's contract with the package agency.

(iv) Any adjustment to the consignment inventory amount shall be done through the use of a transfer, shipment, or payment of money. A copy of the transfer, adjusting shipment, or evidence of payment shall be included in the package agency's file.

(v) The consignment inventory amount may be adjusted from time to time based on the package agency's monthly average sales. Any adjustment shall be made by a properly executed amendment to the department's contract with the package agency.

(b) Payments.

(i) All agencies receiving shipments or transfers are required to have an ACH (Automated Clearing House) payment system set up with the department.

(ii) Statements showing all unpaid debts and unapplied credits will be generated and mailed to the agencies on the 20th or the next available working day of each month. It is the agent's responsibility to review the statement and contact the department with any discrepancies prior to due date of payment.

(iii) Agents will remit payment to the department on the 19th or next available working day of the following month after

the last statement was generated. Payment will be for the statement total. Payment will be automatically drawn through the ACH process on the due date unless prior arrangements have been made between the agent and the department.

(iv) Insufficient funds, returned checks, and unpaid balances from a previous statement are all past due. The department may assess the legal rate of interest on the amount owed. Also, the package agency may be referred to the commission for possible termination of the contract and closure.

(v) All delivery discrepancies shall be resolved through the use of the LQ9 form. Debits or credits shall be issued based on proper completion and submission of the LQ9 form to the department. Payment shall be made in accordance with the agency's statement by the due date whether or not any discrepancies have been resolved.

(c) Transfers.

(i) Transfers (+ or -) shall be adjusted to the package agency's next payment due the department.

(ii) Transfer in will add to the amount owed to the department on the next check due to the department.

(iii) Transfer out will subtract from the amount owed to the department on the next check due to the department.

(d) Credit and Debit Card Credits.

(i) Credit for credit and debit cards processed at the agency will be posted to the agency's statement.

(ii) It is the agent's responsibility to mail in their settlement report and individual receipts to the department in order to receive credit.

(e) Audits.

(i) Any package agency that is on a consignment contract shall keep a daily log of sales.

(ii) The auditing division shall audit the package agency at least twice each fiscal year.

(iii) The package agency is subject to a department audit at any time.

R81-3-18. Type 4 Package Agency Room Service - Mini-Bottle/187 ml Wine Sales.

(1) Purpose. Pursuant to 32B-2-303, the department may not purchase or stock alcoholic beverages in containers smaller than 200 milliliters. except as otherwise allowed by the commission. The commission hereby allows the limited use of 50 milliliter "mini-bottles" of distilled spirits and 187 milliliter bottles of wine as one form of room service sales by Type 4 package agencies located in hotels and resorts. The following conditions are imposed to ensure that these smaller bottle sales are limited to patrons of sleeping rooms, and are not offered to the general public.

(2) Application of Rule.

(a) The department will not maintain a regular inventory of distilled spirits and wine in the smaller bottle sizes, but will accept special orders for these products from a Type 4 package agency. Special orders may be placed with the department's purchasing division, any state store, or any Type 2 or 3 package agency.

(b) The Type 4 package agency must order in full case lots, and all sales are final.

(c) If the hotel/resort has a Type 1 package agency with Type 4 privileges, the smaller bottle sized products must be stored in a secure area separate from the Type 1 agency inventory.

(d) Sale and use of alcohol in the smaller bottle sizes is restricted to providing one form of room service to guests in sleeping rooms in the hotel/resort, and may not be used for other purposes, or be sold to the general public.

(e) Failure of the Type 4 package agency to strictly adhere to the provisions of this rule is grounds for the department to terminate its contract with the Type 4 package agency.

R81-3-19. Reserved.

Reserved.

R81-3-20. Type 4 Package Agency Room Service - Dispensing.

(1) A Type 4 package agency that sells liquor other than in a sealed container (i.e. by the drink) as part of room service, shall dispense liquor in accordance with Section 32B-5-304 and Section R81-1-9 (Liquor Dispensing Systems).

(2) A Type 4 package agency located in a hotel or resort facility that has a retail license or sublicense may provide room service of liquor in other than a sealed container through the dispensing outlet of the retail license or sublicense under the following conditions:

(a) point of sale control systems must be implemented that will record the amounts of alcoholic beverage products sold by the retail license or sublicense on behalf of the Type 4 package agency;

(b) the alcoholic beverage product cost must be allocated to the Type 4 package agency on at least a quarterly basis pursuant to the record keeping requirements of Section 32B-5-302;

(c) dispensing of alcoholic beverages from a retail license or sublicense location may not be made at prohibited hours pertinent to that license or sublicense type;

(d) A Type 4 package agency held by a resort licensee that operates seven days a week, 24 hours per day, must have a separate dispensing outlet for use during the times that a sublicense is not allowed to sell liquor.

KEY: alcoholic beverages

July 28, 2015	**32B-2-202**
Notice of Continuation May 10, 2011	**32B-2-601(4)**
	32B-2-605(13)(b)

R105. Attorney General, Administration.
R105-1. Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services.
R105-1-1. Purpose and Authority.

(1) The purpose of this rule is to provide the requirements for procurements that are managed by the Attorney General, including the hiring of Outside Counsel, expert witnesses, litigation support services and procurement items.

(2) This rule is adopted pursuant to authority granted by the Utah Procurement Code and Section 67-5-32(1)(a), including authority to manage procurement of procurement items directly or by delegation of the Chief Procurement Officer of the Division of Purchasing of the Department of Administrative Services.

R105-1-2. Definitions.

Terms in this Rule R105-1 shall be as defined in the Utah Procurement Code. The definitions in Rule R33-1 also apply to this Rule R105-1, except in case of conflict, the definitions in this Rule R105-1 shall control. Additional definitions are provided below.

(1) "Agency" means any department, division, agency, commission, board, council, committee, authority, institution, or other entity within the State government of Utah (see Utah Code Ann. Sec. 67-5-3).

(2) "Attorney General" means the Attorney General of the State of Utah, or the Attorney General's designee.

(3) "Contingent fee case" means a legal matter for which legal services are provided under a contingent fee contract.

(4) "Contingent fee contract" means a contract for legal services under which the compensation for legal services is a percentage of the amount recovered in the legal matter for which the legal services are provided.

(5) "Emergency" means a determination by the Attorney General in writing that a provision of this Rule needs to be waived due to the need for timeliness, litigation deadlines, confidentiality, or other emergency circumstances.

(6) "Expert witness" means a person whose knowledge, skill, experience, training or education in a scientific, technical, or other specialized area, would enable the person to give testimony under Rule 702 of the Utah Rules of Evidence.

(7) "Legal matter" means a legal issue or administrative or judicial proceeding within the scope of the attorney general's authority.

(8) "Litigation Support Services" includes any goods, services, software, or technology.

(9) "Outside Counsel" means an attorney or attorneys who are not, or a law firm whose attorneys are not, employed by the Attorney General's office, pursuant to Utah Code Ann. Sec. 67-5-7 et seq., which the Attorney General appoints, pursuant to Utah Code Ann. Sec. 67-5-5, to represent, provide legal advice, or counsel to an agency of the State. "Outside Counsel" may or may not be designated as "Special Assistant Attorney General", as the Attorney General determines.

(10) "Procurement item" or "Procurement items" means any goods, services, software or technology.

(11) "Securities class action" means an action brought as a class action alleging a violation of federal securities law, including a violation of the Securities Act of 1933, 15 U.S.C. Sec. 77a et seq., or the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78a et seq.

(12) "Small purchase" means a purchase under Rule R105-1-7.

(13) "Sole source" means a determination by the Attorney General, in writing, that the sole source requirements of the Utah Procurement Code and this Rule have been met.

(14) "State" means the State of Utah.

R105-1-3. Special Considerations to Best Serve the Public.

(1) This rule applies to the procurement and appointment of Outside Counsel, expert witnesses, litigation support services, litigation related consultants, as well as management software and services by the Attorney General.

(2) In order to properly fulfill the responsibilities of the Office, the procurement of Outside Counsel, expert witnesses, litigation support services, litigation related consultants, as well as management software and services often requires that public notice of a particular procurement not be provided. The provisions of the Utah Procurement Code and this Rule must be met. Such a procurement must be processed as an emergency procurement or be a procurement that does not require notice.

(3) The Attorney General may select Outside Counsel, expert witnesses, professional litigation support services, litigation related consultants, as well as management software and services pursuant to any authorized process under the Utah Procurement Code. In any such selection process, it may be specified that the Outside Counsel is responsible for providing the expert witnesses or other litigation goods and services through the selection process for Outside Counsel and pursuant to the contract provisions with the Attorney General.

(4) If a procurement item is not procured through the request for proposals, small purchases, prequalification and vendor list, sole source, or emergency provisions of this rule, the Attorney General may determine to use an Invitation for Bids or any other procurement process allowed by the Utah Procurement Code provided that the following applicable Utah laws are met:

(a) The Utah Procurement Code; and

(b) Administrative Rules of the Division of Purchasing and General Services, when such rules of the Division of Purchasing and General Services are referred to in this Rule R105-1, except as otherwise exempted or in conflict with this Rule R105-1.

(5) The Attorney General may, in a multistate case involving other states as parties aligned with Utah, elect to enter into a fee sharing agreement in which each state contributes to a litigation fund that is used to purchase expert witnesses and/or other litigation support services including litigation related consultants, as well as management software and services, or through a similar group procurement agreement. The agreement shall be treated collectively as a sole source procurement of all goods and services purchased under the terms of the agreement.

(6) The Attorney General may, in a multistate case involving other states as parties aligned with Utah, select Outside Counsel jointly with some or all of the other states as a sole source procurement.

(7) The Attorney General's office shall ensure that the procurement of outside counsel is supported by a determination by the Attorney General that the procurement is in the best interests of the state, in light of available resources of the Attorney General's office.

(8) The Attorney General's office shall provide for the fair and equitable treatment of all potential providers of outside counsel, expert witnesses, and other litigation support services including, litigation related consultants, as well as management software and services consistent with the limitations and procedures set forth in this Rule R105-1.

(9) The Attorney General's office shall ensure that fees for outside counsel, whether based on an hourly rate, contingency fee, or other arrangement, are reasonable and do not exceed industry standards.

(10) The procurement and requirements regarding a Contingency Fee Contract must meet the requirements of this Rule R105-1 and the applicable provisions of the Utah Code.

R105-1-4. Available Procurement Processes.

(1) In General. Prior to any procurement for legal services, the Attorney General shall first determine which

process under the Utah Procurement Code shall be used, including but not limited to, small purchase, prequalification and vendor list, sole source, emergency procurement, availability of a statewide or regional contract, invitation for bids, or request for proposals.

(2) Prequalification and Approved Vendor Lists. Rules R33-4-101 and R33-4-102 shall apply to the Prequalification of Potential Vendors and Thresholds for Approved Vendor Lists, except that the maximum threshold for procuring the services of a licensed attorney(s) shall be $250,000.

R105-1-5. Invitation for Bids.

Any competitive sealed bidding (invitation for bids) or multiple stage bidding process may occur in accordance with Sections 63G-6a-601 through 63G-6a-612, as well as Rule R33-6.

R105-1-6. Request for Proposal Process.

(1) The Request for Proposal process may be used in accordance with Sections 63G-6a-701 through 63G-6a-711. The process shall also be subject to Rule R33-7 except as otherwise specified in this Rule R105-1.

(2) The Request for Proposal process may be issued in stages, or may be issued after a request for information or other procurement process allowed by the Utah Procurement Code or this Rule.

(3) The Request for Proposal, shall contain, in addition to the requirements of Rule R33-7-102, at a minimum, the following information:

(a) A description of the project.

(b) Any fee arrangements.

(c) The persons or entities being sought in the procurement, including whether an individual person, firm or association of firms may respond.

(d) The qualification criteria and the relative importance of the criteria. The Attorney General shall request qualifications from outside counsel being considered to provide services under a contingent fee contract unless the Attorney General:

(i) determines that requesting qualifications is not feasible under the circumstances; and

(ii) sets forth the basis for this determination in writing.

(e) Examples of criteria include:

(i) Identification by name and experience of the proposed service provider(s);

(ii) A description of the duties and responsibilities of each person providing the service; and

(iii) The ability of the persons providing the service to meet the needs of the project, including the consideration of any association with other persons, expert witnesses or firms;

(f) The Contractual Requirements, which may be accomplished by including a copy of the contract.

(g) A request for a conflicts analysis, including potential conflicts of interest or other related matters concerning the offeror's ability to ethically perform the requested services.

(h) Requirements regarding the date, time, place, form and method concerning the filing of the Response to the Request for Proposals.

(i) A statement that the Attorney General reserves the right to reject late-filed or nonconforming proposals.

(j) A statement that the Attorney General reserves the right to reject all proposals. The Attorney General also reserves the right to modify or cancel the Request for Proposal Process and may or may not initiate a new Request for Proposal Process for the particular procurement matter.

(4) Public notice of the Request for Proposals shall be provided in accordance with the Utah Procurement Code.

(5) The award process, including notice of award, shall be made by the Attorney General in accordance with the Utah Procurement Code and this Rule.

(6) A record of the procurement shall be made in accordance with the Utah Procurement Code and this Rule, including Rule R105-1-14.

(7) In any selection process for outside counsel, it may be specified that the outside counsel is responsible for providing the expert witnesses or other litigation goods and services including litigation related consultants, as well as management software and services through the outside counsel's selection process and pursuant to the contract provisions with the Attorney General.

(8) Minimum scores for any of the criteria may be used.

R105-1-7. Small Purchases.

(1) Small purchases shall be conducted in accordance with the requirements set forth in the Utah Procurement Code, Section 63G-6a-408, Rule R33-4-105 with the exception of subsection R33-4-105(3), and R33-4-106 through R33-4-107. The maximum thresholds for small purchases shall be as described in this Rule R105-1-7. "Small Purchase" means a procurement conducted by a procurement unit that does not require the use of a standard procurement process.

(2) For Outside Counsel, litigation related consultants, management software and services, as well as expert witnesses, the small purchase maximum threshold is $250,000. A written justification statement shall be filed explaining the reason(s) for selection of the particular attorney, law firm or expert witness for the particular matter.

(3) For the selection of litigation support services that are not covered under Rule R105-1-7(2), including but not limited to court reporting, litigation related copying and printing services, the small purchase maximum threshold is $50,000. For a purchase of litigation support services that are not covered under Rule R105-1-7(2) between $2500 and $50,000, a minimum of two quotes shall be obtained or there shall be developed a rotation system of qualified persons or firms that meet the qualifications for the service. For any purchase of litigation support services that are not covered under Rule R105-1-7(2) of $2500 or less, a direct award may be made.

(4) The Attorney General may make such other small purchases delegated to the Attorney General by the Chief Procurement Officer pursuant to the Utah Procurement Code.

(5) Under Section 63G-6a-408(3), a threshold stated in this Rule may be exceeded if the Attorney General (not a designee) or a person specifically designated in writing by the Attorney General gives written authorization to exceed the threshold that includes the reasons for exceeding the threshold.

R105-1-8. Sole Source.

(1) Sole Source procurement shall be conducted in accordance with the requirements set forth in Section 63G-6a-802 of the Utah Procurement Code.

(2) Unless the Attorney General determines that a publication of a sole source shall be published, sole sourced procurement items under this Rule need not be published regardless of cost, all of which is in accordance with Section 63G-6a-802(4)(b)(ii).

R105-1-9. Emergency Procurements and Waiver of Requirements.

(1) Emergency procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-803 of the Utah Procurement Code and Rule R33-8-401.

(2) An emergency procurement is a procurement procedure where the Attorney General does not need to use a standard procurement process.

(3) An emergency procurement may only be used when an emergency exists as defined in this Rule.

(4) Emergency procurements are limited to those procurement items necessary to mitigate the emergency.

(5) While a standard procurement process is not required under an emergency procurement, when practicable, the Attorney General should seek to obtain as much competition as possible through the use of phone quotes, internet quotes, limited invitations to bid, or other selection methods while avoiding harm, or risk of harm, to the public health, safety, welfare, property or impairing the ability of a public entity to function or perform required services.

(6) The Attorney General shall make a written determination documenting the basis for the emergency and the selection. A record of the determination and selection shall be kept in the contract file. The documentation may be made after the emergency condition has been alleviated.

R105-1-10. Confidentiality.

Except when an emergency exists under Rule R105-1-9 and in accordance with applicable law, where public inspection may be delayed until such time as the cause for the emergency no longer exists, the following shall be met:

(1) Protected Records.

(a) The following are protected records and may be redacted subject to the procedures described below in accordance with the Governmental Records Access and Management Act (GRAMA) Title 63G, Chapter 2 of the Utah Code:

(i) Trade Secrets, as defined in Section 13-24-2;

(ii) Commercial information or non-individual financial information subject to the provisions of Section 63G-2-305(2); or

(iii) Other Protected Records under GRAMA.

(b) Process For Requesting Non-Disclosure. Any person requesting that a record be protected shall include with the bid/proposal or submitted document:

(i) a written indication of which provisions of the bid/proposal or submitted document are claimed to be considered for business confidentiality or as a protected record (including trade secrets or other reasons for non-disclosure under GRAMA); and

(ii) a concise statement of the reasons supporting each claimed provision of business confidentiality or as a protected record.

(iii) Pricing may not be classified as business confidential and will be considered public information.

(iv) An entire set of bidding documents or proposal documents may not be designated as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY" and shall be considered non-responsive unless the offeror removes the designation.

(v) The term "bid" or "proposal" for purposes of this Rule shall apply to any document submitted to the Attorney General for purposes of a procurement matter.

(2) Notification.

(a) A person who complies with this Rule R105-1-10 shall be notified by the Attorney General's office prior to the public release of any information for which a claim of confidentiality has been asserted.

(b) Except as provided by court order, the Attorney General's office to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under this Rule but which the Attorney General's Office or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. This Rule does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

(c) Any allowed disclosure of public records submitted in the request for proposals process will be made only after the selection of the successful offeror(s) has been made public in compliance with Section 63G-6a-709.5.

(3) Publicizing Awards.

(a) In addition to the requirements of Section 63G-6a-709.5, the following shall be disclosed after receipt by the Attorney General's Office of a GRAMA request and payment of any lawfully enacted and applicable fees:

(i) the contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under this Rule or State law;

(ii) unsuccessful proposals, except for those portions that are to be non-disclosed under this Rule or State law;

(iii) the rankings of the proposals;

(iv) the names of the members of any evaluation committee members (reviewing authority);

(v) the final scores used by the evaluation committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings; and

(vi) the written justification statement supporting the selection, except for those portions that are to be non-disclosed under this Rule or State law.

(b) After due consideration and public input, the following has been determined by the Procurement Policy Board and the Attorney General's Office to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, and, to the extent allowed by law, will not be disclosed by the Attorney General's Office at any time to the public including under any GRAMA request:

(i) the names of individual scorers/evaluators in relation to their individual scores or rankings;

(ii) any individual scorer's/evaluator's notes, drafts, and working documents;

(iii) non-public financial statements; and

(iv) past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the Attorney General's Office. To the extent such past performance or reference information is included in the written justification statement, the justification statement is still subject to public disclosure.

(c) In regard to an Invitation for bids issued by the Attorney General's Office, the Attorney General's Office shall, on the day on which the award of a contract is announced, make available to each bidder and to the public, a notice that includes:

(i) the name of the bidder to which the contract is awarded and the price(s) of the procurement item(s); and

(ii) the names and the prices of each bidder to which the contract is not awarded.

R105-1-11. Special Provisions regarding Procurement of Outside Counsel.

(1) The Attorney General shall not enter into a contract for outside counsel unless the requirements of this Rule R105-1-11 are met throughout the contract period and any extensions.

(2) The Attorney General shall review the proposed fee arrangement to hire outside counsel to ensure that that there is a reasonable, good faith legal basis to pursue the litigation in the interest of the citizens of the State, and ensure that fees for outside counsel, whether based on an hourly rate, contingency fee, or other arrangement, are reasonable and consistent with industry standards.

(3) The Attorney General shall retain oversight and control over the course and conduct of the litigation or anticipated litigation.

(4) The Attorney General shall designate a member of the Attorney General's Office to personally oversee the litigation.

(5) The Attorney General shall retain veto power over any

decisions made by outside counsel, and no lawsuit will be filed, or party added to or served with process in any lawsuit, by outside counsel, without express written permission of the Attorney General.

(6) The Attorney General shall be apprised of, attend and/or participate in all settlement offers or conferences.

(7) Decisions regarding settlement of the case shall be made by the Utah Attorney General and not the outside counsel, provided that the Attorney General may give outside counsel a reasonable range of specific settlement authority in writing, within which outside counsel is authorized to settle the case.

(8) Written Determination regarding using a Contingency Fee Contracts. The Attorney General may not enter into a contingent fee contract with outside counsel unless the Attorney General makes a written determination that the contingent fee contract is cost-effective and in the public interest. This written determination shall:

(a) be made before or within a reasonable time after the Attorney General enters into a contingent fee contract; and

(b) include specific findings regarding:

(i) whether sufficient and appropriate legal and financial resources exist in the Attorney General's office to handle the legal matter that is the subject of the contingent fee contract; and

(ii) the nature of the legal matter, unless information conveyed in the findings would violate an ethical responsibility of the Attorney General or a privilege held by the state.

(9) Contingency Fee Limit. The Attorney General may not enter into a contingent fee contract with outside counsel that provides for outside counsel to receive a contingent fee, exclusive of reasonable costs and expenses, that exceeds:

(a) 25% of the amount recovered, if the amount recovered is no more than $10,000,000;

(b) 25% of the first $10,000,000 recovered, plus 20% of the amount recovered that exceeds $10,000,000, if the amount recovered is over $10,000,000 but no more than $15,000,000;

(c) 25% of the first $10,000,000 recovered, plus 20% of the next $5,000,000 recovered, plus 15% of the amount recovered that exceeds $15,000,000, if the amount recovered is over $15,000,000 but no more than $20,000,000; and

(d) 25% of the first $10,000,000 recovered, plus 20% of the next $5,000,000 recovered, plus 15% of the next $5,000,000 recovered, plus 10% of the amount recovered that exceeds $20,000,000, if the amount recovered is over $20,000,000; or

(e) $50,000,000.

(10) Opt-out regarding Contingency Fee Contracts.

(a) A provision of a contingent fee contract that is inconsistent with a provision of this section is invalid unless, before the contract is executed, the contingent fee contract provision is approved by a majority of the Attorney General, state treasurer, and state auditor.

(11) Exceptions regarding Contingency Fee Contracts:

(a) A contingent fee under a contingent fee contract may not be based on the imposition or amount of a penalty or civil fine.

(b) A contingent fee under a contingent fee contract may be paid only on amounts actually recovered by the state.

(c) Throughout the period covered by a contingent fee contract, including any extension of the contingent fee contract:

(i) outside counsel that is a party to the contingent fee contract shall acknowledge that the Attorney General retains complete control over the course and conduct of the contingent fee case for which outside counsel provides legal services under the contingent fee contract;

(ii) the Attorney General with supervisory authority shall oversee any litigation involved in the contingent fee case;

(iii) the Attorney General retains final authority over any pleading or other document that outside counsel submits to court;

(iv) an opposing party in a contingent fee case may contact the Attorney General directly, without having to confer with outside counsel;

(v) the Attorney General with supervisory authority over the contingent fee case may attend all settlement conferences; and

(vi) the outside counsel shall acknowledge that final approval regarding settlement of the contingent fee case is reserved exclusively to the discretion of the Attorney General.

(d) Nothing in Rule R105-1-11(11) may be construed to limit the authority of the client regarding the course, conduct, or settlement of the contingent fee case.

(12) Website Posting regarding Contingency Fee Contracts. Within five business days after entering into a contingent fee contract, the Attorney General shall post on the Attorney General's website:

(a) the contingent fee contract;

(b) the written determination under R105-1-11(8) relating to that contingent fee; and

(c) if applicable, any written determination made under Rule R105-1-6(3)(d) relating to that contingent fee contract.

(d) The Attorney General shall keep the contingent fee contract and written determination posted on the Attorney General's website throughout the term of the contingent fee contract.

(13) Contingency Fee Contract Records. The outside counsel that enters into a contingent fee contract with the Attorney General shall:

(a) from the time the contingent fee contract is entered into until three years after the contract expires, maintain detailed records relating to the legal services provided by outside counsel attorney under the contingent fee contract, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial that relate to the legal services provided by outside counsel; and

(b) maintain detailed contemporaneous time records for the outside counsel's attorneys and paralegals working on the contingent fee case and promptly provide the records to the Attorney General upon request.

(14) Exemption regarding Contingency Fee Contracts. Rule R105-1-11(8) through (13) as well as Rule R105-1-12(3) do not apply to:

(a) to a contingent fee contract in existence before May 12, 2015, or to any renewal or modification of a contingent fee contract in existence before that date;

(b) to a contingent fee contract with outside counsel that the Attorney General hires to collect a debt that the Attorney General is authorized by law to collect; and

(c) with respect to a contingent fee contract with outside counsel in a securities class action in which the state is appointed as lead plaintiff under Section 27(a)(3)(B)(i) of the Securities Act of 1933 or Section 21D(a)(3)(B)(i) of the Securities Exchange Act of 1934 or in which any state is a class representative, or in any other action in which the state is participating with one or more other states:

(i) apply only with respect to the state's share of any judgment, settlement amount, or common fund; and

(ii) do not apply to attorney fees awarded to outside counsel for representing other members of a class certified under Rule 23 of the Federal Rules of Civil Procedure or applicable state class action procedural rules.

(5) Notwithstanding any other provision of this Rule R105-1-11, the solicitation for outside counsel may provide a lower fee limitation and/or provide for weights and scoring of the proposed fees in accordance with the Utah Procurement Code, which will allow for a competitive process and may provide for fees below the limitations set forth in this Rule.

R105-1-12. Transparency in Contingency Fee Contracts with Outside Counsel.

(1) Except as otherwise provided by GRAMA, applicable law, Rules of Professional Conduct or this Rule, a copy of the executed contract with outside counsel shall be made available for public inspection in accordance with GRAMA.

(2) Any payment by the Attorney General under a contingency fee contract shall be made available for public inspection in accordance with GRAMA.

(3) After June 30 but on or before September 1 of each year, the Attorney General submit a written report to the president of the Senate and the speaker of the House of Representatives describing the Attorney General's use of contingent fee contracts with outside counsel during the fiscal year that ends the immediately preceding June 30.

(a) A report under Rule R105-1-12(3) shall identify:

(i) each contingent fee contract the Attorney General entered into during the fiscal year that ends the immediately preceding June 30; and

(ii) each contingent fee contract the Attorney General entered into during any earlier fiscal year if the contract remained in effect for any part of the fiscal year that ends the immediately preceding June 30.

(iii) state the name of the outside counsel that is a party to the contingent fee contract, including the name of the outside counsel's law firm if the outside counsel is an individual;

(iv) describe the nature of the legal matter that is the subject of the contingent fee contract, unless describing the nature of the legal matter would violate an ethical responsibility of the Attorney General or a privilege held by the state;

(v) identify the state agency which the outside counsel was engaged to represent or counsel;

(vi) state the total amount of attorney fees approved by the Attorney General for payment to an outside counsel for legal services under a contingent fee contract during the fiscal year that ends the immediately preceding June 30; and

(vii) be accompanied by each written determination under R105-1-11(8) and Rule R105-1-6(3)(d) made during the fiscal year that ends the immediately preceding June 30.

R105-1-13. Contracts.

Those awarded a contract under this Rule shall be required to enter into a written contract with the Attorney General. The written contract shall contain all material terms set forth in:

(1) The final procurement documents issued by the Utah Attorney General;

(2) The provisions in documents submitted by the provider to the extent such provisions are accepted by the Attorney General;

(3) A termination for cause and a termination for convenience clause; and

(4) Any terms required by law, whether by the constitutions, statutes, or rules or regulations of the United States or the State of Utah.

(5) Nothing in this Rule regarding contingency fee contracts may be construed to expand the authority of a state department, division, or other agency to enter into a contract if that authority does not otherwise exist.

R105-1-14. Retention and Non-availability of Files.

(1) All proposals submitted to the Attorney General under this rule become the property of the State of Utah and the office of the Attorney General.

(2) All information in all proposals shall be placed in a file relating to the project for which the proposal was submitted. Each file shall contain:

(a) If applicable, a copy of all written determinations of the Attorney General required by the Utah Procurement Code or this Rule;

(b) A copy of the procurement documents and any written documentation related to notification requirements; and

(c) All responses to procurements and modifications, in writing, to any procurement if those modifications have been negotiated by the Attorney General.

(d) All records shall be maintained or disposed of in accordance with Part 20 of the Utah Procurement Code.

R105-1-15. Cancellations, Rejections, and Debarment.

Cancellations, rejections and debarments shall be subject to the provisions of the Utah Procurement Code and, except as otherwise provided in this Rule R105, Rule R33-9.

R105-1-16. Preferences.

Preferences shall be subject to the provision of the Utah Procurement Code, and except as otherwise provided in this Rule R105, Rule R33-10.

R105-1-17. Bond and Security.

Any bonds or security shall comply with Part 11 of the Utah Procurement Code and Rule R33-11.

R105-1-18. Terms and Conditions, Contracts, Multiple Year, Multiple Award, Change Orders and Costs.

There shall be compliance, as applicable, with Part 12 of the Utah Procurement Code and Rule R33-12.

R105-1-19. Controversies and Protests.

Part 16 of the Utah Procurement Code shall apply as well as Rule R33-16.

R105-1-20. Procurement Appeals Board, Appeals to Court and Court.

Parts 17, 18 and 19 of the Utah Procurement Code shall apply as well as Rules R33-17, R33-18 and R33-19.

R105-1-21. Interaction between Procurement Units.

Part 21 of the Utah Procurement Code shall apply as well as Rule R33-21.

R105-1-22. Unlawful Conduct and Penalties.

There shall be compliance with Part 24 of the Utah Procurement Code and Rule R33-24.

KEY: Attorney General, litigation support, outside counsel, expert witnesses

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63G-6

R131. Capitol Preservation Board (State), Administration.
R131-6. Board Designation of Space.
R131-6-1. Purpose.

Pursuant to Section 63C-9-301, Utah Code, this rule defines the types of space located within buildings on Capitol Hill. All Capitol Facility space(s) under the responsibility of the Board, shall be assigned by the Board for function and use.

R131-6-2. Authority.

This rule is authorized by Subsection 63C-9-301, Utah Code, directing the Board to make rules to exercise jurisdiction over such Capitol Hill facilities and grounds for which it has responsibility to administer.

R131-6-3. Definitions.

(1) "Assignable Space" means square-footage area(s), place(s), or location(s), within a Capitol Hill building/facility, or within exterior grounds, specified for distinct functions; including offices, hallways, closets, meeting rooms, lounges, restrooms, stairways and storage rooms.

(2) "Board" or "CPB" means the Capitol Preservation Board.

(3) "Building Official" means an individual designated to manage or control a building or portion of a building, or exterior grounds adjacent to a building.

(4) "Non-Assignable Space" means square-footage area(s) within a Capitol Hill building/facility or within exterior grounds, not specified for distinct functions; including utility rooms, HVAC areas, tunnels, attics, cat-walks, isolator-spaces, foundation/support locations, roofs, and unoccupied or uninhabited space(s) not designated for storage or other functions.

(5) "Storage" means such space within a building designated for warehousing of supplies or equipment or items related to official Capitol Hill functions.

R131-6-4. Space Designation.

(1) Within each building or grounds area on Capitol Hill, various spaces may be identified and recommended by the building official as suitable for a designated function. Functions assigned to such areas shall thereafter be approved by the Board.

(2) A space may not be used for a function, unless it is so designated by the Board. For example, the Board has complete control and jurisdiction of over the assignment and use of space(s) for storage purposes, within all buildings over which it has jurisdiction.

(3) Spaces not designated by the Board, for a specific function are non-assignable, and are considered unoccupied or uninhabitable space. For example, non-assignable space(s) may not be used for other functions, including storage, or other Capitol Hill activities. Accordingly:

(a) Isolator space(s) beneath the Capitol Building shall not be used for other designated functions, or intruded upon in a way that inhibits or restricts the movement of the isolators. Persons shall not accumulate materials which may act as fuel in a fire within an Isolator area.

(b) Isolator space(s) shall not be accessed by persons other than those authorized to periodically check and maintain the capitol equipment and isolators.

(c) The utility tunnel circulation space (not including the ledge) which encircles the central parking lot is only intended for normal movement of people, goods, services and equipment for purposes associated with Capitol Hill functions, and is not to be used for other functions.

KEY: storage, space, unassignable
October 13, 2005 63C-9-301
Notice of Continuation July 6, 2015

R131. Capitol Preservation Board (State), Administration.
R131-15. State Construction Contracts and Drug and Alcohol Testing.
R131-15-1. Purpose.

The purpose of this rule is to comply with the provisions of Section 63G-6-604.

R131-15-2. Authority.

This rule is authorized under Subsection 63C-9-301(3)(a) as well as Subsection 63G-6-604(4).

R131-15-3. Definitions.

(1) The following definitions of Section 63G-6-604 shall apply to any term used in this Rule R131-15:

(a) "Contractor" means a person who is or may be awarded a state construction contract.

(b) "Covered individual" means an individual who:

(i) on behalf of a contractor or subcontractor provides services directly related to design or construction under a state construction contract; and

(ii) is in a safety sensitive position, including a design position that has responsibilities that directly affect the safety of an improvement to real property that is the subject of a state construction contract.

(c) "Drug and alcohol testing policy" means a policy under which a contractor or subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:

(i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug; or

(ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.

(d) "Random testing" means that a covered individual is subject to periodic testing for drugs and alcohol:

(i) in accordance with a drug and alcohol testing policy; and

(ii) on the basis of a random selection process.

(e) For purposes of Subsection R131-15-4(5), "state" includes any of the following of the state:

(i) a department;

(ii) a division;

(iii) an agency;

(iv) a board including the Capitol Preservation Board;

(v) a commission;

(vi) a council;

(vii) a committee; and

(viii) an institution, including a state institution of higher education, as defined under Section 53B-3-102.

(f) "State construction contract" means a contract for design or construction entered into by the Capitol Preservation Board.

(g)(i) "Subcontractor" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction.

(ii) "Subcontractor" includes a trade contractor or specialty contractor.

(iii) "Subcontractor" does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.

(2) In addition:

(a) "Board" means the Capitol Preservation Board established pursuant to Section 63C-9-201.

(b) "Executive Director" means the Executive Director of the Capitol Preservation Board.

(c) "State" as used throughout Rule R131-15 means the State of Utah except that it also includes those entities described in Subsection R131-15-3(1)(e) as the term "state" is used in Subsection R131-15-5.

R131-15-4. Applicability.

(1) Except as provided in Section R131-15-5, on and after July 1, 2010, the Board may not enter into a state construction contract (includes a contract for design or construction) unless the state construction contract requires the following:

(a) A contractor shall demonstrate to the Capitol Preservation Board that the contractor:

(i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the contractor;

(ii) posts in one or more conspicuous places notice to covered individuals hired by the contractor that the contractor has the drug and alcohol testing policy described in Subsection R131-15-4(1)(a)(i); and

(iii) subjects the covered individuals to random testing under the drug and alcohol testing policy described in Subsection R131-15-4(1)(a)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the contractor.

(b) A contractor shall demonstrate to the Board, which shall be demonstrated by a provision in the contract where the contractor acknowledges this Rule R131-15 and agrees to comply with all aspects of this Rule R131-15, that the contractor requires that as a condition of contracting with the contractor, a subcontractor, which includes consultants under contract with the designer:

(i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the subcontractor;

(ii) posts in one or more conspicuous places notice to covered individuals hired by the subcontractor that the subcontractor has the drug and alcohol testing policy described in Subsection R131-15-4(1)(b)(i); and

(iii) subjects the covered individuals hired by the subcontractor to random testing under the drug and alcohol testing policy described in Subsection R131-15-4(1)(b)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the subcontractor.

(2)(a) Except as otherwise provided in this Subsection R131-15-4(2), if a contractor or subcontractor fails to comply with Subsection R131-15-4(1), the contractor or subcontractor may be suspended or debarred in accordance with this Rule R131-15.

(b) On and after July 1, 2010, the Board shall include in a state construction contract a reference to this Rule R131-15.

(c)(i) A contractor is not subject to penalties for the failure of a subcontractor to comply with Subsection R131-15-4(1).

(ii) A subcontractor is not subject to penalties for the failure of a contractor to comply with Subsection R131-15-4(1).

(3)(a) The requirements and procedures a contractor shall follow to comply with Subsection R131-15-4(1) is that the contractor, by executing the construction contract with the Board, is deemed to certify to the Board that the contractor, and all subcontractors under the contractor that are subject to Subsection R131-15-4(1), shall comply with all provisions of this Rule R131-15 as well as Section 63G-6-604; and that the contractor shall on a semi-annual basis throughout the term of the contract, report to the Executive Director in writing information that indicates compliance with the provisions of Rule R131-15 and Section 63G-6-604.

(b) A contractor or subcontractor may be suspended or debarred in accordance with the applicable Utah statutes and rules, if the contractor or subcontractor violates a provision of Section 63G-6-604. The contractor or subcontractor shall be provided reasonable notice and opportunity to cure a violation of Section 63G-6-604 before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation. The greater the risk

to person(s) or property as a result of noncompliance, the shorter this notice and opportunity to cure shall be, including the possibility that the notice may provide for immediate compliance if necessary to protect person(s) or property.

(4) The failure of a contractor or subcontractor to meet the requirements of Subsection R131-15-4(1):

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Part 8, Legal and Contractual Remedies or the similar rules of the Board; and

(b) may not be used by the Board, a prospective bidder, an offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or terminate the design or construction under a state construction contract.

(5)(a) After the Board enters into a state construction contract in compliance with Section 63G-6-604, the state is not required to audit, monitor, or take any other action to ensure compliance with Section 63G-6-604.

(b) The state is not liable in any action related to Section 63G-6-604 and this Rule R131-15, including not being liable in relation to:

(i) a contractor or subcontractor having or not having a drug and alcohol testing policy;

(ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and alcohol testing policy;

(iii) the requirements of a contractor's or subcontractor's drug and alcohol testing policy;

(iv) a contractor's or subcontractor's implementation of a drug and alcohol testing policy, including procedures for:

(A) collection of a sample;

(B) testing of a sample;

(C) evaluation of a test; or

(D) disciplinary or rehabilitative action on the basis of a test result;

(v) an individual being under the influence of drugs or alcohol; or

(vi) an individual under the influence of drugs or alcohol harming another person or causing property damage.

R131-15-5. Non-applicability.

(1) This Rule R131-15 and Section 63G-6-604 does not apply if the Board determines that the application of this Rule R131-15 or Section 63G-6-604 would severely disrupt the operation of a state agency to the detriment of the state agency or the general public, including:

(a) jeopardizing the receipt of federal funds;

(b) the state construction contract being a sole source contract; or

(c) the state construction contract being an emergency procurement.

R131-15-6. Not Limit Other Lawful Policies.

(1) If a contractor or subcontractor meets the requirements of Section 63-6-604 and this Rule R131-15, this Rule R131-15 may not be construed to restrict the contractor's or subcontractor's ability to impose or implement an otherwise lawful provision as part of a drug and alcohol testing policy.

KEY: drug and alcohol testing, contractors, contracts
September 22, 2010 63G-6
Notice of Continuation July 6, 2015

R156. Commerce, Occupational and Professional Licensing.
R156-20a. Environmental Health Scientist Act Rule.
R156-20a-101. Title.

This rule is known as the "Environmental Health Scientist Act Rule."

R156-20a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 20a, as used in Title 58, Chapters 1 and 20a or this rule:

(1) "Distance learning" means the acquisition of knowledge and skills through information and instruction encompassing all technologies and other forms of learning at a distance, including internet, audio/visual recordings, mail or other correspondence.

(2) "Qualified professional continuing education," as used in this rule, means professional continuing education that meets the standards set forth in Section R156-20a-304.

(3) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 20a, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-20a-502.

R156-20a-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 20a.

R156-20a-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.

R156-20a-302. Good Moral Character - Disqualifying Convictions.

(1) When reviewing an application to determine the good moral character of an applicant as set forth in Section 58-20a-302 and whether the applicant has been involved in unprofessional conduct as set forth in Subsection 58-1-501(2)(c), the Division and the Board shall consider the applicant's criminal record as follows:

(a) A criminal conviction for a sex offense as defined in Title 76, Chapter 5, Part 4 and Chapter 5a, and Title 76, Chapter 10, Part 12 and 13, may disqualify an applicant from becoming licensed.

(b) Other criminal history is relevant, including as to the following:

(i) crimes against a person as defined in Title 76, Chapter 5, Parts 1, 2 and 3;

(ii) crimes against property as defined in Title 76, Chapter 6, Parts 1 through 6;

(iii) any offense involving controlled dangerous substances; or

(iv) conspiracy to commit or any attempt to commit any of the above offenses.

(2) An applicant who has a criminal conviction for a felony crime of violence may be considered ineligible for licensure for a period of seven years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(3) An applicant who has a criminal conviction for a felony involving a controlled substance may be considered ineligible for licensure for a period of five years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(4) An applicant who has a criminal conviction for any misdemeanor crime of violence or the use of a controlled substance may be considered ineligible for licensure for a period of three years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(5) Each application for licensure or renewal of licensure shall be considered in accordance with the requirements of Section R156-1-302.

(6) A person whose moral character is subject to review under this Section R156-20a-302 is not guaranteed licensure after allowing a specified period of time to pass after conviction.

R156-20a-302a. Qualifications for Licensure - Education Requirements.

In accordance with Subsections 58-20a-302(1)(d), (2)(d) and (3)(d), an applicant shall satisfy the education requirement as follows:

(1) submit evidence of a bachelor's or master's degree from an environmental health program accredited by the National Environmental Health Science and Protection Accreditation Council (EHAC); or

(2) submit evidence of a bachelor's or master's degree from an accredited program in a college or university with major study in one of the following:

(a) agronomy;
(b) biology;
(c) botany;
(d) chemistry;
(e) civil engineering;
(f) environmental health;
(g) environmental science;
(h) environmental studies;
(i) geology;
(j) microbiology;
(k) physics;
(l) physiology;
(m) sanitary engineering;
(n) science-based public health;
(o) sustainability studies; or
(p) zoology; or

(3) submit evidence of a bachelor's or master's degree from an accredited program in a college or university including:

(a) a college or university level algebra or math course; and

(b) 30 semester hours or 45 quarter hours from at least three of the areas of study listed in Subsection (2).

R156-20a-302b. Qualifications for Licensure - Examination Requirement.

(1) In accordance with Subsection 58-20a-302(1)(e), an applicant shall satisfy the examination requirement by submitting evidence of having passed the National Environmental Health Association Registered Environmental Health Specialist/Registered Sanitarian (REHS/RS) Examination or the National Environmental Health Association Registered Environmental Health Specialist/Registered Sanitarian-in-training Examination.

(2) An applicant may take either examination identified in Subsection (1) upon completion of the education requirements listed in Section R156-20a-302a.

R156-20a-302c. Qualifications for Licensure - Supervision Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-20a-302(3)(f), an applicant when licensed as an environmental health scientist-in-training shall practice under the general supervision of a supervising licensed environmental health scientist for a minimum of six months, except for an applicant who has completed an environmental health science program accredited by EHAC as set forth in Subsection R156-20a-302a(1).

R156-20a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1)(a), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 20a is established by rule in

Section R156-1-308a.

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

R156-20a-304. Professional Continuing Education.

(1) In accordance with Section 58-20a-304, during each two year period commencing June 1 of each odd numbered year, an environmental health scientist or environmental health scientist-in-training shall be required to complete not less than 30 hours of qualified professional continuing education directly related to the licensee's professional practice.

(2) The required number of hours of professional continuing education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

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

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a environmental health scientist;

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

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

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

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

(4) Credit shall be recognized for professional continuing education on an hour for hour basis as a student completed in blocks of time of not less than 50 minutes in formally established classroom courses, distance learning, seminars, lectures, labs, or specific environmental conferences approved, taught or sponsored by:

(a) Utah Environmental Health Association;

(b) Bureau of Environmental Services;

(c) Utah Department of Environmental Quality;

(d) Bureau of Epidemiology;

(e) State Food Program;

(f) National Environmental Health Association;

(g) Food and Drug Administration;

(h) Center for Disease Control and Prevention;

(i) any local, state or federal agency; and

(j) a college or university which provides courses in or related to environmental health science.

(5) A maximum of 15 hours of credit may be recognized for a person who teaches continuing professional education on an hour for hour basis completed in block of time of not less than 50 minutes in formally established classroom courses, seminars, lectures, conferences which meet the requirements in Subsections (3) and (4).

(6) A licensee is responsible for maintaining competent records of completed qualified professional continuing education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.

(7) If properly documented that a licensee is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section, the licensee may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-20a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to comply with the professional continuing education requirements in Section R156-20a-304; and

(2) failing to provide general supervision as defined in Subsection 58-20a-102(2).

KEY: licensing, environmental health scientist, sanitarian, environmental health scientist-in-training

July 9, 2015	**58-1-106(1)(a)**
Notice of Continuation April 27, 2015	**58-1-202(1)(a)**
	58-20a-101

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 programs" means basic education and training that meets the standards set forth in Sections R156-63a-602 and R156-63a-603 that is approved by the Division.

(2) "Approved basic firearms education and training program" means basic firearms education and training that meets the standards set forth in Section R156-63a-604 that is approved by the Division.

(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 he 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)(iii)(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) "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.

(9) "Officer" as used in Subsections 58-63-201(1)(a) and R156-63a-302a(1)(b) means a manager, director, or administrator of a contract security company.

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

(11) "Qualifying agent" means an individual who is an officer, director, partner, proprietor or manager of a contract security company who exercises material authority in the conduct of the contract security company's business by making substantive technical and administrative decisions relating to the work performed for which a license is required under this chapter and who is not involved in any other employment or activity which conflicts with his duties and responsibilities to ensure the licensee's performance of work regulated under this chapter does not jeopardize the public health, safety, and welfare.

(12) "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.

(13) "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.

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

(15) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(1)(c), 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 an officer, director, manager or trainer of a contract security company;

(b) one member who is an 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 associated with the Utah Peace Officers Association.

(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 approval from the Division and periodically reviewing all approved basic education and training programs and firearm training programs regarding current curriculum requirements.

(3) The Education Advisory Committee shall consider, when advising the Board of the acceptability of an educational program, the following:

(a) whether the educational program meets the basic education and training requirements of Sections R156-63a-603 and R156-63b-603; and

(b) whether the educational program meets the basic firearm training program requirements of Sections R156-63a-604 and 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) a certification of criminal record history for the applicant's qualifying agent issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for the applicant's qualifying

agent, and all of the applicant's officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel; and

(c) 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 Bureau of Criminal Identification, Utah Department of Public Safety, for each of the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel.

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

(a) a certification of criminal record history for the applicant issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for the applicant; and

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

(i) the Federal Bureau of Investigation for the applicant; 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) the required firearms training pursuant to Section 58-63-604; and

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

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

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

(1) An applicant for licensure as an armed private security officer shall successfully complete a basic education and training program and a firearms training program approved by the Division, the content of which is set forth in Sections R156-63a-603 and R156-63a-604.

(2) An applicant for licensure as an unarmed private security officer shall successfully complete a basic education and training program approved by the Division, the content of which is set forth in Section R156-63a-603.

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 Security Personnel Qualifying Agent's 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 basic education and training final examination approved by the Division and administered by each provider of basic education and training.

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.

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

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

(1) In addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-63-302(1)(h), (2)(c) and (3)(c), the following is a list of criminal convictions that may disqualify a person 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 controlled dangerous substances;

(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 for initial licensure or license renewal as an armed private security officer may not be licensed if the

applicant is in 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).

(3)(a) Where the applicant is a contract security company, the background of the following individuals shall be considered:

(i) officers;

(ii) directors; and

(iii) shareholders with 5% or more of the stock of the company.

(b) 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 as defined in Section R156-1-302.

(4) An armed private security license shall be automatically revoked if the licensee is in 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).

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

In accordance with Subsection 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 meets the following criteria:

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

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

(c) the applicant 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 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

FIRST OFFENSE

Violation	Contract Security Company	Armed or Unarmed Security Officer
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 he has passed a firearms qualification course as defined in Section R156-63a-604.

(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 and where the officer has completed an appropriate qualification course 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. Operating Standards - Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

To be designated by the Division as an approved basic education and training program for armed private security officers and unarmed private security officers, the applicant for program approval shall meet the following standards:

(1) The applicant shall pay a fee for the approval of the education program.

(2) The training method is documented in a written education and training manual which includes training performance objectives and a four hour instructor training program.

(3) The program curriculum for armed private security officers includes content as established in Sections R156-63a-603 and R156-63a-604.

(4) The program for unarmed private security officers includes content as established in Section R156-63a-603.

(5) An instructor is a person who directly facilitates learning through means of live in-class lecture, group participation, practical exercise, or other means. All instructors providing the basic classroom instruction 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 criteria:

(i) motivation and the learning process;

(ii) teacher preparation and teaching methods;

(iii) classroom management;

(iv) testing; and

(v) instructional evaluation.

(6) All instructors providing firearms training shall have the following qualifications:

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

(b) current certification as a firearms instructor by the National Rifle Association, a Utah law enforcement agency, a Federal law enforcement agency, a branch of the United States military, or other qualification or certification found by the Division, in collaboration with the Board, to be equivalent.

(7) All approved basic education and 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 files of the education and training program for at least three years.

(8) In the event an approved 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.

(9) Instructors, who present continuing education hours and are licensed armed or unarmed private security officers, shall receive credit for actual preparation time for up to two times the number of hours to which participants would be 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. Operating Standards - Content of Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

(1) An approved basic education and training program for armed and unarmed private security officers shall have at least 24 hours of instruction including:

(a) 16 hours of basic classroom instruction in which there is a direct student-teacher relationship that includes all of the following:

(i) the nature and role of private security, including:

(A) the limits of a private security officer's authority;

(B) the scope of authority of a private security officer;

(C) the civil liability of a private security officer; and

(D) the private security officer's role in today's society;

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

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

(A) constitutional law;

(B) search and seizure; and

(C) other such topics;

(iv) situational response evaluations, including:

(A) protecting and securing crime or accident scenes;

(B) notifying of internal and external agencies; and

(C) controlling information;

(v) security ethics;

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

(vii) documentation and report writing, including:

(A) preparing witness statements;

(B) performing log maintenance;

(C) exercising control of information;

(D) taking field notes;

(E) organizing information into a report; and

(F) performing basic writing;

(viii) patrol techniques, including:

(A) mobile patrol verses fixed post;

(B) accident prevention;

(C) responding to calls and alarms;

(D) security breeches; and

(E) monitoring potential safety hazards;

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

(x) sexual harassment in the work place; and

(b) eight hours of elective course work as determined by the instructor that may include:

(i) current certification in cardiopulmonary resuscitation (CPR), automated external defibrillator (AED), first aid, or any other recognized basic life saving certification;

(ii) introduction to executive protection;

(iii) basic self-defense;

(iv) driving techniques for the security professional;

(v) escort techniques;

(vi) crowd control;

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

(viii) introduction to security's rose with closed-circuit television systems;

(ix) use of defensive items and objects;

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

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

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

(xiii) prior training as evidenced by third-party documentation may be accepted at the trainer's discretion to count towards the eight hours of elective training; and

(c) a final examination that:

(i) competently examines the student on the subjects included in the 16 hours of basic classroom instruction in the approved program of education and training; and

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

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

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) the care and cleaning of the weapon;

(c) the prohibition against alterations of 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) the instruction that armed private security officers shall not fire their weapon unless there is an eminent 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 eminent 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 - Criminal Status of Officer, Qualifying Agent, Director, Partner, Proprietor, Private Security Officer or Manager of Contract Security Companies.

(1) This subsection applies to any officer, qualifying agent, director, partner, proprietor, private security officer, or any management personnel having direct responsibility for managing operations of a contract security company.

(2) A person identified in this Subsection (1) may not participate at any level or capacity in the management, operations, sales, ownership, or employment of a contract security company if the person:

(a) has been convicted of:

(i) a felony;

(ii) a misdemeanor crime of moral turpitude; or

(iii) a crime that the Division and Board consider to constitute a risk to the public when considered with the functions and duties of an unarmed or armed private security officer; or

(b) has violated:

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

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

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

(3) A contract security company shall:

(a) within 10 calendar days of occurrence, report to the Division any event contemplated in Subsection (2) that occurs in regard to a person identified in Subsection (1); and

(b) take appropriate steps to ensure that company operations comply with this Subsection (2).

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; and
(r) sexual harassment in the workplace.

(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 - Standards of Conduct.

(1) Licensee employed by a contract security company.

(a) Pursuant to Title 58, Chapter 63, a licensed armed or unarmed private security officer shall notify the licensee's employing contract security company within 72 hours of being:

(i) arrested, charged, or indicted for any criminal offense above the level of a Class C misdemeanor; or

(ii) found in 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).

(b) Within 72 hours after receiving notification pursuant to this Subsection (1)(a), the employing contract security company shall notify the Division of the arrest, charge, indictment, or violation.

(c) The written notification required under this Subsection (1)(b) shall include:

(i) the employee's name;

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

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

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

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

(2) Licensee not employed by a contract security company.

(a) Pursuant to Title 58, Chapter 63, a licensed armed or unarmed private security officer who is not employed by a contract security company shall directly notify the Division in writing within 72 hours of being:

(i) arrested, charged or indicted for any crime above the level of a Class C misdemeanor; or

(ii) found to be in 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).

(b) The written notification required under this Subsection (2)(a) shall meet the requirements of Subsection (1)(c).

KEY: licensing, security guards, private security officers
July 23, 2015 58-1-106(1)(a)
Notice of Continuation September 9, 2013 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 basic education and training that meets the standards set forth in Sections R156-63b-602 and R156-63b-603 that is approved by the Division.

(2) "Approved basic firearms education and training program" means basic firearms education and training that meets the standards set forth in Section R156-63b-604 that is approved by the Division.

(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 he 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)(iii)(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" experience 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) "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.

(9) "Officer" as used in Subsection 58-63-201(1)(a) means a manager, director, or administrator of an armored car company.

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

(11) "Qualifying agent" means an individual who is an officer, director, partner, proprietor or manager of an armored car company who exercises material authority in the conduct of the armored car company's business by making substantive technical and administrative decisions relating to the work performed for which a license is required under this chapter and who is not involved in any other employment or activity which conflicts with his duties and responsibilities to ensure the licensee's performance of work regulated under this chapter does not jeopardize the public health, safety, and welfare.

(12) "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.

(13) "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.

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

(15) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(1)(c), 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 the applicant's qualifying agent, and all of the applicant's officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and 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 Bureau of Criminal Identification, Utah Department of Public Safety, for each of the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel.

(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 of:

(i) the Federal Bureau of Investigation for the applicant; 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 58-1-301(3), the basic education and training requirements for licensure in Section 58-63-302 are defined, clarified, or established herein. An applicant for licensure as an armored car security officer shall successfully complete a basic education and training program and a firearms training program approved by the Division, the content of which is set forth in Section R156-63b-603.

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

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the firearm training requirements for licensure in Subsection 58-63-302(4)(g) are defined, clarified, or established herein. An applicant for licensure as an armored car security officer shall successfully complete a firearms training program

approved by the Division, the content of which is set forth in Section R156-63b-604.

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 Security Personnel Armored Car Qualifying Agent's Examination.

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

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.

An armored car security officer must be 21 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 addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-63-302(1)(h) and (4)(c), the following is a list of criminal convictions that may disqualify a person 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 controlled dangerous substances;
(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 for initial licensure or license renewal as an armored car security officer may not be licensed if the applicant is in 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).

(3)(a) Where the applicant is an armored car company, the background of the following individuals shall be considered:

(i) officers;
(ii) directors; and
(iii) shareholders with 5% or more of the stock of the company.

(b) 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 as defined in Section R156-1-302.

(4) An armored car security officer license shall by automatically revoked if the licensee is in 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).

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

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

(1)(a) the applicant submits with his application an official criminal history report from the Bureau of Criminal Identification showing "No Criminal Record Found";

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

(c) the applicant 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 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

FIRST OFFENSE

Violation	Armored Car Company	Armed or Unarmed Armored Car Security Officer
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 he has passed a firearms qualification course as defined in Section R156-63b-604.

(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 and where the officer has completed an appropriate qualification course in their 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. Operating Standards - Approved Basic Education and Training Program for Armored Car Security Officers.

To be designated by the Division as an approved basic education and training program for armored car officers, the following standards shall be met.

(1) The applicant for program approval shall pay a fee for the approval of the education program.

(2) There shall be a written education and training manual which includes performance objectives.

(3) The program for armored car security officers shall provide content as established in Sections R156-63b-603 and R156-63b-604.

(4) An instructor is a person who directly facilitates learning through means of live in-class lecture, group participation, practical exercise, or other means. All instructors providing the basic classroom instruction shall have at least three years of training and experience reasonably related to providing of security guard services.

(5) All instructors providing firearms training shall have the following qualifications:

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

(b) current certification as a firearms instructor by the National Rifle Association, a Utah law enforcement agency, a Federal law enforcement agency, a branch of the United States military, or other qualification or certification found by the director to be equivalent.

(6) All approved basic education and 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 files of the education and training program for at least three years.

(7) In the event an approved 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.

(8) Instructors, who present continuing education hours and are licensed armored car security officers, shall receive credit for actual preparation time for up to two times the number of hours to which participants would be 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. Operating Standards - Content of Approved Basic Education and Training Program for Armored Car Security Officers.

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 classroom instruction in which there is a direct student-teacher relationship that includes all of the following:

(a) the nature and role of private security, including the limits of, scope of authority and the civil liability of an armored car security officer and the armored car security officer's role in today's society;

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

(c) legal responsibilities of armored car security, including constitutional law, search and seizure and 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 work place;

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

(i) emergency situation response including terminal security, traffic accidents, robbery situations, homeland security and reducing risk potential through street procedures and tactics, securing robbery scenes, and dealing with the media; and

(j) armored operations, including proper paperwork, street control procedures, vehicle transfers, vault procedures, and other proper branch procedures.

(2) Eight hours of elective course work as determined by the instructor that may include:

(a) current certification in cardiopulmonary resuscitation (CPR), automated external defibrillator (AED), first aid, or 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 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 in the approved program of education and training; and

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

R156-63b-604. Operating Standards - Content of Approved Basic Firearms Training Program for Armored Car Security Officers.

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) the care and cleaning of the weapon;

(c) the prohibition against alterations of 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) the instruction that armored car security officers shall not fire their weapon unless there is an eminent 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 eminent 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 - Criminal Status of Officer, Qualifying Agent, Director, Partner, Proprietor, Armored Car Security Officer or Manager of Armored Car Companies.

(1) This subsection applies to any officer, qualifying agent, director, partner, proprietor, armored car security officer, or any management personnel having direct responsibility for managing operations of the armored car company.

(2) A person identified in this Subsection (1) may not participate at any level or capacity in the management, operations, sales, ownership, or employment of an armored car security company if the person:

(a) has been convicted of:

(i) a felony;

(ii) a misdemeanor crime of moral turpitude; or

(iii) a crime that the Division and Board consider to constitute a risk to the public when considered with the duties and functions of an armored car security company officer; or

(b) has violated:

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

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

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

(3) An armored car security company shall:

(a) within 10 calendar days of occurrence, report to the Division any event contemplated in Subsection (2) that occurs in regard to a person identified in Subsection (1); and

(b) take appropriate steps to ensure that company operations comply with this Subsection (2).

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) felony and misdemeanor definitions;
(b) observing and reporting;
(c) natural disaster preparation;
(d) alarm systems, locks, and keys;
(e) radio and telephone communications;
(f) public relations;
(g) personal appearance and demeanor;
(h) bomb threats;
(i) fire prevention;
(j) mental illness;
(k) supervision;
(l) criminal justice system;
(m) accident scene control;
(n) code of ethics for armored car security officers; and
(o) sexual harassment in the workplace.

(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 Offense.

(1) Licensee employed by an armored car company.

(a) Pursuant to Title 58, Chapter 63, a licensed armored car security officer shall notify the licensee's employing contract security company within 72 hours of being:

(i) arrested, charged, or indicted for any criminal offense above the level of a Class C misdemeanor; or

(ii) found in 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).

(b) Within 72 hours after receiving notification pursuant to this Subsection (1)(a), the employing armored car company shall notify the Division of the arrest, charge, indictment, or violation.

(c) The written notification required under this Subsection (1)(b) shall include:

(i) the employee's name;
(ii) the name of the arresting agency, if applicable;
(iii) the agency case number or similar case identifier;
(iv) the date of the arrest, charge, indictment, or violation; and
(v) the nature of the criminal offense or violation.

(2) Licensee not employed by an armored car company.

(a) Pursuant to Title 58, Chapter 63, a licensed armored car security officer who is not employed by a contract security company shall directly notify the Division in writing within 72 hours of being:

(i) arrested, charged or indicted for any crime above the level of a Class C misdemeanor; or

(ii) found to be in 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).

(b) The written notification required under this Subsection (2)(a) shall meet the requirements of Subsection (1)(c).

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

July 23, 2015	**58-1-106(1)(a)**
Notice of Continuation September 9, 2013	**58-1-202(1)(a)**
	58-63-101

R156. Commerce, Occupational and Professional Licensing.
R156-72. Acupuncture Licensing Act Rule.
R156-72-101. Title.

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

R156-72-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 72, as used in this rule:

(1) "Administration", as used in Subsection 58-72-102(4)(b)(ii), means the direct application of an herb, homeopathic, or supplement by ingestion, topical, inhalation, or acupoint injection therapy (AIT), to the body of a patient. Administration does not include: venous injections, immunizations, legend drugs and controlled substances.

(2) "Controlled substance" means a drug or substance as defined in Subsection 58-37-2(1)(f).

(3) "Legend drug" means a prescription drug as defined in Subsections 58-17b-102(30) and (61).

(4) "Insertion of acupuncture needles" means a procedure of acupuncture and oriental medicine which includes but is not limited to trigger point therapy, Ahshi points and dry needling techniques.

(5) "NCCAOM" means the National Commission for the Certification of Acupuncture and Oriental Medicine.

(6) "Modern research" means practicing according to acupuncture and oriental medicine training as recognized through NCCAOM.

(7) "Provision", as used in Subsection 58-72-102(4)(b)(ii), includes procurement of the substances listed in Subsection 58-72-102(4)(b)(ii).

R156-72-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 72.

R156-72-104. Organization - Relationship to Rule R156-1.

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

R156-72-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-72-302(5), the examination requirement for licensure is a passing score as determined by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) on all examinations for certification by NCCAOM, formerly National Commission for the Certification of Acupuncturists (NCCA), in acupuncture or oriental medicine.

R156-72-302b. Qualifications for Licensure - Animal Acupuncture.

In accordance with Subsections 58-28-307(12)(d) and 58-72-102(4)(a)(iii), a licensed acupuncturist practicing animal acupuncture must complete 100 hours of animal acupuncture training and education. The training and education shall include:

(1) completing 50 hours of on the job training under the supervision of a licensed veterinarian;

(2) completing animal anatomy training; and

(3) completing the remaining hours in animal specific continuing education.

R156-72-302c. Informed Consent.

In accordance with Subsection 58-72-302(6), in order for patients to give informed consent to treatment, a licensed acupuncturist shall have a patient chart for each patient which shall include:

(1) a written review of symptoms; and

(2) a statement, signed by that patient, that consent is given to provide acupuncture treatment.

R156-72-302d. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to maintain office, instruments, equipment, appliances, and supplies in a safe and sanitary condition;

(2) failing as a licensee to maintain the professional development activity requirements, as required by the NCCAOM;

(3) failing to abide by and meet standards of the "Code of Ethics" set by NCCAOM, adopted on October 14, 2008, which are hereby incorporated by reference;

(4) failing to maintain medical records for a ten-year period;

(5) failing to obtain education and training recognized by NCCAOM if performing acupoint therapy injections; and

(6) administering venous injections, immunizations, legend drugs and controlled substances.

R156-72-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 72 is established by rule in Section R156-1-308a.

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

(3) In accordance with Section 58-72-303, a licensee must complete 30 continuing education units (CEU) within the two-year renewal period.

KEY: acupuncture, licensing

July 9, 2015	**58-72-101**
Notice of Continuation October 20, 2011	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-79. Hunting Guides and Outfitters Licensing Act Rule.
R156-79-101. Title.

This rule is known as the "Hunting Guides and Outfitters Licensing Act Rule".

R156-79-102. Definitions.

In addition to the definitions in Sections 58-1-102 and 58-79-102, which shall apply to this rule:

(1) "Client" means the person who engages the professional services of a licensed outfitter.

(2) "Certification of completion of a first aid and CPR course" means a valid certificate issued by one of the following:

(a) the American Red Cross;

(b) the American Heart Association; or

(c) another organization that offers substantially equivalent first aid and CPR courses as approved by the Division in collaboration with the Board, to denote the individual whose name and signature appear on the certificate has successfully completed the applicable first aid and CPR course.

(3) "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;

(f) a conviction which has been reduced pursuant to Subsection 76-3-402(1); or

(g) an equivalent of any of the above in another jurisdiction.

(4) "Packing" means transporting for hire or compensation hunters, game animals or equipment in the field.

(5) "Protecting" means the hunting guide and outfitter protects any clientele.

(6) "Responsible charge" means having principal care for the safety and welfare of a client when and where the hunting guide services are being provided.

(7) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 79, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-79-502.

R156-79-103. 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 79.

R156-79-104. Organization - Relationship to Rule R156-1.

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

R156-79-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3) and Section 58-79-302, the application requirements for licensure are defined herein.

(1) An application for licensure as a hunting guide shall be accompanied by:

(a) a current certification of criminal history record for the applicant issued by the state of Utah or the applicant's state of residency;

(b) a current certification of wildlife violation record for the applicant issued by the Utah Division of Wildlife Resources or the State Wildlife Agency of the applicant's state of residency;

(c) a verification of licensure from any state or territory of the United States or province of Canada in which the applicant has been licensed as a hunting guide; and

(d) a copy of a current photo identification for the applicant showing the applicant is at least 18 years of age. Acceptable photo identification shall include:

(i) a driver license issued by a state of the United States of America or the District of Columbia; or

(ii) an identification card issued by a federal, state or local government agency of the United States of America.

(2) An application for licensure as an outfitter shall be accompanied by:

(a) a current certification of criminal history record for the applicant issued by the state of Utah or the applicant's state of residency;

(b) a current certification of wildlife violation record for the applicant issued by the Utah Division of Wildlife Resources or the State Wildlife Agency of the applicant's state of residency;

(c) a verification of licensure from any state or territory of the United States or province of Canada in which the applicant has been licensed; and

(d) a copy of a current photo identification for the applicant showing the applicant is at least 18 years of age. Acceptable photo identification shall include:

(i) a driver license issued by a state of the United States of America or the District of Columbia; or

(ii) an identification card issued by a federal, state or local government agency of the United States of America.

R156-79-302c. Qualifications for Licensure - Examination Requirements.

(1) For the purposes of this rule, to show an applicant possesses a minimum degree of skill and ability, the applicant shall meet one of the following requirements:

(a) an applicant as a hunting guide shall pass the Utah Hunting Guide Examination or the Utah Outfitters Examination with a passing score of at least 75%; or

(b) an applicant as an outfitter shall pass the Utah Outfitters Examination with a passing score of at least 75%.

(2) An individual who fails an examination may retake the failed examination as follows:

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

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

(3) The examination shall include an assessment of the applicant's knowledge of the Division hunting guide and outfitter statute and rules, the Utah Division of Wildlife Resources statutes and rules, the United States Forest Service and the Federal Bureau of Land Management hunting guidelines and rules and the Utah Hunter Safety Course guidelines and rules.

R156-79-302d. Qualifications for Licensure - Good Moral Character.

(1) Any one or more of the following may disqualify an individual from obtaining or holding a hunting guide or outfitters license:

(a) a violation of a state or federal wildlife, hunting guide or outfitter statute or regulation that includes:

(i) an imprisonment for more than five days within the previous five years;

(ii) an unsuspended fine of more than $2,000 imposed in the previous 12 months;

(iii) an unsuspended fine of more than $3,000 imposed in the previous 36 months; or

(iv) an unsuspended fine of more than $5,000 imposed in the previous 60 months;

(b) any felony conviction within the last five years;

(c) a conviction for a felony offense against a person under

Title 76, Chapter 5, Utah Criminal Code, Offenses Against the Person, within the last ten years;

(d) a conviction for one or more misdemeanors involving wildlife violations;

(e) a conviction for a misdemeanor crime of moral turpitude;

(f) a suspension or disciplinary action involving an individual obtaining or exercising the privileges granted by a hunting guide or outfitter license in this state or another state of the United States, province of Canada, by the Federal Bureau of Land Management or by the United States Forest Service; and

(g) a loss of the privilege to hunt in this state or another state of the United States or province of Canada.

R156-79-302e. Qualifications for Licensure - Equivalent Training Requirements.

(1)(a) An applicant for licensure as a hunting guide shall submit evidence of having successfully completed the following training:

(i) a first aid and CPR course as required under Subsection R156-79-102(2); and

(ii)(A) a basic hunting guide training program pursuant to Section R156-79-601; or

(B) 100 days of on-the job training that is substantially equivalent to the basic hunting guide training program.

(b) No more than 15 days of on-the-job training may be accepted for any single item of training listed in Section R156-79-601.

(2)(a) An applicant for licensure as an outfitter shall submit evidence of having successfully completed the following training:

(i) a first aid and CPR course as required under Subsection R156-79-102(2); and

(ii)(A) a basic outfitter training program pursuant to Section R156-79-602; or

(B) 100 days of on-the-job training that is substantially equivalent to the basic outfitter training program.

(b) No more than 15 days of on-the-job training may be accepted for any single item of training listed in Section R156-79-602.

(3) An applicant shall document on-the-job training through:

(a) an affidavit by a licensed hunting guide or outfitter, as applicable to the license sought, attesting to the on-the-job training claimed by the applicant;

(b) for an outfitter who has been licensed in another state, self-authenticating guarantees of reliability, such as:

(i) federal land agency records;

(ii) approved training program records; or

(iii) client affidavits or letters.

(4) Three days of on-the-job training may be waived by the Division in collaboration with the Board for every day of training completed by an applicant who has attended a hunting guide or outfitter school that, as of the date of attendance, has been approved by the Division in collaboration with the Board.

R156-79-303. 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 79 is established by rule in Section R156-1-308a.

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

R156-79-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) engaging in fraud in advertising or soliciting hunting guide or outfitter services to the public;

(2) intentionally obstructing or hindering or attempting to obstruct or hinder lawful hunting by a person who is not a client or an employee of the licensee;

(3) failing to promptly report, unless a reasonable means of communication is not readily available, and in no event later than 20 days, a violation of a state or federal wildlife, game or guiding statute that the licensee believes was committed by a client or an employee of the licensee;

(4) materially breaching a contract with a person using the hunting guide or outfitting services of the licensee;

(5) failing to provide any animal used in the conduct of business with proper food, drink and subjecting any animal used in the conduct of business to needless abuse or cruel and inhumane treatment;

(6) failing to allow the Division or its agents access at all times to inspect hunting camps, whether or not the licensee is present;

(7) failing to provide a hunting guide for every two hunters in wilderness areas and for up to six hunters in all other areas of the state;

(8) failing to maintain a neat, orderly and sanitary camp by not disposing of garbage, debris and human waste appropriately;

(9) failing to provide clean drinking water or failing to protect all food from contamination;

(10) failing to separate livestock facilities and camp facilities and to protect streams from contamination;

(11) failing to report any serious injury or fatality to the client or outfitter staff to a federal, state, county or local law enforcement authority;

(12) failing to comply with state and federal laws and rules regarding hunting guides and outfitters;

(13) failing to comply with state and federal wildlife laws and rules;

(14) failing to adequately maintain general liability insurance coverage as required by the United States Forest Service or the Bureau of Land Management;

(15) failing as a licensee to carry an original license, as issued by the Division, at all times when providing outfitting or hunting guide services;

(16) providing outfitter services to a person who is not properly licensed to hunt for the species sought by that person; and

(17) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established by the Utah Guides and Outfitters Association, adopted July 1, 2006, which is hereby incorporated by reference.

R156-79-601. Content of the Hunting Guide Basic Training Program.

The basic training program for hunting guides as required in Subsection 58-79-302(1)(e) shall be approved by the Division in collaboration with the Board and may include the following components or their equivalent:

(1) hunter ethics and attitude;

(2) horsemanship;

(3) packing skills;

(4) transporting livestock;

(5) shoeing skills;

(6) use of a crosscut saw and ax;

(7) use of a chain saw;

(8) general weapon knowledge;

(9) guiding skills;

(10) game care;

(11) setting up camps;

(12) hunting guide regulations;

(13) first aid and CPR training provided by:

(a) the American Red Cross;

(b) the American Heart Association; or

(c) another organization that offers substantially

equivalent training as approved by the Division in collaboration with the Board;
(14) orienteering and map reading;
(15) a basic off highway vehicle safety course;
(16) basic survival skills;
(17) trophy judging skills;
(18) other topics pertinent to the hunting guide industry as approved by the Division in collaboration with the Board.

R156-79-602. Content of the Outfitter Basic Training Program.

The basic training program for outfitters as required in Subsection 58-79-302(2)(e) shall be approved by the Division in collaboration with the Board and may include the following components or their equivalent:
(1) hunter ethics and attitude;
(2) horsemanship;
(3) packing skills;
(4) transporting livestock;
(5) shoeing skills;
(6) use of a crosscut saw and ax;
(7) use of a chain saw;
(8) general weapon knowledge;
(9) guiding skills;
(10) game care;
(11) setting up camps;
(12) outfitter regulations;
(13) first aid and CPR training provided by:
(a) the American Red Cross;
(b) the American Heart Association; or
(c) another organization that offers substantially equivalent training as approved by the Division in collaboration with the Board;
(14) a basic off highway vehicle safety course;
(15) supervising clientele;
(16) hiring and supervising personnel;
(17) outfitter advertising;
(18) booking clientele;
(19) going into business for oneself;
(20) wilderness and back country manners;
(21) applying federal and state land use policies;
(22) obtaining all necessary licenses and permits and permissions for the client;
(23) providing staff and facilities for hunting;
(24) providing a hunting guide;
(25) orienteering and map reading;
(26) basic survival skills;
(27) trophy judging skills;
(28) other topics pertinent to the outfitter industry as approved by the Division in collaboration with the Board.

KEY: licensing, hunting guides, outfitters

July 9, 2015	**58-79-101**
Notice of Continuation August 5, 2014	**58-1-106(1)(a)**
	58-1-202(1)(a)

R251. Corrections, Administration.
R251-102. Release of Communicable Disease Information.
R251-102-1. Authority and Purpose.

(1) This rule is authorized under Sections 63G-3-201, 64-13-10, and 64-13-36(3)(a) of the Utah Code.

(2) The purpose of this rule is to designate the persons who will be permitted access to information in Department of Corrections inmate medical files.

R251-102-2. Definitions.

(1) "AIDS" means Acquired Immunodeficiency Syndrome.

(2) "Communicable Disease" means any of a group of diseases easily transmitted from one person to another.

(3) "HIV" means Human Immunodeficiency Syndrome.

(4) "inmates" means offenders in the secure facilities of the Department.

R251-102-3. Access to Information in Medical Files.

(1) Information in an inmate's medical file may include:

(a) results of tests conducted for communicable diseases, including AIDS and HIV; and

(b) information self-admitted by an inmate.

(2) The Department shall provide information regarding communicable diseases to:

(a) the Board of Pardons and Parole;

(b) designated Department Adult Probation and Parole agents; and

(c) other Department employees, if necessary, based on legitimate penological interests as determined by a division director in consultation with Clinical Services.

(3) Results of AIDS and HIV tests shall be provided to the Department of Health as outlined in Section 64-13-36.

KEY: medical records, communicable diseases, corrections
October 12, 2011 **64-13-10**
Notice of Continuation July 23, 2015 **64-13-36**
63G-3-201

R251. Corrections, Administration.
R251-109. Sex Offender Treatment Providers.
R251-109-1. Authority and Purpose.

(1) This rule is authorized by Sections 63G-3-201, 64-13-10, and 76-5-406.5, of the Utah Code.

(2) The purpose of the rule is to define the criteria and guidelines for the standards, application and approval process, and program requirements for sex offender treatment providers.

R251-109-2. Definitions.

(1) "Approved provider status" means status as a provider for sex offender services through the Utah Department of Corrections.

(2) "Affiliate approval" means approval of a professional who does not meet experience requirements and is seeking to become approved as a provider.

(3) "Direct clinical experience" means face-to-face contact with patients/clients, direct supervision, training, case coordination and research.

(4) "Formal training" means education and/or supervised experience in the required field; may be provided at an accredited college or university or at seminars or conferences.

(5) "Full disclosure" means the complete discussion during treatment of all previous adjudicated and unadjudicated sexual offenses.

(6) "Provider" means a therapist who has been approved by the Department to provide services to sex offenders under the jurisdiction of the Utah Department of Corrections.

(7) "Provider supervision" means one hour of supervision for every 40 hours of direct client contact with a minimum of one hour supervision per month.

(8) "Screening committee" means group of Department of Corrections employees assigned to screen and approve applications from providers to provide sex offender treatment.

(9) "Transition program" means program designed to help offenders move from residential to non-residential treatment; also to help them move from intensive to progressively less intensive treatment.

(10) "UDC" means Utah Department of Corrections.

R251-109-3. Provider Standards and Requirements.

It is the policy of the Department that:

(1) all potential providers of sex offender treatment shall be screened by the screening committee to ensure they meet the specific established standards and qualifications for providers of sex offender treatment;

(2) providers shall have a basic requirement that full disclosure of all criminal sexual behavior by the offender is a basic requirement for successful completion of therapy;

(3) approved providers must reapply to UDC every three years to renew their approved provider status;

(4) providers shall have a current Utah license to practice therapy in a mental health profession which shall include:

(a) psychiatry;

(b) psychology;

(c) social work; or

(d) marriage and family therapy;

(5) providers' education shall include:

(a) a master's or doctorate degree from a fully accredited college or university in:

(i) social work;

(ii) psychology; or

(b) a medical doctor if board certified/eligible psychiatrist; or

(c) a doctor of osteopathy if board certified/eligible psychiatrist;

(6) within four years immediately preceding application for approval, the provider shall have at least 2,000 hours of direct clinical experience in sex offender treatment, which include:

(a) at least 500 hours of sex offender evaluation experience; and

(b) at least 1,000 hours of sex offender treatment experience;

(7) within three years immediately preceding application, the provider shall have received at least 40 hours of sex offender specific formal training;

(8) licensed professionals and professionals in graduate training and/or post graduate residency who do not meet the experience and training requirements may apply to UDC for affiliate approval;

(9) affiliate approval shall require that the applicant arrange for ongoing provider supervision of therapy by an approved provider;

(10) affiliates may provide services as part of a degree program leading to licensure;

(11) required training may be obtained through approved:

(a) documented conferences;

(b) symposia;

(c) seminars; or

(d) other course work;

(12) the training shall be directly related to the treatment and evaluation of sex offenders;

(13) the training may include:

(a) behavioral/cognitive methods;

(b) reconditioning and relapse prevention;

(c) use of plethysmograph examinations;

(d) use of polygraph examinations;

(e) group therapy;

(f) individual therapy;

(g) sexual dysfunction;

(h) victimology;

(i) couples and family therapy;

(j) risk assessment;

(k) sexual addiction;

(l) sexual deviancy; and

(m) ethics and professional standards;

(14) prior to and during approval, all providers must agree to abide by reporting and other requirements established by UDC and the laws and statutes of the state of Utah;

(15) reporting requirements shall include the offender's:

(a) progress in therapy;

(b) prognosis; and

(c) risk to the community; and

(16) failure to comply with reporting requirements may result in a provider being removed from the approved list.

R251-109-4. Application Process.

(1) All individuals providing services are required to be approved.

(2) Each applicant shall provide all of the required documentation to UDC at the time of submission. If not, the packet shall be returned to the provider.

(3) Individuals or affiliates who are supervised by an approved individual or agency may begin providing services pending approval once UDC receives their application packet.

(4) Reapplication shall include:

(a) documentation demonstrating continuing education and training in sex offender specific treatment of not less than forty hours every three years;

(b) current licensure with the state of Utah;

(c) hours of therapy/supervision per year provided; and

(d) information on any changes in modality of treatment.

(5) Failure to reapply shall result in the provider being removed from the approved provider list.

R251-109-5. Approval Process.

(1) It is the policy of UDC that all therapists providing

services to sex offenders under the jurisdiction of UDC shall have been reviewed and approved by the screening committee.

(2) Approval may be suspended by either the provider or UDC.

(3) A provider shall be removed from the list of approved providers by written request to UDC.

(4) UDC may suspend approval for:

(a) failure to reapply;

(b) failure to comply with provider protocol;

(c) suspension of clinical licensure;

(d) failure to meet provider standards; or

(e) criminal conviction; or

(f) other legitimate penological reasons as determined by the division director.

(5) Providers who are not approved may appeal that decision to the screening committee within thirty days of denial.

(6) Appeals must contain specific documentation of why the denial was inaccurate.

R251-109-6. Program Requirements.

(1) It is the policy of UDC that each provider meet certain accepted standards for treatment of sex offenders.

(2) Treatment programs for sexual offenders convicted of crimes against persons shall have the following intake components available:

(a) complete psycho-sexual evaluation, to include:

(i) sex offender specific testing;

(ii) assessment of personality and intelligence using testing instruments recognized in the treatment community as valid tools; and

(iii) penile plethysmograph testing, with stimuli which conforms to state statute, for male offenders and polygraph examinations for female offenders to determine arousal patterns and establish baselines.

(3) Polygraph examination shall be used for male offenders when deemed appropriate by the provider or UDC staff.

(4) Following assessment, the provider shall submit a written report to UDC staff including:

(a) findings of testing including specifics on offender's risk to community safety;

(b) the offender's suitability for treatment;

(c) a proposed treatment plan; and

(d) the cost to the offender.

(5) The standard treatment shall include:

(a) sex offender groups;

(b) individual therapy;

(c) psycho-educational classes;

(d) ongoing transition program; and

(e) a minimum of one monthly progress report to UDC staff.

(6) An intensive treatment program shall be available which includes:

(a) two weekly sex offender group sessions;

(b) individual weekly session;

(c) psycho-educational classes;

(d) on-going transition program; and

(e) a minimum of one monthly progress report to UDC staff.

(7) Intensive treatment shall be conducted on a minimum of three different days per week.

(8) When treatment is terminated unsuccessfully, the provider shall:

(a) notify UDC staff prior to termination; and

(b) provide a written report to the UDC staff within seven days of termination, addressing:

(i) reason for termination;

(ii) progress of the offender to date;

(iii) prognosis of the offender; and

(iv) the offender's risk to community.

(9) When treatment is terminated successfully, the provider shall:

(a) notify UDC staff of the recommendation to terminate therapy; and

(b) provide a written report to UDC staff addressing:

(i) issues addressed in therapy;

(ii) the offender's compliance with the treatment plan;

(iii) progress made by the offender;

(iv) prognosis of the offender; and

(v) results of a current (less than 90 days old), if appropriate, plethysmograph or polygraph.

(10) As requested, the provider shall submit written reports to UDC, courts and the Board of Pardons and Parole, as applicable.

(11) With reasonable notification, therapists shall appear in court or before the Board of Pardons and Parole as needed.

KEY: mental health, corrections, treatment providers, sex offender treatment

April 5, 1996 64-13-10

Notice of Continuation July 23, 2015

R251. Corrections, Administration.
R251-301. Employment, Educational or Vocational Training for Community Correctional Center Offenders.
R251-301-1. Authority and Purpose.

(1) This rule is authorized by Sections 63G-3-201, 64-13-10 and 64-13-14.5, of the Utah Code.

(2) The purpose of this rule is to provide the requirements for employers who employ offenders. This rule also provides the requirements for offenders' participation in an educational or vocational training program.

R251-301-2. Definitions.

(1) "Center" means a community correctional halfway house facility designed to facilitate an offender's readjustment to private life.

(2) "Educational or vocational training" means that an offender is participating or is enrolled in an educational or vocational training program that is recognized as being fully accredited by the state, which includes academic, applied-technology or correspondence courses, and in which the student is matriculated or has declared intent to be involved in program-completion or degree-attainment within a reasonable period of time.

(3) "Minimum wage" means compensation paid for hours worked in accordance with federally established guidelines.

(4) "Offender" means a person under the jurisdiction of the Department of Corrections residing in a community correctional center.

R251-301-3. Policy.

It is the policy of the Department that:

(1) Center offenders should be employed or participate in educational or vocational training on a full-time basis;

(2) offenders participating in educational or vocational training should have sufficient means to meet their financial obligations; and

(3) employers and offenders shall be informed in writing of the Center's rules governing employment, including:

(a) Offenders shall be accountable for all time spent away from the Center;

(b) employers shall contact Center staff when they need the offender to work overtime or work on a day off;

(c) offenders shall not consume alcoholic beverages;

(d) offenders shall have legitimate employment and shall not be allowed to work for less than the prevailing minimum wage, nor under substandard conditions;

(e) employers shall contact Center staff if the offender terminates or is terminated from his position, is excessively late, or leaves work early;

(f) offenders shall not borrow money nor secure an advance in salary without prior approval of Center staff;

(g) offenders shall notify employers of illness, absence or tardiness;

(h) Center staff shall contact the employer periodically to monitor the offender's performance and to verify the offender's work hours;

(i) within two weeks, employers shall send to the Center staff a signed acknowledgment of the rules and willingness to notify Center staff of any violations; and

(j) employers shall contact Center staff with any questions or concerns.

KEY: corrections, halfway houses, training, offender employment

March 13, 2001	**63G-3-201**
Notice of Continuation July 23, 2015	**64-13-10**
	64-13-14.5

R251. Corrections, Administration.
R251-709. Transportation of Inmates.
R251-709-1. Authority and Purpose.

(1) This rule is authorized under Sections 63G-3-201 and 64-13-10, of the Utah Code.

(2) This rule addresses requirements regarding the transportation of inmates in order to provide for public safety and the security of inmates under the jurisdiction of the Department.

R251-709-2. Definitions.

"Restraint" means handcuffs, handcuff cover, locking devices, leg irons, waist chains or other locking and restraining devices.

"Run" means any transport of an inmate off prison property.

R251-709-3. Policy.

It is the policy of the Department that during the transportation of inmates the primary goal is to ensure adequate security to prevent escapes and to prevent harm to officers or other persons.

R251-709-4. Court Transportation.

(1) Inmates shall not be allowed to visit with relatives, friends or members of the general public during transportation, while in a medical facility, courtroom, or while waiting, in transit to or from a medical facility or courtroom.

(2) Requests from attorneys to detain or temporarily relocate inmates for consultations, visits with spouse, parents, or other family members, shall be denied unless the presiding judge specifically orders the visits.

(3) Attorneys requesting consultation with inmates after a hearing may do so for five minutes in a court holding cell unless the presiding judge specifically orders otherwise.

(4) The inmate's attorney may provide civilian clothing for inmates appearing in a jury trial.

R251-709-5. Medical Security Procedures.

(1) The transportation officers shall maintain custody of the inmate at all times during medical transportation runs. Exceptions may be made when dealing with inmates of the opposite sex during compromising procedures, (i.e., pap smears, mammograms, etc.). When an exception is made, the officers shall remain immediately outside the door (if there are no windows or other escape routes in the room) or on the opposite side of the privacy curtain.

(2) The transportation officers shall remove a particular restraint upon the doctor's orders if the removal of that restraint is required to perform a medical procedure; only that particular restraint shall be removed and it shall be immediately reapplied upon completion of the medical procedure.

(3) Except in life-threatening emergencies, the transportation officers shall not assist nor participate in any medical procedure or other assistance to patients or inmates.

R251-709-6. Transporting by Air.

When transporting by air, the transportation lieutenant, captain, or chief shall contact the transporting airline prior to the transportation run to confirm their policies regarding inmate restraints, boarding and alighting policies, firearms on the aircraft, and other inmate transportation issues.

KEY: prisons, corrections, security measures, inmate transportation
May 15, 2001 64-13-10
Notice of Continuation July 2, 2015

R277. Education, Administration.
R277-200. Utah Professional Practices Advisory Commission (UPPAC), Definitions.
R277-200-1. 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, by Section 53A-6-306 which directs the Board to adopt rules regarding UPPAC duties and procedures, and 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 establish definitions for terms in UPPAC activities.

C. The definitions contained in this rule apply to rules R277-200 through R277-206. Any calculation of time called for by these rules shall be governed by Utah R. Civ. P. 6.

R277-200-2. Definitions.

A(1) "Action" means a disciplinary action taken by the Board adversely affecting an educator's license.

(2) "Action" does not include a disciplinary letter.

(3) "Action" includes:

(a) a letter of reprimand;

(b) probation;

(c) suspension; and

(d) revocation.

B. "Administrative hearing" or "hearing" has the same meaning as that term is defined in Section 53A-6-601.

C. "Alcohol related offense" means:

(1) driving under the influence;

(2) alcohol-related reckless driving or impaired driving;

(3) intoxication;

(4) driving with an open container;

(5) unlawful sale or supply of alcohol;

(6) unlawful permitting of consumption of alcohol by minors;

(7) driving in violation of an alcohol or interlock restriction; and

(8) any offense under the laws of another state that is substantially equivalent to the offenses described in R277-200-2C(1) through (7).

D. "Allegation of misconduct" means a written report alleging that an educator:

(1) has engaged in unprofessional or criminal conduct;

(2) is unfit for duty;

(3) has lost the educator's license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or

(4) has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in R277-515.

E. "Answer" means a written response to a complaint filed by USOE alleging educator misconduct.

F. "Applicant" means a person seeking:

(1) a new license;

(2) reinstatement of an expired, surrendered, suspended, or revoked license; or

(3) clearance of a criminal background review from USOE at any stage of the licensing process.

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

H. "Chair" means the Chair of UPPAC.

I. "Complaint" means a written allegation or charge against an educator filed by USOE against the educator.

J. "Complainant" means the Utah State Office of Education.

K. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file developed by the USOE and maintained on all licensed Utah educators.

L(1) "Conviction" means the final disposition of a judicial action for a criminal offense, except in cases of a dismissal on the merits.

(2) "Conviction" includes:

(a) a finding of guilty by a judge or jury;

(b) a guilty or no contest plea;

(c) a plea in abeyance; and

(d) for purposes of this rule, a conviction that has been expunged.

M. "Criminal Background Review" means the process by which the Executive Secretary, UPPAC, and the Board review information pertinent to:

(1) a charge revealed by a criminal background check;

(2) a charge revealed by a hit as a result of ongoing monitoring; or

(3) an educator or applicant's self-disclosure.

N(1) "Disciplinary letter" means a letter issued to a respondent by the Board as a result of an investigation into an allegation of educator misconduct.

(2) "Disciplinary letter" includes:

(1) a letter of admonishment;

(2) a letter of warning; and

(3) any other action that the Board takes to discipline an educator for educator misconduct that does not rise to the level of an action as defined in this R277-200-2.

O. "Drug" means controlled substance as defined in Section 58-37-2.

P. "Drug related offense" means any criminal offense under:

(1) Title 58, Chapter 37;

(2) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(3) Title 58, Chapter 37b, Imitation Controlled Substances Act;

(4) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;

(5) Title 58, Chapter 37d, Clandestine Drug Lab Act; and

(6) Title 58, Chapter 37e, Drug Dealer's Liability Act. Sections 58-37 through 37e.

Q. "Educator" means a person:

(1) who currently holds a license;

(2) who held a license at the time of an alleged offense;

(3) is a person who is student teaching in anticipation of seeking a license;

(4) is an applicant for a license;

(5) is a licensure candidate through the Alternate Route to Licensure, "ARL," program; or

(6) who has applied to the Alternate Route to Licensure, "ARL" program.

R. "Educator Misconduct" means:

(1) unprofessional or criminal conduct;

(2) conduct that renders an educator unfit for duty; or

(3) conduct that is a violation of standards of ethical conduct, performance, or professional competence as provided in R277-515.

S. "Executive Committee" means a subcommittee of UPPAC consisting of the following members:

(1) Executive Secretary;

(2) Chair;

(3) Vice-Chair; and

(4) one member of UPPAC at large.

T. "Executive Secretary" means an employee of USOE who:

(1) is appointed by the State Superintendent of Public Instruction to serve as the UPPAC Director; and

(2) serves as a non-voting member of UPPAC, consistent with Section 53A-6-302.

U. "Expedited Hearing" means an informal hearing aimed at determining an Educator's fitness to remain in the classroom held as soon as possible following an arrest, citation, or charge for a criminal offense requiring mandatory self-reporting under

R277-516-3.

V. "Expedited Hearing Panel" means a panel of the following three members:

(1) the Executive Secretary;

(2) a voting member of UPPAC; and

(3) a UPPAC prosecutor.

W. "Final action" means an action by the Board that concludes an investigation of an allegation of misconduct against a licensed educator.

X. "GRAMA" refers to the Government Records Access and Management Act, Title 63G, Chapter 2, Government Records Access and Management Act.

Y. "Hearing officer" means a licensed attorney who:

(1) is experienced in matters relating to administrative procedures;

(2) is appointed by the Executive Secretary to manage the proceedings of a hearing;

(3) is not an acting member of UPPAC;

(4) has authority, subject to the limitations of these rules, to regulate the course of the hearing and dispose of procedural requests; and

(5) does not have a vote as to the recommended disposition of a case.

Z. "Hearing panel" means a panel of three or more individuals designated to:

(1) hear evidence presented at a hearing;

(2) make a recommendation to UPPAC as to disposition; and

(3) collaborate with the hearing officer in preparing a hearing report.

AA. "Hearing report" means a report that:

(1) is prepared by the hearing officer consistent with the recommendations of the hearing panel at the conclusion of a hearing; and

(2) includes:

(a) a recommended disposition;

(b) detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent; and

(c) applicable law and rule.

BB. "Informant" means a person who submits information to UPPAC concerning the alleged misconduct of an educator.

CC. "Investigator" means an employee of the USOE, or independent investigator selected by the Board, who:

(1) is assigned to investigate allegations of educator misconduct under UPPAC supervision;

(2) offers recommendations of educator discipline to UPPAC and the Board at the conclusion of the investigation;

(3) provides an independent investigative report for UPPAC and the Board; and

(4) may also be the prosecutor but does not have to be.

DD. "Investigative report" means a written report of an investigation into allegations of educator misconduct, prepared by an Investigator that:

(1) includes a brief summary of the allegations, the investigator's narrative, and a recommendation for UPPAC and the Board;

(2) may include a rationale for the recommendation, and mitigating and aggravating circumstances;

(3) is maintained in the UPPAC Case File; and

(4) is classified as protected under Section 63G-2-305(34).

EE. "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.

FF. "Letter of admonishment" is a letter sent by the Board to an educator cautioning the educator to avoid or take specific actions in the future.

GG. "Letter of reprimand" is a letter sent by the Board to an educator:

(1) for misconduct that was longer term or more seriously unethical or inappropriate than conduct warranting a letter of warning, but not warranting more serious discipline;

(2) that provides specific directives to the educator as a condition for removal of the letter;

(3) appears as a notation on the educator's CACTUS file; and

(4) that an educator can request to be removed from the educator's CACTUS file after two years, or after such other time period as the Board may prescribe in the letter of reprimand.

HH. "Letter of warning" is a letter sent by the Board to an educator:

(1) for misconduct that was inappropriate or unethical; and

(2) that does not warrant longer term or more serious discipline.

II. "License" means a teaching or administrative credential, including an endorsement, which is issued by the Board to signify authorization for the person holding the license to provide professional services in Utah's public schools.

JJ. "Licensed educator" means an individual issued a teaching or administrative credential, including an endorsement, issued by the Board to signify authorization for the individual holding the license to provide professional services in Utah's public schools.

KK. "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for the members of NASDTEC regarding persons whose licenses have been suspended or revoked.

LL. "Notification of Alleged Educator Misconduct" means the official UPPAC form that may be accessed on UPPAC's internet website, and may be submitted by any person, school, or LEA that alleges educator misconduct.

MM. "Party" means a complainant or a respondent.

NN. "Petitioner" means an individual seeking:

(1) an educator license following a denial of a license;

(2) reinstatement following a license suspension; or in the event of compelling circumstances, reinstatement following a license revocation.

OO. "Probation" is an action directed by the Board that:

(1) involves monitoring or supervision for a designated time period, usually accompanied by a disciplinary letter;

(2) may require the educator to be subject to additional monitoring by an identified person or entity;

(3) may require the educator to be asked to satisfy certain conditions in order to have the probation lifted;

(4) may be accompanied by a letter of reprimand, which shall appear as a notation on the educator's CACTUS file; and

(5) unless otherwise specified, lasts at least two years and may be terminated through a formal petition to the Board by the respondent.

PP. "Prosecutor" means an attorney who:

(1) is designated by the Superintendent to represent the complainant and present evidence in support of the complaint; and

(2) may also be the investigator, but does not have to be.

QQ. "Revocation" means a permanent invalidation of a Utah educator license consistent with R277-517.

RR. "Respondent" means an educator against whom:

(1) a complaint is filed; or

(2) an investigation is undertaken.

SS. "Serve" or "service," as used to refer to the provision of notice to a person, means:

(1) delivery of a written document or its contents to the person or persons in question; and

(2) delivery that may be made in person, by mail, by electronic correspondence, or by any other means reasonably calculated, under all of the circumstances, to notify an interested person or persons to the extent reasonably practical or

practicable of the information contained in the document.

TT. "Stipulated agreement" means an agreement between a respondent and the Board:

(1) under which disciplinary action is taken against the educator in lieu of a hearing;

(2) that may be negotiated between the parties and becomes binding:

(a) when approved by the Board; and

(b) at any time after an investigative letter has been sent;

(3) is a public document under GRAMA unless it contains specific information that requires redaction or separate classification of the agreement.

UU. "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

VV(1) "Suspension" means an invalidation of a Utah educator license.

(2) "Suspension" may:

(a) include specific conditions that an educator must satisfy; and

(b) may identify a minimum time period that must elapse before the educator may request a reinstatement hearing before UPPAC.

WW. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, established in Section 53A-6-301.

XX. "UPPAC Background Check File" means a file maintained securely by UPPAC on a criminal background review that:

(1) contains information obtained from:

(a) BCI; and

(b) letters, police reports, court documents, and other materials as provided by an educator; and

(2) is classified as private under Section 63G-2-302(2).

YY. "UPPAC Case File" means a file:

(1) maintained securely by UPPAC on an investigation into educator misconduct;

(2) opened following UPPAC's direction to investigate alleged misconduct;

(3) that contains the original notification of misconduct with supporting documentation, correspondence with the Executive Secretary, the investigative report, the stipulated agreement, the hearing report, and the final disposition of the case;

(4) that is classified as protected under Section 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and

(5) that after a case proceeding is closed, is considered public under GRAMA, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA, in which case the file may be redacted or partially or fully restricted.

ZZ. "UPPAC Evidence File" means a file:

(1) maintained by the attorney assigned by UPPAC to investigate a case containing materials, written or otherwise, obtained by the UPPAC investigator during the course of the attorney's investigation;

(2) that contains correspondence between the Investigator and the educator or the educator's counsel;

(3) that is classified as protected under Section 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and

(4) that is considered public under GRAMA after case proceedings are closed, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA.

AAA. "UPPAC investigative letter" means a letter sent by UPPAC to an educator notifying the educator that an allegation of misconduct has been received against him and that UPPAC or the Board has directed that an investigation of the educator's alleged actions take place.

BBB. "UPPAC Prosecutor File" means a file:

(1) that is kept by the attorney assigned by UPPAC to investigate and/or prosecute a case that contains:

(a) the attorney's notes prepared in the course of investigation; and

(b) other documents prepared by the attorney in anticipation of an eventual hearing; and

(2) that is classified as protected pursuant to Section 63G-2-305(18).

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

KEY: professional practices, definitions, educators
July 8, 2015 **Art X Sec 3**
53A-6-306
53A-1-401(3)

R277. Education, Administration.
R277-201. Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions.
R277-201-1. 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, by Section 53A-6-306 which directs the Board to adopt rules regarding UPPAC duties and procedures, and 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 provide procedures regarding:

(1) notifications of alleged educator misconduct;

(2) review of notifications by UPPAC; and

(3) complaints, stipulated agreement and defaults.

C. Except as provided in R277-201-1D, the provisions of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d).

D. UPPAC may invoke and use sections or provisions of the Utah Administrative Procedures Act as found in Title 63G, Chapter 4, Utah Administrative Procedures Act, as necessary to adjudicate an issue.

R277-201-2. Initiating Proceedings Against Educators.

A. The Executive Secretary may refer a case to UPPAC to make a determination if an investigation should be opened regarding an educator:

(1) upon receiving a notification of alleged educator misconduct; or

(2) upon the Executive Secretary's own initiative.

B. An informant shall submit an allegation to the Executive Secretary in writing, including the following:

(1) the informant's:

(a) name;

(b) position (such as administrator, teacher, parent, student);

(c) telephone number;

(d) address; and

(e) contact information;

(2) the following information of the educator against whom the allegation is made:

(a) name;

(b) position (such as administrator, teacher, candidate); and

(c) if known, the address and telephone number of the educator against whom the allegation is made;

(d) the facts on which the allegation is based and supporting information; and

(e) signature of the informant and date.

C. If an informant submits a written allegation of misconduct as provided in this rule, the informant may be notified of a final action taken by the Board regarding the allegation.

D(1) Proceedings initiated upon the Executive Secretary's own initiative may be based on information received through a telephone call, letter, newspaper article, media information, notice from another state or by other means.

(2) The Executive Secretary may also recommend an investigation based on an anonymous allegation, notwithstanding the provisions of this rule, if the allegation bears sufficient indicia of reliability.

E. All written allegations, subsequent dismissals, actions, or disciplinary letters related to a case against an educator shall be maintained permanently in UPPAC's paper licensing files.

R277-201-3. Review of Notification of Alleged Educator Misconduct.

A. Initial Review: On reviewing the notification of alleged educator misconduct, the Executive Secretary, the Executive Committee, or both, shall recommend one of the following to UPPAC:

(1) Dismiss: If UPPAC determines that alleged misconduct does not involve an issue that UPPAC should address, UPPAC shall dismiss the matter; or

(2) Initiate an investigation: If UPPAC determines that the alleged misconduct involves an issue which may be appropriately addressed by UPPAC and the Board:

(a) UPPAC shall initiate an investigation; and

(b) the Executive Secretary shall direct a UPPAC investigator to gather evidence relating to the allegations.

B(1) Prior to a UPPAC investigator's initiation of an investigation, the Executive Secretary shall send a letter to the following with information that an investigation has been initiated:

(a) the educator to be investigated;

(b) the LEA that currently employs the educator; and

(c) the LEA where the alleged activity occurred.

(2) A letter described in R277-201-3B(1) shall inform the educator and the LEA(s) that an investigation shall take place and is not evidence of unprofessional conduct.

(3) UPPAC shall place a flag on the educator's CACTUS file after sending the notices as provided in this rule.

C(1) The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations.

(2) The investigator shall prepare an investigative report of the findings of the investigation and a recommendation for appropriate action or disciplinary letter.

(3) If the investigator discovers additional evidence of unprofessional conduct which could have been included in the original notification of alleged educator misconduct, the investigator may include the additional evidence of misconduct in the investigative report.

(4) The investigative report shall be submitted to the Executive Secretary.

(5) The Executive Secretary shall review the investigative report described in R277-201-3C(4) with UPPAC.

(6) The investigative report described in R277-201-3C(4) shall become part of the UPPAC Case File.

D. Secondary Review: UPPAC shall review the investigative report and take one of the following actions:

(1) Dismiss: If UPPAC determines no further action should be taken, it may recommend that the Board dismiss the case; or

(2) Make an initial recommendation of appropriate Action or disciplinary letter.

E. After receiving an initial recommendation from UPPAC for action, the Executive Secretary shall direct a UPPAC prosecutor to:

(1) prepare and serve a complaint; or

(2) negotiate and prepare a stipulated agreement.

F(1) A stipulated agreement shall conform to the requirements set forth in R277-201-6.

(2) An educator may stipulate to any recommended disposition for an action.

G. The Executive Secretary shall forward any stipulated agreement to the Board for approval.

H. Upon receipt of a hearing report as defined in R277-202, UPPAC shall make a final recommendation with appropriate findings and shall direct the Executive Secretary to transmit the recommendation to the Board for consideration.

R277-201-4. Expedited Hearings.

A. In a case involving the report of an arrest, citation, or charge of a licensed educator, which requires self-reporting by the educator under R277-516-3, the Executive Secretary, with the consent of the educator, may schedule the matter for an

expedited hearing in lieu of initially referring the matter to UPPAC.

B(1) an expedited hearing shall be held within thirty (30) days of a report of an arrest, citation, or charge, unless otherwise agreed upon by both parties.

(2) An expedited hearing will be conducted by the Executive Secretary or the Executive Secretary's designee with the following additional invited participants:

(a) the educator;

(2) the educator's attorney or representative;

(3) a UPPAC prosecutor;

(4) a voting member of UPPAC; and

(5) representative(s) of the educator's LEA.

C. The following matters may be considered at an expedited hearing:

(1) an educator's oral or written explanation of the events;

(2) a police report;

(3) a court docket or transcript;

(4) an LEA's investigative report or employment file; and

(5) additional information offered by the educator if the panel deems it probative of the issues at the Expedited Hearing.

D. After reviewing the evidence, the expedited hearing panel shall make written findings and a recommendation to UPPAC to do one of the following:

(1) close the case;

(2) close the case upon completion of court requirements;

(3) recommend issuance of a disciplinary letter to the Board;

(4) open a full investigation; or

(5) recommend action by the Board, subject to an educator's due process rights under these rules.

E. An expedited hearing may be recorded, but the testimony from the expedited hearing is inadmissible during a future UPPAC action related to the allegation.

F. If the Board fails to adopt the recommendation of an expedited hearing panel, UPPAC shall open a full investigation.

R277-201-5. Complaints.

A. Filing a complaint: If UPPAC determines that an allegation is sufficiently supported by evidence discovered in the investigation, UPPAC, through the Executive Secretary, may direct the prosecutor to serve a complaint upon the educator being investigated.

B. Elements of a complaint: At a minimum, a complaint shall include:

(1) a statement of legal authority and jurisdiction under which the action is being taken;

(2) a statement of the facts and allegations upon which the complaint is based;

(3) other information which the investigator believes to be necessary to enable the respondent to understand and address the allegations;

(4) a statement of the potential consequences should an allegation be found to be true or substantially true;

(5) a statement that the respondent shall answer the complaint and request a hearing, if desired, within 30 days of the date the complaint was mailed to the respondent;

(6) a statement that the respondent is required to file a written answer described in R277-201-5B(5) with the Executive Secretary;

(7) a statement advising the respondent that if the respondent fails to respond within 30 days, a default judgment for revocation or a suspension of the educator's license may occur for a term of five years or more;

(8) a statement that, if a hearing is requested, the hearing shall be scheduled no less than 25 days, nor more than 180 days, after receipt of the respondent's answer, unless a different date is agreed to by both parties in writing; and

(9) a statement that the hearing will be governed by these rules, with an internet address where the rules may be accessed.

C. On the Executive Secretary's own motion, the Executive Secretary, or the Executive Secretary's designee, with notice to the parties, may reschedule a hearing date.

D(1) Answer to the complaint: A respondent may file an answer to a complaint by filing a written response signed by the respondent, or the respondent's representative with the Executive Secretary within 30 days after the complaint was mailed.

(2) The answer may include a request for a hearing, and shall include:

(a) the file number of the complaint;

(b) the names of the parties;

(c) a statement of the relief that the respondent seeks; and

(d) if not requesting a hearing, a statement of the reasons that the relief requested should be granted.

E(1) As soon as reasonably practicable after receiving an answer, or no more than 30 days after receipt of an answer at the USOE, the Executive Secretary shall schedule a hearing, if requested, as provided in R277-202.

(2) If the parties can reach an agreement prior to the hearing consistent with the terms of UPPAC's initial recommendation, the prosecutor may negotiate a stipulated agreement with the respondent.

(3) A stipulated agreement described in R277-201-5E(2) shall be submitted to the Board for the Board's final approval.

F(1) Default: If a respondent does not respond to the complaint within 30 days, the Executive Secretary may initiate default proceedings in accordance with the procedures set forth in R277-201-7.

(2) Except as provided in R277-201-7C, if the Executive Secretary enters an order of default, the Executive Secretary shall make a recommendation to the Board for a revocation or a suspension of the educator's license for five years before the educator may request a reinstatement hearing.

(3) If a default results in a suspension, a default may include conditions that an educator shall satisfy before the educator may qualify for a reinstatement hearing.

(4) An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Section 53A-6-501(5)(b).

R277-201-6. Stipulated Agreements.

A. At any time after UPPAC has made an initial recommendation, a respondent may accept UPPAC's initial recommendation, rather than request a hearing, by entering into a stipulated agreement.

B. By entering into a stipulated agreement, a respondent waives the respondent's right to a hearing to contest the recommended disposition, contingent on final approval by the Board,

C. Elements of a stipulated agreement: At a minimum, a stipulated agreement shall include:

(1) a summary of the facts, the allegations, and the evidence relied upon by UPPAC in its recommendation;

(2) a statement that the respondent admits the facts recited in the stipulated agreement as true for purposes of the Board administrative action;

(3) a statement that the respondent:

(a) waives the respondent's right to a hearing to contest the allegations that gave rise to the investigation; and

(b) agrees to limitations on the respondent's license or surrenders the respondent's license rather than contest the allegations;

(4) a statement that the respondent agrees to the terms of the stipulated agreement and other provisions applicable to the case, such as remediation, counseling, restitution, rehabilitation, and other conditions, if any, under which the respondent may request a reinstatement hearing or a removal of the letter of

reprimand or termination of probation;

(5) if for suspension or revocation of a license, a statement that the respondent:

(a) may not seek or provide professional services in a public school in Utah;

(b) may not seek to obtain or use an educator license in Utah; or

(c) may not work or volunteer in a public K-12 setting in any capacity without express authorization from the UPPAC Executive Secretary, unless or until the respondent:

(i) first obtains a valid educator license or authorization from the Board to obtain such a license; or

(ii) satisfies other provisions provided in the stipulated agreement;

(6) a statement that the action and the stipulated agreement shall be reported to other states through the NASDTEC Educator Information Clearinghouse and any attempt to present to any other state a valid Utah license shall result in further licensing action in Utah;

(7) a statement that respondent waives the respondent's right to contest the facts stated in the stipulated agreement at a subsequent reinstatement hearing, if any;

(8) a statement that all records related to the stipulated agreement shall remain permanently in the UPPAC case file; and

(9) a statement reflecting the stipulated agreement's classification under GRAMA.

D. A violation of the terms of a stipulated agreement may result in additional disciplinary action and may affect the reinstatement process.

E(1) A stipulated agreement shall be forwarded to the Board for approval prior to execution by the respondent.

(2) If the Board fails to approve the stipulated agreement, the Executive Secretary shall notify the parties of the decision and the proceedings shall continue from the point under these procedures at which the stipulated agreement was negotiated, as if the stipulated agreement had not been submitted.

(3) Alternatively, if the Board rejects the stipulated agreement, it may provide alternative terms to the Executive Secretary, which would be satisfactory to the Board.

(4) If accepted by the respondent, the stipulated agreement, as modified, would become a final Board administrative action without further Board consideration.

(5) If the terms approved by the Board are rejected, the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if the stipulated agreement had not been submitted.

(6) If the Board approves a stipulated agreement, the approval is a final Board administrative action, effective upon signature by all parties, and the Executive Secretary shall:

(a) notify the parties of the decision; and

(b) direct the appropriate penalties to begin.

F. If, after negotiating a stipulated agreement, a respondent fails to sign or respond to a proffered stipulated agreement within 30 days after the stipulated agreement is mailed, the Executive Secretary shall direct the prosecutor to prepare findings in default consistent with R277-201-7.

R277-201-7. Default Procedures.

A. If a respondent does not respond to a complaint or a stipulated agreement within 30 days from the date the complaint or stipulated agreement is served, the Executive Secretary may issue an order of default against respondent consistent with the following:

(1) the prosecutor shall prepare and serve on the respondent an order of default including:

(a) a statement of the grounds for default; and

(b) a recommended disposition if respondent fails to file a response to a complaint or respond to a proffered stipulated agreement;

(2) ten (10) days following service of the order of default, the prosecutor shall attempt to contact respondent by telephone or electronically;

(3) UPPAC shall maintain documentation of attempts toward written, telephonic or electronic contact;

(4) respondent has 20 days following service of the order of default to respond to UPPAC; and

(5) if UPPAC receives a response from respondent to a default order before the end of the 20 day default period, UPPAC shall allow respondent a final 10 day period to respond to a complaint or stipulated agreement.

B. Except as provided in R277-201-7C, if an order of default is issued, the Executive Secretary may make a recommendation to the Board for revocation or for a suspension of the educator's license for no less than five years.

C. If an order of default is issued, the Executive Secretary shall make a recommendation to the Board for a revocation of the educator's license if the alleged misconduct is conduct identified in 53A-6-501(5)(b).

KEY: teacher licensing, conduct, hearings
July 8, 2015 **Art X Sec 3**
53A-6-306
53A-1-401(3)

R277. Education, Administration.
R277-202. UPPAC Hearing Procedures and Reports.
R277-202-1. 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, by Section 53A-6-306 which directs the Board to adopt rules regarding UPPAC duties and procedures, and 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 establish procedures regarding UPPAC hearings and hearing reports.

C. The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d).

R277-202-2. Scheduling a Hearing.

A(1) Scheduling the hearing: Following receipt of an answer by respondent requesting a hearing:

(a) UPPAC shall select panel members;

(b) the Executive Secretary shall appoint a hearing officer from among a list of hearing officers identified by the state procurement process and approved by UPPAC; and

(c) UPPAC shall schedule the date, time, and place for the hearing.

(2) The Executive Secretary shall schedule a hearing for a date that is not less than 25 days nor more than 180 days from the date the answer is received by the Executive Secretary.

(3) The required scheduling periods may be waived by mutual written consent of the parties or by the Executive Secretary for good cause shown.

B. Change of hearing date:

(1) Any party may request a change of hearing date by submitting a request in writing which shall:

(a) include a statement of the reasons for the request; and

(b) be submitted to the Executive Secretary at least five days prior to the scheduled date of the hearing.

(2) The Executive Secretary shall determine whether the reason stated in the request is sufficient to warrant a change.

(3) If the Executive Secretary finds that the reason for the request for a change of hearing date is sufficient, the Executive Secretary shall promptly notify all parties of the new time, date, and place for the hearing.

(4) If the Executive Secretary does not find the reason for the request for a change of hearing date to be sufficient, the Executive Secretary shall immediately notify the parties that the request has been denied.

(5) The Executive Secretary and the parties may waive the time period required for requesting a change of hearing date for good cause shown.

C. An educator shall be entitled to a hearing on any matter in which an action is recommended, as defined in R277-200-2A.

D. An educator is not entitled to a hearing on a matter in which a disciplinary letter is recommended, as defined in R277-200-2N.

R277-202-3. Appointment and Duties of the Hearing Officer and Hearing Panel.

A(1) Hearing officer: The Executive Secretary shall appoint a hearing officer to chair the hearing panel and conduct the hearing.

(2) The Executive Secretary shall select a hearing officer on a random basis from a list of available contracted hearing officers, subject to availability and conflict of interest.

(3) The Executive Secretary shall provide such information about the case as necessary to determine whether the hearing officer has a conflict of interest and shall disqualify any hearing officer that cannot serve under the Utah Rules of Professional Conduct.

(4) Duties of a hearing officer. A hearing officer:

(a) may require the parties to submit briefs and lists of witnesses prior to the hearing;

(b) presides at the hearing and regulates the course of the proceedings;

(c) administers an oath to witnesses as follows: "Do you swear or affirm that the testimony you will give is the truth?";

(d) may take testimony, rule on questions of evidence, and ask questions of witnesses to clarify specific issues; and

(e) prepares and submits a hearing report to the Executive Secretary at the conclusion of the proceedings in consultation with panel members and the timelines of this rule.

B(1) UPPAC panel members: UPPAC shall select three or more individuals to serve as members of the hearing panel.

(2) As directed by UPPAC, any licensed educator may be used as a panel member, if needed.

(3) The majority of panel members shall be current UPPAC members.

(4) UPPAC shall select panel members on a rotating basis to the extent practicable.

(5) UPPAC shall accommodate each prospective panel member based on the availability of the panel member.

(6) If the respondent is a teacher, at least one panel member shall be a teacher.

(7) If the respondent is a non-teacher licensed educator, at least one panel member shall be a non-teacher licensed educator.

(8) The requirements of this R277-202-3B may be waived only upon the stipulation of both UPPAC and the respondent.

C(1) A UPPAC panel member shall:

(a) assist a hearing officer by providing information concerning professional standards and practices of educators in the respondent's particular field of practice and in the situations alleged;

(b) ask questions of all witnesses to clarify specific issues;

(c) review all evidence and briefs, if any, presented at the hearing;

(d) make a recommendation to UPPAC as to the suggested disposition of a complaint; and

(e) assist the hearing officer in preparing the hearing report.

(2) A panel member should consider only such evidence as has been approved for admission by the hearing officer.

(3) The Executive Secretary may make an emergency substitution of a panel member for cause with the consent of the parties.

(4) The agreement to substitute a panel member shall be in writing.

(5) Parties may agree to a two-member UPPAC panel in an emergency situation.

(6) If the parties do not agree to a substitution or to having a two-member panel, the hearing shall be rescheduled.

D. Disqualification of a hearing officer shall be governed by the following requirements:

(1) A party may request that a hearing officer be disqualified by submitting a written request for disqualification to the Executive Secretary

(2) A request to disqualify a hearing officer shall be submitted to the Executive Secretary at least 15 days before a scheduled hearing.

(3) The Executive Secretary shall review a request described in this R277-202-3D and supporting evidence to determine whether the reasons for the request are substantial and sufficient.

(4) If the Executive Secretary determines that the hearing officer should be disqualified, the Executive Secretary shall appoint a new hearing officer and, if necessary, reschedule the hearing.

(5) A hearing officer may recuse himself from a hearing if, in the hearing officer's opinion, the hearing officer's

participation would violate any of the Utah Rules of Professional Conduct consistent with the Supreme Court Rules of Professional Practice.

(6) If the Executive Secretary denies a request to disqualify a hearing officer, the Executive Secretary shall notify the party within ten days prior to the date of the hearing.

(7) The requesting party may submit a written appeal of the Executive Secretary's denial to the Superintendent no later than five days prior to the hearing date.

(8) If the Superintendent finds that the appeal is justified, the Superintendent shall direct the Executive Secretary to appoint a new hearing officer and, if necessary, reschedule the hearing.

(9) The decision of the Superintendent described in R277-202-3D(8)is final.

(10) If a party fails to file an appeal within the time requirements of R277-202-3D(7), the appeal shall be deemed denied.

(11) If the Executive Secretary fails to meet the time requirements described in R277-202-3D, the request or appeal shall be approved.

E. UPPAC panel members shall be governed by the following requirements:

(1) A UPPAC member shall disqualify himself as a panel member due to any known financial or personal interest, prior relationship, personal and independent knowledge of the persons or issues in the case, or other association that the panel member believes would compromise the panel member's ability to make an impartial decision.

(2) A party may request that a UPPAC panel member be disqualified by submitting a written request to the following:

(a) the hearing officer; or

(b) to the Executive Secretary if there is no hearing officer.

(3) A party shall submit a request described in R277-202-3E(2) no less than 15 days before a scheduled hearing.

(4) The hearing officer, or the Executive Secretary, if there is no hearing officer, shall:

(a) review a request described in R277-202-3E(2) and supporting evidence to determine whether the reasons for the request are substantial and compelling enough to disqualify the panel member; and

(b) if the reasons for the request described in R277-202-3E(2) are substantial and compelling, disqualify the panel member.

(5) If the panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members:

(a) UPPAC shall appoint a replacement; and

(b) the Executive Secretary shall, if necessary, reschedule the hearing.

(6) If a request described in R277-202-3E(2) is denied, the hearing officer or the Executive Secretary if there is no hearing officer, shall notify the party requesting the panel member's disqualification no less than ten days prior to the date of the hearing.

(7) The requesting party may file a written appeal of a denial described in R277-202-3E(6) with the Superintendent no later than five days prior to the hearing date.

(8) If the Superintendent finds that an appeal described in R277-202-3E(7) is justified, the Superintendent shall direct the hearing officer or the Executive Secretary if there is no hearing officer, to replace the panel member.

(9) If a panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members, UPPAC shall agree upon a replacement and the Executive Secretary shall, if necessary, reschedule the hearing.

(10) The decision of the Superintendent described in R277-202-3E(8) is final.

(11) If a party fails to file an appeal within the time requirements of R277-202-3E(7), the appeal shall be deemed denied.

(12) If the hearing officer, or the Executive Secretary if there is no hearing officer, fails to meet the time requirements described in this R277-202-3E, the request or appeal shall be approved.

F. The Executive Secretary may, at the time the Executive Secretary selects a hearing officer or panel member, select an alternative hearing officer or panel member following the process for selecting those individuals.

G. The Executive Secretary may substitute a panel member with an alternative panel member if the Executive Secretary notifies the parties of the substitution.

R277-202-4. Preliminary Instructions to Parties to a Hearing.

A. No later than 25 days before the date of a hearing, the Executive Secretary shall provide the parties with the following information:

(1) date, time, and location of the hearing;

(2) names and LEA affiliations of each panel member, and the name of the hearing officer; and

(3) instructions for accessing these rules.

B. No later than 20 days before the date of the hearing, the respondent and the complainant shall provide the following to the other party and to the hearing officer:

(1) a brief, if requested by the hearing officer containing:

(a) any procedural and evidentiary motions along with the party's position regarding the allegations; and

(b) relevant laws, rules, and precedent;

(2) the name of the person who will represent the party at the hearing;

(3) a list of witnesses expected to be called, including a summary of the testimony which each witness is expected to present;

(4) a summary of documentary evidence that the party intends to submit; and

(5) following receipt of the other party's witness list, a list of anticipated rebuttal witnesses and evidence no later than 10 days prior to the hearing.

C(1) Except as provided in R277-202-4C(1), a party may not present a witness or evidence at the hearing if the witness or evidence has not been disclosed to the other party as required in R277-202-4B.

(2) A party may present a witness or evidence at the hearing even if the witness or hearing has not been disclosed to the other party if:

(a) the parties stipulate to the presentation of the witness or evidence at the hearing; or

(b) the hearing officer makes a determination of good cause to allow it in.

D. If a party fails to comply in good faith with a directive of the hearing officer, including time requirements, the hearing officer may prohibit introduction of the testimony or evidence or take other steps reasonably appropriate under the circumstances.

E. A party shall provide materials to the hearing officer, panel members, and UPPAC as directed by the hearing officer.

R277-202-5. Hearing Parties' Representation.

A. Complainant: The complainant shall be represented by a USOE prosecutor.

B. Respondent: A respondent may represent himself or be represented, at his own cost, by another person.

C. The informant has no right to:

(1) individual representation at the hearing; or

(2) to be present or heard at the hearing unless called as a witness.

D. A respondent shall notify the Executive Secretary in a timely manner and in writing if the respondent chooses to be

represented by anyone other than the respondent.

R277-202-6. Discovery Prior to a Hearing.

A. Discovery is permitted to the extent necessary to obtain relevant information necessary to support claims or defenses, as determined by the hearing officer.

B. Unduly burdensome legalistic discovery may not be used to delay a hearing.

C. A hearing officer may limit discovery:

(1) at the discretion of the hearing officer; or

(2) upon a motion by either party.

D. A hearing officer rules on all discovery requests and motions.

E. The Executive Secretary shall issue a subpoena or other order to secure the attendance of a witness pursuant to Section 53A-6-306(3)(c)(i) if:

(1) requested by either party; and

(2) notice of intent to call the witness has been timely provided as required by R277-202-4.

F. The Executive Secretary shall issue a subpoena to produce evidence if timely requested by either party.

G(1) A party may not present an expert witness report or expert witness testimony at a hearing unless the requirements of R277-202-10 have been met.

(2) A respondent may not subpoena the UPPAC prosecutor or investigator as an expert witness.

R277-202-7. Burden and Standard of Proof for UPPAC Proceedings.

A. In matters other than those involving applicants for licensing, and excepting the presumptions under R277-202-11J, the Board shall have the burden of proving that an action against the license is appropriate.

B. An applicant for licensing has the burden of proving that licensing is appropriate.

C. Standard of proof: The standard of proof in all UPPAC hearings is a preponderance of the evidence.

D. Evidence: The Utah Rules of Evidence are not applicable to UPPAC proceedings.

E. The criteria to decide evidentiary questions shall be:

(1) reasonable reliability of the offered evidence;

(2) fairness to both parties; and

(3) usefulness to UPPAC in reaching a decision.

F. The hearing officer has the sole responsibility to determine the application of the hearing rules and the admissibility of evidence.

R277-202-8. Deportment.

A. Parties, their representatives, witnesses, and other persons present during a hearing shall conduct themselves in an appropriate manner during a hearing, giving due respect to members of the hearing panel and complying with the instructions of the hearing officer.

B. A hearing officer may exclude a person from the hearing room who fails to conduct themself in an appropriate manner and may, in response to extreme instances of noncompliance, disallow the person's testimony.

C. Parties, attorneys for parties, or other participants in the professional practices investigation and hearing process may not harass, intimidate, or pressure witnesses or other hearing participants, nor may they direct others to harass, intimidate, or pressure witnesses or participants.

R277-202-9. Hearing Record.

A. A hearing shall be recorded at UPPAC's expense, and the recording shall become part of the UPPAC case file, unless otherwise agreed upon by all parties.

B. An individual party may, at the party's own expense, make a recording or transcript of the proceedings if the party provides notice to the Executive Secretary.

C. If an exhibit is admitted as evidence, the record shall reflect the contents of the exhibit.

D. All evidence and statements presented at a hearing shall become part of the UPPAC Case File and may not be removed except by direction of the hearing officer or by order of the Board.

E. A party may review a UPPAC case file upon request of the party if the review of the UPPAC case file is performed:

(1) under supervision of the Executive Secretary; and

(2) at the USOE.

R277-202-10. Expert Witnesses in UPPAC Proceedings.

A. A hearing officer may allow testimony by an expert witnesses.

B. A party may call an expert witness at the party's own expense.

C. A party shall provide a hearing officer and the opposing party with the following information at least 15 days prior to the hearing date:

(1) notice of intent of a party to call an expert witness;

(2) the identity and qualifications of each expert witness;

(3) the purpose for which the expert witness is to be called; and

(4) any prepared expert witness report.

D. Defects in the qualifications of expert witnesses, once a minimum threshold of expertise is established, go to the weight to be given the testimony and not to its admissibility.

E. An expert witness who is a member of the complainant's staff or staff of an LEA may testify and have their testimony considered as part of the record in the same manner as the testimony of any other expert.

R277-202-11. Evidence and Participation in UPPAC Proceedings.

A. A hearing officer may not exclude evidence solely because the evidence is hearsay.

B. Each party has a right to call witnesses, present evidence, argue, respond, cross-examine witnesses who testify in person at the hearing, and submit rebuttal evidence.

C. Testimony presented at the hearing shall be given under oath if the testimony is offered as evidence to be considered in reaching a decision on the merits.

D. If a case involves allegations of child abuse or of a sexual offense against a minor, either party, a member of the hearing panel, or the hearing officer, may request that a minor be allowed to testify outside of the respondent's presence.

E. If the hearing officer determines that a minor would suffer undue emotional or mental harm, or that the minor's testimony in the presence of the respondent would be unreliable, the minor's testimony may be admitted in one of the following ways:

F. An oral statement of a victim or witness younger than 18 years of age which is recorded prior to the filing of a complaint shall be admissible as evidence in a hearing regarding the offense if:

(1) no attorney for either party is in the minor's presence when the statement is recorded;

(2) the recording is visual and aural and is recorded;

(3) the recording equipment is capable of making an accurate recording;

(4) the operator of the equipment is competent;

(5) the recording is accurate and has not been altered; and

(6) each voice in the recording is identified.

G. The testimony of a witness or victim younger than 18 years of age may be taken in a room other than the hearing room, and may be transmitted by closed circuit equipment to another room where it can be viewed by the respondent if the following conditions shall be observed:

(1) only the hearing panel members, attorneys for each party, persons necessary to operate equipment, and a person approved by the hearing officer whose presence contributes to the welfare and emotional well-being of the minor may be with the minor during the testimony;

(2) the respondent may not be present during the minor's testimony;

(3) the hearing officer shall ensure that the minor cannot hear or see the respondent;

(4) the respondent shall be permitted to observe and hear, but may not communicate with the minor; and

(5) only hearing panel members, the hearing officer, and the attorneys may question the minor.

H. If the hearing officer determines that the testimony of a minor may be taken consistent with R277-202-11D through G, the minor may not be required to testify in any proceeding where the recorded testimony is used.

I. On the hearing officer's own motion or upon objection by a party, the hearing officer:

(1) may exclude evidence that the hearing officer determines to be irrelevant, immaterial, or unduly repetitious;

(2) shall exclude evidence that is privileged under law applicable to administrative proceedings in Utah unless waived;

(3) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;

(4) may take official notice of any facts that could be judicially noticed under judicial or administrative laws of Utah, or from the record of other proceedings before the agency.

J. Presumptions:

(1) A rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor if the person has:

(a) been found, pursuant to a criminal, civil, or administrative action to have committed a sexual offense against a minor;

(b) failed to defend himself against such a charge when given a reasonable opportunity to do so; or

(c) voluntarily surrendered a license or allowed a license to lapse in the face of a charge of having committed a sexual offense against a minor.

(2) A rebuttable evidentiary presumption exists that a person is unfit to serve as an educator if the person has been found pursuant to a criminal, civil, or administrative action to have exhibited behavior evidencing unfitness for duty, including immoral, unprofessional, or incompetent conduct, or other violation of standards of ethical conduct, performance, or professional competence.

(3) Evidence of behavior described in R277-202-11J(2) may include:

(a) conviction of a felony;

(b) a felony charge and subsequent conviction for a lesser related charge pursuant to a plea bargain or plea in abeyance;

(c) an investigation of an educator's license, certificate, or authorization in another state; or

(d) the expiration, surrender, suspension, revocation, or invalidation of an educator's license for any reason.

R277-202-12. Hearing Report.

A. Within 20 days after the hearing, or within 20 days after the deadline imposed for the filing of any post-hearing materials as permitted by the hearing officer, the hearing officer shall sign and issue a hearing report consistent with the recommendations of the panel that includes:

(1) detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted.

(2) a statement of relevant precedent, if available;

(3) a statement of applicable law and rule;

(4) a recommended disposition of UPPAC panel members which shall be one or an appropriate combination of the following:

(a) dismissal of the complaint;

(b) letter of admonishment;

(c) letter of warning;

(d) letter of reprimand;

(e) probation, to include the following terms and conditions:

(i) it is the respondent's responsibility to petition UPPAC for removal of probation and letter of reprimand from the respondent's CACTUS file;

(ii) a probationary time period or specifically designated indefinite time period;

(iii) conditions that can be monitored;

(iv) if recommended by the panel, a person or entity to monitor a respondent's probation;

(v) a statement providing for costs of probation, if appropriate; and

(vi) whether or not the respondent may work in any capacity in public education during the probationary period;

(f) disciplinary action held in abeyance;

(g) suspension; or

(h) revocation; and

(5) notice that UPPAC's recommendation is subject to approval by the Board and judicial review as may be allowed by law.

B. Findings of fact may not be based solely upon hearsay, and conclusions shall be based upon competent evidence.

C. Any of the consequences described in R277-202-12B may be imposed in the form of a disciplinary action held in abeyance.

D. If the respondent's penalty is held in abeyance, the respondent's penalty is stayed subject to the satisfactory completion of probationary conditions.

E. The decision to impose a consequence in the form of a disciplinary action held in abeyance shall provide for appropriate or presumed discipline should the probationary conditions not be fully satisfied;

F. Processing the hearing report:

(1) A hearing officer shall circulate a draft report to hearing panel members prior to the 20 day completion deadline of the hearing report.

(2) Hearing panel members shall notify the hearing officer of any changes to the report:

(a) as soon as possible after receiving the report; and

(b) prior to the 20 day completion deadline of the hearing report.

(3) The hearing officer shall file the completed hearing report with the Executive Secretary, who shall review the report with UPPAC.

(4) The Executive Secretary may participate in UPPAC's deliberation as a resource to UPPAC in explaining the hearing report and answering any procedural questions raised by UPPAC members.

(5) The hearing officer may confer with the Executive Secretary or the panel members or both while preparing the hearing report.

(6) The hearing officer may request the Executive Secretary to confer with the hearing officer and panel following the hearing.

(7) The Executive Secretary may return a hearing report to a hearing officer if the report is incomplete, unclear, or unreadable, or missing essential components or information.

(8) UPPAC shall vote to uphold the hearing officer's and panel's report if UPPAC finds that:

(a) there are no significant procedural errors;

(b) the hearing officer's recommendations are based upon a reasonable interpretation of the evidence presented at the hearing; and

(c) that all issues explained in the hearing report are adequately addressed in the conclusions of the report.

(9) The Executive Secretary shall forward a copy of the hearing report to the Board for further action after the UPPAC review described in R277-202-12F(8).

(10) The Executive Secretary shall place a copy of the hearing report in the UPPAC case file.

(11) If UPPAC or the Board determines that:

(a) the hearing process had procedural errors;

(b) the hearing officer's report is not based upon a reasonable interpretation of the evidence presented at the hearing;

(c) that the conclusions and findings of the hearing report do not provide adequate guidance to the educator; or

(d) that the findings or conclusions of the hearing report do not adequately address the evidence as outlined in the hearing report, the Board or UPPAC may:

(i) direct the Executive Secretary to schedule the matter for rehearing before a new hearing officer and a new UPPAC panel; or

(ii) direct the Executive Secretary to amend the hearing report to reflect the decision of UPPAC or the Board.

G. The hearing report is a public document under GRAMA after final action is taken in the case, but may be redacted if it is determined that the hearing report contains particular information, the dissemination of which is otherwise restricted under the law.

H. A respondent's failure to comply with the terms of a final disposition may result in additional discipline against the educator license.

I. If a hearing officer fails to satisfy the hearing officer's responsibilities under this rule, the Executive Secretary may:

(1) notify the Utah State Bar of the failure;

(2) reduce the hearing officer's compensation consistent with the failure;

(3) take timely action to avoid disadvantaging either party; or

(4) preclude the hearing officer from further employment by the Board for UPPAC purposes.

J. The Executive Secretary may waive the deadlines within this R277-202-12 if the Executive Secretary finds good cause.

K. All criteria of letters of warning and reprimand, probation, suspension and revocation shall also apply to the comparable sections of the final hearing reports.

R277-202-13. Default.

A(1) The Executive Secretary may prepare an order of default if:

(a) the respondent fails to attend or participate in a properly scheduled hearing after receiving proper notice; or

(b) the hearing officer recommends default as a sanction as a result of misconduct by the respondent or his representative during the course of the hearing process.

(2) The hearing officer may determine that the respondent has failed to attend a properly scheduled hearing if the respondent has not appeared within 30 minutes of the appointed time for the hearing to begin, unless the respondent shows good cause for failing to appear in a timely manner.

B. The recommendation of default may be executed by the Executive Secretary following all applicable time periods, without further action by UPPAC.

C. An order of default may result in a recommendation to the Board for revocation or for a suspension of no less than five years.

D. An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in 53A-6-501(5)(b).

R277-202-14. Rights of Victims at Hearings.

A. If the allegations that gave rise to the underlying allegations involve abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to:

(1) advise the alleged victim that a hearing has been scheduled; and

(2) notify the alleged victim of the date, time, and location of the hearing.

B. An alleged victim entitled to notification of a hearing shall be permitted, but is not required, to attend the hearing.

KEY: hearings, reports, educators
July 8, 2015 **Art X Sec 3**
53A-6-306
53A-1-401(3)

R277. Education, Administration.
R277-203. Request for Licensure Reinstatement and Reinstatement Procedures.
R277-203-1. 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, by Section 53A-6-306 which directs the Board to adopt rules regarding UPPAC duties and procedures, and 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 establish procedures regarding educator license reinstatement.

C. The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d).

R277-203-2. Application for Licensing Following Denial or Loss of License.

A(1) An individual who has been denied a license or lost the individual's license through suspension, or through surrender of a license or allowing a license to lapse in the face of an allegation of misconduct, may request a review to consider reinstatement of a license.

(2) A request for review described in R277-203-2A(1)shall:

(a) be in writing;

(b) be transmitted to the UPPAC Executive Secretary; and

(c) have the following information:

(i) name and address of the individual requesting review;

(ii) the action being requested;

(iii) specific evidence and documentation of compliance with terms and conditions of any remedial or disciplinary requirements or recommendations from UPPAC or the Board;

(iv) reason(s) that the individual seeks reinstatement; and

(v) signature of the individual requesting review.

B(1) The Executive Secretary shall review the request with UPPAC.

(2) If UPPAC determines that the request is incomplete or invalid:

(a) the Executive Secretary shall deny the request; and

(b) notify the individual requesting reinstatement of the denial.

(3) If UPPAC determines that the request of an individual described in R277-203-2A is complete, timely, and appropriate, UPPAC shall schedule and hold a hearing as provided under R277-203-3.

C(1) Burden of Persuasion: The burden of persuasion at a reinstatement hearing shall fall on the individual seeking the reinstatement.

(2) An individual requesting reinstatement of a suspended license shall:

(a) show sufficient evidence of compliance with any conditions imposed in the past disciplinary action;

(b) provide sufficient evidence to the reinstatement hearing panel that the educator will not engage in recurrences of the actions that gave rise to the suspension and that reinstatement is appropriate;

(c) undergo a criminal background check consistent with Utah law and R277-517; and

(d) provide materials for review by the hearing panel that demonstrate the individual's compliance with directives from UPPAC or the Board found in petitioner's original stipulated agreement or hearing report.

(3) An individual requesting licensing following a denial shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable, when requesting reinstatement.

D. An individual whose license has been suspended or revoked in another state shall seek reinstatement of the individual's license in the other state before a request for a reinstatement hearing may be approved.

R277-203-3. Reinstatement Hearing Procedures.

A. A hearing officer shall:

(1) preside over a reinstatement hearing; and

(2) rule on all procedural issues during the reinstatement hearing as they arise.

B. A hearing panel, comprising individuals as set forth in R277-202-3(B), shall:

(1) hear the evidence; and

(2) along with the prosecutor and hearing officer, question the individual seeking reinstatement regarding the appropriateness of reinstatement.

C. An individual seeking reinstatement may:

(a) be represented by counsel; and

(b) may present evidence and witnesses.

D. A party may present evidence and witnesses consistent with R277-202.

E. A hearing officer of a reinstatement hearing shall direct one or both parties to explain the background of a case to panel members at the beginning of the hearing to provide necessary information about the initial misconduct and subsequent UPPAC and Board action.

F. An individual seeking reinstatement shall present documentation or evidence that supports reinstatement.

G. The USOE, represented by the UPPAC prosecutor, shall present any evidence or documentation that explains and supports USOE's recommendation in the matter.

H. Other evidence or witnesses may be presented by either party and shall be presented consistent with R277-202.

I. The individual seeking reinstatement shall:

(1) focus on the individual's actions, rehabilitative efforts, and performance following license denial or suspension;

(2) explain item by item how each condition of the hearing report or stipulated agreement was satisfied;

(3) provide documentation in the form of evaluations, reports, or plans, as directed by the hearing report or stipulated agreement, of satisfaction of all required and outlined conditions;

(4) be prepared to completely and candidly respond to the questions of the UPPAC prosecutor and hearing panel regarding:

(a) the misconduct that caused the license suspension;

(b) subsequent rehabilitation activities;

(c) counseling or therapy received by the individual related to the original misconduct; and

(d) work, professional actions, and behavior between the suspension and reinstatement request;

(5) present witnesses and be prepared to question witnesses (including counselors, current employers, support group members) at the hearing who can provide substantive corroboration of rehabilitation or current professional fitness to be an educator;

(6) provide copies of all reports and documents to the UPPAC prosecutor and hearing officer at least five days before a reinstatement hearing; and

(7) bring eight copies of all documents or materials that an individual seeking reinstatement plans to introduce at the hearing.

J. The UPPAC prosecutor, the hearing panel, and hearing officer shall thoroughly question the individual seeking reinstatement as to the individual's:

(1) underlying misconduct which is the basis of the sanction on the educator's license;

(2) specific and exact compliance with reinstatement requirements;

(3) counseling, if required for reinstatement;

(4) specific plans for avoiding previous misconduct; and

(5) demeanor and changed understanding of petitioner's professional integrity and actions consistent with R277-515.

K. If the individual seeking reinstatement sought counseling as described n R277-203-3J(3), the individual shall state, under oath, that he provided all relevant information and background to his counselor or therapist.

L. A hearing officer shall rule on procedural issues in a reinstatement hearing in a timely manner as they arise.

M. No more than 20 days following a reinstatement hearing, a hearing officer, with the assistance of the hearing panel, shall:

(1) prepare a hearing report in accordance with the requirements set forth in R277-203-5; and

(2) provide the hearing report to the UPPAC Executive Secretary.

N. The Executive Secretary shall submit the hearing report to UPPAC at the next meeting following receipt of the hearing report by the Executive Secretary.

O. UPPAC may do the following upon receipt of the hearing report:

(1) accept the hearing panel's recommendation as prepared in the hearing report;

(2) amend the hearing panel's recommendation with conditions or modifications to the hearing panel's recommendation which shall be:

(a) directed by UPPAC;

(b) prepared by the UPPAC Executive Secretary; and

(c) attached to the hearing report; or

(3) reject the hearing panel's recommendation.

P. After UPPAC makes a recommendation on the hearing panel report, the UPPAC recommendation will be forwarded to the Board for final action on the individual's reinstatement request.

Q. If the Board denies an individual's request for reinstatement, the individual shall wait at least twenty four (24) months prior to filing a request for reinstatement again, unless a different time is provided in the hearing panel recommendation or in the Board's motion to deny.

R277-203-4. Rights of a Victim at a Reinstatement Hearing.

A. If the allegations that gave rise to the underlying suspension involve abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to notify the victim or the victim's family of the reinstatement request.

B. UPPAC's notification shall:

(1) advise the victim that a reinstatement hearing has been scheduled;

(2) notify the victim of the date, time, and location of the hearing;

(3) advise the victim of the victim's right to be heard at the reinstatement hearing; and

(4) provide the victim with a form upon which the victim can submit a statement for consideration by the hearing panel.

C. A victim entitled to notification of the reinstatement proceedings shall be permitted:

(1) to attend the hearing; and

(2) to offer the victim's position on the educator's reinstatement request, either by testifying in person or by submitting a written statement.

D. A victim choosing to testify at a reinstatement hearing shall be subject to reasonable cross examination in the hearing officer's discretion.

E. A victim choosing not to respond in writing or appear at the reinstatement hearing waives the victim's right to participate in the reinstatement process.

R277-203-5. Reinstatement Hearing Report.

A. A hearing officer shall provide the following in a reinstatement hearing report:

(1) provide a summary of the background of the original disciplinary action;

(2) provide adequate information, including summary statements of evidence presented, documents provided, and petitioner's testimony and demeanor for both UPPAC and the Board to evaluate petitioner's progress and rehabilitation since petitioner's original disciplinary action;

(3) specifically address petitioner's appropriateness and fitness to be a public school educator again; and

(4) provide a statement that the hearing panel's recommendation to UPPAC was unanimous or provide the panel's vote concerning reinstatement.

B(1) The hearing panel report is a public document under GRAMA following the conclusion of the reinstatement process unless specific information or evidence contained therein is protected by a specific provision of GRAMA, or another provision of state or federal law.

(2) The Executive Secretary shall add the hearing panel report to the UPPAC case file.

C. If a license is reinstated, an educator's CACTUS file shall be updated to:

(1) remove the flag;

(2) show that the educator's license was reinstated; and

(3) show the date of formal Board action reinstating the license.

D. The Board decision as to whether to accept the recommendation of the reinstatement hearing report is within the Board's sole discretion.

KEY: licensure, reinstatement, hearings; license reinstatement

July 8, 2015 **Art X Sec 3**
53A-6-306
53A-1-401(3)

R277. Education, Administration.
R277-204. Utah Professional Practices Advisory Commission Criminal Background Review.
R277-204-1. 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, by Section 53A-6-306 which directs the Board to adopt rules regarding UPPAC duties and procedures, and 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 establish procedures for an applicant to proceed toward licensing or be denied to continue when an application or recommendation for licensing or renewal identifies offenses in the applicant's criminal background check.

C. The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d).

R277-204-2. Initial Submission and Evaluation of Information.

A. The Executive Secretary shall review all information received as part of a criminal background review.

B. The Executive Secretary may request any of the following information from an educator in determining how to process a criminal background review:

(1) a letter of explanation for each reported offense that details the circumstances, the final disposition, and any explanation for the offense the applicant may want to provide UPPAC, including any advocacy for approving licensing;

(2) official documentation regarding each offense, including court records and police reports for each offense, or if both court records and police reports are not available, a letter on official police or court stationery from the appropriate court or police department involved, explaining why the records are not available; and

(3) any other information that the Executive Secretary considers relevant under the circumstances in a criminal background review.

C(1) The Executive Secretary may only process a criminal background review after receipt of all letters of explanation and documentation requested in good faith by the Executive Secretary.

(2) The Executive Secretary shall provide timely notice if the information provided by an applicant is incomplete.

D. If an applicant is under court supervision of any kind, including parole, informal or formal probation, or plea in abeyance, the Executive Secretary may not process the background check review until the Executive Secretary receives proof that court supervision has terminated.

E. It is the applicant's sole responsibility to provide any requested material to the Executive Secretary.

F. The Executive Secretary shall process criminal background reviews subject to the following criteria:

(1) the Executive Secretary may clear a criminal background review without further action if the arrest, citation, or charge resulted in a dismissal, unless the dismissal resulted from a plea in abeyance agreement;

(2) the Executive Secretary shall forward a recommendation to clear the following criminal background reviews directly to the Board:

(a) singular offenses committed by an applicant, excluding offenses identified in R277-204-2F(3), if the arrest occurred more than two years prior to the date of submission to UPPAC for review;

(b) more than two offenses committed by the applicant, excluding offenses identified in R277-204-2F(3), if at least one arrest occurred more than five years prior to the date of submission to UPPAC for review; or

(c) more than two offenses committed by the applicant, excluding offenses identified in R277-204-2F(3), if all arrests for the offenses occurred more than 10 years prior to the date of submission to UPPAC for review;

(3) the Executive Secretary shall forward the following criminal background reviews to UPPAC, which shall make a recommendation to the Board for final action:

(a) convictions or pleas in abeyance for any offense where the offense date occurred less than two years prior to the date of submission to UPPAC;

(b) convictions or pleas in abeyance for multiple offenses where all offenses occurred less than five years prior to the date of submission to UPPAC;

(c) convictions or pleas in abeyance for felonies;

(d) arrests, convictions, or pleas in abeyance for sex-related or lewdness offenses;

(e) convictions or pleas in abeyance for alcohol-related offenses or drug-related offenses where the offense date was less than five years prior to the date of submission to UPPAC;

(f) convictions or pleas in abeyance involving children in any way; and

(g) convictions or pleas in abeyance involving any other matter which the Executive Secretary determines, in his discretion, warrants review by UPPAC and the Board; and

(4) If the criminal background review involves a conviction for an offense requiring mandatory revocation under 53A-6-501(5)(b) or meeting the definition of sex offender under 77-41-102(16), the Executive Secretary shall forward a recommendation directly to the Board that clearance be denied.

G. The Executive Secretary shall use reasonable discretion to interpret the information received from the Bureau of Criminal Identification to comply with the provisions of this rule.

H. In Board review of recommendations of the Executive Secretary and UPPAC for criminal background checks, the following shall apply:

(1) the Board may uphold any recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of USOE;

(2) the Board may substitute its own judgment in lieu of the recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of USOE; and

(3) if the Board chooses to substitute its own judgment in a criminal background review, the Board shall adopt findings articulating its reasoning.

I. If a criminal background review arises as a result of conduct that was cleared in a prior criminal background review by the Executive Secretary, UPPAC, or the Board, the prior action shall be deemed final, and the Executive Secretary shall clear the criminal background review.

J. If a criminal background review results in an applicant's denial, the applicant may request to be heard, and to have the matter reconsidered by the Board, consistent with the requirements of Section 53A-15-1506(1)(c).

KEY: educator license, background review, background check
July 8, 2015 **Art X Sec 3**
53A-6-306
53A-1-401(3)

R277. Education, Administration.
R277-205. Alcohol Related Offenses.
R277-205-1. 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, by Section 53A-6-306 which directs the Board to adopt rules regarding UPPAC duties and procedures, and 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 establish procedures for disciplining educators regarding alcohol related offenses.

C. The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d).

R277-205-2. Action by the Board if a Licensed Educator Has Been Convicted of an Alcohol Related Offense.

A. If as a result of a background check, it is discovered that a licensed educator has been convicted of an alcohol related offense in the previous five years, UPPAC shall adhere to the following minimum conditions:

(1) One conviction--a letter shall be sent to the educator informing the educator of the provisions of this rule;

(2) Two convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical assessment and recommended treatment following the second conviction;

(3) If the most recent conviction was more than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of warning to the educator;

(4) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of reprimand to the educator and a letter to the district, if employed;

(5) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical assessment and recommended treatment, UPPAC or the Board may initiate an investigation of the educator based upon the alcohol offenses;

(6) Three convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical assessment and recommended treatment following the third conviction;

(7) If the most recent conviction was more than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of warning to the educator;

(8) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of reprimand to the educator and send a copy of the letter of reprimand to the educator's employer; and

(9) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical assessment and recommended treatment, UPPAC shall recommend suspension of the educator's license to the Board, subject to the educator's right to a hearing under R277-202.

B. This rule does not preclude more serious or additional action by the Board against an educator for other related or unrelated offenses.

R277-205-3. Board Action Toward Individuals Who Do Not Hold Licensing.

If as a result of a background check, it is discovered that an individual inquiring about educator licensing, seeking information about educator licensing, or placed in a public school for any purpose requiring a background check, has been convicted of an alcohol related offense within five years of the date of the background check, the following minimum conditions shall apply:

A. one conviction--the individual shall be denied Board clearance for a period of one year from the date of the arrest;

B. two convictions--the individual shall be denied Board clearance for a period of two years from the date of the most recent arrest and the applicant shall present documentation of clinical assessment and recommended treatment before Board clearance shall be considered; and

C. three convictions-the Board may require the applicant to present documentation of clinical assessment and recommended treatment and may deny clearance.

KEY: educators, disciplinary actions, alcohol, background check
July 8, 2015

Art X Sec 3
53A-6-306
53A-1-401(3)

R277. Education, Administration.
R277-206. Drug Related Offenses.
R277-206-1. 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, by Section 53A-6-306 which directs the Board to adopt rules regarding UPPAC duties and procedures, and 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 establish procedures for disciplining educators regarding drug related offenses.

C. The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d).

R277-206-2. Action by the Board if a Licensed Educator Has Been Convicted of a Drug Related Offense.

A. If as a result of a background check, it is discovered that a licensed educator has been convicted of a drug related offense in the previous ten years, the following minimum conditions shall apply:

(1) one conviction--a letter shall be sent to the educator informing the educator of the provisions of this rule;

(2) two convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical assessment and recommended treatment following the second conviction;

(3) If the most recent conviction was more than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, the Board shall send a letter of warning to the educator;

(4) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, the Board shall send a letter of reprimand to the educator and a letter to the district with notice of treatment;

(5) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical treatment, UPPAC or the Board may initiate an investigation of the educator based upon the drug offenses;

(6) Three convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical treatment following the third conviction;

(7) If the most recent conviction was more than five years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, the Board shall send a letter of warning to the educator;

(8) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, the Board shall send a letter of reprimand to the educator and send a copy of the letter of reprimand to the educator's employer; and

(9) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical assessment and recommended treatment, UPPAC shall recommend suspension of the educator's license to the Board, subject to the educator's right to a hearing under R277-202.

B. This rule does not preclude more serious or additional action by the Board against an educator if circumstances warrant it.

R277-206-3. Board Action Towards an Individual Who Does Not Hold Licensing.

A. If as a result of a background check, it is discovered that an applicant has been convicted of a drug related offense within ten years of the date of the background check, the following minimum conditions shall apply:

(1) one conviction--the individual shall be denied clearance for a period of one year from the date of the conduct giving rise to the charge;

(2) two convictions--the individual shall be denied clearance for a period of three years from the date of the conduct giving rise to the most recent charge and the applicant shall present documentation of clinical assessment and recommended treatment before clearance shall be considered; and

(3) three convictions--the individual shall be denied clearance for a period of five years from the date of the conduct giving rise to the most recent charge.

B. UPPAC or the Board may require the applicant to present documentation of clinical assessment and recommended treatment and may recommend denial of clearance.

KEY: educators, disciplinary actions, drug offenses, background checks
July 8, 2015 **Art X Sec 3**
53A-6-306
53A-1-401(3)

R277. Education, Administration.
R277-417. Prohibiting LEAs and Third Party Providers from Offering Incentives or Reimbursements for Enrollment or Participation.
R277-417-1. Definitions.

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

B. "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:

(1) money greater than $10; or

(2) an item of value greater than $10.

C. "Individualized Education Program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with the Utah Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA).

D. "LEA" or "local education agency" means a school district or charter school.

E(1) "Reimbursement" means the payment of money or provision of other item of value greater than $10 offered as payment or compensation to a student or to a parent or guardian for:

(a) a student's enrollment in an LEA; or

(b) a student's participation in an LEA's program.

(2) "Reimbursement" 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:

(a) the expenditure is for an item that will be the property of the LEA; and

(b) the expenditure was authorized by the LEA.

F. "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.

G. "Third party provider" means a third party who provides educational services on behalf of an LEA.

R277-417-2. 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 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 provide standards and procedures for prohibiting LEAs and third party providers from offering incentives for student enrollment.

R277-417-3. LEA and Third Party Provider Use of Public Funds for Incentives and Reimbursements.

A. Except as provided in R277-417-3B, an LEA or a third party provider may not use public funds, as defined under Section 51-7-3(26), to provide the following to a student, parent or guardian, individual, or group of individuals:

(1) an incentive for a student's:

(a) enrollment in an LEA; or

(b) participation in an LEA's program; or

(2) a referral bonus for a student's:

(a) enrollment in an LEA; or

(b) participation in an LEA's program.

B. An LEA or third party provider may use public funds to provide an incentive to a student or the student's parent or guardian if the incentive is:

(1) provided to all students enrolled in the LEA; and

(2) part of a school uniform used by the LEA.

C. Except as provided in R277-417-3D, an LEA or third party provider may not use public funds to provide a reimbursement to a student or the student's parent or guardian for:

(1) curriculum;

(2) instruction;

(3) private lessons;

(4) technology; or

(5) other educational expense.

D. An LEA or third party provider may use public funds to provide a reimbursement to a student or the student's parent or guardian if:

(1) the reimbursement is required to be paid or provided pursuant to an IEP or Section 504 accommodation plan that is approved by the LEA;

(2) for a student in Kindergarten through grade 6, the reimbursement is provided to a student's parent or guardian for internet accessibility; or

(3) for a student in grade 7 through grade 12:

(a) the reimbursement is provided to a student or student's parent or guardian for internet access in accordance with the fee waiver policy requirements of R277-407-6; and

(b) failure to provide the reimbursement described in R277-417-3D(3)(a) will cause economic hardship.

E. An LEA or third party provider shall ensure that an item purchased, rented, 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:

(1) the LEA or third party provider purchases an item; and

(2) provides the item to a student or to the student's parent or guardian.

F. An LEA shall establish monitoring 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 R277-417.

G. The Board or the Superintendent may require an LEA to repay public funds to the Superintendent if:

(1) an LEA or an LEA's third party provider fails to comply with the provisions of this R277-417; and

(2) the repayment is made in accordance with the procedures established in R277-114.

KEY: student, enrollment, incentives
July 8, 2015 **Art X Sec 3**
53A-1-401(3)

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 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 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 53A, Chapter 15, Part 15, Background Checks;

(b) 53A-1a-512.5;

(c) 53A-6-401;

(d) R277-516; and

(e) R277-520;

(7) integration of the Utah Core Standards in the nontraditional program's student instruction consistent with Section 53A-1-402(1)(a) and R277-700;

(8) compliance with statewide assessment administration requirements by the LEA, as required under:

(a) Title 53A, Chapter 1, Part 6, 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**
53A-1-401(3)

R277. Education, Administration.
R277-419. Pupil Accounting.
R277-419-1. Definitions.

A. "Aggregate Membership" means the sum of all days in membership during a school year for eligible students enrolled in a public school.

B. "Approved CTE course" means a course approved by the Board within the Career and Technical Education (CTE) Pathways in the eight areas of study.

C. "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 motar 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.

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

E. "Brick and mortar school" means a traditional school or traditional school building.

F. "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.

G. "Compulsory school age" means:

(1) a person who is at least five years old and no more than 17 years old on or before September 1;

(2) 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;

(3) 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.

H. "Continuing enrollment measurement" means a methodology used to establish a student's continuing membership or enrollment status for purposes of generating membership days.

I. "Data Clearinghouse" means the electronic data collection system used by the USOE 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.

J. "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.

K. "Electronic high school" means a rigorous program offering 9-12 grade level courses delivered over the Internet and coordinated by the USOE.

L. "Eligible student" means a student who satisfies the criteria for enrollment in an LEA, set forth in R277-419-5.

M. "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; or

(c) an English learner plan.

N. "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.

O. "Home school" means the formal instruction of children in their homes instead of in an LEA. The differences between a home school student and an online student include:

(1) an online student may receive instruction at home, but the student is enrolled in a public school that follows state Core Standards;

(2) an online student is:

(a) subject to laws and rules governing state and federal mandated tests; and

(b) included in accountability measures;

(3) an online student receives instruction under the direction of highly qualified, licensed teachers who are subject to the licensure requirements of R277-502 and fingerprint and background checks consistent with R277-516 and R277-520;

(4) 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 53A, Chapter 17a, Minimum School Program Act.

P. "Home school course" means instruction:

(1) 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

(2) not supervised or directed by an LEA.

Q. "Influenza pandemic (pandemic)" means a global outbreak of serious illness in people. It 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.

R. "ISI-1" means a student who receives 1 to 59 minutes of YIC related services during a typical school day.

S. "ISI-2" means a student who receives 60 to 179 minutes of YIC related services during a typical school day.

T. "LEA" or "local education agency "means a school district or charter school.

U. "Membership" means a public school student is on the current roll of a public school class or public school as of a given date:

(1) 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.

(2) 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.

V. "Minimum School Program (MSP)" means the same as that term is defined in Section 53A-17a-103.

W. "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.

X. "Online learning program" means a program:

(1) that is under the direction of an LEA; and

(2) in which students receive educational services primarily over the internet.

Y. "Private school" means an educational institution that:

(1) is not an LEA;

(2) is owned or operated by a private person, firm, association, organization, or corporation; and

(3) is not subject to governance by the Board consistent with the Utah Constitution.

Z. "Program" means a program within a school that is designed to accomplish a predetermined curricular objective or set of objectives.

AA. "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.

BB. "Retained senior" means a student beyond the general compulsory education 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 cohort has graduated due to:

(1) sickness;

(2) hospitalization;

(3) pending court investigation or action; or

(4) other extenuating circumstances beyond the control of the student.

CC. "S1" means the record maintained by the USOE containing individual student demographic and school membership data in a Data Clearinghouse file.

DD. "S2" means the record maintained by the USOE containing individual student data related to participation in a special education program in a Data Clearinghouse file.

EE. "S3" means the record maintained by the USOE containing individual student data related to participation in a YIC program in a Data Clearinghouse file.

FF. "School" means an educational entity governed by an LEA that:

(1) is supported with public funds;

(2) includes enrolled or prospectively enrolled full-time students;

(3) employs licensed educators as instructors that provide instruction consistent with R277-502-5;

(4) has one or more assigned administrators;

(5) is accredited consistent with R277-410-3 and

(6) administers required statewide assessments to the school's students.

GG. "School day" means:

(1) 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 following constraints described in R277-419-1FF(2).

(2)(a) 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.

(b) Each day that satisfies hourly instruction time shall count as a school day, regardless of the number or length of class periods or whether or not particular classes meet.

HH. "School membership" means membership other than in a special education or YIC program in the context of the Data Clearinghouse.

II. "School of enrollment" means the school:

(1) where a student takes a majority of the student's classes;and

(2) designated to receive the student's weighted pupil unit.

JJ. "School year" means the 12 month period from July 1 through June 30.

KK. "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.

LL. "Self-Contained Resource Attendance Management (SCRAM)" means a record that tracks the aggregate membership of public school special education students for state funding purposes.

MM. "SEOP/Plan for College and Career Readiness" means a student education occupation plan for College and Career Readiness that 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 school board and local charter school governing 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.

NN. "SSID" means Statewide Student Identifier.

OO. "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

PP. "UCAT" means any public institution of higher education affiliated with the Utah College of Applied Technology.

QQ. "Unexcused absence" means an absence charged to a student when the student was not physically present at school at any of the times attendance checks were made in accordance with Section R277-419-4B(3) and 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 53A-11-101.

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

SS. "Year End upload" means the Data Clearinghouse file due annually by July 15 from LEAs to the USOE for the prior school year.

TT. "Youth in Custody (YIC)" means a person under the age of 21 who is:

(1) in the custody of the Department of Human Services;

(2) 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

(3) being held in a juvenile detention facility.

R277-419-2. 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 State Board of Education, by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities, Section 53A-1-402(1)(e) which directs the Board to establish rules and standards regarding cost-effectiveness, school budget formats and financial, statistical, and student accounting requirements, and Section 53A-1-404(2) which directs that local school board auditing standards shall include financial accounting and student accounting. This rule is further authorized by Section 53A-1-301(3)(d) which directs the Superintendent to present to the Governor and the Legislature data on the funds allocated to LEAs, and Section 53A-3-404 which requires annual financial reports from all school districts.

B. The purpose of this rule is to specify pupil accounting procedures used in apportioning and distributing state funds for education.

R277-419-3. Schools and Programs.

A. Schools

(1) The Superintendent shall provide to each school the appropriate accountability reports and other state-mandated reports for the school type and grade range.

(2) All schools shall submit a Clearinghouse report to the Superintendent.

(3) All schools shall employ at least one licensed educator and one administrator.

B. Programs

(1) Students who are enrolled in a program are considered members of a public school.

(2) The Superintendent may not require programs to receive separate accountability and other state-mandated reports.

(3) Students 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.

(4) Courses taught at programs shall be credited to the appropriate school of enrollment.

C. Private school or program

(1) Private schools or programs may not be required to submit data to the USOE.

(2) Private schools or programs may not receive annual accountability reports.

R277-419-4. Minimum School Days, LEA Records, and Audits.

A. Minimum standards for school days

(1)(a) Except as provided in R277-419-4(1)(b), an LEA shall conduct school for at least 990 instructional hours and 180 school days each school year.

(b) an LEA may seek an exception to the number of school days described in R277-419-4A(1)(a) for individual students and schools as provided for in R277-419-8.

(2) An LEA may offer the required school days and hours described in R277-419-4A(1)(a) at any time during the school year, consistent with the law.

(3) Health Department Emergency or Pandemic

(a) The Board may waive the school day and hour requirement, following a vote of Board members, 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) In the event that the Board is unable to meet in a timely manner, the Superintendent may issue a waiver following consultation with a majority of Board members.

(c) The waiver may be for a designated time period, for specific areas, or for a specific LEA in the state, as determined by the health department directive.

(d) The waiver may allow an LEA to continue to receive state funds for pupil services and reimbursements.

(e) The waiver by the Board or Superintendent shall direct an LEA to provide as much notice to students and parents of the suspension of school services, as is reasonably possible.

(f) The waiver 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.

(g) 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.

(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 is encouraged to provide adequate school days and hours in the LEA's yearly calendar to avoid the necessity of a waiver request except in the most extreme circumstances.

B. Official records

(1) 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).

(2) 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 R277-419-4B(2)(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.

(3) An LEA shall ensure that each school within the LEA completes a minimum of one attendance check each school day.

C. Due to school activities requiring schedule and program modification during the first days and last days of the school year:

(1) 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;

(2) 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

(3) schools shall continue instructional activities throughout required calendared instruction days.

D. Audits

(1) 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 Finance and Statistics Section of the USOE.

(2) 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 and published under the heading of APP C-5.

(3) 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 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.

R277-419-5. Student Membership.

A. Eligibility

(1) 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 is determined using one of the continuing enrollment measurements described in R277-419-5A(2);

(d) is a resident of Utah as defined under Sections 53A-2-201 through 213;

(e) is of compulsory 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, illness, surgery, suspension, pregnancy, pending court investigation or action; or

(II) 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 R277-700-6C(7); 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, other than the Utah Electronic High School, 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.

(2) 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 R277-419-5A(1)(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 R277-419-5A(1)(c).

(3) The continuing enrollment measurement described in R277-419-5A(2)(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.

(4) 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.

5(a) An LEA desiring to generate membership for student enrollment in courses outlined in R277-419-5A(1)(f)(iii), or to seek a waiver from a requirement(s) in R277-419-5A(1)(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.

B. Reporting

(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.

C. Calculations

(1) 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.

(2) 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.

(3) For students in grade 1, an LEA shall adjust the first term of the formula to use 810 hours as the denominator.

(4) For students in kindergarten, an LEA shall adjust the first term of the formula to use 450 hours as the denominator.

D. Constraints

(1) The sum of regular plus self-contained special education and self-contained YIC membership days may not exceed 180 days.

(2) The sum of regular and resource special education membership days may not exceed 360 days.

(3) The sum of regular, ISI-1 and ISI-2 YIC membership days may not exceed 360 days.

E. Exceptions - An LEA may also count a student in membership for the equivalent in hours of up to:

(1) one period each school day, if the student has been:

(a) 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

(b) participating in one or more extracurricular activities under R277-438, but has otherwise been exempted from school attendance under 53A-11-102 for home schooling ;

(2) 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;

(3) all periods each school day, if the student is enrolled in:

(a) a concurrent enrollment program that satisfies all the criteria of R277-713;

(b) 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;

(c) a foreign exchange student program under 53A-2-206(8);

(d) Electronic High School courses for credit which meet curriculum requirements, consistent with the student's SEOP/Plan for College and Career Readiness and following written school counselor approval; or

(e) a school operated by an LEA under a Utah Schools for the Deaf and the Blind IEP provided that:

(i) the student may only be counted in (S1) membership and may not have an S2 record; and

(ii) the S2 record for the student is submitted by the Utah Schools for the Deaf and the Blind.

R277-419-6. High School Completion Status.

A. An LEA shall account for the final status of all students who enter high school (grades 10-12) 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:

(1) graduates are students who earn a basic high school

diploma by satisfying one of the options consistent with R277-705-4B or out-of-school youths of school age who complete adult education secondary diploma requirements consistent with R277-733;

(2) other students are completers who have not satisfied Utah's requirements for graduation but who:

(a) are in membership in twelfth grade on the last day of the school year; and

(b)(i) meet any additional criteria established by an LEA consistent with its authority under R277-705-4C;

(ii) meet any criteria established for special education students under Utah State Board of Education Special Education Rules, Revised, August 2007, and available from the USOE, and R277-700-8E; or

(iii) pass a General Educational Development (GED) test with a designated score;

(3) continuing students are students who:

(a) transfer to higher education, without first obtaining a diploma;

(b) transfer to the Utah Center for Assistive Technology (UCAT) without first obtaining a diploma; or

(c) age out of special education;

(4) dropouts are students who:

(a) leave school with no legitimate reason for departure or absence;

(b) withdraw due to a situation so serious that educational services cannot be continued even under the conditions of R277-419-5A(1)(f)(ii);

(c) are expelled and do not re-enroll in another public education institution; or

(d) transfer to adult education;

(5) an LEA shall exclude a student from the cohort calculation if the student:

(a) transfers out of state, out of the country, to a private school, or to home schooling;

(b) is a U.S. citizen who enrolls in another country as a foreign exchange student;

(c) is a non-U.S. citizen who enrolls in a Utah public school as a foreign exchange student under Section 53A-2-206 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; or

(d) dies.

B(1) An LEA shall report the high school completion status or exit code of each student to the Superintendent as specified in Data Clearinghouse documentation.

(2) High School completion status or exit codes for each student are due to the Superintendent by Year End upload for processing and auditing.

(3) Except as provided in R277-419-6B(4), an LEA shall submit any further updates of completion status or exit codes by October 1 following the end of the student's graduating cohort pursuant to R277-484-3, Deadlines for Data Submission.

(4) An LEA with an alternative school year schedule where all of the students have a summer break in a season other than summer, shall submit the LEA's data by the next complete data submission update, following the LEA's summer break, as defined in R277-484-3.

C(1) The Superintendent shall report a graduation rate for each school, LEA, and the state.

(2) The Superintendent shall calculate the graduation rates in accordance with the No Child Left Behind Act of 2001 (NCLB) and the NCLB High School Graduation Rate: Non-Regulatory Guidance.

(3) The Superintendent shall include a student in a school's graduation rate if:

(a) the school was the last school the student attended before the student's expected graduation date; and

(b) if the student does not meet any exclusion rules as stated in R277-419-6A(5).

(4) The last school a student attended will be determined by the student's exit dates as reported to Data Clearinghouse.

(5) A student's graduation status will be attributed to the school attended in their final cohort year.

(6) 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:

(a) school with an attached graduation status for the final cohort year;

(b) school with the latest exit date;

(c) school with the earliest entry date;

(d) school with the highest total membership;

(e) school of choice;

(f) school with highest attendance; or

(g) school with highest cumulative GPA.

(7) The Superintendent shall report the four-year cohort rate on the annual state reports.

R277-419-7. Student Identification and Tracking.

A(1) Pursuant to Section 53A-1-603.5, an LEA shall:

(a) 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

(b) display the SSID on student transcripts exchanged with LEAs and Utah public institutions of higher education.

(2)(a) The unique student identifier shall be assigned to a student upon enrollment into a public school program or a public school-funded program.

(b) The unique student identifier may not be the student's social security number or contain any personally identifiable information about the student.

B. 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.

(1) 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 53A-11-503;

(2) 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

(3) 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 USOE.

C. The Superintendent and LEAs shall track students and maintain data using students' legal names.

D. 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.

E. An LEA is responsible to verify the accuracy and validity of enrollment verification data, prior to enrolling students in a the LEA, and provide students and their parents with notification of enrollment in a public school.

F. An LEA shall ensure enrollment verification data is collected, transmitted, and stored consistent with sound data policies, established by the LEA as required in R277-487.

R277-419-8. Variances.

A(1) An LEA may, at its discretion, make an exception for school attendance for public school students, in the length of the school day or year, for students with compelling circumstances.

(2) The time an excepted student is required to attend school shall be established by the student's IEP or SEOP/Plan for College and Career Readiness.

B(1)An LEA shall plan for emergency, activity, and weather-related exigency time in its annual calendaring.

(2) If school is closed for any reason, the school shall make up the instructional time missed under the emergency/activity time as part of the minimum required time to qualify for full MSP funding.

C. Staff Planning, Professional Development, Student Assessment Time, and Parent-Teacher and Student Education Plan (SEP) Conferences.

(1) 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 R277-419-1FF, are satisfied.

(2) Schools may conduct parent-teacher and Student Education Plan (SEP) conferences during the school day.

(3) Parent-teacher and SEP 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.

(4) Student membership for professional development or parent-teacher conference days shall be counted as that of the previous school day.

(5) An LEA may designate no more than 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.

(6) If instruction days are designated for kindergarten assessment:

(a) an LEA shall designate the days in an open meeting;

(b) an LEA shall provide adequate notice and explanation to kindergarten parents well in advance of the assessment period;

(c) qualified school employees shall conduct the assessment consistent with Section 53A-3-410; and

(d) assessment time per student shall be adequate to justify the forfeited instruction time.

(7) 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.

(8) Total instructional time and school calendars shall be approved by an LEA in an open meeting.

D. 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.

KEY: education finance, school enrollment, pupil accounting

July 8, 2015 **Art X Sec 3**

Notice of Continuation September 14, 2012 **53A-1-401(3)**

53A-1-402(1)(e)

53A-1-404(2)

53A-1-301(3)(d)

53A-3-404

53A-3-410

R277. Education, Administration.
R277-487. Public School Data Confidentiality and Disclosure.
R277-487-1. Definitions.

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

B. "Chief Privacy Officer" means a USOE employee designated by the Board as primarily responsible to oversee and direct the DGPB to carry out the responsibilities of this rule, direct the development of materials and training about student and public education employee privacy and security standards, including FERPA, for the USOE and LEAs.

C. "Classroom-level assessment data" means student scores on state-required tests, aggregated in groups of more than 10 students at the classroom level or, if appropriate, at the course level, without individual student identifiers of any kind.

D. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained and owned by the USOE on all licensed Utah educators. The file includes information such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history; and

(5) a record of disciplinary action taken against the educator.

E. "Data Governance/Policy Board (DGPB)" means a board composed of USOE and LEA employees, as directed by the Board, whose purpose is to resolve public education data and process issues, make policy decisions, review all research requests for public education data, and fill only those requests that are appropriate and comply with the standards in this rule.

F. "Data security protections" means protections developed and initiated by the Chief Privacy Officer and the DGPB that protect, monitor and secure student, public educator and public education employee data as outlined and identified in FERPA and Sections 63G-2-302 through 63G-2-305.

G. "Disciplinary action" means any lesser action taken by UPPAC which does not materially affect a licensed educator's license and licensing action taken by the Board for suspension or revocation.

H. "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:

(a) an individualized education program;

(b) a Section 504 accommodation plan; or

(c) an English learner plan.

I. "FERPA" means the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, a federal law designed to protect the privacy of students' education records. The law is hereby incorporated by reference.

J. "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.

K. "Personally identifiable student information" means the student's name; a personal identifier, such as the student's social security number or student number; other indirect identifiers such as the student's date of birth or place of birth; other information that, alone or in combination, is linked or linkable to a specific student and enables a person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the educational agency or institution reasonably knows is entitled to the requested information.

L. "Student information" means materials, information, records and knowledge that an LEA possesses or maintains, or both, about individual students. Student information is broader than student records and personally identifiable student information may include information or knowledge that school employees possess or learn in the course of their duties.

M. "Student performance data" means data relating to student performance, including data on state, local and national assessments, course-taking and completion, grade-point average, remediation, retention, degree, diploma, or credential attainment, enrollment, and demographic data.

N. "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

O. "Third party provider" means a third party who provides educational services on behalf of an LEA.

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

R277-487-2. 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, by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities; by Section 53A-13-301(4) which directs the Board to makes rules to establish standards for public education employees, student aides, and volunteers in public schools regarding the confidentiality of student information and student records; by Section 53A-8a-410(4) which directs the Board to make rules to ensure the privacy and protection of individual evaluation data; and by Section 53A-1-411 which directs the Board to establish procedures for administering or making available online surveys to obtain information about public education issues.

B. The purpose of this rule is to:

(1) provide for appropriate review and disclosure of student performance data on state administered assessments as required by law;

(2) provide for adequate and appropriate review of student performance data on state administered assessments to professional education staff and parents of students;

(3) ensure the privacy of student performance data and personally identifiable student information, as directed by law;

(4) provide an online education survey conducted with public funds for Board review and approval; and

(5) provide for appropriate protection and maintenance of educator licensing data.

R277-487-3. Data Privacy and Security Policies.

A. Board Responsibilities:

(1) The Chief Privacy Officer and DGPB shall develop resource materials for LEAs to train employees, aides, and volunteers of an LEA regarding confidentiality of personally identifiable student information and student performance data, as defined in FERPA.

(2) The Chief Privacy Officer and DGPB shall make the materials available to each LEA.

B. LEA Responsibilities:

(1) An LEA is responsible for the collection, maintenance, and transmission of student data.

(2) An LEA shall establish policies and provide appropriate training for employees regarding the confidentiality of student performance data and personally identifiable student information.

(3) An LEA shall provide the policies described in R277-487-3B(2) to parents of students affected by the policies, as well as post the policies for the public on the LEA's website.

(4) An LEA shall ensure that school enrollment verification data, student performance data, and personally identifiable student information are collected, maintained, and transmitted:

(a) in a secure manner; and

(b) consistent with sound data collection and storage procedures, established by the LEA.

(5) An LEA may contract with a third party provider to collect, maintain, and have access to school enrollment verification data or other student data if:

(a) the third party provider meets the definition of a school official under 34 CFR 99.31 (a)(1)(i)(B);

(b) the contract between the LEA and the third party provider includes a provision that the data is the property of the LEA; and

(c) the LEA monitors and maintains control of the data.

(6) If an LEA contracts with a third party provider to collect and have access to the LEA's data as described in R277-487-3B(5), the LEA shall notify a student and the student's parent or guardian in writing that the student's data is collected and maintained by the third party provider.

(7) As required in Section 53A-13-301, an LEA shall notify the parent or guardian of a student if there is a release of the student's personally identifiable student data due to a security breach.

C. Public Education Employee and Volunteer Responsibilities:

(1) All public education employees, aides, and volunteers in public schools shall become familiar with federal, state, and local laws regarding the confidentiality of student performance data and personally identifiable student information.

(2) All public education employees, aides, and volunteers shall maintain appropriate confidentiality pursuant to federal, state, local laws, and LEA policies created in accordance with this section, with regard to student performance data and personally identifiable student information.

(3) An employee, aide, or volunteer may not share, disclose, or disseminate passwords for electronic maintenance of:

(a) student performance data; or

(b) personally identifiable student information.

(4) A public education employee licensed under Section 53A-6-104 may access or use student information and records if the public education employee accesses the student information or records consistent with R277-515, Utah Educator Standards.

(5) A public education employee may be disciplined in accordance with licensing discipline procedures if the public education employee violates this R277-487.

R277-487-4. Transparency.

A. The Chief Privacy Officer working with the DGPB shall recommend USOE policies for Board approval and model policies for LEAs regarding the state's student data systems.

B. The Chief Privacy Officer shall ensure that the rules/policies address:

(1) accessibility to parents, students and the public of the student performance data;

(2) authorized purposes, uses, and disclosures of data maintained by the Superintendent and LEAs;

(3) the rights of parents and students regarding their personally identifiable information under state and federal law;

(4) parent, student and public access to information about student data privacy and the security safeguards that protect the data from unauthorized access and use; and

(5) contact information for parents and students to request student and public school information from LEAs consistent with the law.

R277-487-5. Additional Responsibilities of Chief Privacy Officer and DGPB.

A. The Chief Privacy Officer may recommend legislation, as approved by the Board, for additional data security protections and the regulation of use of the data.

B. The Chief Privacy Officer shall supervise regular privacy and security compliance audits, following initiation by the Board.

C. The Chief Privacy Officer and the DGPB shall have responsibility for identification of threats to data security protections.

D. The Chief Privacy Officer and the DGPB shall develop and recommend policies for the Superintendent and model policies for LEAs for consistent wiping or destruction of devices when devices are discarded by public education entities.

E. The Chief Privacy Officer and the DGPB shall develop USOE and model LEA policies for the training of staff for appropriate responses to suspected or known breaches of data security protections.

R277-487-6. Prohibition of Public Education Data Use for Marketing.

Data maintained by the state, school districts, schools, and other public education agencies or institutions in the state, including data provided by contractors, may not be sold or used for marketing purposes (except with regard to authorized uses or directory information not obtained through a contract with an educational agency or institution).

R277-487-7. Public Education Research Data.

A. The Superintendent may provide limited or extensive data sets for research and analysis purposes to qualified researchers or organizations.

(1) The Superintendent shall use reasonable methods to qualify researchers or organizations to receive data, such as evidence that a research proposal has been approved by a federally recognized Institutional Review Board (IRB).

(2) Aggregate de-identified student assessment data is available through the USOE website. The Superintendent shall ensure that personally identifiable student information is protected.

(3) The Superintendent is not obligated to fill every request for data and shall establish procedures to determine which requests will be filled or to assign priorities to multiple requests. The Superintendent shall respond in a timely manner to all requests submitted under Section 63G-2-101 et seq., Government Records Access and Management Act. In filling data requests, the Superintendent may give higher priority to requests that will help improve instruction in Utah's public schools.

(4) The Superintendent may charge a fee to prepare data or to deliver data, particularly if the preparation requires original work. The Superintendent shall comply with Section 63G-2-203 in assessing fees for responses to GRAMA requests.

(5) The researcher or organization shall provide a copy of the report or publication produced using USOE data to the USOE at least 10 business days prior to the public release.

B. Student data and information: Requests for data that disclose student information shall be provided in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g; such responses may include:

(1) student data that are de-identified, meaning that a reasonable person in the school community who does not have personal knowledge of the relevant circumstances could not identify student(s) with reasonable certainty;

(2) agreements with recipients of student data where recipients agree not to report or publish data in a manner that discloses students' identities. For example, reporting test scores for a race subgroup that has a count, also known as n-size, of less than 10 could enable someone to identify the actual students and shall not be published;

(3) release of student data, with appropriate binding agreements, for state or federal accountability or for the purpose of improving instruction to specific student subgroups.

C. Licensed educator information:

(1) The Superintendent shall provide information about licensed educators maintained in the CACTUS database that is required under Section 63G-2-301(2).

(2) The Superintendent may release information/data:

(a) consistent with the purposes of CACTUS;

(b) if the requester accepts the confidentiality protections established by the Superintendent; and

(c) if the research may provide a benefit for public education in Utah, as determined by the Superintendent.

D. Recipients of USOE research data shall sign a USOE-designated confidentiality agreement, if required by the Superintendent.

E. The Board or the Superintendent may commission research or may approve research requests.

R277-487-8. Public Education Survey Data.

A. The Chief Privacy Officer, working with the DGPB, shall approve statewide education surveys administered with public funds through the USOE or through a contract issued by the USOE, as required under Section 53A-1-411.

B. Data obtained from Board statewide surveys administered with public funds are the property of the Board.

C. Data obtained from Board statewide surveys administered with public funds shall be made available as follows:

(1) Survey data made available by the Board shall protect the privacy of students in accordance with FERPA.

(2) The Superintendent shall ensure that survey data about educators is provided to a requester in a manner that protects the privacy of individual educators consistent with State law.

R277-487-9. Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS) Data, Confidentiality, and Appropriate Disclosure.

A. CACTUS maintains information on licensed Utah educators, including information classified as private, controlled, or protected under GRAMA.

B. The Superintendent shall open a CACTUS file for a licensed Utah educator when:

(1) the individual initiates a USOE background check, or

(2) the USOE receives a paraprofessional license application from an LEA.

C. The data in CACTUS may only be changed as follows:

(1) Authorized USOE staff or authorized LEA staff may change demographic data.

(2) Authorized USOE staff may update licensing data such as endorsements, degrees, license areas of concentration and licensed work experience.

(3) Authorized employing LEA staff may update data on educator assignments for the current school year only.

D. A licensed individual may view his own personal data. An individual may not change or add data except under the following circumstances:

(1) A licensed individual may change his demographic data when renewing his license.

(2) A licensed individual shall contact his employing LEA for the purpose of correcting demographic or current educator assignment data.

(3) A licensed individual may petition the USOE for the purpose of correcting any errors in his CACTUS file.

E. Individuals currently employed by public or private schools under letters of authorization or as interns are included in CACTUS.

F. Individuals working in LEAs as student teachers are included in CACTUS.

G. Designated individuals have access to CACTUS data:

(1) Training shall be provided to designated individuals prior to granting access.

(2) Authorized USOE staff may view or change CACTUS files on a limited basis with specific authorization.

(3) For employment or assignment purposes only, authorized LEA staff members may access data on individuals employed by their own LEA or data on licensed individuals who do not have a current assignment in CACTUS.

(4) Authorized LEA staff may also view specific limited information on job applicants if the applicant has provided the LEA with a CACTUS identification number.

(5) CACTUS information belongs solely to the USOE. The USOE shall make the final determination of information included in or deleted from CACTUS.

(6) CACTUS data may only be released in accordance with the provisions of GRAMA.

R277-487-10. Educator Evaluation Data.

A. The Superintendent shall provide classroom-level assessment data to administrators and teachers. School administrators shall share information requested by parents while ensuring the privacy of individual student information and educator evaluation data.

B. Individual educator evaluation data shall be protected at the school, LEA and state levels and, if applicable, at the USOE.

C. LEAs shall designate employees who may have access to educator evaluation records.

D. LEAs may not release or disclose student assessment information that reveals educator evaluation information or records.

E. LEAs shall train employees in the confidential nature of employee evaluations and the importance of securing evaluations and records.

R277-487-11. Training and Technical Assistance.

A. The Chief Privacy Officer and DGPB shall develop training for the Board, the USOE and LEAs.

B. The Chief Privacy Officer and DGPB shall develop model policies, as resources permit.

R277-487-12. Application to Third Party Providers and Contractors.

A. The USOE and LEAs shall set policies that govern a third party provider or contractor's access to personally identifiable student data and public school enrollment verification data.

B. An LEA may release Student information and public school enrollment verification data to a third party provider if:

(1) the release is allowed by, and released in accordance with, FERPA and its implementing regulations; and

(2) if the LEA complies with the requirements of R277-487-3B.

C. CACTUS or public education employee information may only be released consistent with state law, with express permission of the licensed individual or employee, or with the purposes for which the information was entered into CACTUS or a similar employee database.

D. Sanctions for violations of authorized use and release of student and employee data:

(1) All USOE contracts shall include sanctions for contractors or third party providers who violate provisions of state policies regarding unauthorized use and release of student and employee data.

(2) The Superintendent shall recommend that LEA policies include sanctions for contractors or third party providers who violate provisions of federal or state privacy law and LEA policies regarding unauthorized use and release of student and employee data.

R277-487-13. Annual Reports by Chief Privacy Officer and

DGPB.

A. The Chief Privacy Officer, with the assistance of DGPB, shall submit to the Board an annual report about student data.

B. The public report shall include:

(1) information about the implementation of this rule;

(2) information about research studies begun or planned using student information and data;

(3) identification of significant threats to student data privacy and security;

(4) a summary of data system audits; and

(5) recommendations for further improvements specific to student data security and the systems that are necessary for accountability in Board rules or legislation.

KEY: students, records, confidentiality

July 8, 2015	**Art X Sec 3**
Notice of Continuation November 14, 2014	**53A-13-301(4)**
	53A-1-401(3)
	53A-1-411
	53A-8a-410(4)

R277. Education, Administration.
R277-490. Beverley Taylor Sorenson Elementary Arts Learning Program (BTSALP).
R277-490-1. Definitions.

A. "Arts equipment and supplies" means musical instruments, recording and play-back devices, cameras, projectors, computers to be used in the program, CDs, DVDs, teacher reference books, and art-making supplies. This list is not exhaustive.

B. "Arts Program coordinators (coordinator)" means individuals, employed full-time, who are responsible to coordinate arts programs for the LEA (as defined in R277-490-1G) or consortium, inform arts teachers, organize arts professional development (including organizing arts local learning communities), oversee/guide/organize the gathering of assessment data, represent the LEA or consortium arts program, and provide general leadership for arts education throughout the LEA or consortium.

C. "Beverley Taylor Sorenson Elementary Arts Learning Program model," "BTSALP model," or "Program" means a Program in grades K-6 with the following components:

(1) a qualified arts specialist to work collaboratively with the regular classroom teacher to deliver quality, sequential, and developmental arts instruction in alignment with the state Fine Arts Core Curriculum;

(2) regular collaboration between the classroom teacher and arts specialist in planning arts integrated instruction; and

(3) other activities that may be proposed by an LEA on a grant application and approved by the Board.

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

E. "Endowed university" means an institution of higher education in the state as defined in Section 53A-17a-162(1)(b).

F. "Highly qualified school arts program specialist (arts specialist)" means:

(1) an educator with a current educator license and a Level 2 or K-12 specialist endorsement in the art form;

(2) an elementary classroom teacher with a current educator license who is currently enrolled in a Level 2 specialist endorsement program in the art form;

(3) a professional artist employed by a public school and accepted into the Board Alternative Routes to License (ARL) program under R277-503 to complete a K-12 endorsement in the art form, which includes the Praxis exam in the case of art, music, or theatre; or

(4) an individual who qualifies for an educator license under Board rule that qualifies the individual for the position provided that:

(a) an LEA provides an affidavit verifying that a reasonable search was conducted for an individual who would qualify for an educator license through other means; and

(b) the LEA reopens the position and conducts a new search every two years.

(5) In addition to required licensure and endorsements, prospective teachers should provide evidence of facilitating elementary Core learning in at least one art form.

G. "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.

H. "Matching funds," for purposes of this rule and the Program, means funds that equal 20 percent of the total costs for salary plus benefits incurred by an LEA/consortium to fund an LEA/consortium's arts specialist in Subsection R277-490-1F.

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

R277-490-2. 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-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-162 which directs the Board to establish a grant program for LEAs to hire qualified arts professionals to encourage student participation in the arts in Utah public schools and embrace student learning in Core subject areas.

B. The purpose of this rule is:

(1) to implement the BTSALP model in public schools through LEAs and consortia that submit grant applications to hire arts specialists as defined in R277-490-1F and paid on the licensed teacher salary schedule;

(2) to distribute funds to LEAs to purchase supplies and equipment as provided for in Section 53A-17a-162(4) and (6);

(3) to fund activities at endowed universities as defined in Section 53A-17a-162 to provide pre-service training, professional development, research and leadership for arts educators and arts education in Utah public schools; and

(4) to appropriately monitor, evaluate and report programs and program results.

R277-490-3. Arts Specialist Grant Program.

A. LEAs or consortia of LEAs may submit grant requests consistent with time lines provided in this rule.

B. LEA consortia:

(1) LEAs may form consortia to employ arts specialists appropriate for the number of students served.

(2) The LEA shall develop its proposal consistent with the BTSALP model outlined under R277-490-1C.

(3) The LEA grant shall explain the necessity or greater efficiency and benefit of an arts specialist serving several elementary schools within a consortium of LEAs.

(4) The LEA grant shall explain a schedule for the specialist(s) to serve the group of schools within several LEAs similarly to an arts specialist in a single school.

(5) A consortium grant shall provide information for a consortium arts specialist's schedule that minimizes the arts specialist's travel and allows the arts specialist to be well integrated into several schools.

C. LEA grant requirements:

(1) An LEA shall develop and submit a grant program to the Board that is consistent with the BTSALP model described in R277-490-1C.

(2) An LEA's grant application shall include the collaborative development of the application with the partner endowed university and School Community Council if match comes from School LAND Trust Funds.

D. Program timelines:

(1) Program grant applications shall be completed annually. Grant renewals shall receive funding priority.

(2) LEAs shall submit completed applications requesting funding to the USOE by May 1 annually.

(3) The Board shall designate LEAs/consortia for funding no later than June 1 annually.

E. Distribution of funds for arts specialists

(1) Program LEAs shall submit complete information of salaries (including benefits) of all Program specialists employed by the LEA no later than September 30 annually.

(2) If a Program LEA provides the matching funds described in R277-490-3E(3), the USOE shall distribute funds to Program LEAs annually equal to 80 percent of the salaries plus benefits for approved hires in this program, consistent with Sections 53A-17a-162(5) and(6). An individual specialist grant amount may not exceed $70,000.

(3) A Program LEA shall provide matching funds for each specialist funded through the Program.

R277-490-4. Distribution of Funds for Arts Specialist Supplies.

A. The Board shall distribute funds for arts specialist supplies to LEAs/consortia as available.

B. LEAs shall distribute funds to participating schools as

provided in the approved LEA/consortia grant and consistent with LEA procurement policies.

C. LEAs/consortia shall require arts specialists to provide adequate documentation of arts supplies purchased consistent with the school/consortium plan, this rule and the law.

D. Summary information about effective supplies and equipment shall be provided in the school/consortium evaluation of the Program.

R277-490-5. LEA/Consortia Employment of LEA/Consortia Arts Coordinators.

A. LEAs/consortia may apply for funds to employ arts coordinators in their LEAs/consortium. These are intended as small grants to rural districts to help support arts education and the implementation of BTSALP.

B. Applicants shall explain how arts coordinators will be used consistent with the BTSALP model, what requirements arts coordinators must meet, and what training will be provided by whom.

C. Applicants shall provide documentation of committed matching funds that equal 20 percent of the grant request.

D. The USOE shall notify an LEA that receives a grant award no later than June 1 annually.

R277-490-6. Endowed University Participation in the BTSALP.

A. The Board may consult with endowed chairs and integrated arts advocates regarding program development and guidelines.

B. Endowed university grants:

(1) Endowed universities may apply for grant funds to fulfill the purposes of this program which include:

(a) delivery of high quality professional development to participating LEAs;

(b) the design and completion of research related to the program;

(c) providing the public with elementary arts education resources; and

(d) other program related activities as may be included in a grant application and approved by the Board.

(2) Endowed university grant applications shall include documentation of collaborative development of a plan for delivery of high quality professional development to participating LEAs. The Board shall determine the LEAs assigned to each endowed university.

(3) The Board may award no more than 10 percent of the total legislative appropriation to grants to endowed universities.

(4) The USOE shall monitor the activities of the grantees to ensure compliance with grant rules, fulfillment of grant application commitments and appropriate fiscal procedures. Endowed universities shall cooperate with the USOE in the monitoring of their grants.

(5) Endowed universities that receive grant funds shall consult, as requested by the Board, in the development and presentation of an annual written program report as required in statute.

R277-490-7. LEAs Cooperation with USOE for BTSALP.

A. USOE BTSALP staff may visit schools receiving grants to observe implementation of the grants.

B. BTSALP schools shall cooperate with the USOE to allow visits of members of the Board, legislators, and other invested partners to promote elementary arts integration.

C. LEAs shall accurately report the numbers of students impacted by the Program grant and report on the delivery systems to those students as requested by the USOE.

D. LEAs found to be out of compliance with the terms of the grant will be notified within 30 days of the discovery of such non-compliance.

(1) LEAs found to be in non-compliance will be given 30 days to correct the issues.

(2) If non-compliance is not resolved within that time frame, LEAs are subject to losing the grant funds for the school or schools found to be non-compliant.

R277-490-8. Program Reporting.

The Board shallreport annually to the Education Interim Committee as provided in Section 53A-17a-162(8).

KEY: arts program, grants, public schools, endowed universities

July 8, 2015	**Art X Sec 3**
Notice of Continuation June 10, 2013	**53A-1-401(3)**
	53A-17a-162

R277. Education, Administration.
R277-502. Educator Licensing and Data Retention.
R277-502-1. Definitions.

A. "Accredited" means a Board-approved educator preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC) or the Council for Accreditation of Educator Preparation (CAEP).

B. "Accredited school" for purposes of this rule, means a public or private school that meets standards essential for the operation of a quality school program and has received formal approval through a regional accrediting association.

C. "Authorized staff" for purposes of this rule means an individual designated by the USOE or an LEA and approved by the USOE and who has completed CACTUS training.

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

E. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;
(2) educational background;
(3) endorsements;
(4) employment history; and
(5) a record of disciplinary action taken against the educator.

F. "ESEA subject" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA).

G. "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.

H. "Letter of Authorization" means a designation given to an individual for one year, such as an out-of-state candidate or individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by an LEA.

I. "Level 1 license" means a Utah professional educator license issued upon completion of a Board-approved educator preparation program or an alternative preparation program, or to an applicant that holds an educator license issued by another state or country that has met all ancillary requirements established by law or rule.

J. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:

(1) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;

(2) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah;

(3) additional requirements established by law or rule.

K. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received National Board Certification or a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school, or holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language hearing Association (ASHA) certification.

L. "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: Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Middle (still valid, but not issued after 1988, 5-9), Secondary (6-12), Administrative/Supervisory (K-12), Career and Technical Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders, Speech-Language Pathologist, Speech-Language Technician. License areas of concentration may also bear endorsements relating to subjects or specific assignments.

M. "License endorsement (endorsement)" means a specialty field or area earned through completing required course work established by the USOE or through demonstrated competency approved by the USOE; the endorsement shall be listed on the professional educator license indicating the specific qualification(s) of the holder.

N. "Professional learning plan" means a plan developed by an educator in collaboration with the educator's supervisor consistent with R277-500 detailing appropriate professional learning activities for the purpose of renewing the educator's license.

O. "Renewal" means reissuing or extending the length of a license consistent with R277-500.

P. "State Approved Endorsement Program (SAEP)" means a plan in place developed between the USOE and a licensed educator to direct the completion of endorsement requirements by the educator consistent with R277-520-11.

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

R277-502-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, by Section 53A-6-104 which gives the Board power to issue licenses, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. 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. The rule provides a process and criteria for educators whose licenses have lapsed and return to the teaching profession. All licensed educators employed in the Utah public schools shall be licensed consistent with this rule in order for the district to receive full funding under Section 53A-17a-107(2).

R277-502-3. Program Approval and Requirements.

A. The Board may accept educator license recommendations from educator preparation programs that have applied for Board approval and have met the requirements described in this rule and the Standards for Program Approval established by the Board in R277-504, R277-505, or R277-506 as determined by USOE.

B. The Board, or its designee, may establish deadlines and uniform forms and procedures for all aspects of licensing.

C. To be approved for license recommendation the educator preparation program shall:

(1) be accredited by NCATE or TEAC; or

(2) be accredited by CAEP using the CAEP Program Review with National Recognition or CAEP Program Review with feedback options; and

(3) have a physical location in Utah where students attend classes or if the program provides only online instruction:

(a) the program's primary headquarters shall be located in Utah and

(b) the program shall be licensed to do business in Utah through the Utah Department of Commerce;

(4) include coursework designed to ensure that the

educator is able to meet the Utah Effective Teaching Standards and Educational Leadership Standards established in R277-530;

(5) in the case of content endorsements, include coursework that is, at minimum, equivalent to the course requirements for the endorsement as established by USOE;

(6) establish entry requirements designed to ensure that only high quality individuals enter the licensure program; requirements shall include the following minimum components, beginning August 1, 2014:

(a) a minimum high school/college GPA of 3.0; and

(b) a USOE-cleared fingerprint background check; and

(c) a passing score on a Board-approved basic skills test; or

(d) an ACT composite score of 21 with a verbal/English score no less than 20 and a mathematics/quantitative score of no less than 19; or

(e) a combined SAT score of 1000 with neither mathematics nor verbal below 450.

(7) include a student teaching or intern experience that meets the requirements detailed in R277-504, R277-505, and R277-506.

D. An institution may waive any of the entrance requirements provided in R277-502-3C(6) based on program established guidelines for no more than 10 percent of an entrance cohort.

E. USOE representatives shall be a part of the accrediting team for any Board-approved educator preparation program seeking to maintain or receive program approval. USOE representatives shall be responsible for:

(1) observing and monitoring the accreditation process;

(2) reviewing subject specific programs to determine if the program meets state standards for licensure in specific areas;

(3) reviewing program procedures to ensure that Board requirements for licensure are followed;

(4) reviewing licensure candidate files to determine if Board requirements for licensure are followed by the program.

F. After completion of the accreditation site visit, a Board-approved educator preparation program, working with the USOE, shall prepare and submit a program approval request for consideration by the Board that includes:

(1) program summary;

(2) accreditation findings;

(3) program areas of distinction;

(4) program enrollment;

(5) program goals and direction.

G. If the program approval request is approved by the Board, the program shall be considered Board-approved until the next scheduled accreditation visit unless the program is placed on probation by the USOE for failure to meet program requirements detailed in applicable Board rules and program approval is revoked by the Board under R277-502-3O.

H. New educator preparation programs that seek Board approval or previously Board-approved educator preparation programs that seek approval for additional license area preparation and endorsements shall submit applications to USOE including:

(1) information detailing the exact license areas of concentration and endorsements that the program intends to award;

(2) detailed course information, including required course lists, course descriptions, and course syllabi for all courses that will be required as part of a program;

(3) detailed information showing how the required coursework will ensure that the educator satisfies all standards in the Utah Effective Teaching Standards and Educational Leadership Standards established in R277-530 and Professional Educator Standards established in R277-515;

(4) information about program timelines and anticipated enrollment.

I. Applications for new educator preparation programs shall be approved by the Board.

J. Applications for previously Board-approved educator preparation programs desiring Board approval for additional license areas and endorsements:

(1) shall be reviewed and approved by USOE;

(2) may receive preliminary approval pending Utah State Board of Regents approval of the new program if the program is within a public institution.

K. An educator preparation program seeking accreditation may apply to the Board for probationary approval for a maximum of three years contingent on the completion of the accreditation process.

L. A previously Board-approved educator preparation program shall submit an annual report to the USOE by July 1 of each year. The report shall summarize the institution's annual accreditation report and shall include the following:

(1) student enrollment counts designated by anticipated license area of concentration and endorsement and disaggregated by gender and ethnicity;

(2) information explaining any significant changes to course requirements or course content;

(3) the program's response to USOE-identified areas of concern or areas of focus;

(4) information regarding any program-determined areas of concern or areas of focus and the program's planned response;

(5) a summary explanation of students admitted under the waiver identified in R277-502-3D and an explanation of the waiver.

M. The USOE shall provide reporting criteria to Board-approved educator preparation programs regarding the annual report and USOE-designated areas of concern or focus by January 31 annually.

N. Educator preparation programs that submit inadequate or incomplete information to the USOE may be placed on a probationary status by USOE.

O. Board-approved educator preparation programs on probationary status that continue to fail to meet requirements may have their license recommendation status revoked in full or in part by the Board with at least one year notice.

P. 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.

Q. 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. The preparation program officials shall determine whether any content or pedagogy coursework previously completed meets current program standards and if additional coursework, hours or other activities are necessary. The individual shall complete all work required by the program officials before receiving a license recommendation.

R277-502-4. License Levels, Procedures, and Periods of Validity.

A. Level 1 License Requirements

(1) An initial license, the Level 1 license, is issued to an individual who is recommended by a Board-approved educator preparation program or approved alternative preparation program, or an educator with a professional educator license from another state.

(a) LEAs and Board-approved educator preparation programs shall cooperate in preparing candidates for the educator Level 1 license. The resources of both may be used to assist candidates in preparation for licensing.

(b) The recommendation indicates that 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) The Level 1 license is issued for three years.

(3) A Level 1 license holder shall satisfy all requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

(4) An educator qualified to teach any ESEA subject shall be considered Highly Qualified in at least one ESEA subject prior to moving from Level 1 to Level 2.

(5) 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 USOE to satisfy the licensing requirements.

(6) If an educator has taught for three years in a K-12 public education system in Utah, a Level 1 license may only be renewed if:

(a) the employing LEA has requested a one year extension consistent with R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers; or

(b) the individual has continuous experience as a speech language pathologist in a clinical setting.

B. Level 2 License Requirements

(1) A Level 2 license may be issued by the Board to a Level 1 license holder upon satisfaction of all Board requirements for the Level 2 license and upon the recommendation of the employing LEA.

(2) The recommendation shall be made following the completion of three years of successful, professional growth and educator experience, satisfaction of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers, any additional requirements imposed by the employing LEA, and before the Level 1 license expires.

(3) A Level 2 license shall be issued for five years and shall be valid unless suspended or revoked for cause by the Board.

(4) The Level 2 license may be renewed for successive five year periods consistent with R277-500, Educator Licensing Renewal.

C. Level 3 License Requirements

(1) A Level 3 license may be issued by the Board to a Level 2 license holder who:

(a) has achieved National Board Certification; or

(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 obtained American Speech-Language Hearing Association (ASHA) certification.

(2) A Level 3 license is valid for seven years unless suspended or revoked for cause by the Board.

(3) The Level 3 license may be renewed for successive seven year periods consistent with R277-500.

(4) A Level 3 license shall revert to a Level 2 license if the holder fails to maintain National Board Certification status or fails to maintain a current Certificate of Clinical Competence from the American Speech-Language-Hearing Association.

D. License Renewal Timeline

Licenses expire on June 30 of the year of expiration recorded on CACTUS and may be renewed any time after January of the same year. Responsibility for license renewal rests solely with the holder.

R277-502-5. Professional Educator License Areas of Concentration, and Endorsements and Under-Qualified Employees.

A. Unless excepted under rules of the Board, to be employed in the public schools in a capacity covered by the following license areas of concentration, a person shall hold a valid license issued by the Board in the respective license areas of concentration:

(1) Early Childhood (K-3);
(2) Elementary (1-8);
(3) Elementary (K-6);
(4) Middle (still valid, and issued before 1988, 5-9);
(5) Secondary (6-12);
(6) Administrative/Supervisory (K-12);
(7) Career and Technical Education;
(8) School Counselor;
(9) School Psychologist;
(10) School Social Worker;
(11) Special Education (K-12);
(12) Preschool Special Education (Birth-Age 5);
(13) Communication Disorders;
(14) Speech-Language Pathologist;
(15) Speech-Language Technician.

B. Under-qualified educators:

(1) Educators who are licensed and hold the appropriate license area of concentration but who are working out of their endorsement area(s) shall request and prepare an SAEP to complete the requirements of an endorsement with a USOE education specialist; or

(2) LEAs may request Letters of Authorization from the Board for educators employed by LEAs if educators have not completed requirements for areas of concentration or endorsements.

(a) An approved Letter of Authorization is valid for one year.

(b) Educators may be approved for no more than three Letters of Authorization throughout their employment in Utah schools. The State Superintendent of Public Instruction or designee may grant exceptions to the three Letters of Authorization limitation on a case by case basis following specific approval of the request by the LEA governing board. Letters of Authorization approved prior to the 2000-2001 school year shall not be counted in this limit.

(c) If an education employee's Letter of Authorization expires before the individual is approved for licensing, the employee falls into under-qualified status.

C. License areas of concentration may be endorsed to indicate qualification in a subject or content area.

(1) A STEM endorsement shall be recognized as a minimum of 16 semester hours of university credit toward lane change on an LEA salary schedule.

(a) The State Superintendent of Public Instruction or designee shall determine the mathematics-, engineering-, science-, and technology-related courses and experiences necessary for STEM endorsements.

(b) The State Superintendent of Public Instruction or designee shall determine which content area endorsements qualify as STEM endorsements.

(2) An endorsement is not valid for employment purposes without a current license and license area of concentration.

R277-502-6. Returning Educator Relicensure.

A. A previously licensed educator with an expired license may renew an expired license upon satisfaction of the following:

(1) Completion of criminal background check including review of any criminal offenses and clearance by the Utah Professional Practices Advisory Commission;

(2) Employment by an LEA;

(3) Completion of a one-year professional learning plan developed jointly by the school principal or charter school director and the returning educator consistent with R277-500 that also considers the following:

(a) previous successful public school teaching experience;

(b) formal educational preparation;

(c) period of time between last public teaching experience and the present;

(d) school goals for student achievement within the employing school and the educator's role in accomplishing those goals;

(e) returning educator's professional abilities, as determined by a formal discussion and observation process completed within the first 30 days of employment; and

(f) completion of additional necessary professional development for the educator, as determined jointly by the principal/school and educator.

(4) Filing of the professional development plan within 30 days of hire;

(5) Successful completion of required Board-approved exams for licensure;

(6) Satisfactory experience as determined by the LEA with a trained mentor; and

(7) Submission to the USOE of the completed and signed Return to Original License Level Application, available on the USOE website prior to June 30 of the school year in which the educator seeks to return.

B. The Professional Learning Plan is independent of the License Renewal Point requirements in R277-500-3C.

C. Returning educators who previously held a Level 2 or Level 3 license shall be issued a Level 1 license during the first year of employment. Upon completion of the requirements listed in R277-502-6A and a satisfactory LEA evaluation, the employing LEA may recommend the educator's return to Level 2 or Level 3 licensure.

D. Returning educators who taught less than three consecutive years in a public or accredited private school shall complete the Early Years Enhancement requirements before moving from Level 1 to Level 2 licensure.

R277-502-7. Professional Educator License Reciprocity.

A. Utah is a member of the Compact for Interstate Qualification of Educational Personnel under Section 53A-6-201.

B. A Level 1 license may be issued to an individual holding a professional educator license in another state who has completed preparation equivalent to Board-approved standards and who has completed Board-approved testing, as required by R277-503-3.

(1) If the applicant has three or more continuous years of previous educator experience in a public or accredited private school, a Level 2 license may be issued upon the recommendation of the employing Utah LEA after at least one year.

(2) If the applicant has less than three years of previous educator experience in a public or accredited private school, a Level 2 license may be issued following satisfaction of the requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

R277-502-8. Professional Educator License Fees.

A. The Board may establish a fee schedule for the issuance and renewal of licenses and endorsements consistent with 53A-6-105. All endorsements to which the applicant is entitled may be issued or renewed with the same expiration date for one licensing fee.

B. A fee may be charged for a valid license to be reprinted or for an endorsement to be added.

C. All costs for testing, evaluation, and course work shall be borne by the applicant unless other arrangements are agreed to in advance by the employing LEA.

D. Costs to review nonresident educator applications may exceed the cost to review resident applications due to the following:

(1) The review is necessary to ensure that nonresident applicants' training satisfies Utah's course and curriculum standards.

(2) The review of nonresident licensing applications is time consuming and potentially labor intensive.

E. Differentiated fees may be set consistent with the time and resources required to adequately review all applicants for educator licenses.

KEY: professional competency, educator licensing
July 8, 2015 Art X Sec 3
Notice of Continuation August 14, 2012 53A-6-104
53A-1-401(3)

R277. Education, Administration.
R277-520. Appropriate Licensing and Assignment of Teachers.
R277-520-1. Definitions.

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

B. "Content specialist" means a licensed educator who provides instruction or specialized support for students and teachers in a school setting.

C. "Core academic subjects or areas" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11).

D. "Demonstrated competency" means that a teacher shall demonstrate current expertise to teach a specific class or course through the use of lines of evidence which may include completed USOE-approved course work, content test(s), or years of successful experience including evidence of student performance.

E. "Eminence" means distinguished ability in rank, in attainment of superior knowledge and skill in comparison with the generally accepted standards and achievements in the area in which the authorization is sought as provided in R277-520-5.

F. "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.

G. "Letter of authorization" means a designation given to an individual for one year, such as an out-of-state candidate or individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by an LEA.

H. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Agreement, to candidates who have also met all ancillary requirements established by law or rule.

I. "Level 2 license" means a Utah professional educator license issued after:

(1) satisfaction of all requirements for a Level 1 license;

(2) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;

(3) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah; and

(4) satisfaction of additional requirements established by law or rule.

J. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received National Board certification or a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school from an accredited institution, or holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language Hearing Association (ASHA) certification.

K. "License areas of concentration" means designations to licenses obtained by completing an approved preparation program or an alternative preparation program in a specific area of educational studies such as Early Childhood (K-3), Elementary (K-6), Elementary 1-8, Middle (still valid, but not issued after 1988, 5-9), Secondary (6-12), Administrative/Supervisory (K-12), Career and Technical Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders, Speech-Language Pathologist, and Speech-Language Technician. License areas of concentration may also bear endorsements relating to subjects or specific assignments.

L. "License endorsement (endorsement)" means a specialty field or area earned through completing required course work established by the USOE or through demonstrated competency approved by the USOE; the endorsement shall be listed on the Professional Educator License indicating the specific qualification(s) of the holder.

M. "No Child Left Behind Act (NCLB)" means the federal Elementary and Secondary Education Act, P.L. 107-110, Title IX, Part A, Section 9101(11).

N. "Professional staff cost program funds" means funding provided to school districts based on the percentage of a district's professional staff that is appropriately licensed in the areas in which staff members teach.

O. "SAEP" means State Approved Endorsement Program. This identifies an educator working on a professional development plan to obtain an endorsement.

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

R277-520-2. 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-1-401(3) which gives the Board authority to adopt rules in accordance with its responsibilities, and Section 53A-6-104(2)(a) which authorizes the Board to rank, endorse, or classify licenses. This rule is also necessary in response to ESEA NCLB.

B. The purpose of this rule is to provide criteria for local boards to employ educators in appropriate assignments, for the Board to provide state funding to local school boards for appropriately qualified and assigned staff, and for the Board and local boards to satisfy the requirements of ESEA in order for local boards to receive federal funds.

R277-520-3. Required Licensing.

A. All teachers in public schools shall hold a Utah educator license along with appropriate areas of concentration and endorsements.

B. LEAs shall receive assistance from the USOE to the extent of resources available to have all teachers fully licensed.

C. LEAs are expected to hire teachers who are licensed or in the process of becoming fully licensed and endorsed. Failure to ensure that an educator has appropriate licensure may result in the USOE withholding all LEA funds related to salary supplements under Section 53A-17a-153 and R277-110 and educator quality under Section 53A-17a-107(2) and R277-486 until teachers are appropriately licensed pursuant to the Board's authority under Section 53A-1-401(3).

R277-520-4. Appropriate Licenses with Areas of Concentration and Endorsements.

A. An educator assigned to teach a class in kindergarten through grade 3 shall hold:

(1) a current Utah Educator License with an early childhood (k-3) license area of concentration;

(2) an elementary (k-6) license area of concentration; or

(3) for an educator assigned to teach a class in grade 1 through grade 3, an elementary (1-8) license area of concentration.

B. An educator assigned to teach a class in grade 4 through grade 8 in an elementary setting shall hold a current Utah Educator License with an elementary (k-6) or an elementary (1-8) license area of concentration.

C. An elementary content specialist in Fine Arts or Physical Education shall hold a current Utah Educator License with an elementary or secondary license area of concentration with the appropriate K-12 content endorsement.

D. An elementary content specialist in reading or English as a Second Language shall hold a current Utah Educator License with an elementary or secondary license area of concentration with the appropriate subject/content endorsement.

E. An educator assigned to teach a class in grade 6 through grade 8, including middle-level, intermediate, and junior high schools, shall hold a current Utah Educator License with an elementary (1-8) or a secondary (6-12) license area of concentration with the appropriate subject/content endorsement for all assigned courses.

F. An educator assigned to teach a class in grade 9 through grade 12 shall hold a current Utah Educator License with a secondary (6-12) or a career and technical education license area of concentration with the appropriate subject/content endorsement for all assigned courses.

G. An educator assigned to serve or teach a class of students with disabilities shall hold a current Utah Educator License with a special education (k-12) license area of concentration and, if the educator is the teacher of record of secondary mathematics for students with disabilities, shall also hold the appropriate subject/content endorsement.

H. An educator assigned to serve preschool-aged students with disabilities shall hold a current Utah Educator License with a preschool special education (birth-age 5) license area of concentration.

I. An educator assigned to provide student support services as defined in R277-506 shall hold a current Utah Educator License with the appropriate support service license area of concentration.

J. An educator assigned as a school-based or LEA-based specialist shall hold a current Utah Educator License with the appropriate license area of concentration and endorsement as defined by the LEA.

K. An educator assigned in an administrative position requiring an educator license, as defined by the district, shall hold a current Utah Educator License and an administrative/supervisory (k-12) license area of concentration.

(1) A superintendent of a school district may be licensed with a letter of authorization granted by the Board consistent with Section 53A-3-301.

(2) An educator assigned in an administrative position in a charter schools is exempt from this requirement consistent with Section 53A-1a-511.

R277-520-5. Eminence.

A. The purpose of an eminence authorization is to allow individuals with exceptional training or expertise, consistent with R277-520-1F, to teach or work in the public schools on a limited basis. Documentation of the exceptional training, skill(s) or expertise may be required by the USOE prior to the approval of the eminence authorization.

B. Teachers with an eminence authorization may teach no more than 37 percent of the regular instructional load except as provided in R277-520-5C.

C. In identified circumstances, teachers with an eminence authorization may teach more than 37 percent of the regular instructional load. An eminence authorization may be approved by the Board if:

(1) the LEA can find no other qualified individual to fill the position, then:

(a) the LEA shall submit the following documented information to the USOE annually:

(i) description;

(ii) recruitment efforts;

(iii) the qualifications of all applicants; and

(iv) the LEA's rationale for hiring the individual.

(b) the USOE shall review the information within 15 days of receipt.

(c) the USOE shall notify the individual and the LEA if the USOE approves the documented information.

(d) the LEA shall submit a request for a Letter of Authorization to the Board for the individual through normal administrative procedures; or

(2) An individual has exceptional skills, expertise, and experience that make him the primary candidate for the position, then:

(a) the LEA shall submit the following documented information to the USOE annually:

(i) information about the position;

(ii) the individual's expertise, and experience; and

(iii) the LEA's rationale for hiring the individual.

(b) the USOE shall review the information within 15 days of receipt.

(c) the USOE shall notify the individual and the LEA if the USOE approves the documented information.

(d) the LEA shall submit a request for a Letter of Authorization to the Board for the individual through normal administrative procedures.

D. LEAs shall require an individual teaching with an eminence authorization to have a criminal background check consistent with Section 53A-3-410(1) prior to employment by the LEA.

E. The LEA that employs the teacher with an eminence authorization shall determine the amount and type of professional development required of the teacher.

F. An LEA that employs teachers with eminence authorizations shall apply for renewal of the authorization(s) annually.

G. Eminence authorizations may apply to individuals without teaching licenses or to unusual and infrequent teacher situations where a license-holder is needed to teach in a subject area for which he is not endorsed, but in which he may be eminently qualified.

R277-520-6. Routes to Appropriate Endorsements for Teachers.

A. An educator may add an endorsement to an existing license area of concentration by completing the endorsement requirements established by the USOE.

B. Endorsement requirements in core academic subject areas shall include passage of the Board-approved content knowledge assessment.

C. Teachers may demonstrate competency in the subject area(s) of their teaching assignment(s) as approved by the USOE content area specialist to meet specific endorsement requirements except the Board-approved content knowledge assessment.

D. Educators shall be properly endorsed consistent with R277-520-3 or have USOE-approved SAEPs. Otherwise, the Board may withhold professional staff cost program funds pursuant to the Board's authority under Section 53A-1-401(3).

R277-520-7. Board-Approved Endorsement Program (SAEP).

A. An educator assigned to teach in a subject for which he does not hold the appropriate endorsement and who has successfully completed at least nine semester credit hours of the endorsement requirements shall be placed on an SAEP as determined by USOE specialists.

B. Individuals participating in SAEPs shall demonstrate progress toward completion of the required endorsement(s) annually, as determined jointly by the school district/charter school and the USOE.

C. An SAEP may be granted for one two-year period and

may be extended by the USOE for up to two additional years if the individual has made progress towards completing the SAEP.

D. An individual currently participating in an SAEP is considered to hold the endorsement for the purposes of meeting the requirements of R277-520-4.

R277-520-8. Background Check Requirement and Withholding of State Funds for Non-Compliance.

A. Educators qualified under any provision of this rule shall also satisfy the criminal background requirement of Section 53A-3-410 prior to unsupervised access to students.

B. If LEAs do not appropriately employ and assign teachers consistent with this rule, they may have state appropriated professional staff cost program funds withheld pursuant to R277-486, Professional Staff Cost Formula pursuant to the Board's authority under Section 53A-1-401(3).

KEY: educators, licenses, assignments
July 8, 2015 **Art X Sec 3**
Notice of Continuation May 15, 2015 **53A-1-401(3)**
53A-6-104(2)(a)

R309. Environmental Quality, Drinking Water.
R309-500. Facility Design and Operation: Plan Review, Operation and Maintenance Requirements.
R309-500-1. Purpose.

The purpose of this rule is to describe plan review procedures and requirements, clarify projects requiring review, and inspection requirements for drinking water projects. It is intended to be applied in conjunction with rules R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to public health.

R309-500-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

R309-500-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-500-4. General.

(1) Construction of New Facilities and Modification of Existing Facilities.

(a) Plans, specifications, and other data pertinent to new facilities, or existing facilities of public drinking water systems not previously reviewed, shall be submitted to the Director for review for conformance with rules R309-500 through R309-550. All submittals shall be from the public water system or its agent.

(b) The Director has the authority to grant an exception to R309-500 through R309-550 per R309-105-6(2)(b).

(c) Construction of a public drinking water project shall not begin until complete plans and specifications have received Plan Approval or a Plan Submittal Waiver has been issued by the Director.

(d) No new public drinking water facility shall be put into operation until the Director has issued an Operating Permit or a Plan Submittal Waiver.

(2) Minimum Quantity and Quality Requirements for Existing Facilities.

All existing public drinking water systems shall be capable of reliably delivering water that meets current drinking water minimum quantity and quality requirements. The Director may require modification of existing systems in accordance with R309-500 through R309-550 when such modifications are needed to reliably achieve minimum quantity and quality requirements.

(3) Operation and Maintenance.

Public drinking water system facilities shall be operated and maintained in a manner that protects public health. As a minimum, operation and maintenance procedures described in R309-500 through R309-550 shall be met.

R309-500-5. Public Drinking Water Project.

(1) Definition.

A public drinking water project, requiring submittal of a Project Notification Form and plans and specifications, is any of the following:

(a) Construction of any facility for a proposed drinking water system.

(b) Any addition to, or modification of, the facilities of an existing public drinking water system that may affect the quality or quantity of water delivered.

(c) Any activity, other than on-going operation and maintenance procedures, that may affect the quality or quantity of water delivered by an existing public drinking water system. Such activities may include:

(i) the interior re-coating or re-lining of any raw or drinking water storage tank, or water storage chamber within any treatment facility,

(ii) the in-situ re-lining of any pipeline,

(iii) a change or addition of a water treatment process,

(iv) the re-development of any spring or well source,

(v) replacement of a well pump with one of different capacity, and

(vi) deepening a well.

(2) On-going Operation and Maintenance Procedures.

On-going operation and maintenance procedures are not considered public drinking water projects and, accordingly, are not subject to the project notification, plan approval and operating permit requirements of this rule. However, these activities shall be carried out in accordance with all requirements contained in R309-500 through R309-550 and specifically the design, construction, disinfection, flushing and bacteriological sampling and testing requirements before the facilities are placed back into service. The following activities are considered to be on-going operation and maintenance procedures:

(a) pipeline leak repair,

(b) replacement of existing deteriorated pipeline where the new pipeline segment is the same size as the old pipeline or the new segment is upgraded to meet the minimum pipeline sizes required by R309-550-5(4) or larger sizes as determined by a hydraulic analysis in accordance with R309-550-5(3), excluding substantial distribution system upgrades that involve long-term planning and complex design,

(c) tapping existing water mains with corporation stops so as to make connection to new service laterals to individual structures,

(d) distribution pipeline additions where the pipeline size is the same as the main supplying the addition or the pipeline addition meets the minimum pipeline sizes required by R309-550-5(4) or larger sizes as determined by a hydraulic analysis in accordance with R309-550-5(3), the length is less than 500 feet and contiguous segments of new pipe total less than 1000 feet in any fiscal year,

(e) entry into a drinking water storage facility for the purposes of inspection, cleaning and maintenance, and

(f) replacement of equipment or pipeline appurtenances with the same type, size and rated capacity (fire hydrants, valves, pressure regulators, meters, service laterals, chemical feeders and booster pumps including deep well pumps).

R309-500-6. Plan Approval Procedure.

(1) Project Notification.

The Division shall be notified prior to the construction of any "public drinking water project" as defined in R309-500-5(1) above. The notification may be prior to or simultaneous with submission of construction plans and specifications as required by R309-500-6(2) below. Notification shall be made on a form provided by the Division.

(2) Pre-Construction Requirements.

All of the following shall be accomplished before construction of any public drinking water project begins:

(a) Plans and specifications for a public drinking water project shall be submitted to the Division at least 30 days prior to the date on which action is desired.

(b) Required submittals may include engineering reports, hydraulic analyses of the existing system and additions, local requirements for fire flow and duration, proximity of sewers and other utilities, water consumption data, supporting information,

evidence of rights-of-way and reference to any previously submitted master plans pertinent to the project, a description of a program for keeping existing water works facilities in operation during construction so as to minimize interruption of service, etc.

(c) Plans and specifications submitted shall be complete and sufficiently detailed for actual construction. Plans and specifications shall also adequately identify and address any conflicts or interferences.

(d) Drawings that are illegible or of unusual size will not be accepted for review.

(e) The plans and specifications shall be stamped and signed by a licensed professional engineer as required by Section 58-22-602(2) of the Utah Code.

(f) If construction or the ordering of substantial equipment has not commenced within one year of Plan Approval, a renewal of the Plan Approval shall be obtained prior to proceeding with construction.

(3) Eligibility for Plan Submittal Waivers.

In lieu of submitting plans and specifications for Plan Approval and obtaining Operating Permits, public water systems may request Plan Submittal Waivers for two types of water line projects (excluding booster pump stations) after first becoming eligible to request the waivers. The Director will issue written notification that a public water system is eligible to request the Plan Submittal Waivers described in R309-500-6(3)(a) and (3)(b) if the information provided is acceptable.

(a) Water Line Projects Included in an Approved Master Plan. To become eligible to request this type of waiver, a public water system must submit standard installation drawings, which meet the requirements in R309-550, and a master plan, which is supported by a hydraulic analysis, to the Director for approval.

(b) Water Line Projects Included in (i) through (iii) below. To become eligible to request this type of waiver, a public water system must submit the following in writing to the Director: standard installation drawings that meet the requirements of R309-550, the name of the professional engineer responsible for design of the entire water system, and the name of the professional engineer responsible for oversight of the hydraulic analysis for the entire water system.

(i) Water lines less than or equal to 8 inches in diameter in water systems providing water to a population less than 3,300;

(ii) Water lines less than or equal to 12 inches in diameter in water systems providing water to a population between 3,300 and 50,000; or

(iii) Water lines less than or equal to 16 inches in diameter in water systems providing water to a population greater than 50,000.

(4) Using Plan Submittal Waivers.

After becoming eligible to request Plan Submittal Waivers per R309-500-6(3), a public water system must complete the following when requesting a Plan Submittal Waiver for a water line project:

(a) Submit a complete Project Notification Form describing the project and specifying which Plan Submittal Waiver, R309-500-6(3)(a) or R309-500-6(3)(b), is being requested;

(b) For projects that will have a hydraulic impact, submit a certification of hydraulic analysis by a professional engineer per R309-511-6(1) indicating that the design will not result in unacceptable pressure and flow conditions (including fire flow if fire hydrants are installed);

(c) Submit a certification by a professional engineer, who is responsible for the design and construction of the project or has been designated by the water system in writing as the professional engineer directly responsible for the design of the entire water system, indicating that design and construction will meet the requirements of R309-500 through 550, that proper flushing and disinfection will be completed according to the appropriate ANSI/AWWA standard, that satisfactory bacteriological sample results will be obtained prior to placing the facilities into service, and that the water system will receive a copy of as-built or record drawings;

(d) Obtain a written Plan Submittal Waiver, in lieu of Plan Approval, from the Director prior to the start of construction; and

(e) Comply with the conditions in R309-500-6(4)(c) prior to placing the new facilities into service.

R309-500-7. Inspection during Construction.

Staff from the Division, the Department of Environmental Quality, or the local health department, after reasonable notice and presentation of credentials, may make visits to the work site to assure compliance with these rules.

R309-500-8. Change Orders.

Any deviations from approved plans or specifications affecting capacity, hydraulic conditions, operating units, the functioning of water treatment processes, or the quality of water to be delivered, shall be reported to the Director. The Director may require that revised plans and specifications be submitted for review. If required, revised plans or specifications shall be submitted to the Division in time to permit the review and approval of such plans or specifications before any construction work, which will be affected by such changes, is begun.

R309-500-9. Operating Permit.

The Division shall be informed when a public drinking water project, or a well-defined phase thereof, is at or near completion. The new or modified facility shall not be placed into service until an Operating Permit or a Plan Submittal Waiver is issued by the Director. The Operating Permit will not be issued until all of the following items are submitted and found to be acceptable for all projects. Distribution lines (not including in-line booster pump stations), may be placed into service prior to submittal of all items if the professional engineer responsible for the entire system, as identified to the Director, has received items (1) and (4):

(1) Certification of Rule Conformance by a professional engineer that all conditions of Plan Approval were accomplished and if applicable, changes made during construction were in conformance with rules R309-500 through 550,

(2) as-built or record drawings incorporating all changes to approved plans and specifications, unless no changes are made from previously submitted and approved plans during construction,

(3) confirmation that a copy of the as-built or record drawings has been received by the water system owner,

(4) evidence of proper flushing and disinfection in accordance with the appropriate ANSI/AWWA Standard,

(5) where appropriate, water quality data,

(6) all other documentation which may have been required during the plan review process, and

(7) confirmation that the water system owner has been provided with an Operation and Maintenance manual for the new facility if applicable.

R309-500-10. Waste and Wastewater Disposal.

Approval of plans and specifications may require evidence showing that the methods of waste and wastewater disposal have been approved or accepted by the Utah Division of Water Quality, the local health agency, or the local authority for:

(1) new drinking water facilities, including discharges from treatment facilities, discharges related to construction, etc., and

(2) new drinking water facilities serving proposed developments.

R309-500-11. Fee Schedule.

The Division is authorized to assess fees according to the Department of Environmental Quality fee schedule. The fee schedule is available from the Division.

R309-500-12. Other Permits.

Local, county, federal, and other state authorities may impose different, more stringent, or additional requirements for public drinking water projects. Water systems may be required to comply with other permitting requirements before beginning construction of drinking water projects or placing new facilities into service.

KEY: drinking water, plan review, operation and maintenance requirements, permits
July 15, 2015 19-4-104
Notice of Continuation March 13, 2015

R309. Environmental Quality, Drinking Water.
R309-510. Facility Design and Operation: Minimum Sizing Requirements.
R309-510-1. Purpose.

This rule specifies the minimum requirements for the sizing of public drinking water facilities such as sources (and their associated treatment facilities), storage tanks, and pipelines. It is intended to be applied in conjunction with R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-510-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

R309-510-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-510-4. General.

(1) This rule provides minimum quantities and flow rates that shall be used in the design of new systems and in the evaluation of water source, storage facility, and pipeline capacities, unless a public water system has obtained a capacity reduction per R309-510-5. Water demand may vary significantly depending on water system size, type, land use, urbanization, location, precipitation, etc. Therefore, public water systems may submit system-specific water use data to justify alternative sizing requirements in accordance with R309-510-5.

(2) When designing a public water system, the sizing requirements for indoor water use, irrigation, and fire suppression (as required by the local fire code official) shall be included as appropriate.

(3) Local authorities may impose more stringent design requirements on public water systems than the minimum sizing requirements of this rule.

(4) Public water systems shall consider daily, weekly, monthly, seasonal, and yearly variations of source capacity and system demand and shall verify that the capacities of drinking water facilities are sufficiently sized.

(5) The Director may modify the sizing requirements based on the unique nature and use of a water system.

R309-510-5. Reduction of Sizing Requirements.

(1) Water systems that want to use system-specific design criteria that are below the state's minimum sizing requirements may submit a request for a reduction to the Director. Each request shall include supporting information justifying the reduction in source, storage, or pipeline sizing.

(2) Depending on the reduction being sought, the supporting information may include actual water use data representing peak day demand, average day demand for indoor and irrigation uses, fire flow requirements established by the local fire code official, etc. Each reduction request and supporting information will be reviewed on a case-by-case basis because of the wide variety of factors to be considered, such as water system configuration and size, built-in redundancy, water user type, safety factors, method and quality of data collected, water losses, reliability of the source, etc.

(3) Prior to collecting or compiling water use data for a reduction request, a public water system shall consult with the Division of Drinking Water to identify the information needed for a reduction request and to establish a data collection protocol.

(4) The data submitted for a source reduction request shall be sufficient to account for daily, seasonal, and yearly variations in source and demand.

(5) If data justifying a reduction are accepted by the Director, the sizing requirements may be reduced. The requirements shall not be less than the 90th percentile of acceptable readings.

(6) If a reduction is granted on the basis of limited water use, enforceable water use restrictions must be in place, shall be consistently enforced by the water system or local authority, and shall be accepted by the Director.

(7) The Director may re-evaluate any reduction if the nature or use of the water system changes.

R309-510-6. Water Conservation.

Drinking water systems shall use the water resources of the state efficiently. The minimum sizing requirements of this rule are based on typical water consumption patterns in the State of Utah. Where legally-enforceable water conservation measures exist, the sizing requirements in this rule may be reduced on a case-by-case basis by the Director.

R309-510-7. Source Sizing.

(1) Peak Day Demand and Average Yearly Demand.

Sources shall legally and physically meet water demands under two conditions:

(a) The water system's source capacity shall be able to meet the anticipated water demand on the day of highest water consumption, which is the peak day demand.

(b) The water system's source capacity shall also be able to provide one year's supply of water, which is the average yearly demand.

(2) Indoor Water Use.

Tables 510-1 and 510-2 shall be used as the minimum sizing requirements for peak day demand and average yearly demand for indoor water use unless a public water system has obtained a reduction per R309-510-5.

TABLE 510-1

Source Demand for Indoor Use

Type of Connection	Peak Day Demand	Average Yearly Demand
Year-round use		
Residential	800 gpd/conn	146,000 gal./conn
Equivalent Residential Connection (ERC)	800 gpd/ERC	146,000 gal./ERC
Seasonal/Non-residential use		
Modern Recreation Camp	60 gpd/person	(See Note 1)
Semi-Developed Camp		
a. with pit privies	5 gpd/person	(See Note 1)
b. with flush toilets	20 gpd/person	(See Note 1)
Hotel, Motel, and Resort	150 gpd/unit	(See Note 1)
Labor Camp	50 gpd/person	(See Note 1)
Recreational Vehicle Park	100 gpd/pad	(See Note 1)
Roadway Rest Stop	7 gpd/vehicle	(See Note 1)
Recreational Home Development (i.e., developments with limited water use) (See Note 2)	400 gpd/conn	(See Note 1)

NOTES FOR TABLE 510-1:

Note 1. Average yearly demand shall be calculated by multiplying the number of days in the designated water system operating period by the peak day demand unless a reduction has

been granted in accordance with R309-510-5.

Note 2. To be considered a Recreational Home Development (i.e., developments with limited water use) as listed in Table 510-1, dwellings shall not have more than 8 plumbing fixture units,in accordance with the state-adopted plumbing code, and shall not be larger than 1,000 square feet. For a new not-yet-constructed development to be considered as a development with limited water use, it must have enforceable restrictions in place that are enforced by the water system or local authority and are accepted by the Director.

TABLE 510-2

Source Demand for Indoor Use - Individual Establishments (Note 1)

Type of Establishment	Peak Day Demand (gpd) (Notes 2 and 3)	
Airports		
a. per passenger	3	
b. per employee	15	
Boarding Houses		
a. for each resident boarder and employee	50	
b. for each nonresident boarders	10	
Bowling Alleys, per alley		
a. with snack bar	100	
b. with no snack bar	85	
Churches, per person	5	
Country Clubs		
a. per resident member	100	
b. per nonresident member present	25	
c. per employee	15	
Dentist's Office		
a. per chair	200	
b. per staff member	35	
Doctor's Office		
a. per patient	10	
b. per staff member	35	
Fairgrounds, per person	1	
Fire Stations, per person		
a. with full-time employees and food prep.	70	
b. with no full-time employees and no food prep.	5	
Gyms		
a. per participant	25	
b. per spectator	4	
Hairdresser		
a. per chair	50	
b. per operator	35	
Hospitals, per bed space	250	
Industrial Buildings, per 8 hour shift, per employee (exclusive of industrial waste)		
a. with showers	35	
b. with no showers	15	
Launderette, per washer	580	
Movie Theaters		
a. auditorium, per seat	5	
b. drive-in, per car space	10	
Nursing Homes, per bed space	280	
Office Buildings and Business Establishments, per shift, per employee (sanitary wastes only)		
a. with cafeteria	25	
b. with no cafeteria	15	
Picnic Parks, per person (toilet wastes only)	5	
Restaurants		
a. ordinary restaurants (not 24 hour service)	35	per seat
b. 24 hour service	50	per seat
c. single service customer utensils only	2	per customer
d. or, per customer served (includes toilet and kitchen wastes)	10	
Rooming House, per person	40	
Schools, per person		
a. boarding	75	
b. day, without cafeteria, gym or showers	15	
c. day, with cafeteria, but no gym or showers	20	
d. day, with cafeteria, gym and showers	25	
Service Stations		
a. per vehicle served, or	10	
b. per gas pump	250	
Skating Rink, Dance Halls, etc., per person		
a. no kitchen wastes	10	
b. Additional for kitchen wastes	3	
Ski Areas, per person (no kitchen wastes)	10	
Stores		
a. per public toilet room	500	
b. per employee	11	
Swimming Pools and Bathhouses, per person (Note 4)	10	
Taverns, Bars, Cocktail Lounges, per seat	20	
Visitor Centers, per visitor	5	

NOTES FOR TABLE 510-2:

Note 1. When more than one use will occur, the multiple uses shall be considered in determining total demand. Small industrial plants maintaining a cafeteria or showers and club houses or motels maintaining swimming pools or laundries are typical examples of multiple uses. Uses other than those listed above shall be considered in relation to established demands from known or similar installations.

Note 2. Source capacity must at least equal the peak day demand of the system. Determine this by assuming the facility is used to its maximum, e.g., the physical capacity of the facility.

Note 3. To determine the average day demand for establishments listed in Table 510-2, divide the peak day demand by 2, unless alternative data are accepted by the Director.

Note 4. Or Peak Day Demand = 20 x (Water Area (ft^2)/30) + Deck Area (ft^2)

(3) Irrigation Use.

If a water system provides water for irrigation, Table 510-3 shall be used to determine the peak day demand and average yearly demand for irrigation water use. The following procedure shall be used:

(a) Determine the location of the water system on the map entitled Irrigated Crop Consumptive Use Zones and Normal Annual Effective Precipitation, Utah as prepared by the Soil Conservation Service (available from the Division). Find the numbered zone, one through six, in which the water system is located (if located in an area described "non-arable" find nearest numbered zone).

(b) Determine the net number of acres which may be irrigated.

(c) Refer to Table 510-3, which assumes direct application of water to vegetation, to determine peak day demand and average yearly demand for irrigation use.

(d) Consider water losses due to factors such as evaporation, irrigation delivery method, overwatering, pipe leaks, etc. Apply a safety factor to the irrigation demand in the design accordingly.

TABLE 510-3

Source Demand for Irrigation

Map Zone	Peak Day Demand (gpm/irrigated acre)	Average Yearly Demand (AF/irrigated acre) (Note 1)
1	2.26	1.17
2	2.80	1.23
3	3.39	1.66
4	3.96	1.87
5	4.52	2.69
6	4.90	3.26

NOTE FOR TABLE 510-3:

Note 1. The average yearly demand for irrigation water use (in acre-feet per irrigated acre) is based on 213 days of irrigation, e.g., April 1 to October 31.

(4) Variations in Source Yield.

(a) Water systems shall consider that flow from sources may vary seasonally and yearly. Where flow varies, the number of service connections supported by a source shall be based on the minimum seasonal flow rate compared to the corresponding seasonal demand.

(b) Where source capacity is limited by the capacity of treatment facilities, the maximum number of service connections shall be determined using the treatment plant design capacity instead of the source capacity.

R309-510-8. Storage Sizing.

(1) General.

Each public water system, or storage facility serving

connections within a specific area, shall provide:

(a) equalization storage volume, to satisfy average day demands for water for indoor use and irrigation use,

(b) fire flow storage volume, if the water system is equipped with fire hydrants intended to provide fire suppression water or as required by the local fire code official, and

(c) emergency storage, if deemed appropriate by the water supplier or the Director.

(2) Equalization Storage.

(a) All public drinking water systems shall provide equalization storage. The amount of equalization storage varies with the nature of the water system, the extent of irrigation use, and the location and configuration of the water system.

(b) Table 510-4 lists required equalization storage for indoor use. Storage requirements for non-community systems not listed in this table shall be determined by calculating the average day demands from the information given in Table 510-2.

TABLE 510-4

Storage Volume for Indoor Use

Type	Volume Required (gallons)
Community Systems	
Residential; per single resident service connection	400
Non-Residential; per Equivalent Residential Connection (ERC)	400
Non-Community Systems	
Modern Recreation Camp; per person	30
Semi-Developed Camp; per person	
a. with Pit Privies	2.5
b. with Flush Toilets	10
Hotel, Motel and Resort; per unit	75
Labor Camp; per unit	25
Recreational Vehicle Park; per pad	50
Roadway Rest Stop; per vehicle	3.5
Recreational Home Development (i.e., developments with limited water use); per connection (See Note 2 in Table 510-1)	400

(c) Where a drinking water system provides water for irrigation use, Table 510-5 shall be used to determine the minimum equalization storage volumes for irrigation. The procedure for determining the map zone and irrigated acreage for using Table 510-5 is outlined in R309-510-7(3).

TABLE 510-5

Storage Volume for Irrigation Use

Map Zone	Volume Required (gallons/irrigated acre)
1	1,782
2	1,873
3	2,528
4	2,848
5	4,081
6	4,964

(3) Fire Flow Storage.

(a) Fire flow storage shall be provided if fire flow is required by the local fire code official or if fire hydrants intended for fire flow are installed.

(b) Water systems shall consult with the local fire code official regarding needed fire flows in the area under consideration. The fire flow information shall be provided to the Division during the plan review process.

(c) When direction from the local fire code official is not available, the water system shall use Appendix B of the International Fire Code, 2015 edition, for guidance. Unless otherwise approved by the local fire code official, the fire flow and fire flow duration shall not be less than 1,000 gallons per minute for 60 minutes.

(4) Emergency Storage.

Emergency storage shall be considered during the design process. The amount of emergency storage shall be based upon an assessment of risk and the desired degree of system dependability. The Director may require emergency storage when it is warranted to protect public health and welfare.

R309-510-9. Distribution System Sizing.

(1) General Requirements.

The distribution system shall be designed to ensure adequate flow and that minimum water pressures as required in R309-105-9 exist at all points within the distribution system.

(2) Peak Instantaneous Demand for Indoor Water Use.

(a) Large or complex water systems may determine peak instantaneous demand using hydraulic modeling. The hydraulic model must either apply an instantaneous peaking factor to account for peak instantaneous demand or use actual peak instantaneous water flow data.

(b) Alternatively, the peak instantaneous demand for a single pipeline shall be calculated for indoor use using the following equation:

$Q = 10.8 \times N^{0.64}$

where N equals the total number of ERC's, and Q equals the total flow (gpm) delivered to the total connections served by that pipeline.

(c) For Recreational Vehicle Parks, the peak instantaneous flow for indoor use shall be based on the following:

TABLE 510-6

Peak Instantaneous Demand for Indoor Water Use for Recreational Vehicle Parks

Number of Connections	Formula
0 to 59	$Q = 4N$
60 to 239	$Q = 80 + 20N^{0.5}$
240 or greater	$Q = 1.6N$

NOTES FOR TABLE 510-6:

Q is total peak instantaneous demand (gpm). N is the maximum number of connections. However, if the only water use is via service buildings, the peak instantaneous demand shall be calculated for the number of plumbing fixture units as presented in the state-adopted plumbing code.

(d) For small non-community water systems, the peak instantaneous demand for indoor water use shall be calculated on a per-building basis for the number of plumbing fixture units as presented in the state-adopted plumbing code.

(3) Peak Instantaneous Demand for Irrigation Use.

Peak instantaneous demand for irrigation use is given in Table 510-7. The procedure for determining the map zone and irrigated acreage for using Table 510-7 is outlined in R309-510-7(3).

TABLE 510-7

Peak Instantaneous Demand for Irrigation Use

Map Zone	Peak Instantaneous Demand (gpm/irrigated acre)
1	4.52
2	5.60
3	6.78
4	7.92
5	9.04
6	9.80

(4) Fire Flow.

(a) Distribution systems shall be designed to deliver needed fire flow if fire flow is required by the local fire code official or if fire hydrants intended for fire flow are provided.

The distribution system shall be sized to provide minimum pressures as required by R309-105-9 to all points in the distribution system when needed fire flows are imposed during peak day demand in the distribution system.

(b) The water system shall consult with the local fire code official regarding needed fire flow in the area under consideration. The fire flow information shall be provided to the Division during the plan review process.

(c) If direction from the local fire code official is not available, the water system shall use Appendix B of the International Fire Code, 2015 edition, for guidance. Unless otherwise approved by the local fire code official, the fire flow and fire flow duration shall not be less than 1,000 gallons per minute for 60 minutes.

KEY: drinking water, minimum sizing, water conservation
July 15, 2015 19-4-104
Notice of Continuation March 13, 2015

R313. Environmental Quality, Radiation Control.
R313-27. Medical Use Advisory Committee.
R313-27-1. Formation and Role of Medical Use Advisory Committee.

(1) The board shall appoint a Medical Use Advisory Committee to review and make recommendations prior to a board action for any rule or other policy matter that affects the medical use of radiation. Committee members shall be appointed after considering recommendations from affected groups or individuals.

(2) The Medical Use Advisory Committee shall consist of at least three members, with the majority of members from an area of medical use affected by the rulemaking action.

(3) Members may include non-physician professionals if the member's professional credentials are applicable to the scope of the matter being considered.

(4) Members may include board members.

(5) The Medical Use Advisory Committee shall, by majority vote, provide recommendations and, as appropriate, suggested rule language to the board. Minority recommendations and suggested rule language, if any, shall also be provided to the board.

(6) This rule shall not apply to emergency rulemaking under Section 63G-3-304.

KEY: medical use advisory committee, medical use of radiation
July 9, 2015 **19-3-103.5**
19-3-104(4)

R357. Governor, Economic Development.
R357-8. Allocation of Private Activity Bond Volume Cap.
R357-8-1. Purpose.

The purpose of this rule is to establish a formula for determining the amount of volume cap to be allocated to an applicant applying for an allocation of private activity bond volume cap.

R357-8-2. Authority.

UCA 63M-1-3004 requires the Private Activity Bond Review Board to promulgate rules for the allocation of volume cap for private activity bonds.

R357-8-3. Definitions.

(1) "Applicant" means an issuing authority submitting an application for an allocation of volume cap or a project sponsor submitting an application on behalf of an issuing authority for an allocation of volume cap.

(2) "Available Volume Cap" means the unencumbered volume cap.

(3) "Application" means:

(a) the State of Utah Federal Low-Income Housing Credit Consolidated Application Form for multi-family applicants;

(b) the Private Activity Bond Authority Manufacturing Facility Application for the manufacturing, redevelopment or exempt facility applicants; or

(c) the Private Activity Bond Authority Application for Single Family or Student Loan applicants.

(4) "Project" or "Program" means the applicant's plan for which the private activity bonds are being sought.

(5) All other terms are used as defined by UCA 63M-1-3002.

R357-8-4. Formula for Allocating Volume Cap.

(1) Allocations of the volume cap will be made during each calendar year based upon available volume cap. Availability shall depend upon the date an applicant submits a completed application.

(2) The decision to allocate volume cap to an applicant shall be determined by the board of review.

(a) When deciding to allocate volume cap to an applicant, the board of review shall consider the criteria outlined in UCA 63M-1-3005 and shall consider the following additional criteria.

(i) Multi-Family Housing applicants:

(A) Bond amount per unit;

(B) Percentage of private activity bonds per percentage of total cost;

(C) Bond amount per number of households served;

(D) Percentage of public financing;

(E) Total cost per unit;

(F) Percentage of developer fee contributed to project;

(G) Average rent as a percentage of Area Median Income;

(H) Number of special needs units;

(I) Cash flow per unit;

(J) Percentage of taxable bonds;

(K) Project location--stronger consideration is given to projects located in:

(I) Underserved areas;

(II) Communities without projects; and

(III) Difficult to develop areas as defined by HUD.

(L) Project characteristics including:

(I) Day Care;

(II) Education center;

(III) Applicant's experience with bonds; and

(IV) Size of project developed.

(M) Other considerations deemed appropriate by the board of review.

(ii) Manufacturing Facility, Redevelopment and Exempt Facilities applicants:

(A) New job creation;

(B) Retention of jobs;

(C) Training and education of employees;

(D) Bond amount to jobs ratio;

(E) Jobs created and/or retained that provide above average wages when compared to the community average wage;

(F) Demonstrated need for tax-exempt financing;

(I) Show of realistic cash flow for the first three years of operation; and

(II) Explanation for selecting variable or fixed rates.

(G) Community Support;

(I) Financial support;

(II) Zoning approval;

(III) Tax increment financing; and

(IV) Deferral of fees.

(H) Competitive costs for construction and equipment related expenses;

(I) Ready-to-go Status;

(I) Manufacturing Facility zoned for use;

(II) Proximity of infrastructure to site;

(III) Need for special infrastructure;

(IV) Environmental study, if required by lender;

(V) Current title report and site plan of project; and

(VI) Building description.

(J) Status of project's financing at time of application;

(K) Selection of bond counsel;

(L) Letter from bond counsel opining the project qualifies for private activity bonds;

(M) Selection of investment banker or, if private placement, buyer of the bonds;

(N) Detailed commitment letters from financial entities involved;

(O) Ability to cause bonds to be issued within the calendar year of allocation; and

(P) Other considerations deemed appropriate by the board of review.

(iii) Student Loan and Single Family Housing applicants:

(A) Completed application; and

(B) Payment of all mandatory fees.

(iv) All applicants:

(A) Overall community need and impact of the project or program;

(B) Applicant's past and current experience and utilization of private activity bonds; and

(C) Other considerations deemed appropriate by the board of review.

(b) When considering multiple applications at a meeting, the board of review may choose to award each applicant an equal share, pro rata share, or other division of available volume cap determined by the Board, provided that each applicant shall have submitted its application prior to the deadline posted on the website of the board of review.

(c) The staff of the board of review will work with each applicant prior to each board of review meeting to ensure that all materials necessary to be considered by the board of review are completed and available at such meeting. Forms of applications and other materials shall be made available on the website of the board of review. Applications will not be considered unless and until all materials are provided and complete.

KEY: allocation, private activity bond; volume cap
July 8, 2015 63M-1-3004

R357. Governor, Economic Development.
R357-10. Small Business Jobs Act or Utah New Market Tax Credit.
R357-10-1. Purpose.

(1) The purpose of this Rule is to define and clarify the standards required to apply for and receive a non-refundable tax credit under the Utah Small Business Jobs Act

R357-10-2. Authority.

(1) Rulemaking authority is provided in Utah Code Section 63M-1-3503(10).

R357-10-3. Definitions.

(1) All terms used in this rule shall be defined as provided for in Utah Code Section 63M-1-3502

(2) Any term defined differently in this rule or not provided for in Utah Code Section 63M-1-3502 shall be defined throughout this rule.

R357-10-4. Calculation of Time.

(1) For the purposes of the Utah Small Business Jobs Act and this Rule, time will be calculated beginning the business day after the initial or triggering event.

(2) If the time within which an act is to be performed is sixty (60) days or less, the calculation of time will include business days and will not include weekends and holidays, unless otherwise indicated.

(3) If the time which an act is to be performed is sixty-one (61) days or more, weekends or holidays are included.

(a) If the ending day or due date occurs on a weekend day or a Utah state or federal holiday, the due date shall be 11:59 pm on the next business day following the weekend day or holiday.

R357-10-5. Applications.

(1) Receipt of Applications: All applications received on or before 11:59 pm on September 2, 2014 shall be considered received on September 2, 2014.

(a) Receipt of Refundable Performance Deposit: The refundable performance deposit, provided for in 63M-1-3506, must be received before the application is considered complete.

(b) For the purposes of the evidence required to qualify under section 63M-1-3503(1)(i), applicant must show at least 10 individual qualified low-income community investments, of $4,000,000 or less, that collectively total $40,000,000 in qualified low-income community investments under the Federal New Market Tax Credit Program and/or any other states new market tax credit program.

(2) Denial of Application: All applications that are deemed incomplete or inadequate will be denied and given the statutory 15 day cure period that must be completed within or directly after the 30 day review period. If an application is cured after the 30 day review period but within the 15 day cure period, the application will be prioritized as it would have been with the other applications.

(3) Priority of Applications for Certification: For all applications received on the same day,

(a) Applications by applicants that agree to designate qualified equity investments as federal quality equity investments will be certified first, with the federal quality equity investments receiving priority on a pro rata basis as set forth in Utah Code Section 63M-1-3503(5)(a).

(b) If there is additional funding to certify after considering the priority applications, referenced in section (a) then those applications will be considered on a pro rata basis as set forth in Section 63M-1-3503(5)(b).

(c) If there is no additional funding to certify after considering the priority applications, then the applicants who were not considered priority applicants will be notified and their refundable deposits returned within 60 days.

(4) Non-Priority Applications: If there is no additional funding to certify after considering the priority applications set forth in Utah Code Section 63M-1-3503(5), then the applicants who were not considered priority applicants will be notified and their refundable deposits returned within sixty days.

(5) Notice of Certification Notice of Certification shall be delivered through electronic mail and be considered received at the time stamp within the electronic mail notice, not at the time it is read.

(6) Additional Allocation: If, after a certification is made, an applicant withdraws its request for certification, the amount that was certified to the withdrawing applicant will be redistributed to the other previously certified applicants, using the same priority as set forth in Utah Code Section 63M-1-3503(5).

(a) Certified applicants will be notified of an additional certification amount in writing. The applicant will have ten (10) days to either accept the additional certification or decline the additional certification. Failure to accept in writing will be deemed declination of additional allocation.

(b) If the additional certification is declined, the amount will be redistributed to the remaining previously certified applicants, using the same priority set forth in Utah Code Section 63M-1-3503(5).

(c) If all currently certified applicants decline the additional amount, any applicants who applied but did not receive any allocation will then be considered as set forth in Utah Code Section 63M-1-3503(5).

(d) If all applicants as set forth in (a), (b) and (c) decline the allocation, a new solicitation for the remaining and/or declined allocation may be pursued by the office and shall follow all procedures and processes as set forth in statute and this rule.

(e) Timing of issuance of additional certification: Any additional amounts received by applicants who have already received a certified allocation amount shall have a new independent timeline from the original certified allocation amount unless the qualified community development entity requests to aggregate the timelines as set forth below:

(i) An applicant receiving additional certified allocation may request to have the additional amount aggregated with the initial certified allocation by making such a request on official letter head to the office and by agreeing to waive the independent timeline of the additional certified allocation amount;

(ii) If aggregation of an original certified allocation amount with an additional certification amount may occur without violating the Utah Small Business Jobs Act or this Rule, the Office will approve the request to aggregate the allocations; and

(iii) If the allocations are aggregated, all allocation shall be subject to the deadline for the original certified allocation.

(7) Notification of Maximum Funding Allocation: Once the maximum amount of funding has been allocated, applicants will be notified that there is no other allocation amount available for the fiscal year unless or until: an applicant's certification lapses, an applicant withdraws its request, or if funding is recaptured.

(a) If the applicant has submitted a refundable deposit and elects to withdraw its application, the refundable deposit will be returned within 60 days.

(b) If the applicant withdraws and later applies for any remaining funds that have become available after following the procedures outlined in subsection (4) above, a new refundable deposit must be provided along with the application and follow all statutory requirements that the original application is subject to.

R357-10-6. Annual Fees.

(1) Recalculations: Each applicant will be notified of any recalculation of any annual fee at least ten (10) days before each annual reporting date. If no notice of recalculation is received, then the annual fee will be the same amount as it was the previous year and will be due along with the annual report as set forth in this rule and in Utah Code Section 63M-1-3510.

R357-10-7. Designation of Qualified Equity Investments.

(1) A notice of receipt of cash investment and designation of qualified equity investment pursuant to Utah Code Section 63M-1-3503(8)(b) shall be provided on a notice form supplied by the office. The form shall also include at least one of the following attachments to show that the qualified equity investment was issued, including:

(a) Bank statements, credit instruments, and all other supporting documentation to show qualified equity investment was issued; or

(b) A "screen shot" that shows that the required amount of qualified equity investment was designated as a federal qualified equity investment.

(2) A notice of transfer of a certified qualified equity investment made pursuant to Utah Code Section 63M-1-3503(8)(b) shall be made on official letterhead, indicate satisfaction of the federal match, and be signed by an authorized agent of the qualified community development entity initiating the transfer. Such notice may be sent as a PDF file via electronic mail to the office.

(3) If the qualified community development entity or transferee fails to issue a qualified equity investment within forty-five (45) days of notice of certification, the office shall notify the applicant that its certification has lapsed by issuing a Notice of Agency Action for Lapsed Certification.

(a) The applicant will have ten (10) business days to submit to the Executive Director a challenge to a Notice of Agency Action for Lapsed Certification.

(i) Any challenge to a Notice of Agency Action for Lapsed Certification shall provide documentation that the requirements of Utah Code Section 63M-1-3503(8) were met within forty-five (45) days of notice of certification.

(ii) The executive director shall issue a final determination within 5 business days of receipt of such challenge.

R357-10-8. Form and Notice for Tax Credits.

(1) A qualified community development entity (or transferee subsidiary or controlling entity) that has issued its qualified equity investments and has provided the evidence required in Utah Code Section 63M-1-3503(8)(b) shall notify the office annually of the entities that are eligible to use tax credits as follows:

(a) By submitting the form "Notification of Qualified Equity Investment for Small Business Jobs Act Tax Credits" to the office; or, if applicable,

(b) By submitting the form "Notification of Change in Allocation of Tax Credits" to the office.

(i) A form "Notification of Change in Allocation of Tax Credits" may only be used in cases where there has been a change or amendment to an agreement among the partners, shareholders or members of a partnership, limited liability company or S-Corporation.

(c) Each notice shall be accompanied by documentation of the qualified equity investment made in the qualified community development entity with respect to the entity claiming a tax credit.

(d) Each notice shall be accompanied by the documents required in Utah Code Section 63M-1-3503(12)(a).

(e) Each notice shall be accompanied by a completed "Acknowledgement and Acceptance of Tax Credit Recapture" form provided by the office.

(f) For tax credits allowed to a partnership, limited liability company or S-corporation, the notice shall be accompanied by any and all necessary documentation or agreements to demonstrate how the credits will be used by the partners, members or shareholders.

(2) Each tax credit certificate shall contain the following contingencies:

(a) A certification provision requiring the entity receiving the tax credit to certify:

(i) it is subject to the recapture provisions set forth in Section 63M-1-3504;

(ii) it will not sell the tax credit on the open market;

(iii) it will provide notice of any Federal recapture to the Office within 10 days of receiving notification of the recapture.

(b) Be available for use annually in accordance with the Applicable Percentages to the entity receiving the tax credit after receipt and acceptance of the qualified community development entity's annual report to the Office.

(i) Any event of recapture outlined by the Utah Small Business Jobs Act or this Rule shall prevent the use of an annual tax credit certificate to the entity receiving the tax credit.

R357-10-9. Revenue Impact Assessments.

(1) A REMI (Regional Economic Models, Inc.) or IMPLAN model shall qualify as "national recognized economic development model" for purposes of the revenue impact assessment required by Utah Code Section 63M-1-3511. A qualified community development entity may submit to the executive director a request to use a different revenue impact assessment, and the executive director or its designee shall approve or deny such request within 5 business days.

(2) If a qualified community economic development entity is notified pursuant to Utah Code Section 63M-1-3511(2) that a qualified low-income business investment does not have a revenue positive impact the qualified community development entity will have 5 business days to submit a request for waiver of such requirement.

(a) Any request for waiver shall demonstrate how the qualified low-income community investment will further economic development and shall include at least the following components:

(i) The reason the qualified community development entity is seeking the waiver;

(ii) Documentation supporting the reason the office should grant the waiver;

(iii) Documentation showing the positive economic impacts that will be derived from the qualified equity investment for which the waiver is sought; and

(iv) Documentation to demonstrate the anticipated economic development over a 7-year period.

(b) Within ten (10) days, the office shall provide notice to the requesting qualified community development entity of:

(i) An approval of the request for waiver;

(ii) A denial of the request for waiver; or

(iii) A request for additional information. If additional information is requested, the application shall be approved or denied within ten (10) days of receipt of all additional information.

(3) No investment shall meet the requirements of Utah Code Section 63M-1-3504(1)(c) unless, for such investment, (i) the revenue impact model has been accepted or (ii) the office has granted a waiver pursuant to subsection (2) above.

(4) In connection with any qualified low-income community investment other than those made in satisfaction of the requirement in Utah Code Section 63M-1-3504(1)(c)(i) with respect to investment of 85% of the purchase price of the qualified equity investment in qualified low-income community investments in Utah within 12 months of the issuance of the qualified equity investment, a qualified community development entity shall submit a new revenue impact model prior to making

such qualified low-income community investment and such revenue impact model shall be deemed consistent with and include the revenue impact projected in the revenue impact model submitted with respect to the original qualified low-income community investment that was repaid or redeemed and triggered the reinvestment requirement.

R357-10-10. Reporting.

(1) The initial annual report required by Utah Code Section 63M-1-3510(1) shall include:

(a) Reporting of Transaction Costs: A qualified community development entity shall report on the transactional costs of all qualified low-income community investments made utilizing this program. The report shall contain the same information and be in the same format as required by the Transactional Level Report under the Federal New Market Tax Credit Program and shall contain the same information and format.

(2) Any report required by Utah Code Section 63M-1-3510 shall include, if applicable:

(a) Reinvestment Reporting: If an initial investment is sold or repaid, and the qualified community development entity reinvests an amount equal to the amount of capital returned or recovered by the qualified community development entity from the original investment, the qualified community development entity shall provide sufficient documentation such as bank statements and mapping to show it is in compliance with Utah Code Section 63M-1-3504(1)(c):

R357-10-11. Recapture.

(1) If the office determines recapture is necessary pursuant to Utah Code Section 63M-1-3504, the office shall issue a Provisional Notice of Agency Action for Recapture to both the qualified community development entity and the taxpayer that claimed the tax credit allowed under Utah Code Section 59-9-107. Such notice shall be delivered to the qualified community development entity by (i) electronic mail and (ii) certified mail, and shall state under which provision of Utah Code Section 63M-1-3504 the recapture is sought.

(2) The six-month cure period provided for in Utah Code Section 63M-1-3505 begins on the day following receipt of the Provisional Notice of Agency Action for Recapture. If the action or omission upon which the recapture is based is cured during the six month cure period, the office shall issue a notice of cure to the qualified community development entity. If the action or omission upon which the recapture is based is not cured within the six-month cure period, the office shall issue a final Notice of Agency Action for Recapture to the qualified community development entity, the taxpayer that claimed the tax credit, and the Utah Tax Commission.

(3) For the purposes of Recapture, the Office interprets the requirement to invest 85% of the purchase price of the qualified equity investment as follows:

(a) If the qualified community development entity does not transfer or assign any of its certification, then the qualified community development entity must invest and maintain invested an amount equal to 85% or more of the original amount of the qualified equity investment certified by the Office and for which cash was received within 45 days.

(b) If the qualified community development entity transfers all or a portion of its certified qualified equity investment authority to a controlling entity or subsidiary, then:

(i) The qualified community development entity (the transferor) must invest and maintain invested an amount equal to or greater than 85% of the portion of the certified qualified equity investment authority it retained, and for which it received cash investment within 45 days, AND

(ii) The controlling entity or subsidiary (the transferee) must invest and maintain invested and amount equal to or greater than 85% of the portion of the certified qualified equity investment authority it received, and for which it received cash investment within 45 days.

(c) The 85% investment requirement shall be defined in a manner consistent with the "Substantially-All" standard set forth in IRC Section 45D and the rules and regulations promulgated thereunder. The Department shall be notified of any ransaction fees paid by the qualified active low-income community business that are in excess of a total of $50,000 for the entire time period of the investment, up to seven years.

(i) Notice of transaction fees that are in excess of $50,000 to be paid by the qualified active low-income community business must be requested in writing within 15 days of closing the investment with the qualified active low-income community business and must include an explanation for the necessity of the excess fees including highlighting the impact to the state and how the fees and impact for the particular deal compares to the customary industry practice across both the Federal New Market Tax Credit program and other States' New Market Tax Credit programs.

(4) If after the six month cure period, the action or omission upon which the recapture is based is not cured, the Office shall issue a final notice of Agency Action for Recapture.

(a) The Final Notice of Agency Action for Recapture shall also be sent to the Utah Tax Commission.

R357-10-12. Decertification.

(1) Qualified equity investments shall be decertified upon proof of compliance with all provisions of Utah Code Section 63M-1-3507(2).

(2) A qualified community development entity shall file a "Request to Decertify a Qualified Equity Investment"

(3) For the purposes of this section, the requirement that reinvestments exceed 150% of a qualified equity investment shall be considered provided:

(a) Investments made with the profits on returned or redeemed qualified low-income community investments shall count towards the 150% requirement; and

(b) Investments made with returned or redeemed qualified low-income community investments shall count towards the 150% requirement provided such qualified low-income community investment is made in a different qualified active low-income community business than the qualified active low-income community business that returned or redeemed the qualified low-income community investment and the qualified active low-income community business receiving the, to be counted toward the 150% requirement, is located in Utah.

(c) CDE shall provide documentation, such as bank statements and tax returns to demonstrate compliance with the 150% investment requirement.

(d)(i) Example 1: CDE invests $1,000,000 in QALICB A. QALICB A repays $1,000,000 plus $200,000 in interest. If CDE reinvested another $1,200,000 in QALICB A, only $1,200,000 would count towards 150% requirement ($1,000,000 initially invested plus $200,000 in profits).

(ii) Example 2: Same facts as Example 1 but CDE, instead, reinvests the $1,200,000 repaid by QALICB A into QALICB B. Then $2,200,000 would count towards 150% requirement. ($1,000,000 initial investment in QALICB A, plus $1,000,000 return of capital invested in QALICB B, plus $200,000 profit in QALICB B). Alternatively, CDE could also count $2,200,000 towards 150% requirement if $200,000 profit was reinvested in QALICB A and $1,000,000 was invested in QALICB B.

(4) Upon receipt of a Request to Decertify a Qualified Equity Investment, the Office shall issue a Decertification Certificate if all of the conditions for decertification are met.

(5) If the Office determines that the conditions for decertification have not been met, the Office shall issue a Notice of Agency Action, Failure to Decertify.

(a) Each Notice of Agency Action, Failure to Decertify shall identify which provision of Section 63M-1-3504 has not been met.

(b) Upon receipt of the Notice of Agency Action, the qualified community development entity may submit a request for reconsideration to the Executive Director of the Office within 10 days.

(i) The request for reconsideration shall contain all exhibits or evidence that the qualified community development entity wishes the Director to consider regarding compliance.

(c) The Executive Director of the Office shall have 30 days to consider and issue a decision on reconsideration.

(6) Further proceedings: If the issue of certification is not resolved by reconsideration, as set forth in Section 5, either party may request an informal administrative hearing, as set forth in the Utah Administrative Procedures Act.

(7) The costs of hiring an Administrative Law Judge to rule on the informal administrative hearing shall be borne by the losing party.

KEY: new market tax credit, Small Business Jobs Act, tax credit
July 8, 2015 63M-1-3503(10)

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-40. Private Duty Nursing Service.
R414-40-1. Introduction and Authority.

(1) This rule outlines eligibility, access requirements, coverage, limitations, and reimbursement for private duty nursing. This rule is authorized by Sections 26-1-5 and 26-18-3.

(2) Private duty nursing service is an optional Title XIX program authorized by 42 U.S.C. Sec. 1396 et seq., 42 U.S.C. Sec. 1396d(a)(8) and 42 CFR 440.80.

R414-40-2. Recipient Eligibility Requirements.

ESPDT eligible children who are under age 21 and who are either in transition from the hospital to the home or who are ventilator dependent are eligible for private duty nursing service. The recipient must require greater than four hours of continuous skilled nursing care per day.

R414-40-3. Program Access Requirements.

(1) Only a licensed home health agency enrolled as a Medicaid provider may be reimbursed for private duty nursing service.

(2) A recipient must have a written physician order establishing the need for private duty nursing service. The private duty nursing provider must develop a plan of care consistent with the recipient diagnosis, severity of illness, and intensity of service. The patient must require more than four hours of skilled nursing service. If medically necessary nursing service requires four hours or less of skilled nursing, the service is covered under the home health program.

(3) Medicaid providers shall submit an initial prior authorization request with medical documentation that demonstrates the need for nursing service. The home health agency shall submit an initial certification and a recertification at least every 60 days as required by 42 CFR 440.70.

(4) Private duty nursing is only available if a parent, guardian, or primary caregiver is committed to and capable of performing the medical skills necessary to ensure quality care.

(5) The home health agency shall verify that the hospital has provided specialized training for the caregiver before patient discharge to enable the caregiver to provide hands-on care in the home. The private duty nurse initially supervises the caregiver who provides this care to ensure that training has been assimilated to ensure safe, quality patient care.

R414-40-4. Service Coverage for Private Duty Nursing.

(1) Private duty nursing service is a limited benefit that is provided with the expectation that the patient's need for private duty nursing service will decrease over time.

(2) Medicaid covers medically necessary and appropriate private duty nursing service for a limited time to provide skilled nursing care in the home. Medicaid provides private duty nursing service while the private duty nursing service provider trains the recipient's caregivers to provide the necessary care. Once the caregivers have been given sufficient training for the recipient's needs, the private duty nursing service ends. However, a client who still requires more than four hours of ongoing skilled nursing service may receive private duty nursing service as provided in this rule.

(3) The number of private duty nursing (PDN) hours that a patient may receive is based on how the patient scores on the PDN Acuity Grid. The PDN provider shall provide supporting documentation to justify the patient's score. The PDN Acuity Grid must reflect the average daily care given by the nurse during the previous certification period.

(4) After informing the recipient's family or similar representatives who live with the recipient and in coordination and consultation with the physician, the private duty nurse shall attempt to wean the patient from a device or service and identify new problems.

(5) Private duty nursing is not covered to provide services solely for the following:

(a) custodial or sitter care to ensure the patient is compliant with treatment;

(b) respite care;

(c) monitoring behavioral or eating disorders; and

(d) observation or monitoring medical conditions that do not require skilled nursing care.

(6) Private duty nursing service is not covered if the service is available from another funding source, agency, or program.

R414-40-5. Reimbursement of Services.

(1) Medicaid reimburses nursing service in accordance with the Utah Medicaid State Plan, Attachment 4.19-B.

(2) A private duty nurse caring for two patients in the home shall bill with the UN modifier.

(3) A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay patients.

KEY: Medicaid
December 1, 2011 26-1-5
Notice of Continuation July 16, 2015 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-52. Optometry Services.
R414-52-1. Introduction.

The Optometry Services Program provides a scope of services for Medicaid recipients in accordance with the Vision Care Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

KEY: Medicaid, optometry
July 16, 2015 26-1-5
Notice of Continuation May 1, 2013 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-53. Eyeglasses Services.
R414-53-1. Introduction.

The Eyeglasses Services Program provides a scope of services for Medicaid recipients in accordance with the Vision Care Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

KEY: Medicaid, eyeglasses
July 16, 2015 26-1-5
Notice of Continuation May 3, 2013 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-59. Audiology Services.
R414-59-1. Introduction.

Audiology services provide a scope of services for Medicaid recipients in accordance with the Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

KEY: Medicaid, audiology
August 26, 2014 26-1-5
Notice of Continuation July 16, 2015 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-303. Coverage Groups.
R414-303-1. Authority and Purpose.

This rule is authorized by Sections 26-1-5 and 26-18-3 and establishes eligibility requirements for Medicaid and the Medicare Cost Sharing programs.

R414-303-2. Definitions.

(1) The definitions in Rules R414-1 and R414-301 apply to this rule. In addition, the Department adopts and incorporates by reference the following definitions as found in 42 CFR 435.4, October 1, 2012 ed.:

(a) "Caretaker relative;"

(b) "Family size;"

(c) "Modified Adjusted Gross Income (MAGI);"

(d) "Pregnant woman."

(2) A dependent child who is deprived of support is defined in Section R414-302-5.

(3) The definition of caretaker relative includes individuals of prior generations as designated by the prefix great, or great-great, etc., and children of first cousins.

(a) To qualify for coverage as a non-parent caretaker relative, the non-parent caretaker relative must assume primary responsibility for the dependent child and the child must live with the non-parent caretaker relative or be temporarily absent.

(b) The spouse of the caretaker relative may also qualify for Medicaid coverage.

R414-303-3. Medicaid for Individuals Who Are Aged, Blind or Disabled for Community and Institutional Coverage Groups.

(1) The Department provides Medicaid coverage to individuals as described in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.232, 435.236, 435.301, 435.320, 435.322, 435.324, 435.340, and 435.350, October 1, 2012 ed., which are adopted and incorporated by reference. The Department provides coverage to individuals as required by 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), and 1902(a)(10)(E)(i) through (iv) of Title XIX of the Social Security Act in effect January 1, 2013, which are adopted and incorporated by reference. The Department provides coverage to individuals described in Section 1902(a)(10)(A)(ii)(XIII) of Title XIX of the Social Security Act in effect January 1, 2013, which is adopted and incorporated by reference. Coverage under Section 1902(a)(10)(A)(ii)(XIII) is known as the Medicaid Work Incentive Program.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).

(3) An individual can request a disability determination from the State Medicaid Disability Office. The Department adopts and incorporates by reference the disability determination requirements described in 42 CFR 435.541, October 1, 2012 ed., and Social Security's disability requirements for the Supplemental Security Income program as described in 20 CFR 416.901 through 416.998, April 1, 2012 ed., to decide if an individual is disabled. The Department notifies the eligibility agency of its disability decision, which then sends a disability decision notice to the client.

(a) If an individual has earned income, the State Medicaid Disability Office shall review medical information to determine if the client is disabled without regard to whether the earned income exceeds the Substantial Gainful Activity level defined by the Social Security Administration.

(b) If, within the prior 12 months, SSA has determined that the individual is not disabled, the eligibility agency must follow SSA's decision. If the individual is appealing SSA's denial of disability, the State Medicaid Disability Office must follow SSA's decision throughout the appeal process, including the final SSA decision.

(c) If, within the prior 12 months, SSA has determined an individual is not disabled but the individual claims to have become disabled since the SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

(d) Clients must provide the required medical evidence and cooperate in obtaining any necessary evaluations to establish disability.

(e) Recipients must cooperate in completing continuing disability reviews as required by the State Medicaid Disability Office unless they have a current approval of disability from SSA. Medicaid eligibility as a disabled individual will end if the individual fails to cooperate in a continuing disability review.

(4) If an individual who is denied disability status by the State Medicaid Disability Office requests a fair hearing, the individual may request a reconsideration as part of the fair hearing process. The individual must request the hearing within the time limit defined in Section R414-301-7.

(a) The individual may provide the eligibility agency additional medical evidence for the reconsideration.

(b) The reconsideration may take place before the date the fair hearing is scheduled to take place.

(c) The Department may not delay the individual's fair hearing due to the reconsideration process.

(d) The State Medicaid Disability Office shall notify the individual and the Hearings Office of the reconsideration decision.

(i) If disability status is approved pursuant to the reconsideration, the eligibility agency shall complete the Medicaid eligibility determination for disability Medicaid. The individual may choose whether to pursue or abandon the fair hearing.

(ii) If disability status is denied pursuant to the reconsideration, the fair hearing process will proceed unless the individual chooses to abandon the fair hearing.

(5) If the eligibility agency denies an individual's Medicaid application because the State Medicaid Disability Office or SSA has determined that the individual is not disabled and that determination is later reversed on appeal, the eligibility agency determines the individual's eligibility back to the application that gave rise to the appeal. The individual must meet all other eligibility criteria for such past months.

(a) Eligibility cannot begin any earlier than the month of disability onset or three months before the month of application subject to the requirements defined in Section R414-306-4, whichever is later.

(b) If the individual is not receiving medical assistance at the time a successful appeal decision is made, the individual must contact the eligibility agency to request the Disability Medicaid coverage.

(c) The individual must provide any verification the eligibility agency needs to determine eligibility for past and current months for which the individual is requesting medical assistance.

(d) If an individual is determined eligible for past or current months, but must pay a spenddown or Medicaid Work Incentive (MWI) premium for one or more months to receive coverage, the spenddown or MWI premium must be met before Medicaid coverage may be provided for those months.

(6) The age requirement for Aged Medicaid is 65 years of age.

(7) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act in effect January 1, 2013, the

eligibility agency shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by such section.

(8) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv) of Title XIX of the Social Security Act in effect January 1, 2013, is limited to the amount of funds allocated under Section 1933 of Title XIX of the Social Security Act in effect January 1, 2013, for a given year, or as subsequently authorized by Congress under the American Taxpayer Relief Act, Pub. L. No. 112 240, signed into law on January 2, 2013. The eligibility agency shall deny coverage to applicants when the uncommitted allocated funds are insufficient to provide such coverage.

(9) To determine eligibility under Section 1902(a)(10)(A)(ii)(XIII), if the countable income of the individual and the individual's family does not exceed 250% of the federal poverty guideline for the applicable family size, the eligibility agency shall disregard an amount of earned and unearned income of the individual, the individual's spouse, and a minor individual's parents that equals the difference between the total income and the Supplemental Security Income maximum benefit rate payable.

(10) The eligibility agency shall require individuals eligible under Section 1902(a)(10)(A)(ii)(XIII) to apply for cost-effective health insurance that is available to them.

R414-303-4. Medicaid for Parents and Caretaker Relatives, Pregnant Women, Children, and Individuals Infected with Tuberculosis Using MAGI Methodology.

(1) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.116, 435.118, and 435.139, October 1, 2012 ed., and Section 1902(a)(10)(A)(ii)(XII) of the Social Security Act, effective January 1, 2014, which are adopted and incorporated by reference. The Department uses the MAGI methodology defined in Section R414-304-5 to determine household composition and countable income for these individuals.

(2) To qualify for coverage, a parent or other caretaker relative must have a dependent child living with the parent or other caretaker relative.

(3) The Department provides Medicaid coverage to parents and other caretaker relatives, whose countable income determined using the MAGI methodology does not exceed the applicable income standard for the individual's family size. The income standards are as follows:

TABLE

Family Size	Income Standard
1	$438
2	$544
3	$678
4	$797
5	$912
6	$1,012
7	$1,072
8	$1,132
9	$1,196
10	$1,257
11	$1,320
12	$1,382
13	$1,443
14	$1,505
15	$1,569
16	$1,630

(4) For a family that exceeds 16 persons, add $62 to the income standard for each additional family member.

(5) The Department provides Medicaid coverage to children who are zero through five years of age as required in 42 CFR 435.118, whose countable income is equal to or below 139% of the federal poverty level (FPL).

(6) The Department provides Medicaid coverage to children who are six through 18 years of age as required in 42 CFR 435.118, whose countable income is equal to or below 133% of the FPL.

(7) The Department provides Medicaid coverage to pregnant women as required in 42 CFR 435.116. The Department elects the income limit of 139% of the FPL to determine a pregnant woman's eligibility for Medicaid.

(8) The Department provides Medicaid coverage to an infant until the infant turns one-year old when born to a woman eligible for Utah Medicaid on the date of the delivery of the infant, in compliance with Sec. 113(b)(1), Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3. The infant does not have to remain in the birth mother's home and the birth mother does not have to continue to be eligible for Medicaid. The infant must continue to be a Utah resident to receive coverage.

(9) The Department provides Medicaid coverage to an individual who is infected with tuberculosis and who does not qualify for a mandatory Medicaid coverage group. The individual's income cannot exceed the amount of earned income an individual, or if married, a couple, can have to qualify for Supplemental Security Income.

R414-303-5. Medicaid for Parents and Caretaker Relatives, Pregnant Women, and Children Under Non-MAGI-Based Community and Institutional Coverage Groups.

(1) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.117, 435.139, 435.170 and 435.301 through 435.310, October 1, 2012 ed. and Title XIX of the Social Security Act Sections 1902(e)(1), (4), (5), (6), (7) in effect January 1, 2013, which are adopted and incorporated by reference.

(2) To qualify for coverage as a medically needy parent or other caretaker relative, the parent or caretaker relative must have a dependent child living with the parent or other caretaker relative.

(a) The parent or other caretaker relative must be determined ineligible for the MAGI-based Parent and Caretaker Relative coverage group.

(b) The parent or other caretaker relative must not have resources in excess of the medically needy resource limit defined in Section R414-305-5.

(3) The income and resources of the non-parent caretaker relative are not counted to determine medically needy eligibility for the dependent child.

(4) To qualify for Child Medically Needy coverage, the dependent child does not have to be deprived of support and does not have to live with a parent or other caretaker relative.

(5) If a child receiving SSI elects to receive Medically-Needy Child Medicaid, the child's SSI income shall be counted with other household income.

(6) The eligibility agency shall determine the countable income of the non-parent caretaker relative and spouse in accordance with Section R414-304-6 and Section R414-304-8.

(a) Countable earned and unearned income of the non-parent caretaker relative and spouse is divided by the number of family members living in the household.

(b) The eligibility agency counts the income attributed to the caretaker relative, and the spouse if the spouse is included in the coverage, to determine eligibility.

(c) The eligibility does not count other family members in the non-parent caretaker relative's household to determine the applicable income limit.

(d) The household size includes the caretaker relative and the spouse if the spouse also wants medical coverage.

(7) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

R414-303-6. 12-Month Transitional Medicaid.

The Department shall provide 12 months of extended medical assistance as set forth in 42 U.S.C. 1396r-6, when the parent or caretaker relative is eligible and enrolled in Medicaid as defined in 42 CFR 435.110, and loses eligibility as described in Subsection 1931(c)(2) of the Social Security Act.

(1) A pregnant woman who is eligible and enrolled in Medicaid as defined in 42 CFR 435.116, and who meets the income limit defined in 42 CFR 435.110 for three of the prior six months, is eligible to receive 12-month Transitional Medicaid.

(2) Children who live with the parent are eligible to receive Transitional Medicaid.

R414-303-7. Four-Month Transitional Medicaid.

(1) The Department adopts and incorporates by reference 42 CFR 435.112 and 435.115(f), (g) and (h), October 1, 2012 ed., and Title XIX of the Social Security Act, Section 1931(c)(1) and Section 1931(c)(2) in effect January 1, 2013, to provide four months of extended medical assistance to a household when the parent or caretaker relative is eligible and enrolled in Medicaid as defined in 42 CFR 435.110, and loses eligibility for the reasons defined in 42 CFR 435.112 and 435.115.

(a) A pregnant woman who is eligible and enrolled in Medicaid as defined in 42 CFR 435.116, and who meets the income limit defined in 42 CFR 435.110 for three of the prior six months, is eligible to receive Four-Month Transitional Medicaid for the reasons defined in 42 CFR 435.112 and 435.115.

(b) Children who live with the parent are eligible to receive Four-Month Transitional Medicaid.

(2) Changes in household composition do not affect eligibility for the four-month extension period. Newborn babies are considered household members even if they are not born the month the household became ineligible for Medicaid. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for household members who leave the household.

R414-303-8. Foster Care, Former Foster Care Youth and Independent Foster Care Adolescents.

(1) The Department adopts and incorporates by reference 42 CFR 435.115(e)(2), October 1, 2014 ed. The Department also adopts and incorporates by reference Subsection 1902(a)(10)(A)(i)(IX) and Subsection 1902(a)(10)(A)(ii)(XVII) of the Social Security Act, effective January 1, 2015.

(2) Eligibility for foster children who meet the definition of a dependent child under the State Plan for Aid to Families with Dependent Children in effect on July 16, 1996, is not governed by this rule. The Department of Human Services determines eligibility for foster care Medicaid.

(3) The Department covers individuals who are under the responsibility of the State and meet the criteria of Subsection 1902(a)(10)(A)(i)(IX) of the Social Security Act. Former Foster Care Youth is the name of this coverage group.

(a) Coverage is available through the month in which the individual turns 26 years of age.

(b) There is no income or asset test for eligibility under this group.

(4) The Department elects to cover individuals who are in foster care under the responsibility of the State at the time the individual turns 18 years of age, are not eligible under the Former Foster Care Youth coverage group, and who are 18 years old but not yet 21 years old as described in Subsection 1902(a)(10)(A)(ii)(XVII) of the Social Security Act. This coverage is under the Independent Foster Care Adolescents program. The Department determines eligibility according to the following requirements.

(a) At the time the individual turns 18 years of age, the individual must be in the custody of the Division of Child and Family Services, or the Department of Human Services if the Division of Child and Family Services is the primary case manager, or a federally recognized Indian tribe, but not in the custody of the Division of Youth Corrections.

(b) Income and assets of the child are not counted to determine eligibility under the Independent Foster Care Adolescents program.

(c) When funds are available, an eligible independent foster care adolescent may receive Medicaid under this coverage group until he or she reaches 21 years of age, and through the end of that month.

R414-303-9. Subsidized Adoptions and Kinship Guardianship.

(1) The Department adopts and incorporates by reference 42 CFR 435.115(e)(1), October 1, 2013 ed, in regard to Subsidized Adoption Medicaid.

(2) The Department elects to cover individuals under a state adoption agreement as defined in 42 CFR 435.227, October 1, 2013 ed., which is adopted and incorporated by reference.

(3) The Department may not impose resource or income tests for a child eligible under a state subsidized adoption agreement.

(4) The Department adopts and incorporates by reference Subsection 1902(a)(10)(A)(i)(I) of the Social Security Act, effective January 1, 2014, in regard to Kinship Guardianship Medicaid.

(5) The Department of Human Services determines eligibility for subsidized adoption and Kinship Guardianship Medicaid.

R414-303-10. Refugee Medicaid.

(1) The Department adopts and incorporates by reference 45 CFR 400.90 through 400.107 and 45 CFR, Part 401, October 1, 2012 ed., relating to refugee medical assistance.

(2) Child support enforcement rules do not apply.

(3) The sponsor's income and resources are not counted. In-kind service or shelter provided by the sponsor is not counted.

(4) Cash assistance payments received by a refugee from a resettlement agency are not counted.

(5) Refugees may qualify for medical assistance for eight months after entry into the United States.

R414-303-11. Presumptive Eligibility for Medicaid.

(1) The Department adopts and incorporates by reference, the definitions found at 42 CFR 435.1101, and the provisions found at 42 CFR 435.1103, and 42 CFR 435.1110, October 1, 2013 ed., in relation to determinations of presumptive eligibility.

(2) The following definitions apply to this section:

(a) "covered provider" means a provider whom the Department determines is qualified to make a determination of presumptive eligibility for a pregnant woman and who meets the criteria defined in Section 1920(b)(2) of the Social Security Act. Covered provider also means a hospital that elects to be a qualified entity under a memorandum of agreement with the Department;

(b) "presumptive eligibility" means a period of eligibility for medical services based on self-declaration that the individual meets the eligibility criteria.

(3) The Department provides coverage to a pregnant woman during a period of presumptive eligibility if a covered provider determines, based on preliminary information, that the woman states she:

(a) is pregnant;

(b) meets citizenship or alien status criteria as defined in Section R414-302-3;

(c) has household income that does not exceed 139% of the federal poverty guideline applicable to her declared household size; and

(d) is not already covered by Medicaid or CHIP.

(4) A pregnant woman may only receive medical assistance during one presumptive eligibility period for any single term of pregnancy.

(5) A child born to a woman who is only presumptively eligible at the time of the infant's birth is not eligible for the one year of continued coverage defined in Section 1902(e)(4) of the Social Security Act. If the mother applies for Utah Medicaid after the birth and is determined eligible back to the date of the infant's birth, the infant is then eligible for the one year of continued coverage under Section 1902(e)(4) of the Social Security Act. If the mother is not eligible, the eligibility agency shall determine whether the infant is eligible under other Medicaid programs.

(6) A child determined presumptively eligible who is under 19 years of age may receive presumptive eligibility only through the end of the month after the presumptive determination date or until the end of the month in which the child turns 19, whichever occurs first.

(7) An individual determined presumptively eligible for former foster care children coverage may receive presumptive eligibility only through the end of the month after the presumptive determination date or until the end of the month in which the individual turns 26 years old, whichever occurs first.

(8) The Department shall limit the coverage groups for which a hospital may make a presumptive eligibility decision to the groups defined in Section 1920 (pregnant women, former foster care children, parents or caretaker relatives), Section 1920A (children under 19 years of age) and 1920 B (breast and cervical cancer patients but only Centers for Disease Control provider hospitals can do presumptive eligibility for this group) of the Social Security Act, January 1, 2013.

(9) A hospital must enter into a memorandum of agreement with the Department to be a qualified entity and receive training on policy and procedures.

(10) The hospital shall cooperate with the Department for audit and quality control reviews on presumptive eligibility determinations the hospital makes. The Department may terminate the agreement with the hospital if the hospital does not meet standards and quality requirements set by the Department.

(11) The covered provider may not count as income the following:

(a) Veteran's Administration (VA) payments;

(b) Child support payments; or

(c) Educational grants, loans, scholarships, fellowships, or gifts that a client uses to pay for education.

(12) An individual found presumptively eligible for one of the following coverage groups may only receive one presumptive eligibility period in a calendar year:

(a) Parents or caretaker relatives;

(b) Children under 19 years of age;

(c) Former foster care children; and

(d) Individuals with breast or cervical cancer.

R414-303-12. Medicaid Cancer Program.

(1) The Department shall provide coverage to individuals described in Section 1902(a)(10)(A)(ii)(XVIII) of the Social Security Act in effect January 1, 2013, which the Department adopts and incorporates by reference. This coverage shall be referred to as the Medicaid Cancer Program.

(2) The Department provides Medicaid eligibility for services under this program to individuals who are screened for breast or cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and are in need of treatment.

(3) An individual who is covered for treatment of breast or cervical cancer under a group health plan or other health insurance coverage defined by the Health Insurance Portability and Accountability Act (HIPAA) of Section 2701 (c) of the Public Health Service Act, is not eligible for coverage under the program. If the individual has insurance coverage but is subject to a pre-existing condition period that prevents the receipt of treatment for breast or cervical cancer or precancerous condition, the individual is considered to not have other health insurance coverage until the pre-existing condition period ends at which time eligibility for the program ends.

(4) An individual who is eligible for Medicaid under any mandatory categorically needy eligibility group, or any optional categorically needy or medically needy program that does not require a spenddown or a premium, is not eligible for coverage under the program.

(5) An individual must be under 65 years of age to enroll in the program.

(6) Coverage for the treatment of precancerous conditions is limited to two calendar months after the month benefits are made effective.

(7) Coverage for an individual with breast or cervical cancer under Section 1902(a)(10)(A)(ii)(XVIII) ends when treatment is no longer needed for the breast or cervical cancer. At each eligibility review, eligibility workers determine whether treatment is still needed based on the doctor's statement or report.

KEY: MAGI-based, coverage groups, former foster care youth, presumptive eligibility

August 1, 2015 26-18-3

Notice of Continuation January 23, 2013 26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-306. Program Benefits and Date of Eligibility.
R414-306-1. Medicaid Benefits and Coordination with Other Programs.

(1) The Department provides medical benefits to Medicaid recipients as outlined in Section R414-1-6.

(2) The Department elects to coordinate Medicaid with Medicare Part B for all Medicaid recipients.

(3) The Department must inform applicants about the Child Health Evaluation and Care (CHEC) program. By signing the application form the client acknowledges receipt of CHEC program information.

(4) The Department must coordinate with the Children's Health Insurance Program to assure the enrollment of eligible children.

(5) The Department must coordinate with the Women, Infants and Children Program to provide information to applicants and recipients about the availability of services.

R414-306-2. QMB, SLMB, and QI Benefits.

The Department shall provide the services outlined under 42 U.S.C. 1396d(p) and 42 U.S.C. 1396u-3 for Qualified Medicare Beneficiaries.

(2) The Department shall provide the benefits outlined under 42 U.S.C. 1396d(p)(3)(ii) for Specified Low-Income Medicare Beneficiaries and Qualifying Individuals. Benefits for Qualifying Individuals are subject to the provisions of 42 U.S.C. 1396u-3.

(3) The Department does not cover premiums for enrollment with any health insurance plans except for Medicare.

R414-306-3. Qualified Medicare Beneficiary Date of Entitlement.

(1) Eligibility for the Qualified Medicare Beneficiary (QMB) program begins the first day of the month after the month the Medicaid eligibility agency determines that the individual is eligible, in accordance with the requirements of 42 U.S.C. 1396a(e)(8).

(2) There is no provision for retroactive QMB assistance.

R414-306-4. Effective Date of Eligibility.

(1) Subject to the exceptions in Subsection R414-306-4(3), eligibility for any Medicaid program, and for the Specified Low-income Medicare Beneficiary (SLMB) or Qualified Individual (QI) programs begins the first day of the application month if the individual is determined to meet the eligibility criteria for that month.

(2) An applicant for Medicaid, SLMB or QI benefits may request medical coverage for the retroactive period. The retroactive period is the three months immediately preceding the month of application.

(a) An applicant may request coverage for one or more months of the retroactive period.

(b) Subject to the exceptions in Subsection R414-306-4(3), eligibility for retroactive medical coverage begins no earlier than the first day of the month that is three months before the application month.

(c) The applicant must receive medical services during the retroactive period and be determined eligible for the month he receives services.

(3) To determine the date eligibility for medical assistance may begin for any month, the following requirements apply:

(a) Eligibility of an individual cannot begin any earlier than the date the individual meets the state residency requirement defined in Section R414-302-4;

(b) Eligibility of a qualified alien subject to the five-year bar on receiving regular Medicaid services cannot begin earlier than the date that is five years after the date the person became a qualified alien, or the date the five-year bar ends due to other events defined in statute;

(c) Eligibility of a qualified alien not subject to the five-year bar on receiving regular Medicaid services can begin no earlier than the date the individual meets qualified alien status.

(d) An individual who is ineligible for Medicaid while residing in a public institution or an Institution for Mental Disease (IMD) may become eligible on the date the individual is no longer a resident of either one of these institutions. If an individual is under the age of 22 and is a resident of an IMD, the individual remains a resident of the IMD until he is unconditionally released.

(4) If an applicant is not eligible for the application month, but requests retroactive coverage, the agency will determine eligibility for the retroactive period based on the date of that application.

(5) The eligibility agency shall determine retroactive eligibility by using the eligibility criteria in effect during the retroactive month. Modified Adjusted Gross Income (MAGI) methodology is effective only on or after January 1, 2014, and the eligibility agency may not apply MAGI methodology before that date.

(6) The agency may use the same application to determine eligibility for the month following the month of application if the applicant is determined ineligible for both the retroactive period and the application month. In this case, the application date changes to the date eligibility begins. The retroactive period associated with the application changes to the three months preceding the new application date.

(7) The effective date of eligibility is January 1, 2014, for applicants who file for eligibility from October 1, 2013, through December 31, 2013, and are not found eligible using 2013 eligibility criteria, but are found eligible for a coverage group using MAGI methodology.

(8) Medicaid eligibility for certain services begins when the individual meets the following criteria:

(a) Eligibility for coverage of institutional services cannot begin before the date that the individual has been admitted to a medical institution and meets the level of care criteria for admission. The medical institution must provide the required admission verification to the Department within the time limits set by the Department in Rule R414-501. Medicaid eligibility for institutional services does not begin earlier than the first day of the month that is three months before the month of application for Medicaid coverage of institutional services.

(b) Eligibility for coverage of home and community-based services under a Medicaid waiver cannot begin before the first day of the month the client is determined by the case management agency to meet the level of care criteria and home and community-based services are scheduled to begin within the month. The case management agency must verify that the individual meets the level of care criteria for waiver services. Medicaid eligibility for waiver services does not begin earlier than the first day of the month that is three months before the month of application for Medicaid coverage of waiver services.

(9) An individual determined eligible for QI benefits in a calendar year is eligible to receive those benefits throughout the remainder of the calendar year, if the individual continues to meet the eligibility criteria and the program still exists. Receipt of QI benefits in one calendar year does not entitle the individual to QI benefits in any succeeding year.

(10) After being approved for Medicaid, a client may later request coverage for the retroactive period associated with the approved application if the following criteria are met:

(a) The client did not request retroactive coverage at the time of application; and

(b) The agency did not make a decision about eligibility for medical assistance for that retroactive period; and

(c) The client states that he received medical services and

provides verification of his eligibility for the retroactive period.

(11) The Department may not provide retroactive coverage if a client requests coverage for the retroactive period associated with a denied application after the date of denial. The client, however, may reapply and the eligibility agency may consider a new retroactive coverage period based on the new application date.

R414-306-5. Medical Transportation.

The Medical Transportation program provides medical transportation services for Medicaid recipients in accordance with the Medical Transportation Utah Medicaid Provider Manual, as incorporated into Section R414-1-5.

R414-306-6. State Supplemental Payments for Institutionalized SSI Recipients.

(1) The Department incorporates by reference Section 1616(a) through (d) of the Compilation of the Social Security Laws, January 1, 2009 ed.

(2) A State Supplemental payment equal to $15 shall be paid to a resident of a medical institution who receives a Supplemental Security Income (SSI) payment.

(3) Recipients must be eligible for Medicaid benefits to receive the State Supplemental payment.

(4) Recipients are eligible to receive the $15 State Supplemental payment beginning with the first month that their SSI assistance is reduced to $30 a month because they stay in an institution and they are eligible for Medicaid.

(5) The State Supplemental payment terminates effective the month the recipient no longer meets the eligibility criteria for receiving such supplemental payment.

KEY: effective date, program benefits, medical transportation
August 1, 2015 26-18
Notice of Continuation January 23, 2013

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-506. Hospital Provider Assessments.
R414-506-1. Introduction and Authority.

This rule defines the scope of hospital provider assessment. This rule is authorized under Title 26, Chapter36a and governs the services allowed under 42 CFR 447.272.

R414-506-2. Definitions.

The definitions in Section 26-36a-103 apply to this rule.

R414-506-3. Audit of Hospitals.

(1) For hospitals that do not file a Medicare cost report for the time frames outlined in Section 26-36a-203, the Department of Health shall audit the hospital's records to determine the correct discharges for the assessment.

(2) Hospitals subject to the assessment shall make their records available for reasonable inspection upon written request from the Department. Failure to make the records available shall be considered non-compliance and subject the hospital to penalties set forth in Section R414-506-5.

R414-506-4. Change in Hospital Status.

(1) If a hospital's status changes during any given year and it no longer falls under the definition of a hospital that is subject to the assessment outlined in Section 26-36a-203 or is no longer entitled to Medicaid hospital access payments under Section 26-36a-205, the hospital must submit in writing to the Division of Medicaid and Health Financing (DMHF) a notice of the status change and the effective date of that change. The notice must be mailed to the correct address, as follows, and is only effective upon receipt by the Reimbursement Unit:

Via United States Postal Service:
Utah Department of Health
DMHF, BCRP
Attn: Reimbursement Unit
P.O. Box 143102
Salt Lake City, UT 84114-3102
Via United Parcel Service, Federal Express, and similar:
Utah Department of Health
DMHF, BCRP
Attn: Reimbursement Unit
288 North 1460 West
Salt Lake City, UT 84116-3231

(2) For any period where a hospital is no longer subject to the assessment and notice has been given under Subsection R414-506-4 (1):

(a) the Department shall require payment of the assessment from that hospital for the full quarter in which the status change occurred and the hospital will receive full payment for the applicable quarter; and

(b) the hospital is exempt from future assessment and not eligible for payment under this rule.

(3) For State Fiscal Year 2013 and subsequent years, prior to the beginning of each state fiscal year, the Department shall determine if new providers are eligible to receive Medicaid hospital inpatient access payments. The new providers will also be subject to the assessment beginning that same state fiscal year as they become eligible to receive the Medicaid hospital inpatient access payments. New providers identified will be added prospectively beginning with that new state fiscal year (e.g., a May 2012 evaluation identifying new providers will result in those new providers being added July 2012).

R414-506-5. Penalties and Interest.

(1) If DMHF audits a hospital's records to determine the correct discharges for the assessment for a hospital that is required to file a Medicare cost report but failed to provide its Medicare cost report within the timeline required, DMHF shall fine the hospital five percent of its annual calculated assessment. The fine is payable within 30 days of invoice.

(2) If DMHF audits a hospital's records to determine the correct discharges for the assessment because the hospital does not file a Medicare cost report and did not submit its discharges and supporting documentation within the timeline required, DMHF shall fine the hospital five percent of its annual calculated assessment. The fine is payable within 30 days of invoice.

(3) If a hospital fails to fully pay its assessment on or before the due date, DMHF shall fine the hospital five percent of its quarterly calculated assessment. The fine is payable within 30 days of invoice.

(4) On the last day of each quarter, if a hospital has any unpaid assessment or penalty, DMHF shall fine the hospital five percent of the unpaid amount. The fine is payable within 30 days of invoice.

R414-506-6. Rule Repeal.

The Department shall repeal this rule in conjunction with the repeal of the Hospital Provider Assessment Act outlined in Section 26-36a-208.

R414-506-7. Retrospective Operation.

This rule has retrospective operation for taxable years beginning on or after January 1, 2010, as authorized under Section 26-36a-209 of the Hospital Provider Assessment Act.

KEY: Medicaid

July 1, 2013	**26-1-5**
Notice of Continuation July 16, 2015	**26-18-3**
	26-36a

R428. Health, Center for Health Data, Health Care Statistics.
R428-2. Health Data Authority Standards for Health Data.
R428-2-1. Legal Authority.

This rule is promulgated under authority granted by Title 26, Chapter 33a.

R428-2-2. Purpose.

This rule establishes definitions, requirements, and general guidelines relating to the collection, control, use and release of data pursuant to Title 26, Chapter 33a.

R428-2-3. Definitions.

(1) The terms used in this rule are defined in Section 26-33a-102.

(2) In addition, the following definitions apply to all of Title R428:

(a) "Adjudicated claim" means a claim submitted to a carrier for payment where the carrier has made a determination whether the services provided fall under the carrier's benefit.

(b) "Ambulatory surgery data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a surgical or diagnostic procedure treatment in an outpatient setting into a data record.

(c) "Ambulatory surgical facility" is defined in Section 26-21-2.

(d) "Carrier" means any of the following Third Party Payors as defined in 26-33a-102(16):

(i) an insurer engaged in the business of health care or dental insurance in the state of Utah, as defined in Section 31A-1-301;

(ii) a business under an administrative services organization or administrative services contract arrangement;

(iii) a third party administrator, as defined in Section 31A-1-301, licensed by the state of Utah that collects premiums or settles claims of residents of the state, for health care insurance policies or health benefit plans, as defined in Section 31A-1-301;

(iv) a governmental plan, as defined in Section 414 (d), Internal Revenue Code, that provides health care benefits;

(v) a program funded or administered by Utah for the provision of health care services, including Medicaid, the Utah Children's Health Insurance Program created under Section 26-40-103, and the medical assistance programs described in Title 26, Chapter 18 or any entity under a contract with the Utah Department of Health to serve clients under such a program;

(vi) a non-electing church plan, as described in Section 410 (d), Internal Revenue Code, that provides health care benefits;

(vii) a licensed professional employer organization as defined in Section 31a-40-102 acting as an administrator of a health care insurance plan;

(viii) a health benefit plan funded by a self-insurance arrangement;

(ix) the Public Employees' Benefit and Insurance Program created in Section 49-20-103;

(x) a pharmacy benefit manager, defined to be a person that provides pharmacy benefit management services as defined in Section 49-20-502 on behalf of any other carrier defined in subsection R428-2-3.

(e) "Claim" means a request or demand on a carrier for payment of a benefit.

(f) "Covered period" means the calendar year on which the data used for calculation of HEDIS measures is based.

(g) "Data element" means the specific information collected and recorded for the purpose of health care and health service delivery. Data elements include information to identify the individual, health care provider, data supplier, service provided, charge for service, payer source, medical diagnosis, and medical treatment.

(h) "Discharge data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a single inpatient hospital stay into a discharge data record.

(i) "Electronic media" means a compact disc, digital video disc, external hard drive, or other media where data is stored in digital form.

(j) "Electronic transaction" means to submit data directly via electronic connection from a hospital or ambulatory surgery facility to the Office according to Electronic Data Interchange standards established by the American National Standards Institute's Accredited Standards Committee, known as the Health Care Transaction Set (837) ASC X 12N.

(k) "Eligible Enrollee" means an enrollee who meets the criteria outlined in the NCQA survey specifications.

(l) "Enrollee" means any individual who has entered into a contract with a carrier for health care or on whose behalf such an arrangement has been made.

(m) "Health care claims data" means information consisting of, or derived directly from, member enrollment, medical claims, and pharmacy claims that this rule requires a carrier to report.

(n) "Health Insurance" has the same meaning as found in Section 31A-1-301.

(o) "HEDIS" means the Healthcare Effectiveness Data and Information Set, a set of standardized performance measures developed by the NCQA.

(p) "HEDIS data" means the complete set of HEDIS measures calculated by the carriers according to NCQA specifications, including a set of required measures and voluntary measures defined by the department, in consultation with the carriers.

(q) "Hospital" means a general acute hospital or specialty hospital as defined in Section 21-21-2 that is licensed under Rule R432.

(r) "Level 1 data element" means a required reportable data element.

(s) "Level 2 data element" means a data element that is reported when the information is available from the patient's hospital record.

(t) "NCQA" means the National Committee for Quality Assurance, a not-for-profit organization committed to evaluating and reporting on the quality of managed care plans.

(u) "Office" means the Office of Health Care Statistics within the Utah Department of Health.

(v) "Order" means an action of the committee that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

(w) "Patient Social Security number" is the social security number of a person receiving health care.

(x) "Performance Measure" means the quantitative, numerical measure of an aspect of the carrier, or its membership in part or in its entirety, or qualitative, descriptive information on the carrier in its entirety as described in HEDIS.

(y) "Public Use Data Set" means a data extract or a subset of a database that is deemed by the Office to not include identifiable data or where the probability of identifying individuals is minimal.

(z) "Report" means a disclosure of data or information collected or produced by the committee or Office, including but not limited to a compilation, study, or analysis designed to meet the needs of specific audiences.

(aa) "Research Data Set" means a data extract or subset of a database intended for use by investigators or researchers for bona fide research purposes that may include identifiable information or where there is more than a minimal probability

that the data could be used to identify individuals.

(bb) "Record linkage number" is an irreversible, unique, encrypted number that will replace patient social security number.

(cc) "Sample file" means the data file containing records of selected eligible enrollees drawn by the survey agency from the carrier's sampling frame.

(dd) "Sampling Frame" means the carrier enrollment file as described criteria outlined by the NCQA survey specifications.

(ee) "Submission year" means the year immediately following the covered period.

(ff) "Survey agency" means an independent contractor on contract with the Office of Health Care Statistics.

(gg) "Utah Health Care Performance Measurement Plan" means the plan for data collection and public reporting of health-related measures, adopted by the Utah Health Data Committee to establish a statewide health performance reporting system.

(hh) "Uniform billing form" means the uniform billing form recommended for use by the National Uniform Billing Committee.

(ii) "Submittal Manual for Inpatient Data" means the document referenced in Subsection R428-1-4(1).

(jj) "Submittal Manual for Ambulatory Surgery Data" means the document referenced in Subection R428-1-4(2).

(kk) "NCQA Survey Specifications" means the document referenced in Subsection R428-1-4(3)

(ll) "NCQA HEDIS Specifications" means the document referenced in Subsection R428-1-4(4)

(mm) "Data Submission Guide for Claims Data" means the document referenced in Subsection R428-1-4(5) for data submissions required from May 15, 2014 to March 31, 2015 and the document referenced in Subsection R428-1-4(6) for data submissions beginning April 1, 2015.

R428-2-4. Technical Assistance.

The Office may provide technical assistance or consultation to a data supplier upon request and resource availability. The consultation shall be to enable a data supplier to submit required data according to Title R428.

R428-2-5. Data Classification and Access.

(1) Data collected by the committee are not public, and as such are exempt from the classification and release requirements specified in Title 63g, Chapter 2, Government Records Access and Management Act.

(2) Any person having access to data collected or produced by the committee or the Office under Title 26, Chapter 33a shall not:

(a) take any action that might provide information to any unauthorized individual or agency;

(b) scan, copy, remove, or review any information to which specific authorization has not been granted;

(c) discuss information with unauthorized persons which could lead to identification of individuals;

(d) give access to any information by sharing passwords or file access codes.

(3) Any person having access to data collected or produced by the committee or the Office under Title 26, Chapter 33a shall:

(a) maintain the data in a safe manner which restricts unauthorized access;

(b) limit use of the data to the purposes for which access is authorized;

(c) report immediately any unauthorized access to the Office or its designated security officer.

(4) A failure to report known violations by others is subject to the same punishment as a personal violation.

(5) The Office shall deny a person access to the facilities, services and data as a consequence of any violation of the responsibilities specified in this section.

R428-2-6. Editing and Validation.

(1) Each data supplier shall review each required record prior to submission. The review shall consist of checks for accuracy, consistency, completeness, and conformity.

(2) The Office may subject submitted data to edit checks. The Office may require the data supplier to correct data failing an edit check as follows:

(a) The Office may, by first class U.S. mail or email, inform the submitting data supplier of any data failing an edit check.

(b) The submitting data supplier shall make necessary corrections and resubmit all corrected data to the Office within 10 business days of the date the Office notified the supplier.

R428-2-7. Error Rates.

The committee may establish and order reporting quality standards based on non-reporting or edit failure rates.

R428-2-8. Data Disclosure.

(1) The committee may disclose data received from data suppliers or data or information derived from this data as specified in Title 26, Chapter 33a.

(2) The Office may prepare reports relating to health care cost, quality, access, health promotion programs, or public health. These actions may be to meet legislative intent or upon request from individuals, government agencies, or private organizations. The Office may create reports in a variety of formats including print or electronic documents, searchable databases, web-sites, or other user-oriented methods for displaying information.

(3) Unless otherwise specified by the committee, the time period for data suppliers and health care providers to prepare a response as required in Subsections 26-33a-107(1) and 26-33a-107(3) shall be 15 business days. If a data supplier fails to respond in the specified time frame, the committee may conclude that the information is correct and suitable for release.

(4) The committee may note in a report that accurate appraisal of a certain category or entity cannot be presented because of a failure to comply with the committee's request for data, edit corrections, or data validation.

(5) The Office may release to the data supplier or its designee any data elements provided by the supplier without notification when a data supplier requests the data be so supplied.

(6) The committee may disclose data in computer readable formats.

(7) The Director of the Office may approve the disclosure of a public use data set upon receipt of a written request that includes the following:

(a) the name, address, e-mail and telephone number of the requester;

(b) a statement of the purpose for which the data will be used;

(c) agreement to other terms and conditions as deemed necessary by the Office.

(8) The committee may approve the release of a research data set to an institution, association or organization for bona fide research of health care cost, quality, access, health promotion programs, or public health issues. The requester must provide:

(a) the name, address, e-mail and telephone number of the requester and for each person who will have access to the research data set;

(b) a statement of the purpose for which the research data set will be used;

(c) the starting and ending dates for which the research data set is requested;

(d) an explanation of why a public use data set could not be used for to accomplish the stated research purposes, including a separate justification for each element containing identified data requested;

(e) evidence of the integrity and ability to safeguard the data from any breach of confidentiality;

(f) evidence of competency to effectively use the data in the manner proposed;

(g) a satisfactory review from an Office-approved institutional review board;

(h) a guarantee that no further disclosure will occur without prior approval of the Office;

(i) a signed agreement to comply with other terms and conditions as stipulated by the committee.

R428-2-9. Penalties.

(1) The Office may apply civil penalties or subject violators to legal prosecution.

(2) Sections 26-23-6 and 26-33a-110 specify civil and criminal penalties for failure to comply with the requirements of Title R428 or Title 26, Chapter 33a.

(3) Notwithstanding Subsection R428-2-9(2), any person that violates any provision of Title R428 may be assessed an administrative civil money penalty not to exceed $3,000 upon an administrative finding of a first violation and up to $5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed $5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

(4) Notwithstanding Subsection R428-2-9(2) and R428-2-9(3), a data supplier that violates any provision of Title R428 may be assessed an administrative civil money penalty for each day of non-compliance. Fines may be imposed as follows:

(a) Not to exceed the sum of $10,000 per violation

(b) Each day of violation is a separate violation

(c) Deadlines established in separate sections of Title R428 are considered as separate provisions.

(5) The Office may impose a fine on any data supplier that misses a deadline to submit data required in Title R428 as follows:

(a) A fine of $250 per violation shall be imposed until the data has been supplied as required

(b) The fines shall increase to $500 per violation for each violation when any data supplier that is currently in violation misses another deadline

(c) After forty-five consecutive calendar days of violation, the Office may adjust the per day penalty subject to the limits in (4)(a) taking into account the following aggravating and mitigating circumstances:

(i) Prior violation history and history of compliance

(ii) Good faith efforts to prevent violations

(iii) The size and financial capability of the data supplier.

R428-2-10. Exemptions and Extensions.

(1) The committee may grant exemptions or extensions from reporting requirements in Title R428 to data suppliers under certain circumstances.

(2) The committee may grant an exemption to a data supplier when the supplier demonstrates that compliance imposes an unreasonable cost.

(a) A data supplier may request an exemption from any particular requirement or set of requirements of Title R428. The data supplier must submit a request for exemption no less than 30 calendar days before the date the supplier would have to comply with the requirement.

(b) The committee may grant an exemption for a maximum of one calendar year. A data supplier wishing an additional exemption must submit an additional, separate request.

(3) The committee may grant an extension to a data supplier when the supplier demonstrates that technical or unforeseen difficulties prevent compliance.

(a) A data supplier may request an extension for any deadline required in Title R428. For each deadline for which the data supplier requests an extension, the data supplier must submit its request no less than seven calendar days before the deadline in question.

(b) The committee may grant an extension for a maximum of 30 calendar days. A data supplier wishing an additional extension must submit an additional, separate request.

(4) The supplier requesting an extension or exemption shall include:

(a) The data supplier's name, mailing address, telephone number, and contact person;

(b) the dates the exemption or extension is to start and end;

(c) a description of the relief sought, including reference to specific sections or language of the requirement;

(d) a statement of facts, reasons, or legal authority in support of the request; and

(e) a proposed alternative to the requirement or deadline.

(5) A carrier that covers fewer than 2,500 individual Utah residents as of January 1 of a given year is exempt from all requirements of this title except that once a carrier has covered a cumulative total of 2,500 such individuals during a calendar year, they are no longer considered exempt for the remainder of that year.

R428-2-11. Contractor Liability.

(1) A data supplier may contract with another entity to submit required data elements on their behalf under Title R428. In such cases, the data supplier must notify the Office of the identity and contact information of the contractor.

(2) Regardless of the existence of a contractor, the responsibility for complying with all requirements of Title R428 remains solely with the data supplier.

KEY: health, health policy, health planning
July 30, 2015 26-33a-104
Notice of Continuation November 30, 2011

R495. Human Services, Administration.
R495-861. Requirements for Local Discretionary Social Services Block Grant Funds.
R495-861-1. Authority and Purpose.

A. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111.

B. The purpose of this rule is to specify the allocation of the Local Discretionary Social Services Block Grant Funds.

R495-861-2. Requirements for Local Discretionary Social Services Block Grant Funds.

A. Social Services Block Grant funds allocated to local governments are distributed to either counties or associations of government. These funds must be used as allowed by the Social Services Block Grant. The following agencies receive local discretionary social services block grant funds: Bear River Association of Governments, Weber/Morgan Counties, Davis County, Salt Lake County, Tooele County, Mountainlands Association of Governments, Six County Association of Governments, Five County Association of Governments, Uintah Basin Association of Governments, Southeastern Utah Association of Governments, and San Juan County.

B. Social Services Block Grant funds identified for local discretionary use by the Department of Human Services shall be allocated annually to local governments based on the following formula:

1. Each area with less than 15,000 population will receive a base of $54,000.00.

2. Each area with less than 150,000 population will receive a base of $34,000.00.

3. The remainder of the money will be allocated based on the percentage each area population is to the state population.

C. Each local government shall provide non-federal local government funds of at least 25 percent of their award. The additional 25 percent must be used for Social Services Block Grant Purposes.

KEY: social services, match requirements
July 16, 2015 62A-1-114
Notice of Continuation November 6, 2012

R495. Human Services, Administration.
R495-883. Children in Care Support Services.
R495-883-1. Authority and Purpose.

(1) The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules as necessary by Section 62A-11-107.

(2) The purpose of this rule is to provide definitions of terms used in this rule and information about child support services for children in care or custody of the State of Utah.

R495-883-2. Definitions.

Terms used in this rule are defined as:

(1) Child Support Services -- efforts to enforce and collect the child support amount due for a calendar month.

(2) Custodial Parent -- one of the financially obligated parents of a child placed in the care or custody of the state.

(3) Third Party Payments -- entitlement benefits (SSA, SSI), insurance benefits, trust fund benefits, paid in behalf of the child.

R495-883-3. Child Support Services for Children in Care.

(1) ORS shall collect child support and Third Party Payments in behalf of children placed in the custody of the State of Utah in accordance with Section 78A-6-1106, 78B-12-101 et seq., 62A-1-117, 62A-11-301 et seq., and Federal Regulations 45 CFR 300 through 307.

(2) If a current child support order exists, ORS may collect and enforce the support based on the existing order in accordance with Section 78B-12-108.

(3) ORS may conduct a review of circumstances to determine if an existing order is in compliance with the child support guidelines and if the case meets the review criteria in accordance with Sections 62A-11-320.5 and 62A-11-320.6. If the order is not in compliance with the child support guidelines but still meets the review criteria, an administrative order may be issued, under the administrative adjudication process as provided in rule R497-100-1 et seq., while the child is under the jurisdiction of the juvenile court and in a placement other than with his parents.

(4) If a current child support order does not exist, the monthly child support obligation will be determined in accordance with the child support guidelines enacted in Sections 78B-12-301 and 78B-12-302.

(5) Child Support Services are due and payable on the first day of the month. Child support shall not be prorated for partial months.

R495-883-4. Child Support Services During Trial Placements or Temporary Lapses in State Custody.

(1) If an administrative order for child support is issued at the time the child is placed in custody;

(a) the child returns home; and,

(b) the child is subsequently returned to state custody, ORS may collect and enforce child support based on the existing administrative order in accordance with Section 78A-6-1106.

(2) Child Support Services shall not be provided on behalf of the Division of Child and Family Services when a child in custody returns to the home of a custodial parent for more than seven consecutive days.

(a) The more than seven consecutive days at the home of a custodial parent may span two or more calendar months. If the more than seven consecutive days span over more than one calendar month, child support services shall not be provided for any of the affected months.

(b) The child support debt will be retroactively adjusted to remove the child support amount due for each calendar month affected by the more than seven consecutive day stay and child support services to collect any child support due for the affected calendar month(s) will not be provided.

(c) Adjustments for this purpose cannot be made to a child support case by ORS until information verifying the date, duration and location of the more than seven consecutive day stay is received from the Division of Child and Family Services.

(d) ORS shall complete the adjustment to the child support debt within ten business days of receiving the necessary verification from the Division of Child and Family Services.

(e) If the child support amount has been collected from the custodial parent prior to ORS receiving the necessary verification from the Division of Child and Family Services, the amount collected will be first applied to other debts owed to the state for times that the child has been in care or custody of the state. If no other child in care debts exists, the amount will be refunded to the custodial parent.

(f) If the consecutive day stay becomes a permanent placement in the custodial parent's home according to information received from the Division of Child and Family Services, ORS will provide continuing child support services, if appropriate, as of the date of the permanent placement as required by 45 CFR 302.33.

KEY: child support, foster care, youth corrections

August 9, 2010	**45 CFR 300 - 307**
Notice of Continuation July 6, 2015	**62A-1-117**
	62A-11-104
	62A-11-107
	62A-11-301
	62A-11-320.5
	62A-11-320.6
	78A-6-1106
	78B-12-101
	78B-12-106
	78B-12-108
	78B-12-301
	78B-12-302

R497. Human Services, Administration, Administrative Hearings.
R497-100. Adjudicative Proceedings.
R497-100-1. Authority.

The Department of Human Services, Office of Administrative Hearings is given rulemaking authority pursuant to Utah Code Ann. Section 62A-1-111.

R497-100-2. Definitions.

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

(1) For the purpose of this section, "agency" means the Department of Human Services or a division or office of the Department of Human Services including the Division of Child and Family Services (DCFS), the Division of Services to People with Disabilities (DSPD), the Division of Juvenile Justice Services (DJJS), the Division of Aging and Adult Services (DAAS), the Division of Mental Health (DMH), the Division of Substance Abuse (SA), the Office of Licensing (OL), the Utah State Developmental Center (USDC), the Utah State Hospital (USH), and any boards, commissions, officers, councils, committees, bureaus, or other administrative units, including the Executive Director and Director of the Department or other persons acting on behalf of or under the authority of the Executive Director or Director. For purposes of this section, the term "Department of Human Services" does not include the Office of Recovery Services (ORS). The rules regarding ORS are stated in R527-200.

(2) "Agency actions or proceedings" of the Department of Human Services include, but are not limited to the following:

(a) challenges to findings of abuse, neglect and dependency pursuant to Section 62A-4a-1009;

(b) due process hearings afforded to foster parents prior to removal of a foster child from their home pursuant to Section 62A-4a-206;

(c) the denial, revocation, modification, or suspension of any Department foster home license, or group care license;

(d) the denial, revocation, modification or suspension of a license issued by the Office of Licensing pursuant to Section 62A-2-101, et seq.;

(e) challenges to findings of abuse, neglect or exploitation of a disabled or elder adult pursuant to Section 62A-3-301, et seq.;

(f) the licensure of community alternative programs by the Office of Licensing;

(g) actions by the Division of Juvenile Justice Services and the Youth Parole Authority relating to granting or revocation of parole, discipline or, resolution of grievances of, supervision of, confinement of or treatment of residents of any Juvenile Justice Services facility or institution;

(h) resolution of client grievances with respect to delivery of services by private, nongovernmental, providers within the Department's service delivery system;

(i) actions by Department owned and operated institutions and facilities relating to discipline or treatment of residents confined to those facilities;

(j) placement and transfer decisions affecting involuntarily committed residents of the Utah State Developmental Center pursuant to Sections 62A-5-313;

(k) protective payee hearings;

(l) Department records amendment hearings held pursuant to Section 63G-3-603.

(3) "Aggrieved person" includes any applicant, recipient or person aggrieved by an agency action.

(4) "Declaratory Order" is an administrative interpretation or explanation of the applicability of a statute, rule, or order within the primary jurisdiction of the agency to specified circumstances.

(5) "Office" means the Office of Administrative Hearings in the Department of Human Services.

(6) "Presiding officer" means an agency head, or individual designated by the agency head, by these rules, by agency rule, or by statute to conduct an adjudicative proceeding and may include the following:

(a) hearing officers;
(b) administrative law judges;
(c) division and office directors;
(d) the superintendent of agency institutions;
(e) statutorily created boards or committees.

R497-100-3. Exceptions.

The provisions of this section do not govern the following:

(1) The procedures for promulgation of agency rules, or the judicial review of those procedures. See Section 63G-4-102(2)(a).

(2) Department actions relating to contracts for the purchase or sale of goods or services by and for the state or by and for the Department, including terminations of contracts by the Department.

(3) Initial applications for and initial determinations of eligibility for state-funded programs.

R497-100-4. Form of Proceeding.

(1) All adjudicative proceedings commenced by the Department of Human Services or commenced by other persons affected by the Department of Human Services' actions shall be informal adjudicative proceedings.

(2) However, any time before a final order is issued in any adjudicative proceeding, the presiding officer may convert an informal adjudicative proceeding to a formal adjudicative proceeding if:

(a) conversion of the proceeding is in the public interest; and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

(3) If a proceeding is converted from informal to formal, the Procedure for Formal Adjudicative Proceedings in Section 63G-4-102, et seq. shall apply. In all other cases, the Procedures for Informal Proceedings in R497-100-6 shall apply.

R497-100-5. Commencement of Proceedings.

(1) All adjudicative proceedings shall be commenced by either:

(a) a notice of agency action, if proceedings are commenced by the agency; or

(b) a request for agency action, if proceedings are commenced by persons other than the agency.

(2) (a) When adjudicative proceedings are commenced by the agency, the notice of agency action shall conform to Section 63G-4-201(2)(a) and shall also include:

(i) a statement that the adjudicative proceeding is to be conducted informally;

(ii) if a hearing is to be held in an informal adjudicative proceeding, a statement of the time and place of any scheduled hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default; and

(iii) if the agency's rules do not provide for a hearing, a statement that the parties may request a hearing within ten working days of the notice of agency action.

(b) The notice of agency action shall be mailed or published in conformance with Section 63G-4-201(2)(b).

(c) When adjudicative proceedings are commenced by a person other than the agency, the request for agency action shall conform to Section 63G-4-201(3)(a) and (b) and include the name of the adjudicative proceeding, if known.

(d) In the case of adjudicative proceedings commenced under Subsection (2)(c) by a person other than the agency, the

presiding officer shall within ten working days give notice by mail to all parties. The written notice shall:

(i) give the agency's file number or other reference number;

(ii) give the name of the proceeding;

(iii) designate that the proceeding is to be conducted informally;

(iv) if a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in the hearing may be held in default;

(v) if the agency's rules do not provide for a hearing, state the parties' right to request a hearing within ten working days of the agency's response; and

(vi) give the name, title, mailing address, and telephone number of the presiding officer.

R497-100-6. Availability of Hearing.

(1) Hearings may be held in any informal adjudicative proceedings conducted in connection with an agency action if the aggrieved party requests a hearing and if there is a disputed issue of fact. If there is no disputed issue of fact, the presiding officer may deny a request for a hearing and determine all issues in the adjudicative proceeding, if done in compliance with the policies and standards of the applicable agency. If the aggrieved person objects to the denial of a hearing, that person may raise that objection as grounds for relief in a request for reconsideration.

(2) There is no issue of fact if:

(a) the aggrieved person tenders facts which on their face establish the right of the agency to take the action or obtain the relief sought in the proceeding;

(b) the aggrieved person tenders facts upon the request of the presiding officer and the fact does not conflict with the facts relied upon by the agency in taking its action or seeking its relief.

R497-100-7. Procedures for Informal Proceedings.

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

(1) (a) The respondent to a notice of agency action or request for agency action may, but is not required to, file an answer or responsive pleading to the allegations contained in the notice of agency action or the request for agency action within 10 working days following receipt of the adverse party's pleading.

(b) A hearing shall be provided to any party entitled to request a hearing in accordance with Section 63G-4-203.

(c) In the hearing, the party named in the notice of agency action or in the request for agency action may be represented by counsel and shall be permitted to testify, present evidence and comment on the issues.

(d) Hearings will be held only after a timely notice has been mailed to all parties.

(e) Discovery is prohibited, but the office may issue subpoenas or other orders to compel production of necessary evidence. The office may require that parties exchange documents prior to the hearing in order to expedite the process. All parties to the proceedings will be responsible for the appearance of witnesses.

(f) All parties shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, to the extent permitted by law.

(g) Intervention is prohibited, except that intervention is allowed where a federal statute or rule requires that a state permit intervention.

(h) Within a reasonable time after the close of the hearing, or after the party's failure to request a hearing within the time prescribed by the agency's rules, the presiding officer shall issue a signed order in writing that conforms to Section 63G-4-203(1)(i).

(i) All hearings shall be open to all parties.

(j) The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at the hearings.

(k) A copy of the presiding officer's order shall be promptly mailed to each of the parties.

(2) All hearings shall be recorded at the office's expense. A transcript of the record may be prepared pursuant to Section 63G-4-203(2)(b). The recording will be maintained for one year after the order has been issued.

R497-100-8. Declaratory Orders.

(1) Who May File. Any person or governmental entity directly affected by a statute, rule or order administered, promulgated or issued by an agency, may file a petition for a declaratory order by addressing and delivering the written petition to the presiding officer of the appropriate agency.

(2) Content of Petition.

(a) The petition shall be clearly designated as a request for an agency declaratory order and shall include the following information;

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

(ii) a detailed description of the situation or circumstances at issue;

(iii) a description of the reason or need for a declaratory order, including a statement as to why the petition should not be considered frivolous;

(iv) an address and telephone where the petitioner can be contacted during regular work days;

(v) a statement about whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

(vi) the signature of the petitioner or an authorized representative.

(3) Exemptions from Declaratory Order Procedure. A declaratory order shall not be issued by any agency of the Department under the following circumstances:

(a) the subject matter of the petition is not within the jurisdiction and competency of the agency;

(b) the person requesting the declaratory ruling participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the declaratory order request;

(c) the declaratory order procedure is likely to substantially prejudice the rights of a person who would be a necessary party, unless that person consents in writing to a determination of the matter by a declaratory proceeding;

(d) the declaratory order is trivial, irrelevant, or immaterial;

(e) a declaratory order proceeding is otherwise prohibited by state or federal law;

(f) a declaratory order is not in the best interest of the agency or the public;

(g) the subject matter is not ripe for consideration; or

(h) the issue is currently pending in a judicial proceeding.

(4) Intervention in Accordance with Sections 63G-4-203(1)(g) and 63G-4-503.

(a) Intervention is prohibited in informal adjudicative proceedings, except where a federal statute or rule requires that intervention be permitted.

(b) In the case of an adjudicative proceeding that has been converted to a formal adjudicative proceeding, a person may intervene in a declaratory order proceeding by filing a petition to intervene with the presiding officer of the agency within 30 days after the conversion of the proceeding.

(c) The agency presiding officer may grant a petition to

intervene if the petition meets the following requirements:

(i) the intervener's legal interests may be substantially affected by the declaratory order proceedings; and

(ii) the interests of justice and the orderly and prompt conduct of the declaratory order proceeding will not be materially impaired by allowing intervention.

(5) Review of Petition for Declaratory Order.

(a) After review and consideration of a petition for a declaratory order, the presiding officer of the agency may issue a written order that conforms to Section 63G-4-503(6)(a);

(b) If the matter is set for an adjudicative proceeding, written notice shall be mailed to all parties that shall:

(i) give the name, title, mailing address, and telephone number of the presiding officer;

(ii) give the agency's file number or other reference number;

(iii) give the name of the proceeding;

(iv) state whether the proceeding shall be conducted informally or formally;

(v) state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in the hearing may be held in default; and

(vi) if the agency's rules do not provide for a hearing, state the parties' right to request a hearing within 10 working days of the agency's response.

(c) If the agency's presiding officer issues a declaratory order, it shall conform to Section 63G-4-503(6)(b) and shall also contain:

(i) a notice of any right of administrative or judicial review available to the parties; and

(ii) the time limits for filing an appeal or requesting review.

(d) A copy of all declaratory orders shall be mailed in accordance with Section 63G-4-503(6)(c).

(e) If the agency's presiding officer has not issued a declaratory order within 60 days after receipt of the petition, the petition is deemed denied.

R497-100-9. Agency Review.

Agency review shall not be allowed. Nothing contained in this rule prohibits a party from filing a petition for reconsideration pursuant to Section 63G-4-302. If the 20th day for filing a request for reconsideration falls on a weekend or holiday the deadline will be extended until the next working day.

R497-100-10. Scope and Applicability.

The provisions of this section supersede the provisions of any other Department rules which may conflict with the foregoing rules.

KEY: administrative procedures, social services
January 21, 2009 62A-1-110
Notice of Continuation July 20, 2015 62A-1-111

R512. Human Services, Child and Family Services.
R512-11. Accommodation of Moral and Religious Beliefs and Culture.
R512-11-1. Purpose and Authority.

(1) The purpose of this rule is to define procedures to accommodate the moral beliefs, religious beliefs, and culture of children and families served by the Division of Child and Family Services (Child and Family Services) according to Section 62A-4a-120.

(2) This rule is authorized by Section 62A-4a-102.

R512-11-2. Definitions.

(1) "Accommodate" means to adapt, adjust, or make provision to support.

(2) "Child and Family Assessment" means a document that is a collection of formal and informal assessments pertaining to the child and family identifying the strengths, resources, and needs of the family. The Child and Family Assessment is a working document used to record information, draw conclusions, and inform the Child and Family Plan.

(3) "Child and Family Plan" means the collective intentions of the Child and Family Team documenting specific goals, roles, strategies, resources, and schedules for coordinated provision of assistance, supports, supervision, and services for the child, caregiver, and parents, or guardians.

(4) "Child and Family Team" means a group that may consist of the child, the child's family, the Child and Family Services caseworker, the out-of-home provider, relatives, representatives of the family's moral beliefs, religious beliefs, and culture, representatives from education, health care, and law enforcement, the Guardian ad Litem, the parents' attorney, the Attorney General, and other supportive individuals as designated by the family.

(5) "Culture" means the totality of socially transmitted behavior patterns characteristic of a family and includes moral beliefs and religious beliefs.

(6) "Moral beliefs" means ideas of what is right and what is wrong that shape one's outward behavior. Moral beliefs define what is decent and honorable.

(7) "Religious beliefs" means faith or conviction in a system of principles or worship relating to the sacred and uniting its adherents in a community.

R512-11-3. Child and Family Services Responsibilities.

(1) Child and Family Services recognizes that children and families have the right to be understood within the context of their family's moral beliefs, religious beliefs, and culture.

(2) When intervening with a family, Child and Family Services caseworkers shall ask the family to identify aspects of the family's moral beliefs, religious beliefs, and culture that are relevant to the care and placement of the child.

(3) Child and Family Services shall develop a Child and Family Team when engaging children and families.

(a) The Child and Family Team shall discuss with the child and family any aspects of their moral beliefs, religious beliefs, and culture that they wish to have accommodated.

(b) The Child and Family Assessment shall document the moral beliefs, religious beliefs, and culture of the child and family and the accommodations requested by the child and family. It shall document the method that Child and Family Services will employ to make the accommodation or the reasons that such accommodation is not reasonable or proper. Accommodations shall be reflected in the Child and Family Plan.

(c) The decisions of the Child and Family Team related to accommodations of moral beliefs, religious beliefs, and culture shall be documented in the Child and Family Assessment and reflected in the services and provisions made in the Child and Family Plan. Any accommodation that cannot be provided shall be explained to the child and family and noted in the Child and Family Plan.

(d) When Child and Family Services is not able to accommodate exactly some aspect of the family's moral beliefs, religious beliefs, or culture, the Child and Family Team may explore the best way to accommodate the moral beliefs, religious beliefs, or culture of the child and family.

(e) The accommodations in the Child and Family Assessment and Child and Family Plan shall be periodically reviewed with the parents or caregivers, along with all other requirements, to assure that the moral beliefs, religious beliefs, and culture of the child and family are met according to the decisions made by the Child and Family Team.

(4) The planning and implementation of all other activities provided by Child and Family Services shall identify in the Child and Family Assessment and the Child and Family Plan aspects of the family's moral beliefs, religious beliefs, and culture that are relevant to the service. Documentation shall identify any requested accommodation and the method Child and Family Services employs to make accommodation for the child and family or the reasons accommodation is not reasonable or appropriate.

KEY: child welfare

September 15, 2010	**62A-4a-102**
Notice of Continuation July 22, 2015	**62A-4a-105**
	62A-4a-106
	62A-4a-120

R512. Human Services, Child and Family Services.
R512-203. Child Protective Services, Significant Risk Assessments.
R512-203-1. Purpose and Authority.

(1) The purpose of this rule is to define how significant risk assessments are utilized by the Division of Child and Family Services (Child and Family Services).

(2) Pursuant to Section 62A-4a-105, Child and Family Services is authorized to provide Child Protective Services (CPS). Child and Family Services is required by Section 62A-4a-1002 to promulgate a rule for making significant risk assessments.

(3) This rule is authorized by Section 62A-4a-102.

R512-203-2. Definitions.

(1) "Assessment" means an evaluation made to determine if a minor is a risk to other children and whether or not a minor's name should be placed and retained on the Licensing Information System.

(2) "Significant risk" means that a minor is likely to continue perpetrating against other children.

R512-203-3. Significant Risk Assessments.

(1) During the course of a CPS investigation involving allegations of conduct by a juvenile that is identified as severe or chronic as those terms are defined in Sections 62A-4a-101 and 62A-4a-1002, the CPS caseworker shall complete a significant risk assessment to determine whether a juvenile is a significant risk to other children or the community.

(2) To conduct this assessment the CPS caseworker shall use the assessment tool developed by Child and Family Services for the purpose of determining risk presented by the minor. The tool used will be the most current version of the significant risk assessment.

(3) The assessment shall be based upon the facts of the case that are present during the CPS investigation.

(4) The assessment process identified in Section R512-203-3 is not for determining whether the allegation under investigation is supported or unsupported.

(5) The juvenile's age alone is not a reason for determining whether the juvenile presents a significant risk.

(6) The completed significant risk assessment instrument for each minor assessed shall be made a part of the CPS record and shall be classified as Private pursuant to the Government Records Management and Access Act (GRAMA).

KEY: child welfare, child abuse

October 13, 2010	**62A-4a-102**
Notice of Continuation July 22, 2015	**62A-4a-105**
	62A-4a-1002

R512. Human Services, Child and Family Services.
R512-300. Out-of-Home Services.
R512-300-1. Purpose and Authority.

(1) The purposes of Out-of-Home Services are:

(a) To provide a temporary, safe living arrangement for a child placed in the custody of the Division of Child and Family Services (Child and Family Services) or the Department of Human Services by court order or through voluntary placement by the child's parent or legal guardian.

(b) To provide services to protect the child and facilitate the safe return of the child home or to another permanent living arrangement.

(c) To provide safe and proper care and address the child's needs while in state custody.

(2) Sections 62A-4a-105 and 62A-4a-106 authorize Child and Family Services to provide Out-of-Home Services and 42 USC Section 672 authorizes federal foster care. 42 USC Sections 671 and 672 (2007), and 45 CFR Parts 1355 and 1356 (2008) are incorporated by reference.

(3) This rule is authorized by Section 62A-4a-102.

R512-300-2. Definitions.

The following terms are defined for the purposes of this rule:

(1) "Custody by court order" means temporary custody or custody authorized by Sections 78A-6-117 or 78A-6-322. It does not include protective custody.

(2) "Child and Family Services" means the Division of Child and Family Services.

(3) "Department" means the Department of Human Services.

(4) "Least restrictive" means most family-like.

(5) "Placement" means living arrangement.

R512-300-3. Scope of Services.

(1) Qualification for Services. Out-of-Home Services are provided to:

(a) A child placed in the custody of Child and Family Services by court order and the child's parent or guardian, if the court orders reunification;

(b) A child placed in the custody of the Department by court order for whom Child and Family Services is given primary responsibility for case management or for payment for the child's placement, and the child's parent or guardian if reunification is ordered by the court;

(c) A child voluntarily placed into the custody of Child and Family Services and the child's parent or guardian.

(2) Service Description. Out-of-Home Services consist of:

(a) Protection, placement, supervision, and care of the child;

(b) Services to a parent or guardian of a child receiving Out-of-Home Services when a reunification goal is ordered by the court or to facilitate return of a child home upon completion of a voluntary placement.

(c) Services to facilitate another permanent living arrangement for a child receiving Out-of-Home Services if a court determines that reunification with a parent or guardian is not required or in the child's best interests.

(3) Availability. Out-of-Home Services are available in all geographic regions of the state.

(4) Duration of Services. Out-of-Home Services continue until a child's custody is terminated by a court or when a voluntary placement agreement expires or is terminated.

(5) As specified in Section 62A-4a-415, Child and Family Services may not consent to the interview of a child in state custody by a law enforcement officer, unless consent for the interview is obtained from the child's Guardian ad Litem. This provision does not apply if a Guardian ad Litem is not appointed for the child.

R512-300-4. Child and Family Services Responsibility to a Child Receiving Out-of-Home Services.

(1) Child and Family Team.

(a) With the family's assistance, a Child and Family Team shall be established for each child receiving Out-of-Home Services.

(b) At a minimum, the Child and Family Team shall assist with assessment, Child and Family Plan development, and selection of permanency goals; oversee progress towards completion of the plan; provide input into adaptations to the plan; and recommend placement type or level.

(2) Assessment.

(a) A written assessment is completed for each child placed in the custody of Child and Family Services through court order or voluntary placement and for the child's family.

(b) The written assessment evaluates the child and family's strengths and underlying needs.

(c) The type of assessment is determined by the unique needs of the child and family, such as cultural considerations, special medical or mental health needs, and permanency goals.

(d) Assessment is ongoing.

(3) Child and Family Plan.

(a) Based upon an assessment, each child and family receiving Out-of-Home Services shall have a written Child and Family Plan in accordance with Section 62A-4a-205.

(b) The child's parent or guardian and other members of the Child and Family Team shall assist in creating the plan based on the assessment of the child and family's strengths and needs.

(c) In addition to requirements specified in Section 62A-4a-205, the Child and Family Plan shall include the following to facilitate permanency:

(i) The current strengths of the child and family as well as the underlying needs to be addressed.

(ii) A description of the type of placement appropriate for the child's safety, special needs, and best interests, in the least restrictive setting available and, when the goal is reunification, in reasonable proximity to the parent. If the child with a goal of reunification has not been placed in reasonable proximity to the parent, the plan shall describe reasons why the placement is in the best interests of the child.

(iii) Goals and objectives for assuring the child receives safe and proper care, including the provision of medical, dental, mental health, educational, or other specialized services and resources.

(iv) If the child is age 14 years or older, a written description of the programs and services to help the child prepare for the transition from foster care to independent living in accordance with Rule R512-305.

(v) A visitation plan for the child, parents, and siblings, unless prohibited by court order.

(vi) Steps for monitoring the placement and plan for worker visitation and supports to the Out-of-Home caregiver for a child placed in Utah or out of state.

(vii) If the goal is adoption or placement in another permanent home, steps to finalize the placement, including child-specific recruitment efforts.

(d) The Child and Family Plan is modified when indicated by changing needs, circumstances, progress towards achievement of service goals, or the wishes of the child, family, or Child and Family Team members.

(e) A copy of the completed Child and Family Plan shall be provided to the parent or guardian, Out-of-Home caregiver, juvenile court, Assistant Attorney General, Guardian ad Litem, legal counsel for the parent, and the child, if the child is able to understand the plan.

(4) Permanency Goals.

(a) A child in Out-of-Home care shall have a primary permanency goal and a concurrent permanency goal identified

by the Child and Family Team.

(b) Permanency goals include:

(i) Reunification.

(ii) Adoption.

(iii) Guardianship (Relative).

(iv) Guardianship (Non-Relative).

(v) Individualized Permanency.

(c) For a child whose custody is court ordered, both primary and concurrent permanency goals shall be submitted to the court for approval.

(d) The primary permanency goal shall be reunification unless the court has ordered that no reunification efforts be offered.

(e) A determination that Transition to Adult Living services are appropriate for a child does not preclude adoption as a primary permanency goal. Enrollment in Transition to Adult Living services can occur concurrently with continued efforts to locate and achieve placement of an older child with an adoptive family.

(5) Placement.

(a) A child receiving Out-of-Home Services shall receive safe and proper care in an appropriate placement according to placement selection criteria specified in Rule R512-302.

(b) The type of placement, either initial or change in placement, is determined within the context of the Child and Family Team utilizing a need level screening tool designated by Child and Family Services.

(c) Placement decisions are based upon the child's needs, strengths, and best interests.

(d) The following factors are considered in determining placement:

(i) Age, special needs, and circumstances of the child;

(ii) Least restrictive placement consistent with the child's needs;

(iii) Placement of siblings together;

(iv) Proximity to the child's home and school;

(v) Sensitivity to cultural heritage and needs of a minority child;

(vi) Potential for adoption.

(e) A child's placement shall not be denied or delayed on the basis of race, color, or national origin of the Out-of-Home caregiver or the child involved.

(f) Placement of an Indian child shall be in compliance with the Indian Child Welfare Act, 25 USC Section 1915 (2007), which is incorporated by reference.

(g) When a young woman in state custody is the mother of a child and desires and is able to parent the child with the support of the Out-of-Home caregiver, the child shall remain in the Out-of-Home placement with the mother. Child and Family Services shall only petition for custody of the young woman's child if there are concerns of abuse, neglect, or dependency in accordance with Section 78A-6-322.

(h) The Child and Family Team may recommend a Transition to Adult Living placement for a child age 14 years or older in accordance with Rule R512-305 when in the child's best interests.

(6) Federal Benefits.

(a) Child and Family Services may apply for eligibility for Title IV-E foster care and Medicaid benefits for a child receiving Out-of-Home Services. Information provided by the parent or guardian, as specified in Rule R512-301, shall be utilized in determining eligibility.

(b) Child and Family Services may apply to be protective payee for a child in state custody who has a source of unearned income, such as Supplemental Security Income or Social Security Income. A representative payee account shall be maintained by Child and Family Services for management of the child's income. The unearned income shall be utilized only towards costs of the child's care and personal needs in accordance with requirements of the regulating agency.

(7) Visitation with Familial Connections.

(a) The child has a right to purposeful and frequent visitation with a parent or guardian and siblings, unless the court orders otherwise.

(b) Visitation is not a privilege to be earned or denied based on behavior of the child or the parent or guardian.

(c) Visitation may be supplemented with telephone calls and written correspondence.

(d) The child also has a right to communicate with extended family members, the child's attorney, physician, clergy, and others who are important to the child.

(e) Intensive efforts shall be made to engage a parent or guardian in continuing contacts with a child, when not prohibited by court order.

(f) If clinically contraindicated for the child's safety or best interests, Child and Family Services may petition the court to deny or limit visitation with specific individuals.

(g) Visitation and other forms of communication with familial connections shall only be denied when ordered by the court.

(h) A parent whose parental rights have been terminated does not have a right to visitation.

(8) Out-of-Home Worker Visitation with the Child.

(a) The Out-of-Home worker shall visit with the child to ensure that the child is safe and is appropriately cared for while in an Out-of-Home placement. If the child is placed out of the area or out of state, arrangements may be made for another worker to perform some of the visits. The Child and Family Team shall develop a specific plan for the worker's contacts with the child based upon the needs of the child.

(9) Case Reviews.

(a) Pursuant to Sections 78A-6-313 and 78A-6-315, periodic reviews of court ordered Out-of-Home Services shall be held no less frequently than once every six months.

(b) Child and Family Services shall seek to ensure that each child receiving Out-of-Home Services has timely and effective case reviews and that the case review process:

(i) Expedites permanency for a child receiving Out-of-Home Services,

(ii) Assures that the permanency goals, Child and Family Plan, and services are appropriate,

(iii) Promotes accountability of the parties involved in the child and family planning process, and

(iv) Monitors the care for a child receiving Out-of-Home Services.

(10) Maximum Number of Children in Out-of-Home Care.

(a) At no time during the fiscal year will the proportion of children in Out-of-Home care for over 24 months exceed one-third of the total number of children currently in Out-of-Home care.

(b) On an annual basis, the statewide quality improvement committee (also known as the Child Welfare Improvement Council) will review data on the proportion of children in foster care over 24 months and the steps taken by Child and Family Services to ensure that proportion is not exceeded. As appropriate, recommendations for improvement will be made from the committee to Child and Family Services administration.

KEY: social services, child welfare, domestic violence, child abuse

July 22, 2015 **62A-4a-102**

Notice of Continuation May 16, 2013 **62A-4a-105**

42 U.S.C. 671

R512. Human Services, Child and Family Services.
R512-308. Out-of-Home Services, Guardianship Services and Placements.
R512-308-1. Purpose and Authority.

(1) The purpose of this rule is to define guardianship services and placements. Guardianship services and placements provide a permanent, safe living arrangement for a child in the court-ordered custody of Child and Family Services or Department of Human Services when it is not appropriate for the child to return home or be adopted, and continuing agency custody is not in the child's best interest.

(2) Guardianship services are authorized by Section 62A-4a-105.

(3) This rule is authorized by Section 62A-4a-102.

R512-308-2. Definitions.

(1) "Child and Family Services" means the Division of Child and Family Services.

(2) "Child and Family Team" has the same meaning as defined in Rule R512-301.

(3) "Guardianship" has the same meaning as defined in Section 78A-6-105.

R512-308-3. General Guardianship Qualifying Factors.

(1) General qualifying factors apply for both relative and non-relative guardianship, and all factors must be met.

(a) The child cannot safely return home. This requirement is met if the court determines that reunification with the child's parents is not possible or appropriate and the Child and Family Team and regional screening committee agree that adoption is not an appropriate plan for the child.

(b) The parent and child have a significant bond but the parent is unable to provide ongoing care for the child, such as an emotional, mental, or physical disability, and the child's current caregiver has committed to raising the child to the age of majority and to facilitate visitation with the parent.

(c) The prospective guardian must:

(i) Be able to maintain a stable relationship with the child;

(ii) Have a strong commitment to providing a safe and stable home for the child on a long-term basis;

(iii) Have a means of financial support and connections to community resources; and

(iv) Be able to care for the child without Child and Family Services supervision.

(d) The child has no ongoing care or financial needs beyond basic maintenance and does not require the services of a case manager.

(e) There are compelling reasons why the child cannot be adopted, such as when the child's tribe has exclusive jurisdiction or the tribe has chosen to intervene in the adoption proceedings. Under the Indian Child Welfare Act (ICWA), 25 USC Section 1911, a tribe has the right to determine the child's permanency. For this reason, the tribe has the authority to approve guardianship with the current caregiver.

R512-308-4. Non-Relative Qualifying Factors.

(1) In addition to general qualifying factors in R512-308-3, all of the following factors apply to non-relative guardianship and must be met.

(a) The child is in the legal custody of Child and Family Services and has been in custody for at least 12 consecutive months. If this is a sibling group, at least one child must have been in custody for 12 consecutive months.

(b) The prospective guardian is a licensed out-of-home care provider.

(c) The child has lived for at least six months in the home of the prospective guardian. The region director or designee may waive the six-month placement requirement for sibling groups if at least one sibling has been in the home for six months and meets all other eligibility criteria.

(d) A Child and Family Team has formally assessed the placement and found that continuation with the caregiver is in the child's best interest and supports the safety, permanency, and well-being of the child.

(e) Child and Family Services has no concerns with the care the child has received in the home.

(f) The child has a stable and positive relationship with the prospective guardian.

(g) The child has reached the age of 12 years. The region director or designee may waive the age requirement for members of a sibling group placed with a non-relative if at least one sibling is 12 years of age or older and meets all other guardianship criteria and adoption is not the best permanency option for the younger children.

R512-308-5. Relative Qualifying Factors.

(1) In addition to general qualifying factors found in R512-308-3, all of the following factors apply for relative guardianship and must be met.

(a) The child's prospective guardian is a relative to the child who meets the relationship requirements of the Department of Workforce Services Specified Relative Program, which currently includes:

(i) Grandfather or grandmother;

(ii) Brother or sister;

(iii) Uncle or aunt;

(iv) First cousin;

(v) First cousin once removed (a first cousin's child);

(vi) Nephew or niece;

(vii) Persons of preceding generations as designated by prefixes of grand, great, great great, or great great great;

(viii) Spouses of any relative mentioned above even if the marriage has been terminated;

(ix) Persons that meet any of the above-mentioned relationships by means of a step relationship; or

(x) Relatives that meet one of these relationships by legal adoption.

(b) If not licensed as an out-of-home care provider, the relative has completed kinship screening, including a home study and background checks, in accordance with Kinship Practice Guidelines.

(c) The child's needs may be met without continued Child and Family Services funding. In order to be considered for a guardianship subsidy, the prospective relative guardian must be a licensed out-of-home care provider and demonstrate that they cannot qualify for a Specified Relative Grant through the Department of Workforce Services as outlined in R512-308-6.

R512-308-6. Guardianship Subsidy Availability, Scope, Duration.

(1) Guardianship subsidies are available to meet the care and maintenance needs for children in out-of-home care:

(a) For whom guardianship has been determined as the most appropriate primary goal.

(b) Who do not otherwise have adequate resources available for their care and maintenance.

(c) Who meet the qualifying factors described in R512-308-4 Non-Relative Qualifying Factors and who cannot qualify to receive a Specified Relative Grant from the Department of Workforce Services.

(i) The caseworker must be provided with a copy of a denial letter from the Department of Workforce Services or written proof that the relationship requirements do not apply, such as through relevant birth certificates.

(ii) Approval from the regional guardianship screening committee and regional administration is required in making this determination.

(2) If a prospective guardian is found to be receiving both

a Specified Relative Grant and guardianship subsidy for the same child, the caseworker will notify the Department of Workforce Services and appropriate actions may be taken for repayment.

(3) Guardianship subsidies are available through the month in which the child reaches age 18 years.

(4) Each region may establish a limit to the number of eligible children who may receive guardianship subsidies.

(5) Guardianship subsidies are subject to the availability of state funds designated for this purpose.

R512-308-7. Regional Guardianship Subsidy Screening Committee.

(1) Each region shall establish at least one regional guardianship subsidy screening committee. This committee may be combined with another appropriate committee, such as the adoption subsidy committee or placement committee.

(2) The regional guardianship subsidy screening committee shall be comprised of at least five members. A minimum of three members must be present for making decisions regarding a guardianship subsidy. Decisions shall be made by consensus.

(3) The regional guardianship subsidy screening committee is responsible to:

(a) Verify that a child qualifies for a guardianship subsidy.

(b) Approve the level of need and amount of monthly subsidy for initial requests, changes, and renewals.

(c) Document the committee's decisions.

(d) Coordinate supportive services to prevent disruptions and preserve permanency.

R512-308-8. Determining Guardianship Subsidy Amounts.

(1) The regional guardianship subsidy screening committee will determine the subsidy amount by considering the special needs of the child and the circumstances of the guardian family. The caseworker presents to the committee information regarding the special needs of the child, the guardian family's income and expenses, and/or the guardian family's special circumstances.

(2) All of the following factors must be considered when determining the amount of the monthly subsidy to be granted:

(a) All sources of financial support for the child including Supplemental Security Income, Social Security benefits, and other benefits. The regional guardianship subsidy committee may require verification of financial support.

(i) If a child is receiving benefit income and the income can continue after guardianship is granted, this amount will be deducted from the guardianship subsidy amount.

(ii) The guardianship subsidy should not replace other available income, such as Supplemental Security Income.

(3) A guardianship subsidy will not exceed the levels indicated in Level I and Level II below, and may be less based upon the ongoing needs of the child and the needs of the guardian family.

(a) Guardianship Level I (Basic): Guardianship Level I is for a child who may have mild to moderate medical needs, psychological, emotional, or behavioral problems, and who requires parental supervision and care. The amount of guardianship subsidy for a child whose needs are within Level I may be any amount up to the lowest basic out-of-home care rate.

(b) Guardianship Level II (Specialized): Guardianship Level II is for a child who may be physically disabled, developmentally delayed, medically needy or medically fragile, or have a serious emotional disorder. The amount of the guardianship subsidy may range from the lowest basic out-of-home care rate to the lowest specialized out-of-home care rate.

(4) Children who are receiving the structured out-of-home care rate in out-of-home care or who are in a group or residential setting are considered for the Guardianship Level II rate.

(5) Guardianship subsidies may not exceed the Guardianship Level II rate.

(6) Guardianship subsidies are funded with state general funds within regional out-of-home care budgets. A region has the discretion to limit the number of guardianship subsidies or reduce guardianship subsidy rates based on the availability of funds.

(7) Changing the amount of the guardianship subsidy.

(a) The amount of a guardianship subsidy does not automatically increase when there is an out-of-home care rate change or as the child ages.

(b) A guardian may request a guardianship subsidy review when seeking an increase in the guardianship subsidy amount, not to exceed the maximum amount allowable for the child's level of need. The guardian must complete the Request for Subsidy Increase Form to provide documentation to justify the request.

(c) The request must be reviewed and approved by the regional guardianship subsidy screening committee. If approved, a new Guardian Subsidy Agreement will be completed.

(d) Child and Family Services must provide written notice of agency action by certified mail at least 30 days in advance if a guardianship subsidy rate is going to be reduced.

R512-308-9. Guardianship Subsidy Agreement.

(1) A Guardianship Subsidy Agreement specifies the terms for financial support for the child's basic needs.

(2) A guardianship subsidy worker will complete the Guardianship Subsidy Agreement.

(3) The effective date of the initial agreement is the date of the court order granting guardianship.

(4) A Guardianship Subsidy Agreement must:

(a) Be signed by the guardian and Child and Family Services prior to any payments being made.

(b) Identify the reason a subsidy is needed.

(c) List the amount of the monthly payment.

(d) Identify dates the agreement is in effect.

(e) Identify responsibilities of the guardian.

(f) Identify under what circumstances the agreement may be amended or terminated and the time period for agreement reviews.

(g) Include a provision for a reduction or termination in the amount of the guardianship subsidy in the event a legislative or executive branch action affects Child and Family Services' budget or expenditure authority, making it necessary for Child and Family Services to reduce or terminate guardianship subsidies or if a regional office determines that reduction is necessary due to regional budget constraints.

(h) Include a provision for assignment of benefits to the Office of Recovery Services in accordance with the Office of Recovery Services requirements.

(i) Include a provision for re-payment of any financial entitlement made by the Department of Human Services or Child and Family Services to the guardian that was incorrectly paid.

R512-308-10. Notification Regarding Changes.

(1) The guardian must notify Child and Family Services if:

(a) There is no longer a need for a guardianship subsidy.

(b) The guardian is no longer legally responsible for the support of the child.

(c) The guardian is no longer providing any financial support to the child or is providing reduced financial support for the child.

(d) The child no longer resides with the guardian.

(e) The guardian has a change in address.

(f) The child has run away.

(g) The guardian is planning to move out-of-state.

R512-308-11. Reviews, Renewals, and Recertifications.

(1) Reviews:

(a) A guardianship subsidy worker will review each Guardianship Subsidy Agreement annually. The family situation, child's needs, and amount of the guardianship subsidy payment may be considered.

(b) Prior to review, the guardian must complete the Guardianship Subsidy Recertification form provided by Child and Family Services to verify that the guardian continues to support the child. If the Guardianship Subsidy Recertification form is not received after adequate notice, the guardianship subsidy may be delayed or face possible termination.

(2) Renewals:

(a) In order for guardianship assistance payments to continue, this agreement shall be renewed at intervals of up to three years until the child's 18th birthday.

(b) The Department of Human Services or Child and Family Services shall provide written notification to the guardians before the next renewal date and shall supply the guardian with the appropriate forms.

(c) The Department of Human Services or Child and Family Services and the guardian may negotiate the terms of a new agreement at any time. In order to be effective, all new agreements shall be in writing, on a form approved by the Department of Human Services or Child and Family Services, and signed by the parties. Oral modifications or agreements shall bind the Department of Human Services or Child and Family Services and the guardian.

(3) Recertification:

(a) In order for guardianship assistance payments to continue, the guardian must recertify annually by completing and submitting the Annual Guardianship Assistance Recertification form to the Department of Human Services or Child and Family Services.

R512-308-12. Appeals/Fair Hearings.

(1) When a decision is made to deny, reduce, or terminate a guardianship subsidy, Child and Family Services shall send by certified mail a written Notice of Agency Action. The notice shall also include information about how to request a fair hearing.

R512-308-13. Termination.

(1) A Guardianship Subsidy Agreement will be terminated if any of the following circumstances occur:

(a) The terms of the agreement are concluded.

(b) The guardian requests termination.

(c) The child reaches age 18 years.

(d) The child dies.

(e) The guardian parent dies or, in a two parent family, if both guardian parents die.

(f) The guardian parents' legal responsibility for the child ceases.

(g) The Department of Human Services or Child and Family Services determines that the child is no longer receiving financial support from the guardian parent.

(h) The child marries.

(i) The child enters the military.

(j) The child is adopted.

(k) The child is placed in out-of-home care.

(l) The Department of Human Services or Child and Family Services determines that funding restrictions prevent continuation of subsidies for all guardians.

(2) A guardianship subsidy payment may be terminated or suspended, as appropriate, if any of the following occur. The decision to terminate or suspend must be made by the regional guardianship subsidy screening committee.

(a) The child is incarcerated for more than 30 days.

(b) The child is out of the home for more than a 30-day period or is no longer living in the home.

(c) The guardian fails to return the annual Guardianship Subsidy Recertification form or to complete the renewed Guardianship Subsidy Agreement within five working days of the renewal date.

(d) There is a supported finding of child abuse or neglect against the guardian.

KEY: out-of-home care, guardianship

December 22, 2010	**62A-4a-102**
Notice of Continuation July 22, 2015	**62A-4a-105**
	78A-6-105

R602. Labor Commission, Adjudication.
R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.
R602-2-1. Pleadings and Discovery.

A. Definitions.

1. "Commission" means the Labor Commission.

2. "Division" means the Division of Adjudication within the Labor Commission.

3. "Application for Hearing" means Adjudication Form 001 Application for Hearing Industrial Accident Claim, Adjudication Form 026 Application for Hearing Occupational Disease Claim, Adjudication Form 025 Application for Dependent's Benefits and/or Burial Benefits Industrial Accident, Adjudication Form 027 Application for Dependent's Benefits Occupational Disease, or other request for agency action complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102 et seq. filed by an employer of insurance carrier regarding a workers' compensation claim.

4. "Supporting medical documentation" means Adjudication Form 113 Summary of Medical Record or other medical report or treatment note completed by a physician that indicates the presence or absence of a medical causal connection between benefits sought and the alleged industrial injury or occupational disease.

5. "Authorization to Release Medical Records" is Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information authorizing the injured workers' medical providers to provide medical records and other medical information to the commission or a party.

6. "Supporting documents" means supporting medical documentation, Adjudication Form 307 Medical Treatment Provider List, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information and, when applicable, Adjudication Form 152 Appointment of Counsel.

7. "Petitioner" means the person or entity who has filed an Application for Hearing.

8. "Respondent" means the person or entity against whom the Application for Hearing was filed.

9. "Discovery motion" includes a motion to compel or a motion for protective order.

10. "Designated agent" is the agent authorized to receive all notices and orders in workers' compensation adjudications pursuant to Utah Code Section 34A-2-113. All designated agents shall provide the Adjudication Division an electronic address to receive delivery of documents from the Adjudication Division.

B. Application for Hearing.

1. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests with the injured worker, authorized representative of a deceased worker's estate, dependent of a deceased worker or medical provider, to initiate agency action by filing an appropriate Application for Hearing with the Division. Applications for hearing shall include an original, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information.

2. An employer, insurance carrier, or any other party with standing under the Workers' Compensation Act may obtain a hearing before the Adjudication Division by filing a request for agency action with the Division complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102et seq.

3. All Applications for Hearing shall include supporting medical documentation of the claim where there is a dispute over medical issues. Applications for Hearing without supporting documentation and a properly completed Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information may not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided. In addition to respondent's answer, a respondent may file a motion to dismiss the Application for Hearing where there is no supporting medical documentation filed to demonstrate medical causation when such is at issue between the parties.

4. When an Application for Hearing with appropriate supporting documentation is filed with the Division, the Division shall forthwith mail to the respondents a copy of the Application for Hearing, supporting documents and Notice of Formal Adjudication and Order for Answer.

5. In cases where the injured worker is represented by an attorney, a completed and signed Adjudication Form 152 Appointment of Counsel form shall be filed with the Application for Hearing or upon retention of the attorney.

C. Answer.

1. The respondent(s) shall have 30 days from the date of mailing of the Order for Answer, to file a written answer to the Application for Hearing.

2. The answer shall admit or deny liability for the claim and shall state the reasons liability is denied. The answer shall state all affirmative defenses with sufficient accuracy and detail that the petitioner and the Division may be fully informed of the nature and substance of the defenses asserted.

3. All answers shall include a summary of benefits which have been paid to date on the claim, designating such payments by category, i.e. medical expenses, temporary total disability, permanent partial disability, etc.

4. When liability is denied based upon medical issues, copies of reasonably available, admissible medical reports sufficient to support the denial of liability shall be filed with the answer.

5. If the answer filed by the respondents fails to sufficiently explain the basis of the denial, fails to include medical reports or records to support the denial, or contains affirmative defenses without sufficient factual detail to support the affirmative defense, the Division may strike the answer filed and order the respondent to file within 20 days, a new answer which conforms with the requirements of this rule.

6. All answers must state whether the respondent is willing to mediate the claim.

7. Petitioners are allowed to timely amend the Application for Hearing, and respondents are allowed to timely amend the answer, as newly discovered information becomes available that would warrant the amendment. The parties shall not amend their pleadings later than 45 days prior to the scheduled hearing without leave of the Administrative Law Judge.

8. Responses and answers to amended pleadings shall be filed within ten days of service of the amended pleading without further order of the Labor Commission.

D. Default.

1. If a respondent fails to file an answer as provided in Subsection C above, the Division may enter a default against the respondent.

2. If default is entered against a respondent, the Division may conduct any further proceedings necessary to take evidence and determine the issues raised by the Application for Hearing without the participation of the party in default pursuant to Section 63G-4-209(4), Utah Code.

3. A default of a respondent shall not be construed to deprive the Employer's Reinsurance Fund or Uninsured Employers' Fund of any appropriate defenses.

4. The defaulted party may file a motion to set aside the default under the procedures set forth in Section 63G-4-209(3), Utah Code. The Adjudication Division shall set aside defaults upon written and signed stipulation of all parties to the action.

E. Waiver of Hearing.

1. The parties may, with the approval of the administrative law judge, waive their right to a hearing and enter into a stipulated set of facts, which may be submitted to the

administrative law judge. The administrative law judge may use the stipulated facts, medical records and evidence in the record to make a final determination of liability or refer the matter to a Medical Panel for consideration of the medical issues pursuant to R602-2-2.

2. Stipulated facts shall include sufficient facts to address all the issues raised in the Application for Hearing and answer.

3. In cases where Medical Panel review is required, the administrative law judge may forward the evidence in the record, including but not limited to, medical records, fact stipulations, radiographs and deposition transcripts, to a medical panel for assistance in resolving the medical issues.

F. Discovery.

1. Upon filing the answer, the respondent and the petitioner may commence discovery. Discovery documents may be delivered by electronic transmittal. Discovery allowed under this rule may include interrogatories, requests for production of documents, depositions, and medical examinations. Discovery shall not include requests for admissions. Appropriate discovery under this rule shall focus on matters relevant to the claims and defenses at issue in the case. All discovery requests are deemed continuing and shall be promptly supplemented by the responding party as information comes available.

2. Without leave of the administrative law judge, or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 25 in number, including all discrete subparts, to be answered by the party served. The frequency or extent of use of interrogatories, requests for production of documents, medical examinations and/or depositions shall be limited by the administrative law judge if it is determined that:

a. The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive;

b. The party seeking discovery has had ample opportunity by discovery in the action to obtain the discovery sought; or

c. The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the adjudication.

3. Upon reasonable notice, the respondent may require the petitioner to submit to a medical examination by a physician of the respondent's choice.

4. All parties may conduct depositions pursuant to the Utah Rules of Civil Procedure and Section 34A-1-308, Utah Code.

5. Requests for production of documents are allowed, but limited to matters relevant to the claims and defenses at issue in the case, and shall not include requests for documents provided with the petitioner's Application for Hearing, nor the respondents' answer.

6. Parties shall diligently pursue discovery so as not to delay the adjudication of the claim. If a hearing has been scheduled, discovery motions shall be filed no later than 45 days prior to the hearing unless leave of the administrative law judge is obtained.

7. Discovery motions shall contain copies of all relevant documents pertaining to the discovery at issue, such as mailing certificates and follow up requests for discovery. The responding party shall have 10 days from the date the discovery motion is mailed to file a response to the discovery motion.

8. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

9. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

10. Notwithstanding the disclosures required under Rule 602-2-1, parties shall remain obligated to respond timely and appropriately to discovery requests.

G. Subpoenas.

1. Commission subpoena forms shall be used in all discovery proceedings to compel the attendance of witnesses. All subpoenas shall be signed by the administrative law judge assigned to the case, or the duty judge where the assigned judge is not available. Subpoenas to compel the attendance of witnesses shall be served at least 14 days prior to the hearing consistent with Utah Rule of Civil Procedure 45. Witness fees and mileage shall be paid by the party which subpoenas the witness.

2. A subpoena to produce records shall be served on the holder of the record at least 14 days prior to the date specified in the subpoena as provided in Utah Rule of Civil Procedure 45. All fees associated with the production of documents shall be paid by the party which subpoenas the record.

H. Medical Records Exhibit.

1. The parties are expected to exchange medical records during the discovery period.

2. Petitioner shall submit all relevant medical records contained in his/her possession to the respondent for the preparation of a joint medical records exhibit at least twenty (20) working days prior to the scheduled hearing.

3. The respondent shall prepare a joint medical record exhibit containing all relevant medical records. The medical record exhibit shall include all relevant treatment records that tend to prove or disprove a fact in issue. Hospital nurses' notes, duplicate materials, and other non-relevant materials need not be included in the medical record exhibit.

4. The medical records shall be indexed, paginated, arranged by medical care provider in chronological order and bound. The medical records may not be filed via electronic transmittal.

5. The medical record exhibit prepared by the respondent shall be delivered to the Division and the petitioner or petitioner's counsel at least ten (10) working days prior to the hearing. Late-filed medical records may or may not be admitted at the discretion of the administrative law judge by stipulation or for good cause shown.

6. The administrative law judge may require the respondent to submit an additional copy of the joint medical record exhibit in cases referred to a medical panel.

7. The petitioner is responsible to obtain radiographs and diagnostic films for review by the medical panel. The administrative law judge shall issue subpoenas where necessary to obtain radiology films.

I. Hearing.

1. Notices of hearing shall be mailed to the addresses of record of the parties. The parties shall provide current addresses to the Division for receipt of notices or risk the entry of default and loss of the opportunity to participate at the hearing.

2. Judgment may be entered without a hearing after default is entered or upon stipulation and waiver of a hearing by the parties.

3. No later than 45 days prior to the scheduled hearing, all parties shall file a signed pretrial disclosure form that identifies: (1) fact witnesses the parties actually intend to call at the hearing; (2) expert witnesses the parties actually intend to call at the hearing; (3) language translator the parties intend to use at the hearing; (4) exhibits, including reports, the parties intend to offer in evidence at the hearing; (5) the specific benefits or relief claimed by the petitioner; (6) the specific defenses that the respondent actually intends to litigate; (7) whether, or not, a party anticipates that the case will take more than two hours of hearing time; (8) the job categories or titles the respondents claim the petitioner is capable of performing if the claim is for

permanent total disability, and; (9) any other issues that the parties intend to ask the administrative law judge to adjudicate. The administrative law judge may exclude witnesses, exhibits, evidence, claims, or defenses as appropriate of any party who fails to timely file a signed pre-trial disclosure form as set forth above. The parties shall supplement the pre-trial disclosure form with information that newly becomes available after filing the original form. The pre-trial disclosure form does not replace other discovery allowed under these rules.

4. If the petitioner requires the services of language translation during the hearing, the petitioner has the obligation of providing a person who can translate between the petitioner's native language and English during the hearing. If the respondents are dissatisfied with the proposed translator identified by the petitioner, the respondents may provide a qualified translator for the hearing at the respondent's expense.

5. The petitioner shall appear at the hearing prepared to outline the benefits sought, such as the periods for which compensation and medical benefits are sought, the amounts of unpaid medical bills, and a permanent partial disability rating, if applicable. If mileage reimbursement for travel to receive medical care is sought, the petitioner shall bring documentation of mileage, including the dates, the medical provider seen and the total mileage.

6. The respondent shall appear at the hearing prepared to address the merits of the petitioner's claim and provide evidence to support any defenses timely raised.

7. Parties are expected to be prepared to present their evidence on the date the hearing is scheduled. Requests for continuances may be granted or denied at the discretion of the administrative law judge for good cause shown. Lack of diligence in preparing for the hearing shall not constitute good cause for a continuance.

8. Subject to the continuing jurisdiction of the Labor Commission, the evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted without leave of the administrative law judge.

J. Motions-Time to Respond.

Responses to all motions shall be filed within 10 days from the date the motion was filed with the Division. Reply memoranda shall be filed within 5 days from the date a response was filed with the Division.

K. Motions - Length and Type

1. Without prior leave of the Administrative Law Judge, supporting memorandum shall not exceed a total of 10 pages, opposing memorandum shall not exceed 7 pages and reply memorandum shall not exceed 3 pages. All pleadings shall be double spaced.

a. The page limitations herein are inclusive of headings, table of contents, introduction and/or background, conclusion, statement of issues and facts, arguments, etc.

b. The text of motions and memoranda shall be typeset in 12-point.

c. The Administrative Law Judge shall not consider anything contained on pages which exceed the page limits.

d. If a memorandum is to exceed the page limitations set forth in this rule, leave of the Administrative Law Judge must first be obtained. A motion for leave to file a lengthy memorandum must include a statement of the reasons why additional pages are needed and specify the number required. The Administrative Law Judge will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such a showing by the requesting party, such requests will not be approved. A lengthy memorandum must not be filed with the Division prior to an entry of an order authorizing its filing.

2. Other than one supporting and one opposing and one reply memoranda, no other memoranda shall be considered by the Administrative Law Judge.

L. Orders on Continuances.

The Administrative Law Judge may rule, ex parte, on requests for continuances.

M. Notices.

1. Orders and notices mailed by the Division to the last address of record provided by a party are deemed served on that party.

2. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

N. Form of Decisions.

Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63G-4-203 or 63G-4-208, Utah Code.

O. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an Administrative Law Judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63G-4-301 and Section 34A-1-303, Utah Code. Unless a request for review is properly filed, the Administrative Law Judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 15 calendar days of the date the request for review was filed. If such a response is filed, the party filing the original request for review may reply within 5 calendar days of the date the response was filed. Thereafter the Administrative Law Judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior Order by a Supplemental Order; or

c. Refer the entire case for review under Section 34A-2-801, Utah Code.

2. Motions for Review shall not exceed a total of 15 pages. Response briefs shall not exceed a total of 12 pages. Reply briefs shall not exceed a total of 5 pages. All motions and briefs shall be double spaced.

a. The page limitations herein are inclusive of headings, table of contents, introduction and/or background, conclusion, statement of issues and facts, arguments, etc.

b. The text of motions and memoranda shall be typeset in 12-point font.

c. The Commission and the Appeals Board may disregard argument or other writing contained on pages which exceed the page limits.

3. If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

P. Procedural Rules.

In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of Section 34A-2-802, Utah Code or as may be otherwise modified by these rules.

Q. Requests for Reconsideration and Petitions for Judicial Review.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63G-4-302, Utah Code. Any petition for judicial review of final agency action shall be governed by the provisions of Section 63G-4-401, Utah Code.

R602-2-2. Guidelines for Utilization of Medical Panel.

Pursuant to Section 34A-2-601, the Commission adopts the following guidelines in determining the necessity of submitting

a case to a medical panel:

A. A panel will be utilized by the Administrative Law Judge where one or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are:

1. Conflicting medical opinions related to causation of the injury or disease;

2. Conflicting medical opinion of permanent physical impairment which vary more than 5% of the whole person,

3. Conflicting medical opinions as to the temporary total cutoff date which vary more than 90 days;

4. Conflicting medical opinions related to a claim of permanent total disability, and/or

5. Medical expenses in controversy amounting to more than $10,000.

B. Objections and Responses.

1. Time. A written Objection to a medical panel report shall be due within 20 days of when the medical panel report is served on the parties. A Response to an Objection shall be filed within 10 days from the date the Objection was filed with the Division. A Reply to an Objection shall be filed within 5 days from the date the Response is filed with the Division.

2. Length. Without prior leave of the Administrative Law Judge, Objections shall not exceed 10 pages. Responses shall not exceed 7 pages, and Replies shall not exceed 3 pages. All pleadings shall be double spaced.

a. The page limitations herein are inclusive of headings, table of contents, introduction and/or background, conclusion, statement of issues and facts, arguments, etc.

b. The text of motions and memoranda shall be typeset in 12-point font.

c. The Administrative Law Judge shall not consider anything contained on pages which exceed the page limits.

d. If a memorandum is to exceed the page limitations set forth in this rule, leave of the Administrative Law Judge must first be obtained. A motion for leave to file a lengthy memorandum must include a statement of the reasons why additional pages are needed and specify the number required. The Administrative Law Judge will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such a showing by the requesting party, such requests will not be approved. A lengthy memorandum must not be filed with the Division prior to an entry of an order authorizing its filing.

3. Other than one Objection and one Response and one Reply, no other memoranda shall be considered without prior leave of the Administrative Law Judge.

4. A hearing on objections to the panel report may be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the Administrative Law Judge may, in lieu of a hearing, re-submit the new evidence to the panel for consideration and clarification.

C. Any expenses of the study and report of a medical panel or medical consultant and of their appearance at a hearing, as well as any expenses for further medical examination or evaluation, as directed by the Administrative Law Judge, shall be paid from the Uninsured Employers' Fund, as directed by Section 34A-2-601.

R602-2-3. Compensation for Medical Panel Services.

Compensation for medical panel services, including records review, examination, report preparation and testimony, shall be $125 per half hour for medical panel members and $137.50 per half hour for the medical panel chair.

R602-2-4. Attorney Fees.

A. Pursuant to Section 34A-1-309, the Commission adopts the following rule to regulate and fix reasonable fees for attorneys representing applicants in workers' compensation or occupational illness claims.

1. This rule applies to all fees awarded after July 1, 2015.

2. Fees awarded prior to the effective date of this rule are determined according to the prior version of this rule in effect on the date of the award.

B. Upon written agreement, when an attorney's services are limited to consultation, document preparation, document review, or review of settlement proposals, the attorney may charge the applicant an hourly fee of not more than $125 for time actually spent in providing such services, up to a maximum of four hours.

1. Commission approval is not required for attorneys fees charged under this subsection B. It is the applicant's responsibility to pay attorneys fees permitted by this subsection B.

2. In all other cases involving payment of applicants' attorneys fees which are not covered by this subsection B., the entire amount of such attorneys fees are subject to subsection C. or D. of this rule.

C. Except for legal services compensated under subsection B. of this rule, all legal services provided to applicants shall be compensated on a contingent fee basis.

1. For purposes of this subsection C., the following definitions and limitations apply:

a. The term "benefits" includes only death or disability compensation and interest accrued thereon.

b. Benefits are "generated" when paid as a result of legal services rendered after Adjudication Form 152 Appointment of Counsel form is signed by the applicant. A copy of this form must be filed with the Commission by the applicant's attorney.

c. In no case shall an attorney collect fees calculated on more than the first 312 weeks of any and all combinations of workers' compensation benefits.

2. Fees and costs authorized by this subsection shall be deducted from the applicant's benefits and paid directly to the attorney on order of the Commission. A retainer in advance of a Commission approved fee is not allowed.

3. Attorney fees for benefits generated by the attorney's services shall be computed as follows:

a. For all legal services rendered through final Commission action, the fee shall be 25% of weekly benefits generated for the first $25,000, plus 20% of the weekly benefits generated in excess of $25,000 but not exceeding $50,000, plus 10% of the weekly benefits generated in excess of $50,000, to a maximum of $18,590.

b. For legal services rendered in prosecuting or defending an appeal before the Utah Court of Appeals, an attorney's fee shall be awarded amounting to 30% of the benefits in dispute before the Court of Appeals. This amount shall be added to any attorney's fee awarded under subsection C.3.a. for benefits not in dispute before the Court of Appeals. The total amount of fees awarded under subsection C.3.a. and this subsection C.3.b. shall not exceed $26,819;

c. For legal services rendered in prosecuting or defending an appeal before the Utah Supreme Court, an attorney's fee shall be awarded amounting to 35% of the benefits in dispute before the Supreme Court. This amount shall be added to any attorney's fee awarded under subsection C.3.a. and subsection C.3.b. for benefits not in dispute before the Supreme Court. The total amount of fees awarded under subsection C.3.a, subsection C.3.b. and this subsection C.3.c shall not exceed $32,913.

D. The following expenses, fees and costs shall be presumed to be reasonable and necessary and therefore reimbursable in a workers' compensation claim:

1. Medical records and opinion costs;

2. Deposition transcription costs;
3. Vocational and Medical Expert Witness fees;
4. Hearing transcription costs;
5. Appellate filing fees; and
6. Appellate briefing expenses.

F. Other reasonable expenses, fees and costs may be awarded as reimbursable as the Commission may in its discretion decide in a particular workers compensation claim.

E. In "medical only" cases in which awards of attorneys' fees are authorized by Subsection 34A-1-309(4), the amount of such fees and costs shall be computed according to the provisions of subsection C and D.

R602-2-5. Timeliness of Decisions.

A. Pursuant to Section 34A-2-801, the Commission adopts the following rule to ensure decisions on contested workers' compensation cases are issued in a timely and efficient manner.

1. This rule applies to all workers' compensation adjudication cases and motions for review filed on or after July 1, 2013.

B. Timeliness standards.

1. The Adjudication Division will issue all interim decisions and all final decisions within 60 days of the date on which the matter is ready for decision unless the parties agree to a longer period of time or issuing a decision within 60 days is impracticable. The Division will maintain a record of those cases in which a decision is not issued within 60 days.

2. The Commissioner or Appeals Board will issue all decisions on motions for review within 90 days of the date on which the motion for review is filed unless the parties agree to a longer period of time or issuing a decision within 90 days is impracticable. The Commission will maintain a record of those cases in which a decision is not issued within 90 days.

C. Yearly Report

1. The Commission shall annually provide to the Business and Labor Interim Committee a report that includes the following information:

a. The number of cases for which an application for hearing was filed during the previous calendar year;

b. The number of cases for which a Division decision was not issued within 60 days of the hearing;

c. The number of cases for which a decision on a motion for review was not issued within 90 days of the date on which the motion for review was filed;

d. The number of cases for which an application for hearing was filed during the previous year that resulted in a final Commission decision issued within 18 months of the filing date; and

e. The number of cases for which an application for hearing was filed during the previous year that did not result in a final Commission issued within 18 months of the filing date and the reason such a decision was not issued.

D. Commission decisions might not be issued within these timeframes if doing so is impracticable.

1. For purposes of this rule, "impracticable" may include but is not limited to:

a. Cases that are sent to a medical panel;

b. Cases in which the hearing record is left open at the request of one or more of the parties or by order of the ALJ;

c. Cases in which one or more parties file post-hearing motions or objections;

d. Cases in which the parties request mediation or an extension of time to pursue settlement negotiations;

e. Cases in which due process requires subsequent or additional adjudication;

f. Cases in which a claimant is required to amend the application for hearing or in which a respondent is required to amend a response or answer; or

e. Cases in which an appellate decision related to the pending case or a similar case may have bearing on the pending case.

E. The Commission will receive the motion for review immediately after the motion is filed with the Adjudication Division.

1. Preliminary evaluation: motions for review.

a. Immediately upon transfer of a motion for review from the Adjudication Division to the Commission, staff will review the ALJ's decision and the motion for review. Responses will be reviewed as they are submitted. Based on that review, staff will prioritize cases for decision in the following order:

i. Cases with statutory mandates to issue quick decisions, such as requests to eliminate or reduce temporary disability compensation.

ii. Cases that require an immediate decision in order to allow the underlying adjudicative proceeding to proceed.

iii. Cases that can be resolved without research or extensive decision-writing.

iv. Cases that need to be decided in a timely manner by the Appeals Board in order to be completed within 90 days.

b. If none of these factors are present, cases will be completed in the order they are received, with the oldest cases receiving priority.

KEY: workers' compensation, administrative procedures, hearings, settlements

July 8, 2015	**34A-1-301 et seq.**
Notice of Continuation June 19, 2012	**63G-4-102 et seq.**

R614. Labor Commission, Occupational Safety and Health.
R614-1. General Provisions.
R614-1-1. Authority.

A. These rules and all subsequent revisions as approved and promulgated by the Labor Commission, Division of Occupational Safety and Health, are authorized pursuant to Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

B. The intent and purpose of this chapter is stated in Section 34A-6-202 of the Act.

C. In accordance with legislative intent these rules provide for the safety and health of workers and for the administration of this chapter by the Division of Occupational Safety and Health of the Labor Commission.

R614-1-2. Scope.

These rules consist of the administrative procedures of UOSH, incorporating by reference applicable federal standards from 29 CFR 1910 and 29 CFR 1926, and the Utah initiated occupational safety and health standards found in R614-1 through R614-7. Notice has been given and rules filed as required by Subsection 34A-6-104(1)(c) and 34A-6-202(2) of the Utah Occupational Safety and Health Act and by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

R614-1-3. Definitions.

A. "Access" means the right and opportunity to examine and copy.

B. "Act" means the Utah Occupational Safety and Health Act of 1973.

C. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

D. "Administrator" means the director of the Division of Occupational Safety and Health.

E. "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.

F. "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

G. "Commission" means the Labor Commission.

H. "Council" means the Utah Occupational Safety and Health Advisory Council.

I. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of the 30 days shall be included.

J. "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

K. "Division" means the Division of Occupational Safety and Health, known by the acronyum of UOSH (Utah Occupational Safety and Health).

L. "Employee" includes any person suffered or permitted to work by an employer.

1. For Medical Records: "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

M. "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

1. Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretations of the results obtained;

2. Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

3. Material safety data sheets; or

4. In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

N. Employee medical record

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and not required to be maintained by other legal requirements;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

c. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

O. "Employer" means:

1. The state;

2. Each county, city, town, and school district in the state; and

3. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

4. For medical records: "Employer" means a current employer, a former employer, or a successor employer.

P. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by the Administrator.

1. Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.

2. Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

3. Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance and real estate.

4. Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural; and membership organizations.

5. The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of normal basis for determining the primary activity.

Q. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

R. "Hearing" means a proceeding conducted by the commission.

S. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.

T. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 34A-6-301 of the Act.

U. "National consensus standard" means any occupational safety and health standard or modification:

1. Adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

2. Formulated in a manner which affords an opportunity for diverse views to be considered; and

3. Designated as such a standard by the Secretary of the United States Department of Labor.

V. "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.

W. "Publish" means publication in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

X. "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing.)

Y. "Safety and Health Officer" means a person authorized by the Utah Occupational Safety and Health Administration to conduct inspections.

Z. "Secretary" means the Secretary of the United States Department of Labor.

AA. "Specific written consent" means written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;

2. The date of the written authorization;

3. The name of the individual or organization that is authorized to release the medical information;

4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for the release of medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year).

8. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

9. A written authorization may be revoked in writing prospectively at any time.

BB. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

CC. "Toxic substance" or "harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo and hyperbaric pressure, etc) which:

1. Is regulated by any Federal law or rule due to a hazard to health;

2. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See R614-103-20B Appendix B);

3. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

4. Has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

DD. "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

EE. "Workplace" means any place of employment.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

1. Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 2011, edition are incorporated by reference.

2. 29 CFR 1908, July 1, 2011, is incorporated by

reference.

3. 29 CFR 1904, July 1, 2011, is incorporated by reference.

4. FR Vol. 77, Monday, March 26, 2012, Pages 17574 to and including 17896 "29CFR Part 1910 Hazard Communication:" Final Rule is incorporated by reference.

B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 2011, edition is incorporated by reference.

2. FR Vol. 77, Monday, March 26, 2012, Pages 17574 to and including 17896 "29CFR Part 1910 Hazard Communication:" Final Rule is incorporated by reference.

R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and place of employment of every employee engaged in construction work of:

1. New construction and building;

2. Remodeling, alteration and repair;

3. Decorating and painting;

4. Demolition; and

5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

C. Reporting Requirements.

1. Each employer shall within 8 hours of occurrence, notify the Division of Utah Occupational Safety and Health of the Commission of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901.

2. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor commission or one of its Compliance Officers.

3. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

4. Each employer shall file a report with the Commission within seven days after the occurrence of an injury or occupational disease, after the employers' first knowledge of the occurrence, or after the employee's notification of the same, on forms prescribed by the Commission, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness or loss of work, restriction of work, or transfer to another job. Each employer shall file a subsequent report with the Commission of any previously reported injury or occupational disease that later resulted in death. The subsequent report shall be filed with the Commission within seven days following the death or the employer's first knowledge or notification of the death. No report is required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless the treating physician files, or is required to file the physician's initial report of work injury or occupational disease with the Commission. Also, no report is required for occupational disease which manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

5. Each employer shall provide the employee with a copy of the report submitted to the Commission. The employer shall also provide the employee with a statement, as prepared by the Commission, of his rights and responsibilities related to the industrial injury or occupational disease.

6. Each employer shall maintain a record in a manner prescribed by the Commission of all work-related injuries and all occupational disease resulting in medical treatment, loss of consciousness, loss of work, restriction or work, or transfer to another job.

7. No person shall remove, displace, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees. No employee shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, and welfare of employees.

D. Employer, Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

4. Supervisory personnel shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

E. General Safety Requirements.

1. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

2. Body protection: Clothing which is appropriate for the work being done should be worn. Loose sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

3. General. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

4. Safety Committees. It is recommended that a safety committee comprised of management and employee representatives be established. The committee or the individual member of the committee shall not assume the responsibility of management to maintain and conduct a safe operation. The duties of the committee should be outlined by management, and may include such items as reviewing the use of safety apparel, recommending action to correct unsafe conditions, etc.

5. No intoxicated person shall be allowed to go into or loiter around any operation where workers are employed.

6. No employee shall carry intoxicating liquor into a place of employment, except that the place of employment shall be engaged in liquor business and this is a part of his assigned duties.

7. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

8. Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of employment.

9. Emergency Posting Required.

a. Good communications are necessary if a fire or disaster situation is to be adequately coped with. A system for alerting and directing employees to safety is an essential step in a safety program.

b. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

(1) Responsible supervision (superintendent or equivalent)
(2) Doctor
(3) Hospital
(4) Ambulance
(5) Fire Department
(6) Sheriff or Police

10. Lockouts and Tagging.

a. Where there is any possibility of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged and the employee in charge (the one who places the lock) shall keep the key until the job is completed or he is relieved from the job, such as by shift change or other assignment. If it is expected that the job may be assigned to other workers, he may remove his lock provided the supervisor or other workers apply their lock and tag immediately. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs on maintenance work is being done, the employee in charge shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, pressurized lines or lines connected to such equipment if they could create a hazard to workers.

b. After tagging and lockout procedures have been applied, machinery, lines, and equipment shall be checked to insure that they cannot be operated.

c. If locks and tags cannot be applied, conspicuous tags made of nonconducting material and plainly lettered, "EMPLOYEES WORKING" followed by the other appropriate wording, such as "Do not close this switch" shall be used.

d. When in doubt as to procedure, the worker shall consult his supervisor concerning safe procedure.

11. Safety-Type hooks shall be used wherever possible.

12. Emergency Showers, Bubblers, and Eye Washers.

a. Readily accessible, well marked, rapid action safety showers and eye wash facilities must be available in areas where strong acid, caustic or highly oxidizing or irritating chemicals are being handled. (This is not applicable where first aid practices specifically preclude flushing with running water.)

b. Showers should have deluge type heads, easily accessible, plainly marked and controlled by quick opening valves of the type that stay open. The valve handle should be equipped with a pull chain, rope, etc., so the blinded employee will be able to more easily locate the valve control. In addition, it is recommended that the floor platform be so constructed to actuate the quick opening valve. The shower should be capable of supplying large quantities of water under moderately high pressure. Blankets should be located so as to be reasonably accessible to the shower area.

c. All safety equipment should be inspected and tested at regular intervals, preferably daily and especially during freezing weather, to make sure it is in good working condition at all times.

13. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

F. All requirements of PSM Standard 29 CFR 1910.119 are hereby extended to include the blister agents, HT, HD, H, Lewisite, and the nerve agents, GA, VX.

R614-1-6. Personal Protective Equipment.

A. When no other method or combination of methods can be provided to prevent employees from becoming exposed to toxic dusts, fumes, gases, flying particles or other objects, dangerous rays or burns from heat, acid, caustic, or any other hazard of a similar nature, the employer must provide each worker with the necessary personal protection equipment, such as respirators, goggles, gas masks, certain types of protective clothing, etc. Provision must also be made to keep all such equipment in good, sanitary working condition at all times.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Except when, in the opinion of the Administrator, their use creates a greater hazard, life lines and safety harnesses shall be provided for and used by workers engaged in window washing, in securing or shifting thrustouts, inspecting or working on overhead machines supporting scaffolds or other high rigging, and on steeply pitched roofs. Similarly, they shall be provided for and used by all exposed to the hazard of falling, and by workmen on poles workers or steel frame construction more than ten (10) feet above solid ground or above a temporary or permanent floor or platform.

D. Every life line and safety harness shall be inspected by the superintendent or his authorized representative and the worker before it is used and at least once a week while continued in use.

E. Wristwatches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

R614-1-7. Inspections, Citations, and Proposed Penalties.

A. The Utah Occupational Safety and Health Act (Title 34A, Chapter 6) requires, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act applicable to employees actions and conduct. The Act authorizes the Utah Occupational Safety and Health Division to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under Section 34A-6-301, also authorizes the Administrator to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Labor Commission, if contested by an employer or by an employee or authorized representative of employees, and for a judicial review. The purpose of R614-1-7 is to prescribe rules and general policies for enforcement of the inspection, citations, and proposed penalty provisions of the Act. Where R614-1-7 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Administrator or his designee determines that an alternative course of action would better serve the objectives of the Act.

B. Posting of notices; availability of Act, regulations and applicable standards.

1. Each employer shall post and keep posted notices, to be furnished by the Administrator, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact their employer or the office of the Administrator. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesman, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of R614-1-7.Q.

3. Copies of the Act, all regulations published under authority of Section 34A-6-202 and all applicable standards will be available at the office of the Administrator. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative.

4. Any employer failing to comply with the provisions of this Part shall be subject to citation and penalty in accordance with the provisions of Sections 34A-6-302 and 34A-6-307 of the Act.

C. Authority for Inspection.

1. Safety and Health Officers of the Division are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in R614-1-7 and 8, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified as restricted by an agency of the United States Government in the interest of national security, Safety and Health Officers shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with R614-1-7.B. and C. or to permit a representative of employees to accompany the Safety and Health Officer during the physical inspection of any workplace in accordance with R614-1-7.G. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interview concerning which no objection is raised.

2. The Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Administrator. The Administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Administrator circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employers past practice either implicitly or explicitly puts the Administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Act. Safety and Health Officers are not authorized to grant such waivers.

F. Advance notice of Inspections.

1. Advance notice of inspections may not be given, except in the following instances:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

c. Where necessary to assure the presence of the employer or representative of the employer and employees or the

appropriate personnel needed to aid the inspection; and

d. In other circumstances where the Administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the instances described in R614-1-7.F.1., advance notice of inspections may be given only if authorized by the Administrator, except that in cases of imminent danger, advance notice may be given by the Safety and Health Officer without such authorization if the Administrator is not immediately available. Where advance notice is given, it shall be the employer's responsibility to notify the authorized representative of the employees of the inspection, if the identity of such representatives is known to the employer. (See R614-1-7.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Safety and Health Officer with the identity of such representatives and with such other information as is necessary to enable him promptly to inform such representatives of the inspection. A person who fails to comply with his responsibilities under this paragraph, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Act. Advance notice in any of the instances described in R614-1-7.F. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger and other unusual circumstances.

3. The Act provides in Subsection 34A-6-307(5)(b) conditions for which advanced notice can be given and the penalties for not complying.

G. Conduct of Inspections.

1. Subject to the provisions of R614-1-7.C., inspections shall take place at such times and in such places of employment as the Administrator or the Safety and Health Officer may direct. At the beginning of an inspection, Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in R614-1-7.C. which they wish to review. However, such designations of records shall not preclude access to additional records specified in R614-1-7.C.

2. Safety and Health Officers shall have authority to take environmental samples and to take photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See R614-1-7.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of the operations of the employer's establishment.

5. At the conclusion of an inspection, the Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Safety and Health Officer any pertinent information regarding conditions in the workplace.

H. Representative of employers and employees.

1. Safety and Health Officer shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Safety and Health Officer may permit additional employer representative and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Safety and Health Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and the employees for purpose of this Part. If there is no authorized representative of employees, or if the Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Safety and Health Officer during the inspection.

4. Safety and Health Officers are authorized to deny the right of accompaniment under this Part to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of R614-1-7.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Safety and Health Officer in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of Section 34A-6-306 of the Act.

3. Upon the request of an employer, any authorized representative of employees under R614-1-7.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is not such representative or employee, the Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with employees.

Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Safety and Health Officer.

K. Complaints by employees.

1. Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Administrator or to a Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent by the Administrator or Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Administrator.

2. If upon receipt of such notification the Administrator determines that the complaint meets the requirements set forth in R614-1-7.K.1., and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this Part shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of R614-1-7.K.1.

4. Section 34A-6-203 of the Act provides protection for employees while engaged in protected activities.

L. Inspection not warranted; informal review.

1. If the Administrator determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under K, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Administrator. The Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the Administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of his decision and the reasons therefor.

2. If the Administrator determines that an inspection is not warranted because the requirements of R614-1-7.K.1. have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of R614-1-7.K.1.

M. Imminent danger.

Whenever a Safety and Health Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated through the enforcement procedures of the Act, he shall inform the affected employees and employers of the danger, that he is recommending a civil action to restrain such conditions or practices and for other appropriate citations of proposed penalties which may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

N. Citations.

1. The Administrator shall review the inspection report of the Safety and Health Officer. If, on the basis of the report the Administrator believes that the employer has violated a requirement of Section 34A-6-201 of the Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Act, or of any substantive rule published in this chapter, shall issue to the employer a citation. A citation shall be issued even though, after being informed of an alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violations. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision of the Act, standard, rule, regulations, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for an alleged violation in a request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the Administrator determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under R614-1-7.K.1.or a notification of violation under R614-1-7.K.3., the informal review procedures prescribed in R614-1-7.L.1. shall be applicable. After considering all views presented, the Administrator shall either affirm, order a re-inspection, or issue a citation if he believes that the inspection disclosed a violation. The Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or

near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

P. Proposed penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of the proposed penalty under Section 34A-6-307 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division in writing that he intends to contest the citation or the notification of proposed penalty before the Commission.

2. The Administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of Section 34A-6-307 of the Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of citations.

1. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place of alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see R614-1-7.B.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see R614-1-7.B.2.), the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days which ever is later. The filing by the employer of a notice of intention to contest under R614-1-7.R. shall not affect his posting responsibility unless and until the Commission issues a final order vacating the citation.

3. An employer, to whom a citation has been issued, may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of R614-1-7.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of Section 34A-6-307 of the Act.

R. Employer and employee hearings before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Act, notify the Adjudication Division in writing that the employer intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under Section 34A-6-303(3) of the Act, file a written notice with the Adjudication Division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Adjudication Division shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

S. Failure to correct a violation for which a citation has been issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of such failure and of the additional penalty proposed under Section 34A-6-307 of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 34A-6-303(3) of the Act, notify the Adjudication Division in writing that he intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of

proposed additional penalty shall state that it shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies the Adjudication Division in writing that he intends to contest the notification or the proposed additional penalty before the Commission.

T. Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The Administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30 day period for filing a notice of intention to contest as prescribed in R614-1-7.R.

U. Multi-Employer worksites.

1. Pursuant to Section 34A-6-201 of the Act, violation of an applicable standard adopted under Section 34A-6-202 of the Act at a multi-employer worksite may result in a citation issued to more than one employer.

2. An employer on a multi-employer worksite may be considered a creating, exposing, correcting, or controlling employer. An employer may be cited should:

a. It meet the definition of a creating employer and be found to have failed to exercise the duty of care required by this Rule for a creating employer: or

b. It meet the definition of an exposing, correcting, or controlling employer and be found to have failed to exercise the duty of care required by this Rule for that category of employer.

c. Even if an employer meets its duty of reasonable care applicable to one category of employer, it may still be cited should it meet the definition of another category of employer and be found to have failed to exercise the duty of care required by this Rule for that category of employer. No employer will be cited for the same violation under multiple categories of employers.

3. Creating Employer. A creating employer is one that created a hazardous condition on the worksite. A creating employer may be cited if:

a. Its own employees are exposed or if the employees of another employer at the site are exposed to this hazard; and

b. The employer did not exercise reasonable care by taking prompt and effective steps to alert employees of other employers of the hazard and to correct or remove the hazard or, if the creating employer does not have the ability or authority to correct or remove the hazard, to notify the controlling or correcting employer of the hazard.

4. Exposing Employer. An exposing employer is one that exposed its own employees to a hazard. If the exposing employer created the hazard, it is citable as the creating employer, not the exposing employer.

a. If the exposing employer did not create the hazard, it may be cited as the exposing employer if:

i. It knew of the hazard or failed to exercise reasonable care to discover the hazard; and

ii. Upon obtaining knowledge of the hazard, it failed to take prompt and reasonable precautions, consistent with its authority on the worksite, to protect its employees.

b. An exposing employer will be deemed to have exercised reasonable care to discover a hazard if it demonstrates that it has regularly and diligently inspected the worksite.

c. If the exposing employer has the authority to correct or remove the hazard, it must correct or remove the hazard with reasonable diligence. If the exposing employer lacks such authority, it may still be cited if:

i. It failed to make a good faith effort to ask the creating and/or controlling employer to correct the hazard;

ii. It failed to inform its employees of the hazard; and

iii. It failed to take reasonable alternative measures, consistent with its authority on the worksite, to protect its employees.

5. Correcting Employer. A correcting employer is one responsible for correcting a hazardous condition, such as installing or maintaining safety and health devices or equipment, or implementing appropriate health and safety procedures. A correcting employer must exercise reasonable care in preventing and discovering hazards and ensure such hazards are corrected in a prompt manner, which shall be determined in light of the scale, nature and pace of the work, and the amount of activity of the worksite.

6. Controlling Employer. A controlling employer is one with general supervisory authority over a worksite. This authority may be established either through contract or practice and includes the authority to correct safety and health violations or require others to do so, but it is separate from the responsibilities and care to be exercised by a correcting employer.

a. A controlling employer will not be cited if it has exercised reasonable care to prevent and detect violations on the worksite. The extent of the measures used by a controlling employer to satisfy this duty, however, is less than the extent required of an employer when protecting its own employees. A controlling employer is not required to inspect for hazards or violations as frequently or to demonstrate the same knowledge of applicable standards or specific trade expertise as the employer under its control.

b. When determining the duty of reasonable care applicable to a controlling employer on a multi-employer worksite, the factors that may be considered include, but are not limited to:

i. The nature of the worksite and industry in which the work is being performed;

ii. The scale, nature and pace of the work, including the pace and frequency at which the worksite hazards change as the work progresses;

iii. The amount of activity at the worksite, including the number of employers under its control and the number of employees working on the worksite;

iv. The implementation and monitoring of safety and health precautions for the entire worksite requiring that other employers on the worksite comply with their respective obligations and standards of care for the safety of employees, a graduated system of discipline for non-compliant employees and/or employers, regular worksite safety meetings, and when appropriate for atypical hazards, the providing of adequate safety training by employers for atypical hazards present on the worksite; and

v. The frequency of worksite inspections, particularly at the commencement of a project or the commencement of work on the project by other employers that come under its control. As work progresses, the frequency and sufficiency of such inspections shall be determined in relation to other employers' compliance with their respective obligations and standards of care as required by this Rule.

c. When evaluating whether a controlling employer has demonstrated reasonable care in preventing and discovering violations, the following factors, though not inclusive, shall be considered;

i. Whether the controlling employer conducted worksite

inspections with sufficient frequency as contemplated by subsection 6(b);

ii. The controlling employer's implementation and monitoring of an effective system for identifying a hazardous condition and promptly notifying employers under its control of the hazard so as to ensure compliance with their respective duties of care under this Rule;

iii. Whether the controlling employer implements a graduated system of discipline for non-compliant employees and/or employers with their respective safety and health requirements;

iv. Whether the controlling employer performs follow-up inspections to ensure hazards are corrected; and

v. Other actions demonstrating the implementation and monitoring of safety and health precautions for the entire worksite.

7. In accordance with Section 34A-6-110, nothing in this Rule shall:

a. be deemed to limit or repeal requirements imposed by statute or otherwise recognized by law; or

b. be construed or held to supersede or in any manner affect workers' compensation or enlarge or diminish or affect the common-law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, occupational or other diseases, or death of employees arising out of, or in the course of employment.

R614-1-8. Recording and Reporting Occupational Injuries and Illnesses.

A. The rules in this section implement Sections 34A-6-108 and 34A-6-301(3) of the Act. These sections provide for record-keeping and reporting by employers covered under the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of R614-1-5.C.

NOTE: Utah has adopted and will enforce the Federal Recordkeeping Standard 29CFR1904.

Utah Specific Recordkeeping requirements follow:

B. Supplementary record.

Each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying federal OSHA Form No. 301, Utah Industrial Accidents Form 122. Workers' compensation, insurance, or other reports are acceptable alternative records if they contain the information required by the federal OSHA Form No. 301, Utah Industrial Accidents Form 122. If no acceptable alternative record is maintained for other purposes, Federal OSHA Form No. 301, Utah Industrial Accidents Form 122 shall be used or the necessary information shall be otherwise maintained.

C. Retention of records.

Preservation of records.

a. This section applies to each employer who makes, maintains or has access to employee exposure records or employee medical records.

b. "Employee exposure record" means a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

c. "Employee medical record" means a record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(1) The results of medical examinations and tests;

(2) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(3) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

d. Preservation of records. Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve these records.

e. Availability of records. The employer shall make available, upon request to the Administrator, or a designee, and to the Director of the Division of Health, or a designee, all employee exposure records and employee medical records for examination and copying.

D. Access to records.

1. Records provided for in R614-1-8.A.,E., and F. shall be available for inspection and copying by Compliance Officers during any occupational safety and health inspection provided for under R614-1-7 and Section 34A-6-301 of the Act.

2. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in R614-1-8.A. shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

3. Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

4. Access to the log provided under this section shall pertain to all logs retained under requirements of R614-1-8.G.

E. Reporting of fatality or accidents. (Refer to Utah Occupational Safety and Health Rule, R614-1-5.C.)

F. Falsification or failure to keep records or reports.

1. Section 34A-6-307 of the Act provides penalties for false information and recordkeeping.

2. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in Sections 34A-6-302 and 34A-6-307 of the Act.

G. Description of statistical program.

1. Section 34A-6-108 of the Act directs the Administrator to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within Stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates for most four-digit Standard Industrial Classification (SIC) industries in manufacturing and for three-digit classification (SIC) in non-manufacturing. Full cooperation with the U. S. Department of Labor in statistical programs is intended.

R614-1-9. Rules of Practice for Temporary or Permanent

Variance from the Utah Occupational Safety and Health Standards. (Also Adopted and Published as Chapter XXIII of the Utah Occupational Safety and Health Field Operations Manual.)

A. Scope.

1. This rule contains Rules of Practice for Administrative procedures to grant variances and other relief under Section 34A-6-202 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or petition against Variances and other relief.

1. The applicable parts of Section 34A-6-202 of the Act shall govern application and petition procedure.

2. Any employer or class of employers desiring a variance from a standard must make a formal written request including the following information:

a. The name and address of applicant;

b. The address of the place or places of employment involved;

c. A specification of the standard or portion thereof from which the applicant seeks a variance;

d. A statement by the applicant, supported by opinions from qualified persons having first-hand knowledge of the facts of the case, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore;

e. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the existing standard;

f. A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standards (applies to temporary variances);

g. A statement of the facts the applicant would show to establish that (applies to newly promulgated standards);

(1) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) He is taking all available steps to safeguard his employees against the hazards covered by the standards; and

(3) He has an effective program for coming into compliance with the standard as quickly as practicable;

h. Any request for a hearing, as provided in this rule;

i. A statement that the applicant has informed his affected employees of the application for variance by giving a copy thereof to their authorized representative, posting a summary statement of the application at the place or places where notices to employees are normally posted specifying where a copy may be examined; and

j. A description of how affected employees have been informed of their rights to petition the Administrator for a hearing.

3. The applicant shall designate the method he will use to safeguard his employees until a variance is granted or denied.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an Administrative Law Judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the Administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

C. Hearings.

1. The Administrator may conduct hearings upon application or petition in accordance with Section 34A-6-202(4) of the Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The Administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the Administrator shall set the date, time, and place for such hearing. He shall provide timely notification to the applicant for variance and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify his employees of the hearing.

3. Notice of hearings shall be published in the Administrative Rulemaking Bulletin. This shall include a statement that the application request may be inspected at the UOSH Division Office.

4. A copy of the Notification of Hearing along with other pertinent information shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

D. Inspection for Variance Application.

1. A variance inspection will be required by the Administrator or his designee prior to final determination of either acceptance or denial.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interview where necessary.

E. Interim order.

1. The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

2. Following a variance inspection, and after determination and assurance that employees are to be adequately protected, the Administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the work-site by the Administrator. The interim order will remain in force pending completion of the administrative promulgation action and the formal granting or denying of a temporary/permanent variance as requested.

F. Decision of the Administrator.

1. The Administrator may deny the application if:

a. It does not meet the requirements of paragraph R614-1-8.B.;

b. It does not provide adequate safety in the workplace for affected employees; or

c. Testimony or information provided by the hearing or inspection does not support the applicant's request for variance as submitted.

2. Letters of notification denying variance applications shall be sent to the applicant, and will include posting requirements to inform employees, affected associations, and employer groups.

a. A copy of correspondence related to the denial request shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

b. The letter of denial shall be explicit in detail as to the reason(s) for such action.

3. The Administrator may grant the request for variances provided that:

a. Data supplied by the applicant, the UOSHA inspection and information and testimony affords adequate protection for the affected employee(s);

b. Notification of approval shall follow the pattern described in R614-1-9.C.2. and 3.;

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

4. The Administrator's decision shall be deemed final subject to Section 34A-6-202(6).

G. Recommended Time Table for Variance Action.

1. Publication of agency intent to grant a variance. This

includes public comment and hearing notification in the Utah Administrative Rulemaking Bulletin: within 30 days after receipt.

2. Public comment period: within 20 days after publication.

3. Public hearing: within 30 days after publication

4. Notification of U.S. Department of Labor Regional Administrator for OSHA: 10 days after agency publication of intent.

5. Final Order: 120 days after receipt of variance application if publication of agency intent is made.

6. Rejection of variance application without publication of agency intent: 20 days after receipt of application.

a. Notification of U.S. Department of Labor Regional Administrator for OSHA: 20 days after receipt of application.

H. Public Notice of Granted Variances, Tolerances, Exemptions, and Limitations.

1. Every final action granting variance, exemption, or limitation under this rule shall be published as required under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and the time table set forth in R614-1-9.G.

I. Acceptance of federally Granted Variances.

1. Where a variance has been granted by the U.S. Department of Labor, Occupational Safety and Health Administration, following Federal Promulgation procedures, the Administrator shall take the following action:

a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a multi-state employer doing business in Utah, then the Administrator shall accept the variance (as federally accepted) and promulgate it for Utah under the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah Legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the Regional Administrator will be so notified.

J. Revocation of a Variance.

1. Any variance (temporary or permanent) whether approved by the state or one accepted by State based on Federal approval, may be revoked by the Administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not afforded by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by the state for a specific work-site or place of employment within the state for reasons cited in R614-1-9.J.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.

3. Normally, permanent variances may be revoked or changed only after being in effect for at least six months.

K. Coordination.

1. All variances issued by the Administrator will be coordinated with the U.S. Department of Labor, OSHA to insure consistency and avoid improper unilateral action.

R614-1-10. Discrimination.

A. General.

1. The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of work places, and record keeping requirements. Enforcement procedures initiated by the Commission; review proceedings as required by Title 63G, Chapter 4, Administrative Procedures Act; and judicial review are provided by the Act.

2. This rule deals essentially with the rights of employees afforded under section 34A-6-203 of the Act. Section 34A-6-203 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

3. The purpose is to make available in one place interpretations of the various provisions of Section 34A-6-203 of the Act which will guide the Administrator in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

B. Persons prohibited from discriminating.

Section 34A-6-203 defines employee protections under the Act, because the employee has exercised rights under the Act. Section 34A-6-103(11) of the Act defines "person". Consequently, the prohibitions of Section 34A-6-203 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 34A-6-203 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. (See, Meek v. United States, F. 2d 679 (6th Cir., 1943); Bowe v. Judson C. Burnes, 137 F 2d 37 (3rd Cir., 1943).)

C. Persons protected by section 34A-6-203.

1. All employees are afforded the full protection of Section 34A-6-203. For purposes of the Act, an employee is defined in Section 34A-6-103(6). The Act does not define the term "employ". However, the broad remedial nature of this legislation demonstrates a clear legislative intent that the existence of an employment relationship, for purposes of Section 34A-6-203, is to be based upon economic realities rather than upon common law doctrines and concepts. For a similar interpretation of federal law on this issue, see, U.S. v. Silk, 331 U.S. 704 (1947); Rutherford Food Corporation v. McComb, 331 U.S. 722 (1947).

2. For purposes of Section 34A-6-203, even an applicant for employment could be considered an employee. (See, NLRB v. Lamar Creamery, 246 F. 2d 8 (5th Cir., 1957).) Further, because Section 34A-6-203 speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

3. In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would be within the coverage of Section 34A-6-203.

D. Unprotected activities distinguished.

1. Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Section 34A-6-203 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. (See, NLRB v. Dixie Motor Coach Corp., 128 F. 2d 201 (5th Cir., 1942).)

2. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if

the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated. (See, Mitchell v. Goodyear Tire and Rubber Co., 278 F. 2d 562 (8th Cir., 1960); Goldberg v. Bama Manufacturing, 302 F. 2d 152 (5th Cir., 1962).) Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

E. Specific protections - complaints under or related to the Act.

1. Discharge of, or discrimination against an employee because the employee has filed "any complaint under or related to this Act" is prohibited by Section 34A-6-203. An example of a complaint made "under" the Act would be an employee request for inspection pursuant to Section 34A-6-301(6). However, this would not be the only type of complaint protected by Section 34A-6-203. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. ((See Cong. Rec., vol. 116 P. 42206 December 17, 1970).)

2. Complaints registered with Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

3. Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

F. Proceedings under or related to the act.

1. Discharge of, or discrimination against, any employee because the employee has exercised the employee's rights under or related to this Act is also prohibited by Section 34A-6-203. Examples of proceedings which would arise specifically under the Act would be inspections of work-sites under Section 34A-6-301 of the Act, employee contest of abatement date under Section 34A-6-303 of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under Section 34A-6-202 of the Act and Title 63G, Chapter 3, employee application for modification of revocation of a variance under Section 34A-6-202(4)(c) of the Act and R614-1-9., employee judicial challenge to a standard under Section 34A-6-202(6) of the Act, and employee appeal of an order issued by an Administrative Law Judge, Commissioner, or Appeals Board under Section 34A-6-304. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in R614-1-10.G. would also be applicable.

2. An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

G. Testimony.

Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by Section 34A-6-203. This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rulemaking or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

H. Exercise of any right afforded by the Act.

1. In addition to protecting employees who file complaints, institute proceedings under or related to the Act it also prohibited by Section 34A-6-203 discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (34A-6-303). Certain other rights exist by necessary implications. For example, employees may request information from the Utah Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Administrator in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

2. Review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Section 34A-6-301 of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Section 34A-6-203 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

a. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

I. Procedures - Filing of complaint for discrimination.

1. Who may file. A complaint of Section 34A-6-203 discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

2. Nature of filing. No particular form of complaint is required.

3. Place of filing. Complaint should be filed with the Administrator, Division of Occupational Safety and Health, Labor Commission, 160 East 300 South, Salt Lake City, Utah 84114-6650, Telephone 530-6901.

4. Time for filing.

a. Section 34A-6-203(2)(b) provides protection for an employee who believes that he has been discriminated against.

b. A major purpose of the 30-day period in this provision is to allow the Administrator to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

c. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable

principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

J. Notification of administrator's determination.

The Administrator is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the Administrator's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in this section.

K. Withdrawal of complaint.

Enforcement of the provisions of Section 34A-6-203 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Administrator's investigation. The Administrator's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

L. Arbitration or other agency proceedings.

1. An employee who files a complaint under Section 34A-6-203(2) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Administrator's jurisdiction to entertain Section 34A-6-203 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Administrator may file action in district court regardless of the pendency of other proceedings.

2. However, the Administrator also recognizes the policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. (See, e.g., Boy's Market, Inc. v. Retail Clerks, 398 U.S. 235 (1970); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Carey v. Westinghouse Electric Co., 375 U.S. 261 (1964); Collier Insulated Wire, 192 NLRB No. 150 (1971).) By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to Section 34A-6-203 complaints.

3. Where a complainant is in fact pursuing remedies other than those provided by Section 34A-6-203, postponement of the Administrator's determination and deferral to the results of such proceedings may be in order. (See, Burlington Truck Lines, Inc., v. U.S., 371 U.S. 156 (1962).)

4. Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Section 34A-6-203 and those proceedings are not likely to violate the rights guaranteed by Section 34A-6-203. The factual issues in such proceedings must be substantially the same as those raised by Section 34A-6-203 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. (See, Rios v. Reynolds Metals Co., F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (October 10, 1972): Newman v. Avco Corp., 451 F. 2d 743 (6th Cir., 1971).)

5. Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicative hearing thereof, such dismissal will not ordinarily be regarded as determinative of the Section 34A-6-203 complaint.

M. Employee refusal to comply with safety rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by Section 34A-6-203. This situation should be distinguished from refusals to work, as discussed in R614-1-10.H.

R614-1-11. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope.

1. Except as provided in paragraphs R614-1-11.B.3. through 6. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of R614-1-12.D.

2. For the purposes of this rule, "personally identifiably employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

3. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not a personally identifiable form. This section does not apply to records required by R614-1-8 to death certificates, or to employee exposure records, including biological monitoring records defined by R614-1-3.M. or by specific occupational safety and health standards as exposure records.

4. This rule does not apply where UOSH compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance record keeping requirements of an occupational safety and health standard, or with R614-1-12. An examination

of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. The UOSH compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

5. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

6. This rule does not apply where a written directive by the Administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

7. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible persons.

1. UOSH Administrator. The Administrator of the Division of Occupational Safety and Health of the Labor Commission shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH Medical Records Officer. The Administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH Medical Records Officer. The UOSH Medical Records Officer shall report directly to the Administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the Administrator as to the approval or denial of written access orders.

b. Assuring that written access orders meet the requirements of paragraphs R614-1-11.D.2. and 3. of this rule.

c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders.

d. Regulating the use of direct personal identifiers.

e. Regulating internal agency use and security of personally identifiable employee medical information.

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees.

g. Preparing an annual report of UOSH's experience under this rule.

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH Investigator. The Principal UOSH Investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the Principal UOSH Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, bio-statistics, environmental health, etc.)

D. Written access orders.

1. Requirement for written access order. Except as provided in paragraph R614-1-11.D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the Administrator upon the recommendation of the UOSH Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the Administrator and the UOSH Medical Records Officer shall determine that:

a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought.

b. The general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information.

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.

d. The name, address, and phone number of the Principal UOSH Investigator and the names of any other authorized persons who are expected to review and analyze the medical information.

e. The name, address, and phone number of the UOSH Medical Records Officer, and

f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

a. Specific written consent. If the specific written consent of an employee is obtained pursuant to R614-1-12.D., and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal UOSH Investigator shall be promptly named to assure protection of the information, and the UOSH Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs R614-1-11.H.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH Medical Records Officer.

E. Presentation of written access order and notice to employees.

1. The Principal UOSH Investigator, or someone under his or her supervision, shall present at least two (2) copies each of

the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal UOSH Investigator or to the UOSH Medical Records Officer.

2. The Principal UOSH Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The Principal UOSH Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The Principal UOSH Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal UOSH Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections concerning a written access order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH Medical Records Officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH Medical Records Officer may revoke a written access order and direct that any medical information obtained by it by returned to the original record holder or destroyed. The principal UOSH Investigator shall assure that such instructions by the UOSH Medical Records Officer are promptly implemented.

G. Removal of direct personal identifiers. Whenever employees medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal UOSH Investigator shall, unless otherwise authorized by the UOSH Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal UOSH Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal agency use of personally identifiable employee medical information.

1. The Principal UOSH Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

2. The Principal UOSH Investigator, the UOSH Medical Records Officer, the Administrator, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the office of the State Attorney General, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of R614-1-11.D. through G. are repeated with respect to the secondary purpose.

5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH Medical Records Officer and the Principal UOSH Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and destruction of records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an agency analysis using personally identifiable employee medical information.

1. The UOSH Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

2. Annual report. The UOSH Medical Records Officer shall on an annual basis review UOSH's experience under this

section during the previous year, and prepare a report to the UOSH Administrator which shall be made available to the public. This report shall discuss:

a. The number of written access orders approved and a summary of the purposes for access;

b. The nature and disposition of employee; collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and

c. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

L. Inter-agency transfer and public disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to The Attorney General's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the Administrator.

2. Except as provided in paragraph R614-1-11.L.3. below, the Administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

a. Needs the requested information in a personally identifiable form for a substantial public health purpose;

b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;

c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and

d. Satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (See 5 U.S.C. 552a(b); 29 CFR 70a.3).

3. Upon the approval of the Administrator, personally identifiable employee medical information may be transferred to:

a. The National Institute for Occupational Safety and Health (NIOSH).

b. The Department of Justice when necessary with respect to a specific action under the federal Occupational Safety and Health Act of 1970 and Utah Occupational Safety and Health Act of 1973.

4. The Administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The Administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the State Attorney General's Office, the UOSH Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

M. Effective date.

This rule shall become effective on January 15, 1981.

R614-1-12. Access to Employee Exposure and Medical Records.

A. Purpose.

To provide employees and their designated representatives a right of access to relevant exposure and medical records, and to provide representatives of the Administrator a right of access to these records in order to fulfill responsibilities under the Utah Occupational Safety and Health Act. Access by employees, their representatives, and the Administrator is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this Rule, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this Rule is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

B. Scope.

1. This rule applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

2. This rule applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

3. This rule applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this rule are complied with regardless of the manner in which records are made or maintained.

C. Preservation of records.

1. Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

a. Employee medical records. Each employee medical record shall be preserved and maintained for a least the duration of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period.

b. Employee exposure records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(1) Background data to environmental (workplace) monitoring or measuring, such a laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(2) Material safety data sheets and paragraph R614-1-3.M.4. records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

c. Analyses using exposure or medical records. Each

analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

2. Nothing in this rule is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.

D. Access to records.

1. Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

2. Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

a. A copy of the record is provided without cost to the employee or representative;

b. The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

c. The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

3. Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copy expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that:

a. An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

b. An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

4. Nothing in this rule is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this rule.

5. Employee and designated representative access.

a. Employee exposure records. Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this rule exposure records relevant to the employee consist of:

(1) Records of the employee's past or present exposure to toxic substances or harmful physical agents,

(2) Exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee,

(3) Records containing exposure information concerning the employee's workplace or working conditions, and

(4) Exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

b. Employee medical records.

(1) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in R614-1-12.D.4.

(2) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. R614-1-12A., Appendix A to R614-1-12., contains a sample form which may be used to establish specific written consent for access to employee medical records.

(3) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(a) Consult with the physician for the purposes of reviewing and discussing the records requested;

(b) Accept a summary of material facts and opinions in lieu of the records requested;, or

(c) Accept release of the requested records only to a physician or other designated representative.

(4) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employees health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(5) Nothing in this rule precludes physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

c. Analysis using exposure or medical records.

(1) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(2) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.) the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of analysis need not be provided.

(3) UOSH access.

(a) Each employer shall, upon request, assure the immediate access of representatives of the Administrator to employee exposure and medical records and to analysis using exposure or medical records. Rules of agency practice and procedure governing UOSH access to employee medical records are contained in R614-1-8.

(b) Whenever UOSH seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to R614-1-8, the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

E. Trade Secrets.

1. Except as provided in paragraph R614-1-12.E.2., nothing in this rule precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to

identify where and when exposure occurred.

2. Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

3. Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

F. Employee information.

1. Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following;

a. The existence, location, and availability of any records covered by this rule;

b. The person responsible for maintaining and providing access to records; and

c. Each employee's right of access to these records.

2. Each employer shall make readily available to employees a copy of this rule and its appendices, and shall distribute to employees any informational materials concerning this rule which are made available to the employer by the Administrator.

G. Transfer of Records

1. Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this Rule to the successor employer. The successor employer shall receive and maintain these records.

2. Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

3. Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

a. Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

b. Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

4. Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

a. Appendices. The information contained in the appendices to this rule is not intended, by itself, to create any additional obligations not otherwise imposed by this rule nor detract from any existing obligation.

H. Effective date. This rule shall become effective on December 5, 1980. All obligations of this rule commence on the effective date except that the employer shall provide the information required under R614-1-12.F.1. to all current employees within sixty (60) days after the effective date.

R614-1-12A. Appendix A to R614-1-12 SAMPLE.

Authorization letter for the Release of Employee Medical Record Information to Designated Representative.

I, (full name of worker/patient), hereby authorize (individual or organization holding the medical records), to release to (individual or organization authorized to receive the medical information), the following medical information from my personal medical records: (Describe generally the information desired to be released).

I give my permission for this medical information to be used for the following purpose: ....., but I do not give permission for any other use or re-disclosure of this information.

(Note---Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year): (2) describe medical information to be created in the future that you intend to be covered by this authorization letter, or (3) describe portions of the medical information in you records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

R614-1-12B. Appendix B to R614-1-12 Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS).

R614-1-12 applies to all employee exposure and medical records, and analysis thereof, of employees exposed to toxic substances or harmful physical agents (see R614-1-12.B.2.). The term "toxic substance" or "harmful physical agent" is defined by paragraph R614-1-3.FF. to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analysis of these records) relevant to employees exposed to the substances.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by Rule 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669 (a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Forward and Introduction describes the RTECS as follows:

"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment.

"This registry contains 142,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry.

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and

information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous.

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known does entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters.

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences."

The RTECS 1978 printed edition may be purchased for $13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchase from the GPO for $14.00 (Order the "Microfiche Edition. Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or any OSHA Regional or Area Office (See major city telephone directories under United States Government-Labor Department).

KEY: safety
July 8, 2015 **34A-6**
Notice of Continuation October 22, 2012

R628. Money Management Council, Administration.
R628-15. Certification as an Investment Adviser.
R628-15-1. Authority.

This rule is issued pursuant to Sections 51-7-3(3), 51-7-18(2)(b)(vi) and (vii), and 51-7-11.5.

R628-15-2. Scope.

This rule establishes the criteria applicable to all investment advisers and investment adviser representatives for certification by the Director as eligible to provide advisory services to public treasurers under the State Money Management Act (the "Act"). It further establishes the application contents and procedures, and the criteria and the procedures for denial, suspension, termination and reinstatement of certification.

R628-15-3. Purpose.

This rule establishes a uniform standard to evaluate the financial condition and the standing of an investment adviser to determine if investment of public funds by investment advisers would expose said public funds to undue risk.

R628-15-4. Definitions.

A. The following terms are defined in Section 51-7-3 of the Act, and when used in this rule, have the same meaning as in the Act:

1. "Certified investment adviser";
2. "Council";
3. "Director";
4. "Public treasurer";
5. "Investment adviser representative"; and
6. "Certified dealer".

B. For purposes of this rule the following terms are defined:

1. "Investment adviser" means either a federal covered adviser as defined in Section 61-1-13 or an investment adviser as defined in Section 61-1-13.

2. "Realized rate of return" means yield calculated by combining interest earned, discounts accreted and premiums amortized, plus any gains or losses realized during the month, less all fees, divided by the average daily balance during the reporting period. The realized return should then be annualized.

3. "Soft dollar" means the value of research services and other benefits, whether tangible or intangible, provided to a certified investment adviser in exchange for the certified investment adviser's business.

R628-15-5. General Rule.

Before an investment adviser or investment adviser representative provides investment advisory services to any public treasurer, the investment adviser or investment adviser representative must submit and receive approval of an application to the Division, pay to the Division a non-refundable fee as described in Section 51-7-18.4(2), and become a Certified investment adviser or Investment adviser representative under the Act.

R628-15-6. Criteria for Certification of an Investment Adviser.

To be certified by the Director as a Certified investment adviser or Investment adviser representative under the Act, an investment adviser or investment adviser representative shall:

A. Submit an application to the Division on Form 628-15 clearly designating:

(1) the investment adviser;

(2) its designated official as defined in R164-4-2 of the Division; and

(3) any investment adviser representative who provides investment advisory services to public treasurers in the state.

B. Provide written evidence of insurance coverage as follows:

(1) fidelity coverage based on the following schedule:

TABLE

Utah Public funds under management	Percent for Bond
$0 to $25,000,000	10% but not less than $1,000,000
$25,000,001 to $50,000,000	8% but not less than $2,500,000
$50,000,001 to $100,000,000	7% but not less than $4,000,000
$100,000,001 to $500,000,000	5% but not less than $7,000,000
$500,000,001 to $1.250 billion	4% but not less than $25,000,000
$1,250,000,001 and higher	Not less than $50,000,000

(2) errors and omissions coverage equal to five percent (5%) of Utah public funds under management, but not less than $1,000,000 nor more than $10,000,000 per occurrence.

C. Provide to the Division at the time of application or renewal of application, its most recent annual audited financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles in accordance with R628-15-8A.

D. Pay to the Division the non-refundable fee described in Section 51-7-18.4(2).

E. Have a current Certificate of Good Standing dated within 30 days of application from the state in which the applicant is incorporated or organized.

F. Have net worth as of its most recent fiscal year-end of not less than $150,000 documented by the financial statements audited according to Subsection R628-15-6(C).

G. Allow the public treasurer to select the forum and method for dispute resolution, whether that forum be arbitration, mediation or litigation in any state or federal court. No agreement, contract, or other document that the applicant requires or intends to require to be signed by the public treasurer to establish an investment advisory relationship shall require or propose to require that any dispute between the applicant and the public treasurer must be submitted to arbitration.

H. Agree to the jurisdiction of the Courts of the State of Utah and applicability of Utah law, where relevant, for litigation of any dispute arising out of transactions between the applicant and the public treasurer.

I. All Investment adviser representatives who have any contact with a public treasurer or its account, must sign and have notarized a statement that the representative:

(1) is familiar with the authorized investments as set forth in the Act and the rules of the Council;

(2) is familiar with the investment objectives of the public treasurer, as set forth in Section 51-7-17(2);

(3) acknowledges, understands, and agrees that all investment transactions conducted for the benefit of the public treasurer must fully comply with all requirements set forth in Section 51-7-7 and that the Certified investment adviser and any Investment adviser representative is prohibited from receiving custody of any public funds or investment securities at any time.

R628-15-7. Certification.

A. The initial application for certification must be received on or before the last day of the month for approval at the following month's Council meeting.

B. All certifications shall be effective upon acceptance by

the Council.

C. All certifications not otherwise terminated shall expire on June 30 of each year, unless renewed.

R628-15-8. Renewal of Application.

A. Certified investment advisers shall apply annually, on or before April 30 of each year, for certification to be effective July 1 of each year.

B. The application must contain all of the documents and meet all of the requirements as set forth above with respect to initial applications.

C. The application must be accompanied by an annual certification fee as described in Section 51-7-18.4(2).

D. A Certified investment adviser whose certification has expired as of June 30 may not function as a Certified investment adviser until the investment adviser's certification is renewed.

R628-15-9. Post Certification Requirements.

A. Certified investment advisers shall notify the Division of any changes to any items or information contained in the original application within 30 calendar days of the change. The notification shall provide copies, where necessary, of relevant documents.

B. Certified investment advisers shall maintain a current application on Form 628-15 with the Division throughout the term of any agreement or contract with any public treasurer. Federal covered advisers shall maintain registration as an investment adviser under the Investment Advisers Act of 1940 throughout the term of any agreement or contract with any public treasurer.

C. Certified investment advisers shall provide and maintain written evidence of insurance coverage as described in R628-15-6(B).

D. Certified investment advisers shall provide to the public treasurer the SEC Form ADV Part II prior to contract execution.

E. Certified investment advisers shall file annual audited financial statements with all public treasurers with whom they are doing business.

F. Certified investment advisers shall fully disclose all conflicts of interest and all economic interests in certified dealers and other affiliates, consultants and experts used by the Investment adviser in providing investment advisory services.

G. Certified investment advisers shall act with the degree of care, skill, prudence, and diligence that a person having special skills or expertise acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

H. Certified investment advisers shall exercise good faith in allocating transactions to certified dealers in the best interest of the account and in overseeing the completion of transactions and performance of certified dealers used by the Investment adviser in connection with investment advisory services.

I. Certified investment advisers shall fully disclose to the public treasurer any self-dealing with subsidiaries, affiliates or partners of the Investment adviser and any soft dollar benefits to the Investment adviser for transactions placed on behalf of the public treasurer.

J. Certified investment advisers shall fully and completely disclose to all public treasurers with whom they do business the basis for calculation of fees, whether and how fees may be adjusted during the term of any agreement, and any other costs chargeable to the account. If performance-based fees are proposed, the disclosure shall include a clear explanation of the amount of the fee at specific levels of performance and how prior losses are handled in calculation of the performance-based fee.

K. Certified investment advisers shall not assign any contract or agreement with a public treasurer without the written consent of the public treasurer.

L. Certified investment advisers shall provide immediate written notification to any public treasurer to whom advisory services are provided and to the Division upon conviction of any crime involving breach of trust or fiduciary duty or securities law violations.

M. Not less than once each calendar quarter and as often as requested by the public treasurer, Certified investment advisers shall timely deliver to the public treasurer:

(1) copies of all trade confirmations for transactions in the account;

(2) a summary of all transactions completed during the reporting period;

(3) a listing of all securities in the portfolio at the end of each reporting period, the market value and cost of each security, and the credit rating of each security;

(4) performance reports for each reporting period showing the total return on the portfolio as well as the realized rate of return, when applicable, and the net return after calculation of all fees and charges permitted by the agreement; and

(5) a statistical analysis showing the portfolio's weighted average maturity and duration, if applicable, as of the end of each reporting period.

R628-15-10. Notification of Certification.

The Director shall provide a list of Certified investment advisers and Investment adviser representatives to the Council at least semiannually. The Council shall mail this list to each public treasurer.

R628-15-11. Grounds for Denial, Suspension or Termination of Status as a Certified Investment Adviser.

Any of the following constitutes grounds for denial, suspension, or termination of status as a Certified investment adviser:

A. Denial, suspension or termination of the Certified investment adviser's license by the Division.

B. Failure to maintain a license with the Division by the firm or any of its Investment adviser representatives conducting investment transactions with a public treasurer.

C. Failure to maintain the required minimum net worth and the required bond.

D. Requiring the public treasurer to sign any documents, contracts, or agreements which require that disputes be submitted to mandatory arbitration.

E. Failure to pay the annual certification fee.

F. Making any false statement or filing any false report with the Division.

G. Failure to comply with any requirement of section R628-15-9.

H. Engaging in any material act in negligent or willful violation of the Act or Rules of the Council.

I. Failure to respond to requests for information from the Division or the Council within 15 days after receipt of a request for information.

J. Engaging in a dishonest or unethical practice. "Dishonest or unethical practice" includes but is not limited to those acts and practices enumerated in Rule R164-6-1g.

K. Being the subject of:

(1) an adjudication or determination, within the past five years by a securities or commodities agency or administrator of another state, Canadian province or territory, or a court of competent jurisdiction that the person has willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the securities or commodities law of any other state; or

(2) an order entered within the past five years by the securities administrator of any state or Canadian province or territory or by the Securities and Exchange Commission denying

or revoking license as an investment adviser, or investment adviser representative or the substantial equivalent of those terms or is the subject of an order of the Securities and Exchange Commission suspending or expelling the person from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order.

R628-15-12. Procedures for Denial, Suspension, or Termination and Reinstatement of Status.

A. Where it appears to the Division or to the Council that grounds may exist to deny, suspend, or terminate status as a Certified investment adviser, the Council shall proceed under the Utah Administrative Procedures Act, Chapter 4, Title 63G ("UAPA").

B. All proceedings to suspend a Certified investment adviser or to terminate status as a certified investment adviser are designated as informal proceedings under ("UAPA").

C. In any hearings held, the Chair of the Council shall be the presiding officer, and that person may act as the hearing officer, or may designate another person from the Council or the Division to be the hearing officer. After the close of the hearing, other members of the Council may make recommendations to the hearing officer.

D. The Notice of Agency Action as set forth under UAPA, or any petition filed in connection with it, shall include a statement of the grounds for suspension or termination, and the remedies required to cure the violation.

E. A Certified investment adviser and its Investment adviser representative who has received a Notice of Agency Action alleging violations of the Act or these rules, may continue, in the discretion of the public treasurer, to conduct investment transactions with the public treasurer until the violations asserted by the Money Management Council in the Notice of Agency Action becomes subject to a written order of the Council or Agency against the adviser or adviser representative, or until the Council enters an emergency order indicating that public funds will be jeopardized by continuing investment transactions with the adviser or adviser representative.

F. The Council may issue an emergency order to cease and desist operations or specified actions with respect to public treasurers or public funds. Further, the Council may issue an emergency suspension of certification if the Council determines that public funds will be jeopardized by continuing investment transactions or other specified actions with the adviser or adviser representative.

G. Within ten business days after the conclusion of a hearing on an emergency order, the Council shall lift this prohibition upon a finding that the Certified investment adviser and its investment adviser representative may maintain certification.

KEY: cash management, public investments, securities regulation, investment advisers
July 13, 2015
51-7-3(3)
51-7-18(2)(b)(vi)
51-7-18(2)(b)(vii)
51-7-11.5(2)(b)
51-7-11.5(2)©

R652. Natural Resources; Forestry, Fire and State Lands.
R652-70. Sovereign Lands.
R652-70-100. Authority.

This rule provides for the management and classification of the surface of sovereign lands in Utah, which include but are not limited to, the beds of Bear Lake, the Great Salt Lake, Utah Lake, the Jordan River, the Bear River from the Amalga Bridge to the Great Salt lake, the summer channel of the Bear River from the Utah-Idaho border to the Amalga Bridge, and portions of the beds of the Green and Colorado Rivers. Should any other lakes or streams, or portions thereof, be declared navigable by the courts, the beds of such lakes or streams would fall under the authority of these rules. It also provides for the issuance of special use leases, general permits and easements on sovereign lands and the procedures and fees necessary to obtain these rights of use. This rule implements Article XX of the Utah Constitution, and Section 65A-10-1.

R652-70-200. Classification of Sovereign Lands.

Sovereign lands may be classified based upon their current and planned uses. A synopsis of some possible classes and an example of each class follows. For more detailed information, consult the management plan for the area in question.

1. Class 1: Manage to protect existing resource development uses. The Utah State Park Marinas on Bear Lake and on Great Salt Lake are areas where the current use emphasizes development.

2. Class 2: Manage to protect potential resource development options. For example, areas adjacent to Class 1 areas which have the potential to be developed.

3. Class 3: Manage as open for consideration of any use. This might include areas which do not currently show development potential but which are not now, or in the foreseeable future, needed to protect or preserve the resources.

4. Class 4: Manage for resource inventory and analysis. This is a temporary classification which allows the division to gather the necessary resource information to make a responsible classification decision.

5. Class 5: Manage to protect potential resource preservation options. Sensitive areas of wildlife habitat may fall into this class.

6. Class 6: Manage to protect existing resource preservation uses. Cisco Beach on Bear Lake is an example of an area where the resource is currently being protected.

R652-70-300. Categories of Leases, Permits, and Easements.

The division may issue Special Use Leases for terms of one to 51 years, and General Permits for terms of one to 30 years for surface uses, excluding grazing uses on sovereign lands. Grazing permits and mineral leases are considered separately under the range resource management rules and the mineral lease rules. Easement terms and conditions shall be prescribed in the particular easement document. Any lease, permit, or easement, issued by the division on sovereign lands, is subject to a public trust; and any lease, permit, or easement may be revoked at any time if necessary to fulfill public trust responsibilities.

1. Special Use Leases: Uses may include the following:

(a) Commercial: Income producing uses such as marinas, recreation piers or facilities, docks, moorings, restaurants, or gas service facilities.

(b) Industrial: Uses such as oil terminals, piers, wharves, mooring.

(c) Agricultural/Aquacultural: Any use which utilizes the bed of a navigable lake or stream to grow or harvest any plant or animal.

(d) Private Uses: Non-income producing uses such as piers, buoys, boathouses, docks, water-ski facilities, houseboats, moorings, not qualifying for a general permit under R652-70-300(2)(c).

2. General Permit: Uses may include the following:

(a) Public agency uses such as public roads, bridges, recreation areas, or wildlife refuges having a statewide public benefit.

(b) Public agency protective structures such as dikes, breakwaters and flood control workings.

(c) Private recreational uses such as any facility for the launching, docking or mooring of boats which is constructed for the use of the adjacent upland owner. An adjacent upland owner is defined as any person who owns adjacent upland property which is improved with, and used solely for a single-family dwelling.

3. Easements: Applications for easements not meeting the criteria of R652-70-300(2) shall follow the rules and procedures outlined in the division's rules governing the issuance of easements.

R652-70-400. Lease and General Permit Provisions.

The provisions for special use leases and general permits on sovereign lands shall be the same as those found in R652-30 Special Use Leases.

R652-70-500. Lease and General Permit Payments, and Audits.

The rules for lease and general permit payments and audits on sovereign lands are the same as those found in R652-30 Special Use Leases.

R652-70-600. Lease Rates.

1. Procedures for determining fair market value for surface leases are found in R652-30-400. Where these general procedures can not readily be applied, fair market value for sovereign lands may also be determined by multiplying the market value, as determined by the county assessor or, if none, then as determined by the State Tax Commission, of the adjacent upland by 30%.

2. Procedures for determining lease rates are described in R652-30 Special Use Leases. Lease rates for sovereign lands may also be determined by multiplying the fair market value, as determined by R652-70-600(1), by the current division - determined interest rate and then prorating that amount by a season of use adjustment as determined by the division.

3. Regardless of lease rate determined by R652-70-600(2), no Special Use Lease shall be issued for an amount less than the minimum lease rate determined by the division.

R652-70-700. Permit Rates.

1. An application fee may be waived if it is for a public agency's use of sovereign lands and if the director determines that the agency use enhances public use and enjoyment of sovereign land.

2. A rental fee may be waived if it is for a public agency's use of sovereign lands and if the director determines that a commensurate public benefit accrues from the use.

3. The division shall establish rental rates for any private recreational use of sovereign land as outlined under R652-70-300(2)(c). The adjacent upland owner shall also pay to the division, in accordance with its current fee schedule, the division's expenses in issuing a general permit.

4. The director may negotiate a filing fee for general permits with impacted governmental agencies. This would be a one-time package fee for currently existing uses of sovereign lands. Future application for use will be treated under the existing fee schedule or may be authorized by the amendment of an existing permit, after payment of an amendment fee pursuant to R652-4.

5. The director may enter into agreements with state agencies having regulatory authority on navigable lakes and

rivers to allow these agencies to authorize public agency use of sovereign land provided that:

(a) the use is consistent with division policies and coordinated with other activities of the division;

(b) the applicant has an existing general permit in good standing under which the proposed use can be placed pursuant to R652-70-700(3);

(c) a commensurate public benefit accrues from the use, as indicated by criteria provided in the agreement;

(d) the proposed use meets the criteria required by the state agency; and

(e) the proposed use is consistent with the principles of multiple use and sustained yield as defined in Section 65A-1-1.

R652-70-800. Applicant Qualifications.

Any person who is qualified to do business in the state of Utah, and is not in default under the laws of the state of Utah relative to qualifications to do business within the state, and not in default on any previous agreements with the division, shall be a qualified applicant for a lease, permit, or easement on sovereign land.

R652-70-900. Applications.

Application for a Special Use Lease or General Permit shall be on forms provided by the division or exact copies thereof. Applications must be accompanied by plans which include references to the relationship of the proposed use to the various water surface elevations of the lake or stream as well as the relationship of the proposed use to the lake or stream boundary and vicinity at the site of the proposed use. The application must also include a description of the proposal's relationship to the classification system found in the appropriate master plan and outlined in R652-70-200. Where applicable, applications must be accompanied by a copy of local building permits, a copy of the Army Corps of Engineer permit, and a copy of any additional permits required by the Division of Parks and Recreation.

R652-70-1000. Deficient Applications.

Incomplete applications, and applications not accompanied by filing fees when required, shall not be accepted for filing. The division will notify the applicant of any deficiency.

R652-70-1100. Additional Approvals.

Nothing in these rules shall excuse a person making an application for a general permit, lease, or easement from obtaining any additional approvals lawfully required by any local, state, or federal agency, including, local zoning boards, or any other local regulatory entity, the Division of Parks and Recreation, the State Engineer, the Division of Oil, Gas and Mining, the United States Army Corps of Engineers, the United States Coast Guard, or any other local, state, or federal agency.

R652-70-1200. Dredging and Filling Requires Approval.

The placing of dredged or fill material, refuse or waste material, intended as or becoming fill material, on the beds of any navigable water in the state of Utah shall require written approval by the division.

R652-70-1300. Excavated or Dredged Channels, and Basins.

Excavated or dredged channels or basins will only be authorized by the director on a showing of reasonable necessity. Material removed during excavation or dredging shall be carried and deposited at a point above normal flood water levels, unless the applicant can satisfy the director that an alternative plan for disposition of the material is feasible and will not have an unreasonably adverse effect upon other values, including water quality. Additional conditions may be stipulated in the permit.

R652-70-1400. Approval Not Required to Repair Existing Facilities.

Approval is not required by the division to clean, maintain, or to make repairs to existing facilities authorized by a permit or lease in good standing. Approval is required to replace, enlarge, or extend the facilities, or for any activity which would disturb the surface of the bed of any navigable water, or which would cause any rock or sediment to enter a navigable body of water.

R652-70-1500. Docks, Piers, and Similar Structures.

All docks, piers, or similar structures shall be constructed to protrude as nearly as possible at right angles to the general shoreline and to not interfere with docks, piers, or similar structures presently existing or likely to be installed to serve adjacent facilities. The structures may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water during the normal low water period.

R652-70-1600. Retaining Walls and Bulkheads.

Retaining walls and bulkheads will not be authorized below the ordinary high water mark without a showing of extraordinary need.

R652-70-1700. Breakwaters and Jetties.

1. Breakwaters and jetties will not be authorized below the normal low water mark without a showing of extraordinary need. This shall not apply to floating breakwaters secured by piling or other approved anchoring devices and used to protect private property from recurring wind, wave, or ice damage.

2. The director may approve streambank stabilization practices concurrently with the issuance of streambed alteration permits issued by the Division of Water Rights if the director determines that the proposed practice is consistent with public trust management.

R652-70-1800. Overhead Clearance.

Overhead clearance between the ordinary high water mark and any structure, pipeline, or transmission line must be sufficient to pass the largest vessel which may reasonably be anticipated to use the subject waters in the vicinity of the easement.

R652-70-1900. Camping and Motor Vehicles.

1. The division may restrict camping on the beds of navigable lakes and rivers. Except as provided elsewhere in this rule, motor vehicles are prohibited from driving or parking on these lands at all times, except that those areas supervised by the Division of Parks and Recreation or other enforcement entity, and posted as open to vehicle use, will be open to vehicle use.

2. Persons found in violation of 65A-3-1(1)(g-h) are subject to the criminal penalties set forth in 76-3-204 and 76-3-301 as determined by the court.

R652-70-2000. Existing Uses.

Every person using sovereign lands without a current permit or lease shall, within 60 days of notification by the division, submit an application as provided under R652-70-900.

R652-70-2100. Authorization of Existing Uses.

Authorization of the following uses may be recognized following compliance with Section R652-70-2000:

1. Uses existing on December 31, 1968, whether they were such as to be entitled to issuance of a permit or not.

2. Rights previously granted an applicant by the Division of Forestry, Fire and State Lands.

R652-70-2200. Violations.

The following acts or omissions shall subject a person to

a civil penalty as provided in Section 65A-3-1(3):

1. A violation of the provisions of Section 65A-3-1(1-2);

2. A violation of any special order of the director applicable to the bed of a navigable water; or

3. Refusal to cease and desist from any violation in regards to the bed of a navigable water after having been notified to do so, in writing, by the director by personal service or certified mail, within the time provided in the notice, or within 30 days of service of the notice if no time is provided.

R652-70-2300. Management of Bear Lake Sovereign Lands.

(1) Lands lying below the ordinary high water mark of Bear Lake as of the date of statehood are owned by the state of Utah and shall be administered by the division as sovereign lands.

(2) Upon application for a specific use of state lands near the boundary of Bear Lake, or in the event of a dispute as to the ownership of the sovereign character of the lands near the boundary of Bear Lake, the division may evaluate all relevant historical evidence of the lake elevation, the water erosion along the shoreline, the topography of the land, and other relevant information to determine the relationship of the land in question to the ordinary high water mark.

(3) In the absence of evidence establishing the ordinary high water mark as of the date of statehood, the division shall administer all the lands within the bed of Bear Lake and lying below the level of 5,923.65 feet above mean sea level, Utah Power and Light datum, as being sovereign lands.

(4) The division, after notice to affected state agencies and any person with an ownership in the land, may enter into agreements to establish boundaries with owners of land adjoining the bed of Bear Lake; provided that the agreements shall not set a boundary for sovereign lands below the level of 5,923.65 feet above mean sea level.

(5) The established speed limit is 10 miles per hour.

(6) Camping and use of motorized vehicles are prohibited between the hours of 10 p.m. and 7 a.m.

(7) No campfires or fireworks are allowed.

(8) The use and operation of motor vehicles on sovereign land at Bear Lake shall be governed by Utah Code 65A-3-1 and division plans.

(9) Pursuant to 65A-2-6(2), to obtain a permit to launch or retrieve a motorboat on states lands surrounding Bear Lake, a person shall:

(a) Complete the online Mussel-Aware Boater Program and receive a multiple use Decontamination Certification Form valid through the end of the calendar year as required and provided by the Utah Division of Wildlife Resources as part of the Aquatic Invasive Species Program.

(10) A person may only purchase one (1) beach launching permit annually.

(a) The permit is valid for the calendar year within which the permit is issued.

(b) The permit does not authorize launching or retrieving a motorboat or parking or operating a motor vehicle in an area designated as closed to motorized use.

(c) Lost or stolen permits may be replaced at the established fee.

(11) The division may enter into an agreement with a local governmental entity or state agency to issue the beach launching permits in compliance with the requirements listed above.

(a) The agreement will allow the entity or agency to establish a minimal administrative fee not to exceed $25 for issuing the beach launching permit.

(12) The division or the entity or agency with an agreement to issue the beach launching permit may revoke a permit or deny an applicant a permit to launch under the following circumstances:

(a) The applicant fails to comply with the beach launching permit requirements and stipulations listed above (R652-70-2300(9)(a-b) and R652-70-2300(10)(a-c))

(b) the applicant fails to acquire a lease or permit for structures placed on sovereign lands that may include but is not limited to buoys, piers, docks (with the associated anchors/weights) or boat ramps as required in R652-70-300.

(13) Persons found in violation of 65A-3-1(1-3) are subject to the criminal penalties set forth in 76-3-204 and 76-3-301 as determined by the court as well as civil damages set forth in 65A-3-1(3).

R652-70-2400. Recreational Use of Navigable Rivers.

1. Navigable rivers include the Bear River, Jordan River, and portions of the Green and Colorado rivers. On the Green River the navigable portions presently recognized as being owned by the state are generally described as from Dinosaur National Monument to the mouth of Sand Wash, and from the mouth of Desolation Canyon at Swazey's Rapid, also known as Twelve Mile Rapid, to the north boundary of Canyonlands National Park. On the Colorado River the navigable portions presently recognized as being owned by the state are generally described as from the mouth of Castle Creek to the east boundary of Canyonlands National Park and from the mouth of Cataract Canyon to the Arizona state line. Except as specified, this Section applies to recreational navigation on these waters.

2. Each group conducting an overnight float trip is required to possess and utilize a washable, reusable toilet system that allows for disposal of solid human body waste through an authorized sewage system.

3. All garbage, trash, human waste and pet waste must be carried off the river and disposed of properly.

4. For a float trip that takes place on the Colorado River between the mouth of Castle Creek and Potash, where toilet facilities and sewage and trash receptacles are available, these provided facilities may be used in lieu of reusable toilets and carrying out garbage, trash, and waste products.

5. The maximum group size for overnight river trips is limited to 25 persons. Two or more groups may not camp together if the resulting group size exceeds 25 persons at a campsite.

6. Each group on an overnight float trip is required to possess a durable metal fire pan at least 12 inches wide, with a lip of at least 1.5 inches around its outer edge, and to utilize this fire pan to contain campfires.

7. Only driftwood may be used as firewood. No cutting of firewood is allowed except in designated areas. Ashes and charcoal accumulated during a trip must be carried out and disposed of properly.

8. A right of entry permit from the division and a special recreation permit from the federal agency managing the land through which the river flows are required for commercial float trips.

9. For the Green River from Green River State Park to Canyonlands National Park, each noncommercial group floating the river shall have in the group's possession a valid interagency noncommercial river trip permit and shall abide by its terms. This permit will be issued free of charge by the Division, the Division of Parks and Recreation, the Bureau of Land Management, authorized outfitters and authorized private landowners. Subsection R652-70-2400(8) applies to commercial trips.

KEY: sovereign lands, permits, administrative procedures
July 6, 2015 65A-10-1
Notice of Continuation April 2, 2012

R657. Natural Resources, Wildlife Resources.
R657-11. Taking Furbearers.
R657-11-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking furbearers.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking furbearers.

R657-11-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Artificial cubby set" means any artificially manufactured container with an opening on one end that houses a trapping device. Bait must be placed inside the artificial cubby set at least eight inches from the opening. Artificial cubby sets must be placed with the top of the opening even with or below the bottom of the bait so that the bait is not visible from above.

(b) "Bait" means any lure containing animal parts larger than one cubic inch, or eight cubic inches if used in an artificial cubby set, with the exception of white-bleached bones with no hide or flesh attached.

(c) "Exposed bait" means bait which is visible from any angle, except when used in an artificial cubby set.

(d) "Fur dealer" means any individual engaged in, wholly or in part, the business of buying, selling, or trading skins or pelts of furbearers within Utah.

(e) "Fur dealer's agent" means any person who is employed by a resident or nonresident fur dealer as a buyer.

(f) "Green pelt" means the untanned hide or skin of any furbearer.

(g) "Pursue" means to chase, tree, corner, or hold a furbearer at bay.

(h) "Scent" means any lure composed of material of less than one cubic inch that has a smell intended to attract animals.

R657-11-3. License, Permit and Tag Requirements.

(1) A person who has a valid, current furbearer license may take furbearers during the established furbearer seasons published in the guidebook of the Wildlife Board for taking furbearers.

(2) A person who has a valid, current furbearer license and valid bobcat permits may take bobcat during the established bobcat season published in the guidebook of the Wildlife Board for taking furbearers.

(3) A person who has a valid, current furbearer license and valid marten trapping permit may take marten during the established marten season published in the guidebook of the Wildlife Board for taking furbearers.

(4) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing furbearers.

R657-11-4. Bobcat Permits.

(1) Bobcat permits can only be obtained and are only valid with a valid, current furbearer license.

(2) A person may obtain up to the number of bobcat permits authorized each year by the Wildlife Board. Permit numbers shall be published in the guidebook of the Wildlife Board for taking furbearers.

(3) Bobcat permits will be available during the dates published in the guidebook of the Wildlife Board for taking furbearers and may be obtained by submitting an application through the division's Internet address.

(4) Bobcat permits are valid for the entire bobcat season.

R657-11-5. Tagging Bobcats.

(1) The pelt or unskinned carcass of any bobcat must be tagged in accordance with Section 23-20-30.

(2) The tag must remain with the pelt or unskinned carcass until a permanent tag has been affixed.

(3) Possession of an untagged green pelt or unskinned carcass is prima facie evidence of unlawful taking and possession.

(4) The lower jaw of each bobcat taken must be removed and tagged with the numbered jaw tag corresponding to the number of the temporary possession tag affixed to the hide.

R657-11-6. Marten Permits.

(1) A person may not trap marten or have marten in possession without having a valid, current furbearer license and a marten trapping permit in possession.

(2) Marten trapping permits are available free of charge from any division office.

(3)(a) Applications for marten permits must contain the applicant's full name, mailing address, phone number, and valid, current furbearer license number.

(b) Permit applications are accepted by mail or in person at any regional division office.

R657-11-7. Permanent Possession Tags for Bobcat and Marten.

(1) A person may not:

(a) possess a green pelt or unskinned carcass from a bobcat or marten that does not have a permanent tag affixed after the Saturday following the close of the bobcat trapping season and marten seasons;

(b) possess a green pelt or the unskinned carcass of a bobcat with an affixed temporary bobcat possession tag issued to another person, except as provided in Subsections (5) and (6); or

(b) buy, sell, trade, or barter a green pelt from a bobcat or marten that does not have a permanent tag affixed.

(2) Bobcat and marten pelts must be delivered to a division representative to have a permanent tag affixed and to surrender the lower jaw.

(3) Bobcat and marten pelts may be delivered to the following division offices, by appointment only, during the dates published in the guidebook of the Wildlife Board for taking furbearers:

(a) Cedar City - Regional Office;
(b) Ogden - Regional Office;
(c) Price - Regional Office;
(d) Salt Lake City - Salt Lake Office;
(e) Springville - Regional Office; and
(f) Vernal - Regional Office.

(4) There is no fee for permanent tags.

(5) Bobcat and marten which have been legally taken may be transported from an individual's place of residence by an individual other than the fur harvester to have the permanent tag affixed; bobcats must be tagged with a temporary possession tag and accompanied by a valid furbearer license belonging to the fur harvester.

(6) Any individual transporting a bobcat or marten for another person must have written authorization stating the following:

(a) date of kill;
(b) location of kill;
(c) species and sex of animal being transported;
(d) origin and destination of such transportation;
(e) the name, address, signature and furbearer license number of the fur harvester;
(f) the name of the individual transporting the bobcat or marten; and
(g) the fur harvester's marten permit number if marten is

being transported.

(7) Green pelts of bobcats and marten legally taken from outside the state may not be possessed, bought, sold, traded, or bartered in Utah unless a permanent tag has been affixed or the pelts are accompanied by a shipping permit issued by the wildlife agency of the state where the animal was taken.

(8)(a) Fur harvesters taking marten are requested to present the entire skinned carcass intact, including the lower jaw, to the division in good condition when the pelt is presented for tagging.

(b) "Good condition" means the carcass is fresh or frozen and securely wrapped to prevent decomposition so that the tissue remains suitable for lab analysis.

R657-11-8. Purchase of License by Mail.

A person may purchase a license by mail by sending the following information to a division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, Social Security number, driver license number (if available), proof of furharvester education certification, and fees.

R657-11-9. Trap Registration Numbers.

(1) For the purposes of this section, "owner" means the person who has been issued a trap registration number, which is permanently marked or affixed to the trapping device.

(2) Each trapping device used to take furbearers must be permanently marked or tagged with the trap registered number of the owner.

(3) No more than one trap registration number may be on a trapping device.

(4) Trap registration numbers must be legible.

(5) Trap registration numbers are permanent and may be obtained by mail or in person from any division office.

(6) Applicants must include their full name, including middle initial, and complete home address.

(7) A registration fee of $10 must accompany the request. This fee is payable only once.

(8) Each individual is issued only one trap registration number.

(9) Any person who has obtained a trap registration number must notify the division within 30 days of any change in address or the theft of traps.

R657-11-10. Traps.

(1) All long spring, jump, or coil spring traps must have spacers on the jaws which leave an opening of at least 3/16 of an inch when the jaws are closed, except;

(a) rubber-padded jaw traps,

(b) traps with jaw spreads less than 4.25 inches, and

(c) traps that are not completely submerged under water when set.

(2) All cable devices (ie snares), except those set in water or with a loop size less than 3 inches in diameter, must be equipped with a breakaway lock device that will release when any force greater than 300 lbs. is applied to the loop. Breakaway cable devices must be fastened to an immovable object solidly secured to the ground. The use of drags is prohibited.

(3) On the middle section of the Provo River, between Jordanelle Dam and Deer Creek Reservoir, the Green River, between Flaming Gorge Dam and the Utah Colorado state line; and the Colorado River, between the Utah Colorado state line and Lake Powell; and the Escalante River, between Escalante and Lake Powell, trapping within 100 yards of either side of these rivers, including their tributaries from the confluences upstream 1/2 mile, is restricted to the following devices:

(a) Nonlethal-set foot hold traps with a jaw spread less than 5 1/8 inches, and nonlethal-set padded foot hold traps. Drowning sets with these traps are prohibited.

(b) Body-gripping, killing-type traps with body-gripping area less than 30 square inches (i.e., 110 Conibear).

(c) Nonlethal dry land cable devices equipped with a stop-lock device that prevents it from closing to less than a six-inch diameter.

(d) Size 330, body-gripping, killing-type traps (i.e. Conibear) modified by replacing the standard V-trigger assembly with one top side parallel trigger assembly, with the trigger placed within one inch of the side, or butted against the vertical turn in the Canadian bend.

(4) A person may not disturb or remove any trapping device, except:

(a) a person who possesses a valid, current furbearer license, the appropriate permits or tags, and who has been issued a trapper registration number, which is permanently marked or affixed to the trapping device; or

(b) peace officers in the performance of their duties; or

(c) as provided in Subsection (6).

(5) A person may not kill or remove wildlife caught in any trapping device, except:

(a) a person who possesses a valid, current furbearer license, the appropriate permits or tags, and who has been issued a trapper registration number, which is permanently marked or affixed to the trapping device; or

(b) as provided in Subsection (6).

(6) For the purposes of this section, "owner" means the person who has been issued a trap registration number, which is permanently marked or affixed to the trapping device.

(7) A person, other than the owner, may possess, disturb or remove a trapping device; or possess, kill or remove wildlife caught in a trapping device provided:

(a) the person possesses a valid, current furbearer license, the appropriate permits or tags; and

(b) has obtained written authorization from the owner of the trapping device stating the following:

(i) date written authorization was obtained;

(ii) name and address of the owner;

(iii) owner's trap registration number;

(iv) the name of the individual being given authorization;

(v) signature of owner.

(8) The owner of any trapping device, providing written authorization to another person under Subsection (6), shall be strictly liable for any violations of this guidebook resulting from the use of the trapping device by the authorized person.

(9) The owner of any trapping device, providing written authorization to another person under Subsection (6), must keep a record of all persons obtaining written authorization and furnish a copy of the record upon request from a conservation officer.

(10)(a) A person may not set any trap or trapping device on posted private property without the landowner's permission.

(b) Any trap or trapping device set on posted property without the owner's permission may be sprung by the landowner.

(c) Wildlife officers should be informed as soon as possible of any illegally set traps or trapping devices.

(11) Peace officers in the performance of their duties may seize all traps, trapping devices, and wildlife used or held in violation of this rule.

(12) A person may not possess any trapping device that is not permanently marked or tagged with that person's registered trap number while engaged in taking wildlife.

(13) All traps and trapping devices must be checked and animals removed at least once every 48 hours, except;

(a) killing traps striking dorso-ventrally,

(b) drowning sets, and

(c) lethal cable devices that are set to capture on the neck, that have a nonrelaxing lock, without a stop, and are anchored

to an immoveable object; which must be checked every 96 hours.

(14) A person may not transport or possess live protected wildlife. Any animal found in a trap or trapping device must be killed or released immediately by the trapper.

R657-11-11. Use of Bait.

(1) A person may not use any protected wildlife or their parts, except for white-bleached bones with no hide or flesh attached, as bait or scent; however, parts of legally taken furbearers and nonprotected wildlife may be used as bait.

(2) Traps or trapping devices may not be set within 30 feet of any exposed bait.

(3) A person using bait is responsible if it becomes exposed for any reason.

(4) White-bleached bones with no hide or flesh attached may be set within 30 feet of traps.

R657-11-12. Accidental Trapping.

(1)(a) Any bear, bobcat, cougar, marten, otter, wolverine, any furbearer trapped out of season, or other protected wildlife accidentally caught in a trap must be released unharmed.

(b) Written permission must be obtained from a division representative to remove the carcass of any of these species from a trap.

(c) The carcass remains the property of the state and must be turned over to the division.

(2) All incidents of accidental trapping of any of these animals must be reported to the division within 48 hours.

(3) Black-footed ferret, lynx and wolf are protected species under the Endangered Species Act. Accidental trapping or capture of these species must be reported to the division within 48 hours.

R657-11-13. Methods of Take and Shooting Hours.

(1) Furbearers, except bobcats and marten, may be taken by any means, excluding explosives and poisons, or as otherwise provided in Section 23-13-17.

(2) Bobcats may be taken only by shooting, trapping, or with the aid of dogs as provided in Section R657-11-26.

(3) Marten may be taken only with an elevated, covered set in which the maximum trap size shall not exceed 1 1/2 foothold or 160 Conibear.

(4) Taking furbearers by shooting or with the aid of dogs is restricted to one-half hour before sunrise to one-half hour after sunset, except as provided in Section 23-13-17.

(5) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

R657-11-14. Spotlighting.

(1) Except as provided in Subsection (3):

(a) a person may not use or cast the rays of any spotlight, headlight, or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland, or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

(3) The provisions of this section do not apply to the use of an artificial light when used by a trapper to illuminate his path and trap sites for the purpose of conducting the required trap checks, provided that:

(a) any artificial light must be carried by the trapper;

(b) a motor vehicle headlight or light attached to or powered by a motor vehicle may not be used; and

(c) while checking traps with the use of an artificial light, the trapper may not occupy or operate any motor vehicle.

(4) Spotlighting may be used to hunt coyote, red fox, striped skunk, or raccoon where allowed by a county ordinance enacted pursuant to Section 23-13-17.

(5) The ordinance shall provide that:

(a) any artificial light used to spotlight coyote, red fox, striped skunk, or raccoon must be carried by the hunter;

(b) a motor vehicle headlight or light attached to or powered by a motor vehicle may not be used to spotlight the animal; and

(c) while hunting with the use of an artificial light, the hunter may not occupy or operate any motor vehicle.

(6) For purposes of the county ordinance, "motor vehicle" shall have the meaning as defined in Section 41-6-1.

(7) The ordinance may specify:

(a) the time of day and seasons when spotlighting is permitted;

(b) areas closed or open to spotlighting within the unincorporated area of the county;

(c) safety zones within which spotlighting is prohibited;

(d) the weapons permitted; and

(e) penalties for violation of the ordinance.

(8)(a) A county may restrict the number of hunters engaging in spotlighting by requiring a permit to spotlight and issuing a limited number of permits.

(b) A fee may be charged for a spotlighting permit.

(9) A county may require hunters to notify the county sheriff of the time and place they will be engaged in spotlighting.

(10) The requirement that a county ordinance must be enacted before a person may use spotlighting to hunt coyote, red fox, striped skunk, or raccoon does not apply to:

(a) a person or his agent who is lawfully acting to protect his crops or domestic animals from predation by those animals; or

(b) a wildlife service's agent acting in his official capacity under a memorandum of agreement with the division.

R657-11-15. Use of Dogs.

(1) Dogs may be used to take furbearers only from one-half hour before sunrise to one-half hour after sunset and only during the prescribed open seasons.

(2) The owner and handler of dogs used to take or pursue a furbearer must have a valid, current furbearer license in possession while engaged in taking furbearers.

(3) When dogs are used in the pursuit of furbearers, the licensed hunter intending to take the furbearer must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

R657-11-16. State Parks.

(1) Taking any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614-4.

(2) Hunting with a rifle, handgun, or muzzleloader on park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns, crossbows, and archery equipment is prohibited within one quarter mile of the above stated areas.

R657-11-17. Transporting Furbearers.

(1)(a) A person who has obtained the appropriate license and permit may transport green pelts of furbearers. Additional restrictions apply for taking bobcat and marten as provided in Section R657-11-6.

(b) A registered Utah fur dealer or that person's agent may transport or ship green pelts of furbearers within Utah.

(2) A furbearer license is not required to transport red fox or striped skunk.

R657-11-18. Exporting Furbearers from Utah.

(1) A person may not export or ship the green pelt of any furbearer from Utah without first obtaining a valid shipping permit from a division representative.

(2) A furbearer license is not required to export red fox or striped skunk from Utah.

R657-11-19. Sales.

(1) A person with a valid furbearer license may sell, offer for sale, barter, or exchange only those species that person is licensed to take, and which were legally taken.

(2) Any person who has obtained a valid fur dealer or fur dealer's agent certificate of registration may engage in, wholly or in part, the business of buying, selling, or trading green pelts or parts of furbearers within Utah.

(3) Fur dealers or their agents and taxidermists must keep records of all transactions dealing with green pelts of furbearers.

(4) Records must state the following:

(a) the transaction date; and

(b) the name, address, license number, and tag number of each seller.

(5) A receipt containing the information specified in Subsection (4) must be issued whenever the ownership of a pelt changes.

(6)(a) A person may possess furbearers and tanned hides legally acquired without possessing a license, provided proof of legal ownership or possession can be furnished.

(b) A furbearer license is not required to sell or possess red fox or striped skunk or their parts.

R657-11-20. Wasting Wildlife.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts as provided in Section 23-20-8.

(2) The skinned carcass of a furbearer may be left in the field and does not constitute waste of wildlife.

R657-11-21. Depredation by Badger, Weasel, and Spotted Skunk.

(1) Badger, weasel, and spotted skunk may be taken anytime without a license when creating a nuisance or causing damage, provided the animal or its parts are not sold or traded.

(2) Red fox and striped skunk may be taken any time without a license.

R657-11-22. Depredation by Bobcat.

(1) Depredating bobcats may be taken at any time by duly appointed animal damage control agents, supervised by the animal damage control program, while acting in the performance of their assigned duties and in accordance with procedures approved by the division.

(2) A livestock owner or his employee, on a regular payroll and not hired specifically to take furbearers, may take bobcats that are molesting livestock.

(3) Any bobcat taken by a livestock owner or his employee must be surrendered to the division within 72 hours.

R657-11-23. Depredation by Nuisance Beaver.

(1) Beaver doing damage or other nuisance behaviors may be taken or removed during open and closed seasons with either a valid furbearer license or a nuisance permit.

(2) A nuisance permit to remove beaver must first be obtained from a division office or conservation officer.

R657-11-24. Survey.

Each permittee who is contacted for a survey about their furbearer harvesting experience should participate in the survey regardless of success. Participation in the survey helps the division evaluate population trends, harvest success and collect other valuable information.

R657-11-25. Prohibited Species.

(1)(a) A person may not take black-footed ferret, fisher, lynx, otter, wolf, or wolverine.

(b) Accidental trapping or capture of any of these species must be reported to the division within 48 hours.

R657-11-26. Season Dates and Bag Limits.

Season dates, bag limits, and areas with special restrictions are published annually in the guidebook of the Wildlife Board for taking furbearers.

R657-11-27. Applications for Trapping on State Waterfowl Management Areas.

(1)(a) Applications for trapping on state waterfowl management areas are available at the division's internet address, and must be completed and submitted online by the date prescribed in the respective guidebook of the Wildlife Board.

(i) Applicants submitting more than one application per calendar year will be rejected.

(b) Applicants must meet all age requirements, proof of hunter education and furharvester requirements, and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(c) Applicants may select up to two WMA choices on the application.

(d) Hunt choices must be listed in order of preference.

(e) Up to three trappers may apply as a group for a single permit.

(f) A person who applies for or obtains a permit must notify the division of any change in mailing address, residency, telephone number, email address, and physical description.

(g) If the number of applications received for a WMA exceeds the number of permits available, a drawing will be held. This drawing will determine successful or unsuccessful applicants.

(i) each application will be assigned a computerized random drawing number.

(ii) a drawing order will be established by arranging applications beginning with the lowest random drawing number.

(iii) in sequence of the drawing order, the applicant's first selection will be considered. If a permit is not available for that selection, that applicant's second selection will be considered.

(iv) remaining permits will be offered to the alternate list beginning with the first eligible alternate.

(A) the alternate list is comprised of unsuccessful applicants.

(B) the alternate list is arranged in order beginning with the lowest drawing number.

(2) Permits, trapping dates and boundaries

(a) Open areas, trapping dates, allowable species, fees, and number of permits shall be determined by the waterfowl management area superintendent.

(b) Superintendents of waterfowl management areas offering more than one trapping permit will determine the trapping boundaries of each permit.

(c) Only the trapper or trappers listed on the permit may

trap on the waterfowl management area.

(d) All trappers must trap under the supervision of the waterfowl management area superintendent. Permits are not valid until signed by the superintendent in charge of the area to be trapped.

(e) Violation of this section is cause for forfeiture of all trapping privileges on management areas for that trapping year.

(f) Applicants may be notified of drawing results by the date prescribed in the respective guidebook of the Wildlife Board.

R657-11-28. Fees.

(1) Upon verified payment of trapping fees, permits will be mailed to successful applicants are granted trapping rights for management areas.

(2) If a successful applicant fails to make full payment within 14 days of the results posting date, an alternate trapper will be selected.

(3) Permits are not valid until signed by the superintendent in charge of the area to be trapped.

R657-11-29. Vehicle Travel.

Vehicle travel is restricted to developed roads. However, written permission for other travel may be obtained from the waterfowl management area superintendent.

R657-11-30. Trapping Hours.

On waterfowl management areas traps may be checked only between one-half hour before official sunrise to one-half hour after official sunset.

R657-11-31. Responsibility of Trappers.

(1) All trappers are directly responsible to the waterfowl management area superintendent.

(2) Violation of management or trapping rules, including failure to return a trapping permit within five days of cessation of trapping activities, or failure to properly trap an area, as determined and recommended by the superintendent, may be cause for cancellation of trapping privileges, existing and future, on all waterfowl management areas.

R657-11-32. Closed Area.

Davis County - Trapping is allowed only on the dates published in the guidebook of the Wildlife Board for taking furbearers, on those lands administered by the state lying along the eastern shore of the Great Salt Lake, commonly known as the Layton-Kaysville marshes. In addition, there may be a portion of the above stated area that is closed to trapping. This area will be posted and marked.

R657-11-33. Wildlife Management Areas.

(1) A person may not use motor vehicles on division-owned wildlife management areas closed to motor vehicle use without first obtaining written authorization from the appropriate division regional office.

(2) For purposes of coyote trapping, the division may, in its sole discretion, authorize limited motor vehicle access to its wildlife management areas closed to such use provided the motor vehicle access will not interfere with wildlife or wildlife habitat.

KEY: wildlife, furbearers, game laws, wildlife law

November 7, 2014	**23-14-18**
Notice of Continuation July 13, 2015	**23-14-19**
	23-13-17

R657. Natural Resources, Wildlife Resources.
R657-41. Conservation and Sportsman Permits.
R657-41-1. Purpose and Authority.

(1) Under the authority of Section 23-14-18 and 23-14-19, this rule provides the standards and procedures for issuing:

(a) conservation permits to conservation organizations for sale at an auction, or for use as an aid to wildlife related fund raising activities;

(b) sportsman permits;

(c) Special Antelope Island State Park Conservation Permits to a conservation organization for marketing and sale at the annual wildlife exposition held pursuant to R657-55; and

(d) Special Antelope Island State Park Limited Entry Permits to successful applicants through a general drawing conducted by the Division.

(2) The division and conservation organizations shall use all revenue derived from conservation permits under Subsections R657-41-9(4) and R657-41-9(5)(b) for the benefit of species for which conservation permits are issued, unless the division and conservation organization mutually agree in writing that there is a higher priority use for other species of protected wildlife.

R657-41-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Area Conservation Permit" means a permit issued for a specific unit or hunt area for a conservation permit species, and may include an extended season, or legal weapon choice, or both, beyond the season except area turkey permits are valid during any season option and are valid in any open area during general season hunt.

(i) Area Conservation permits issued for limited entry units are not valid on cooperative wildlife management units.

(b) "Conservation Organization" means a nonprofit chartered institution, foundation, or association founded for the purpose of promoting the protection and preservation of one or more conservation permit species and has established tax exempt status under Internal Revenue Code, Section 501C-3 as amended.

(c) "Conservation Permit" means any harvest permit authorized by the Wildlife Board and issued by the division for purposes identified in Section R657-41-1.

(d) "Conservation Permit Species" means the species for which conservation permits may be issued and includes deer, elk, pronghorn, moose, bison, Rocky Mountain goat, Rocky Mountain bighorn sheep, desert bighorn sheep, wild turkey, cougar, and black bear.

(e) "Multi-Year Conservation Permit" means a conservation permit awarded to an eligible conservation organization pursuant to R657-41-7 for three consecutive years to sell, market or otherwise use as an aid in wildlife related fund raising activities.

(f) "Retained Revenue" means 60% of the revenue raised by a conservation organizations from the sale of conservation permits that the organization retains for eligible projects, excluding interest earned thereon.

(g) "Special Antelope Island State Park Conservation Permit" means a permit authorized by the Wildlife Board to hunt bighorn sheep or mule deer on Antelope Island State Park which is issued pursuant to R657-41-12(3).

(h) "Special Antelope Island State Park Limited Entry Permit" means a permit authorized by the Wildlife Board to hunt bighorn sheep or mule deer on Antelope Island State Park which is issued by the division in a general drawing, requiring all applicants to pay an application fee and the successful applicant the cost of the permit.

(i) "Sportsman Permit" means a permit which allows a permittee to hunt during the applicable season dates specified in Subsection (k), and which is authorized by the Wildlife Board and issued by the division in a general drawing, requiring all applicants to pay an application fee and the successful applicant the cost of the permit.

(j) "Single Year Conservation Permit" means a conservation permit awarded to an eligible conservation organization pursuant to R657-41-6 for one year to sell, market or otherwise use as an aid in wildlife related fund raising activities.

(k) "Statewide Conservation Permit" means a permit issued for a conservation permit species that allows a permittee to hunt:

(i) big game species on any open unit with archery equipment during the general archery season published in the big game proclamation for the unit beginning before September 1, and with any weapon from September 1 through December 31, except pronghorn and moose from September 1 through November 15 and deer and elk from September 1 through January 15;

(ii) two turkeys on any open unit from April 1 through May 31;

(iii) bear on any open unit during the season authorized by the Wildlife Board for that unit;

(iv) cougar on any open unit during the season authorized by the Wildlife Board for that unit and during the season dates authorized by the Wildlife Board on any harvest objective unit that has been closed by meeting its objective;

(v) Antelope Island is not an open unit for hunting any species of wildlife authorized by a conservation or sportsman permit, except for the Special Antelope Island State Park Conservation Permits and the Special Antelope Island State Park Limited Entry Permits; and

(vi) Central Mountain/Nebo/Wasatch West sheep unit is open to the Sportsmen permit holder on even number years and open to the Statewide Conservation permit holder on odd number years.

R657-41-3. Determining the Number of Conservation and Sportsman Permits.

(1) The number of conservation permits authorized by the Wildlife Board shall be based on:

(a) the species population trend, size, and distribution to protect the long-term health of the population;

(b) the hunting and viewing opportunity for the general public, both short and long term; and

(c) the potential revenue that will support protection and enhancement of the species.

(2) One statewide conservation permit may be authorized for each conservation permit species.

(3) A limited number of area conservation permits may be authorized as follows:

(a) the potential number of multi-year and single year permits available for Rocky Mountain bighorn sheep and desert bighorn sheep will be calculated based on the number permits issued the year prior to the permits being awarded using the following rule:

(i) 5-14 public permits = 1 conservation permit, 15-24 public permits = 2 conservation permits, 25-34 public permits = 3 conservation permits, 35-44 permits = 4 conservation permits, 45-54 public permits = 5 conservation permits, 55-64 = 6 conservation permits, 65-74 public permits = 7 conservation permits and >75 public permits = 8 conservation permits.

(b) the potential number of multi-year and single year permits available for the remaining conservation permit species will be calculated based on the number permits issued the year prior to the permits being awarded using the following rule:

(i) 11-30 public permits = 1 conservation permit, 31-50 public permits = 2 conservation permits, 51-70 public permits = 3 conservation permits, 71-90 permits = 4 conservation permits, 91-110 public permits = 5 conservation permits, 111-

130 = 6 conservation permits, 131-150 public permits = 7 conservation permits and >150 public permits = 8 conservation permits.

(4) The number of conservation permits may be reduced if the number of public permits declines during the time period or which multi-year permits were awarded.

(5) The actual number of conservation and sportsman permits available for use will be determined by the Wildlife Board.

(6) Area conservation permits shall be deducted from the number of public drawing permits.

(7) One sportsman permit shall be authorized for each statewide conservation permit authorized.

(8) All area conservation permits are eligible as multi-year permits except that the division may designate some area conservation permits as single year permits based on the applications received for single year permits.

(9) All statewide permits will be multi-year permits except for a second statewide permit issued for a special event.

R657-41-4. Eligibility for Conservation Permits.

(1) Statewide and area conservation permits may be awarded to eligible conservation organizations to market and sell, or to use as an aid in wildlife related fund raising activities.

(2) To be eligible for multi-year conservation permits, a conservation organization must have generated in conservation permit sales during the previous three year period at least one percent of the total revenue generated by all conservation organizations in conservation permit sales during the same period. Conservation organizations eligible for multi-year permits may not apply for single year permits, and conservation organizations ineligible for multi-year permits may only apply for single year permits.

(3) Conservation organizations applying for single year permits may not:

(a) bid for or obtain conservation permits if any employee, officer, or board of director member of the conservation organization is an employee, officer, or board of director member of any other conservation organization that is submitting a bid for single year conservation permits; or

(b) enter into any pre-bidding discussions, understandings or agreements with any other conservation organization submitting a bid for conservation permits regarding:

(i) which permits will be sought by a bidder;

(ii) what amounts will be bid for any permits; or

(iii) trading, exchanging, or transferring any permits after permits are awarded.

R657-41-5. Applying for Conservation Permits.

(1)(a) Conservation organizations may apply for conservation permits by sending an application to the division.

(b) Only one application per conservation organization may be submitted. Multiple chapters of the same conservation organization may not apply individually.

(c) Conservation organizations may apply for single year conservation permits or multi-year conservation permits. They may not apply for both types of conservation permits.

(2) The application must be submitted to the division by September 1 to be considered for the following year's conservation permits. Each application must include:

(a) the name, address and telephone number of the conservation organization;

(b) a copy of the conservation organization's mission statement;

(c) verification of the conservation organization's tax exempt status under Internal Revenue Code, Section 501C-3 as amended; and

(d) the name of the president or other individual responsible for the administrative operations of the conservation organization;

(3) If applying for single year conservation permits, a conservation organization must also include in its application:

(a) the proposed bid amount for each permit requested. The proposed bid amount is the revenue the organization anticipates to be raised from a permit through auction or other lawful fund raising activity.

(b) certification that there are no conflicts of interest or collusion in submitting bids as prohibited in R657-41-4(3);

(c) acknowledgement that the conservation organization recognizes that falsely certifying the absence of collusion may result in cancellation of permits, disqualification from bidding for five years or more, and the filing of criminal charges;

(d) evidence that the application and bid has been reviewed and approved by the board of directors of the bidding conservation.

(e) the type of permit, and the species for which the permit is requested; and

(f) any requested variances for an extended season or legal weapon choice for area conservation permits.

(4) An application that is incomplete or completed incorrectly may be rejected.

(5) The application of a conservation organization for conservation permits may be denied for:

(a) failing to fully report on the preceding year's conservation permits;

(b) violating any provision of this rule, Title 23 of the Utah Code, Title R657 of the Utah Administrative Code, a division proclamation, or an order of the Wildlife Board; or

(c) violating any other law that bears a reasonable relationship to the applicant's ability to responsibly and lawfully handle conservation permits pursuant to this rule.

R657-41-6. Awarding Single Year Conservation Permits.

(1) The division shall recommend the conservation organization to receive each single year conservation permit based on:

(a) the bid amount pledged to the species, adjusted by:

(i) the performance of the organization over the previous two years in meeting proposed bids;

(ii) 90% of the bid amount;

(iii) the organizations maintaining a minimum two-year average performance of 70% to be eligible for consideration of permits. Performance of the organization is the proportion of the total revenue generated from permit sales, divided by 90% of the bid amount for all permits, calculated annually and averaged for the last two years.

(b) if two or more conservation organizations are tied using the criteria in Subsection (a), the closeness of the organization's purpose to the species of the permit; and

(c) if two or more conservation organizations are tied using the criteria in Subsection (a) and (b), the geographic closeness of the organization to the location of the permit.

(2)(a) Between the time the division recommends that a conservation permit be awarded to a conservation organization and the time the Wildlife Board approves that recommendation, a conservation organization may withdraw its application for any given permit or exchange its application with another conservation organization without penalty, provided the bid amount upon which the permit application was evaluated is not changed.

(b) If a conservation organization withdraws its bid and the bid is awarded to another organization at a lower amount, then the difference between the two bids will be subtracted from the organization making the higher bid for purposes of evaluating organization performance.

(3) The Wildlife Board shall make the final assignment of conservation permits at a meeting prior to December 1 annually.

(4) The Wildlife Board may authorize a conservation

permit to a conservation organization, other than the conservation organization recommended by the division, after considering the:

(a) division recommendation;

(b) benefit to the species;

(c) historical contribution of the organization to the conservation of wildlife in Utah;

(d) previous performance of the conservation organization; and

(e) overall viability and integrity of the conservation permit program.

(5) The total of all bids for permits awarded to any one organization shall not exceed $20,000 the first year an organization receives permits.

(6) The number of permits awarded to any one organization shall not increase by more than 100% from the previous year.

(7) If the Wildlife Board authorizes a second statewide conservation permit for a species, the conservation organization receiving the permit must meet the division designated bid for that permit.

R657-41-7. Awarding Multi-Year Conservation Permits.

(1) Distribution of multi-year conservation permits will be based on a sequential selection process where each eligible conservation organization is assigned a position or positions in the selection order among the other participating organizations and awarded credits with which to purchase multi-year permits at an assigned value. The selection process and other associated details are as follows.

(2) Multi-year permits will be awarded to eligible conservation organizations for no more than three years.

(3) The division will determine the number of permits available as multi-year permits after subtracting the proposed number of single year permits.

(a) Season types for multi-year area conservation permits for elk on any given hunt unit will be designated and assigned in the following order:

(i) first permit -- premium;

(ii) second permit -- any-weapon;

(iii) third permit -- any-weapon;

(iv) fourth permit -- archery;

(v) fifth permit -- muzzleloader;

(vi) sixth permit -- premium;

(vii) seventh permit -- any-weapon; and

(viii) eighth permit -- any-weapon.

(b) Season types for multi-year area conservation permits for deer on any given hunt unit will be designated and assigned in the following order:

(i) first permit -- hunter choice of season;

(ii) second permit -- hunter choice of season;

(iii) third permit -- muzzleloader;

(iv) fourth permit -- archery;

(v) fifth permit -- any-weapon;

(vi) sixth permit -- any-weapon;

(vii) seventh permit -- muzzleloader; and

(viii) eighth permit -- archery.

(4) The division will assign a monetary value to each multi-year permit based on the average return for the permit during the previous three year period. If a history is not available, the value will be estimated.

(5) The division will determine the total annual value of all multi-year permits.

(6)(a) The division will calculate a market share for each eligible conservation organization applying for multi-year permits.

(b) Market share will be calculated and determined based on:

(i) the conservation organization's previous three years performance;

(ii) all conservation permits (single and multi-year) issued to a conservation organization except for special permits allocated by the Wildlife Board outside the normal allocation process.

(iii) the percent of conservation permit revenue raised by a conservation organization during the three year period relative to all conservation permit revenue raised during the same period by all conservation organizations applying for multi-year permits.

(7) The division will determine the credits available to spend by each group in the selection process based on their market share multiplied by the total annual value of all multi-year permits.

(8) The division will establish a selection order for the participating conservation organizations based on the relative value of each groups market share as follows:

(a) groups will be ordered based on their percent of market share;

(b) each selection position will cost a group 10% of the total market share except the last selection by a group will cost whatever percent a group has remaining;

(c) no group can have more than three positions in the selection order; and

(d) the selection order will be established as follows:

(i) the group with the highest market share will be assigned the first position and ten percent will be subtracted from their total market share;

(ii) the group with the highest remaining market share will be assigned the second position and ten percent will be subtracted from their market share; and

(iii) this procedure will continue until all groups have three positions or their market share is exhausted.

(9) At least two weeks prior to the multi-year permit selection meeting, the division will provide each conservation organization applying for multi-year permits the following items:

(a) a list of multi-year permits available with assigned value;

(b) documentation of the calculation of market share;

(c) credits available to each conservation group to use in the selection process;

(d) the selection order; and

(e) date, time and location of the selection meeting.

(10) Between the establishing of the selection order and the selection meeting, groups may trade or assign draw positions, but once the selection meeting begins draw order cannot be changed.

(11) At the selection meeting, conservation organizations will select permits from the available pool according to their respective positions in the selection order. For each permit selected, the value of that permit will be deducted from the conservation organization's available credits. The selection order will repeat itself until all available credits are used or all available permits are selected.

(12) Conservation organizations may continue to select a single permit each time their turn comes up in the selection order until all available credits are used or all available permits are selected.

(13) A conservation organization may not exceed its available credits except a group may select their last permit for up to 10% of the permit value above their remaining credits.

(14) Upon completion of the selection process, but prior to the Wildlife Board meeting where final assignment of permits are made, conservation organizations may trade or assign permits to other conservation organizations eligible to receive multi-year permits. The group receiving a permit retains the permit for the purposes of marketing and determination of market share for the entire multi-year period.

(15) Variances for an extended season or legal weapon choice may be obtained only on area conservation permits and must be presented to the Wildlife Board prior to the final assignment of the permit to the conservation organization.

(16) Conservation organizations may not trade or transfer multi-year permits to other organizations once assigned by the Wildlife Board.

(17) Conservation organizations failing to comply with the reporting requirements in any given year during the multi-year period shall lose the multi-year conservation permits for the balance of the multi-year award period.

(18) If a conservation organization is unable to complete the terms of marketing the assigned permits, the permits will be returned to the regular public drawing process for the duration of the multi-year allocation period.

R657-41-8. Distributing Conservation Permits.

(1) The division and conservation organization receiving permits shall enter into a contract.

(2)(a) The conservation organization receiving permits must insure that the permits are marketed and distributed by lawful means. Conservation permits may not be distributed in a raffle except where the following conditions are met:

(i) the conservation organization obtains and provides the division with a written opinion from a licensed attorney or a written confirmation by the local district or county attorney that the raffle scheme is in compliance with state and local gambling laws;

(ii) except as otherwise provided in R657-41-8(5), the conservation organization does not repurchase, directly or indirectly, the right to any permit it distributes through the raffle;

(iii) the conservation organization prominently discloses in any advertisement for the raffle and at the location of the raffle that no purchase is necessary to participate; and

(iv) the conservation organization provides the division with a full accounting of any funds raised in the conservation permit raffle, and otherwise accounts for and handles the funds consistent with the requirement in Utah Admin. Code R657-41-9.

(3) The conservation organization must:

(i) obtain the name of the proposed permit recipient at the event where the permit recipient is selected; and

(ii) notify the division of the proposed permit recipient within 30 days of the recipient selection or the permit may be forfeited.

(4) If a person is selected by a qualified organization to receive a conservation permit and is also successful in obtaining a permit for the same species in the same year through the a division drawing, that person may designate another person to receive the conservation permit, provided the conservation permit has not been issued by the division to the first selected person.

(5) If a person is selected by a qualified organization to receive a conservation permit, but is unable to use the permit, the conservation organization may designate another person to receive the permit provided:

(a) the conservation organization selects the new recipient of the permit;

(b) the amount of money received by the division for the permit is not decreased;

(c) the conservation organization relinquishes to the division and otherwise uses all proceeds generated from the re-designated permit, pursuant to the requirements provided in Section R657-41-9;

(d) the conservation organization and the initial designated recipient of the permit, sign an affidavit indicating the initial designated recipient is not profiting from transferring the right to the permit; and

(e) the permit has not been issued by the division to the first designated person.

(6) Except as otherwise provided under Subsections (4) and (5), a person designated by a conservation organization as a recipient of a conservation permit, may not sell or transfer the rights to that designation to any other person. This does not preclude a person from bidding or otherwise lawfully acquiring a permit from a conservation organization on behalf of another person who will be identified as the original designated recipient.

(7) A person cannot obtain more than one conservation permit for a single conservation permit species per year, except for:

(a) elk, provided no more than two permits are obtained where one or both are antlerless permits; and

(b) turkey.

(8) the person designated on a conservation permit voucher must possess or obtain a current Utah hunting or combination license to redeem the voucher for the corresponding conservation permit.

R657-41-9. Conservation Permit Funds and Reporting.

(1) All permits must be marketed by September 1, annually.

(2) Within 30 days of the last event, but no later than September 1 annually, the conservation organization must submit to the division:

(a) a final report on the distribution of permits;

(b) the total funds raised on each permit;

(c) the funds due to the division; and

(d) a report on the status of each project funded in whole or in part with retained conservation permit revenue.

(3)(a) Permits shall not be issued until the permit fees are paid to the division.

(b) If the conservation organization is paying the permit fees for the permit recipient, the fees must be paid from the 10% retained by the conservation organization as provided in Subsection (5)(a).

(4)(a) Conservation organizations shall remit to the division by September 1 of each year 30% of the total revenue generated by conservation permit sales in that year.

(b) The permit revenue payable to the division under Subsection (4)(a), excluding accrued interest, is the property of the division and may not be used by conservation organizations for projects or any other purpose.

(c) The permit revenue must be placed in a federally insured account promptly upon receipt and remain in the account until remitted to the division on or before September 1 of each year.

(d) The permit revenue payable to the division under this subsection shall not be used by the conservation organization as collateral or commingled in the same account with the organization's operation and administration funds, so that the separate identity of the permit revenue is not lost.

(e) Failure to remit 30% of the total permit revenue to the Division by the September 1 deadline may result in criminal prosecution under Title 76, Chapter 6, Part 4 of the Utah Code, and may further disqualify the conservation organization from obtaining any future conservation permits.

(5) A conservation organization may retain 70% of the revenue generated from the sale of conservation permits as follows:

(a) 10% of the revenue may be withheld and used by the conservation organization for administrative expenses.

(b) 60% of the revenue may be retained and used by the conservation organization only for eligible projects as provided in subsections (i) through (ix).

(i) eligible projects include habitat improvement, habitat acquisition, transplants, targeted education efforts and other

projects providing a substantial benefit to species of wildlife for which conservation permits are issued, unless the division and conservation organization mutually agree in writing that there is a higher priority use for other species of protected wildlife.

(ii) retained revenue shall not be committed to or expended on any eligible project without first obtaining the division director's written concurrence.

(iii) retained revenue shall not be used on any project that does not provide a substantial and direct benefit to conservation permit species or other protected wildlife located in Utah.

(iv) cash donations to the Wildlife Habitat Account created under Section 23-19-43, Division Species Enhancement Funds, or the Conservation Permit Fund shall be considered an eligible project and do not require the division director's approval, provided the donation is made with instructions that it be used for species of wildlife for which conservation permits are issued.

(v) funds committed to approved projects will be transferred to the division within 90 days of being committed

(A) if the project to which funds are committed is completed under the projected budget or is canceled, funds committed to the project that are not used will be kept by the division and credited back to the conservation organization and will be made available for the group to use on other approved projects during the current or subsequent year.

(vi) retained revenue shall not be used on any project that is inconsistent with division policy, including feeding programs, depredation management, or predator control.

(vii) retained revenue under this subsection must be placed in a federally insured account. All interest revenue earned thereon may be retained and used by the conservation organization for administrative expenses.

(viii) retained revenue shall not be used by the conservation organization as collateral or commingled in the same account with the organization's operation and administration funds, so that the separate identity of the retained revenue is not lost.

(ix) retained revenue must be completely expended on or committed to approved eligible projects by September 1, two years following the year in which the relevant conservation permits are awarded to the conservation organization by the Wildlife Board. Failure to commit or expend the retained revenue by the September 1 deadline will disqualify the conservation organization from obtaining any future conservation permits until the unspent retained revenue is committed to an approved eligible project.

(x) all records and receipts for projects under this subsection must be retained by the conservation organization for a period not less than five years, and shall be produced to the division for inspection upon request.

(6)(a) Conservation organizations accepting permits shall be subject to annual audits on project expenditures and conservation permit accounts.

(b) The division shall perform annual audits on project expenditures and conservation permit accounts.

R657-41-10. Obtaining Sportsman Permits.

(1) One sportsman permit is offered to residents through a drawing for each of the following species:

(a) desert bighorn (ram);
(b) bison (hunter's choice);
(c) buck deer;
(d) bull elk;
(e) Rocky Mountain bighorn (ram)
(f) Rocky Mountain goat (hunter's choice)
(g) bull moose;
(h) buck pronghorn;
(i) black bear;
(j) cougar; and
(k) wild turkey.

(2) The following information on sportsman permits is provided in the proclamations of the Wildlife Board for taking protected wildlife:

(a) hunt dates;
(b) open units or hunt areas;
(c) application procedures;
(d) fees; and
(e) deadlines.

(3) a person must possess or obtain a current Utah hunting or combination license to apply for or obtain a sportsman permit.

R657-41-11. Using a Conservation or Sportsman Permit.

(1)(a) A conservation or sportsman permit allows the recipient to take only one individual of the species for which the permit is issued, except a statewide turkey conservation or sportsman permit allows the holder to take two turkeys.

(b) The species that may be taken shall be printed on the permit.

(c) The species may be taken in the area and during the season specified on the permit.

(d) The species may be taken only with the weapon specified on the permit.

(2) The recipient of a conservation or sportsman permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.

(3) Bonus points shall not be awarded or utilized:

(a) when applying for conservation or sportsman permits; or

(b) in obtaining conservation or sportsman permits.

(4) Any person who has obtained a conservation or sportsman permit is subject to all waiting periods as provided in Rules R657-62.

R657-41-12. Special Antelope Island State Park Hunting Permits.

(1)(a) The Wildlife Board may authorize a hunt for bighorn sheep and buck mule deer on Antelope Island State Park, with one or more permits for each species made available as Special Antelope Island State Park Conservation Permits and an equal number of permits for each species made available as Special Antelope Island State Park Limited Entry Permits.

(b) The Division of Wildlife Resources and the Division of Parks and Recreation, through their respective policy boards, will enter into a cooperative agreement for the purpose of establishing:

(i) the number of permits issued annually for bighorn sheep and buck mule deer hunts on Antelope Island;

(ii) season dates for each hunt;

(iii) procedures and regulations applicable to hunting on Antelope Island;

(iv) protocols for issuing permits and conducting hunts for antlerless deer on Antelope Island when populations require management; and

(v) procedures and conditions for transferring Special Antelope Island State Park Conservation Permit revenue to the Division of Parks and Recreation.

(c) The cooperative agreement governing bighorn sheep and mule deer hunting on Antelope Island and any subsequent amendment thereto shall be presented to the Wildlife Board and the Parks Board for approval prior to holding a drawing or issuing hunting permits.

(2)(a) Special Antelope Island State Park Limited Entry Permits will be issued by the Division through its annual bucks, bulls, and once-in-a-lifetime drawing.

(i) The mule deer Special Antelope Island State Park Limited Entry Permit is a premium limited entry buck deer permit and subject to the regulations governing such permits, as

provided in this rule, R657-5, and R657-62.

(ii) The bighorn sheep Special Antelope Island State Park Limited Entry Permit is a once-in-a-lifetime Rocky Mountain bighorn sheep permit and subject to the regulations governing such permits, as provided in this rule, R657-5, and R657-62.

(b) To apply for a Special Antelope Island State Park Limited Entry Permit, the applicant must:

(i) pay the prescribed application handling fee;

(ii) possess a current Utah hunting license or combination license;

(iii) not be subject to a waiting period under R657-62 for the species of wildlife applied for; and

(iv) otherwise be eligible to hunt the species of wildlife designated on the application;

(c) A person that obtains a Special Antelope Island State Park Limited Entry Permit:

(i) must pay the applicable permit fee;

(ii) may take only one animal of the species and gender designated on the permit;

(iii) may hunt only with the weapon and during the season prescribed on the permit;

(iv) may hunt the specified species within the areas of Antelope Island designated open by the Wildlife Board and the rules and regulations of the Division of Parks and Recreation; and

(v) is subject to the:

(A) provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife; and

(B) statutes, rules, and regulations of the Division of Parks and Recreation for hunting on Antelope Island.

(d) Bonus points are awarded and utilized in applying for and obtaining a Special Antelope Island State Park Limited Entry Permit.

(e) A person who has obtained a Special Antelope Island State Park Limited Entry Permit is subject to all waiting periods applicable to the particular species, as provided in R657-62.

(f) A person cannot obtain a Special Antelope Island State Park Limited Entry Permit for a bighorn sheep or mule deer and any other permit for a male animal of the same species in the same year.

(3) Special Antelope Island State Park Conservation Permits will be provided to the conservation group awarded the wildlife expo permit series, as provided in R657-55, for marketing at the wildlife exposition.

(a) The division and conservation organization receiving Special Antelope Island State Park Conservation Permits shall enter into a contract.

(b) The conservation organization receiving Special Antelope Island State Park Conservation Permits must insure that the permits are marketed and distributed by lawful means.

(c) The conservation organization must:

(i) obtain the name of the proposed permit recipient at the event where the permit recipient is selected; and

(ii) notify the division of the proposed permit recipient within 10 days of the recipient selection or the permit may be forfeited.

(d) If a person is selected by a qualified organization to receive a Special Antelope Island State Park Conservation Permit and is also successful in obtaining a permit for the same species in the same year through a division drawing, that person may designate another person to receive the Special Antelope Island State Park Conservation Permit, provided the permit has not been issued by the division to the first selected person.

(e) If a person is selected by a qualified organization to receive a Special Antelope Island State Park Conservation Permit, but is unable to use the permit, the conservation organization may designate another person to receive the permit provided:

(i) the conservation organization selects the new recipient of the permit;

(ii) the amount of money received by the division for the permit is not decreased;

(iii) the conservation organization relinquishes to the division and otherwise uses all proceeds generated from the re-designated permit, pursuant to the requirements provided below:

(A) the conservation organization and the initial designated recipient of the permit, sign an affidavit indicating the initial designated recipient is not profiting from transferring the right to the permit; and

(B) the permit has not been issued by the division to the first designated person.

(f) Within 30 days of the exposition, but no later than May 1 annually, the conservation organization must submit to the division:

(i) a final report on the distribution of the Special Antelope Island State Park Conservation Permits;

(ii) the total funds raised on each permit; and

(iii) the funds due to the division.

(g)(i) Permits shall not be issued until the permit fees are paid to the division.

(ii) If the conservation organization is paying the permit fees for the permit recipient, the fees must be paid from the 10% retained by the conservation organization as provided in R657-41-9(5)(a).

(h)(i) Conservation organizations shall remit to the division 90% of the total revenue generated by the Special Antelope Island State Park Conservation Permit sales in that year.

(ii) Failure to remit 90% of the total permit revenue to the division by the September 1 deadline may result in criminal prosecution under Title 76, Chapter 6, Part 4 of the Utah Code.

(i) A conservation organization may retain 10% of the revenue generated by the permits for administrative expenses.

(j) Special Antelope Island State Park Conservation Permits will be issued under this section and will not be limited by the requirements of R657-41-3 through R657-41-8.

(k) Upon receipt of the permit revenue from the conservation organization, the division will transfer revenue to the Division of Parks and Recreation, as provided in the cooperative agreement under Subsection (1)(b) between the two divisions.

(4)(a) Except as otherwise provided under Subsections (3)(d) and (3)(e), a person designated by a conservation organization as a recipient of a Special Antelope Island State Park Conservation Permit, may not sell or transfer the rights to that designation to any other person. This does not preclude a person from bidding or otherwise lawfully acquiring a permit from a conservation organization on behalf of another person who will be identified as the original designated recipient.

(b) A person cannot obtain a Special Antelope Island State Park Conservation Permit for a bighorn sheep or mule deer and any other permit for a male animal of the same species in the same year.

(c) The person designated to receive a Special Antelope Island State Park Conservation Permit must possess or obtain a current Utah hunting or combination license before being issued the permit.

R657-41-13. Failure to Comply.

Any conservation organization administratively or criminally found in violation of this rule or the Wildlife Resources Code may be suspended from participation in the conservation permit program and required to surrender all conservation permit vouchers.

KEY: wildlife, wildlife permits, sportsmen, conservation permits

July 9, 2015 **23-14-18**

Notice of Continuation November 1, 2010 23-14-19

R698. Public Safety, Administration.
R698-6. Honoring Heroes Restricted Account.
R698-6-1. Purpose.

The purpose of this rule is to establish procedures by which an organization may apply to the department to receive funds under Section 53-1-118.

R698-6-2. Authority.

This rule is authorized by Section 53-1-118(8) which provides that the commissioner shall make rules regarding the procedures to be used to obtain funds from the account.

R698-6-3. Definitions.

(1) The terms used in this rule are defined in Section 53-1-102.

(2) In addition:

(a) "awarded funds" means the funds appropriated by the department from the account;

(b) "restricted funds" means the funds appropriated to the department from the account;

(c) "the account" means the Public Safety Honoring Heroes Restricted Account; and

(d) "UHP" means the Utah Highway Patrol.

R698-6-4. Application Process.

(1) An organizations that wishes to receive awarded funds must submit an application to the commissioner.

(2) The application must contain the following:

(a) verification that the organization is a charitable organization that qualifies for tax exempt status under Internal Revenue Code Section 501(c)(3);

(b) a statement indicating that a primary part of the organization's mission is to support the families of fallen UHP troopers or other department employees;

(c) a detailed description of how the organization intends to spend the awarded funds to support the families of fallen UHP troopers and other department employees; and

(d) documentation of how the organization spent any awarded funds that were previously appropriated to the organization.

(3)(a) All applications must be submitted before July 1 in order to be eligible for awarded funds from the current fiscal year.

(b) If no applications are received by July 1, the award funds shall remain in the account until the next fiscal year.

R698-6-5. Distributions and Prioritization of Awards.

(1) The commissioner shall review any applications that have been submitted and determine which organization will receive awarded funds based upon the following criteria:

(a) which organization's intended use of the awarded funds will have the broadest application or meet the greatest need; and

(b) whether the organization used previously awarded funds in the manner for which they originally sought the funds.

(2) The commissioner shall distribute all restricted funds in the account each year to one or more qualified organizations.

KEY: Honoring Heroes Restricted Account
September 1, 2010 53-1-118(8)
Notice of Continuation July 29, 2015

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-330. Licensing of Private Investigators.
R722-330-1. Purpose.

The purpose of this rule is to establish procedures for the licensing of private investigator agencies, registrants, and apprentices.

R722-330-2. Authority.

This rule is authorized by Subsections 53-9-103(2)(c) and 53-9-103(6).

R722-330-3. Definitions.

(1) Terms used in this rule are defined in Section 53-9-102.

(2) In addition:

(a) "act involving moral turpitude" means conduct which:

(i) is done knowingly contrary to justice, honesty, or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another's property;

(b) "FBI" means the Federal Bureau of Investigation;

(c) "felony" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States for which the penalty is a term of imprisonment in excess of one year;

(d) "legal resident of this state" means a person who has established a domicile in Utah, as that term is defined in Section 41-1a-202;

(e) "license" means a license for a private investigator agency, registrant, or apprentice;

(f) "revocation" means the permanent deprivation of a private investigator license, however revocation of a private investigator license does not preclude an individual from applying for a new private investigator license if the reason for revocation no longer exists; and

(g) "suspension" means the temporary deprivation, for a specified period of time, of a private investigator license.

R722-330-4. Application for Licensure.

(1)(a) An applicant seeking to obtain a license shall submit a completed application packet to the bureau.

(b) The application packet shall include:

(i) a written application form provided by the bureau with the applicant's residential or physical address and mailing or business address;

(ii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the applicant submitted a photo which meets these requirements to the bureau within the previous three years;

(iii) a photocopy of a driver license or identification card issued by the state of Utah;

(iv) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints; and

(v) the non-refundable license and registration fee in the amount indicated in Section 53-9-111 plus the FBI fingerprint processing fee, in the form of cash, check, money order, or credit card.

(2) If an applicant is applying for an agency license, the applicant shall also provide:

(a) the name under which the applicant intends to do business;

(b) a completed Verification of Investigative Experience Form which documents that the applicant has performed 10,000 hours of investigative experience as provided in Subsection 53-9-108(3);

(c) a certificate of liability insurance for the applicant in an amount of not less than $500,000 as described in Subsection 53-9-109(3); and

(d) a certificate of workers' compensation insurance, if applicable.

(3) If the applicant is applying for a registrant license, the applicant shall also provide:

(a) the name of the licensed agency for which the applicant will be an employee or independent contractor;

(b) authorization from a licensed agency indicating that the agency will employ or contract with the applicant;

(c) a completed Verification of Investigative Experience Form which documents that the applicant has performed 2,000 hours of investigative experience as provided in Subsection 53-9-108(3); and

(d) a surety bond for the applicant in an amount of not less than $10,000 as described in Subsection 53-9-110(3).

(4) If the applicant is applying for an apprentice license, the applicant shall also provide:

(a) the name of the licensed agency for which the applicant will be an employee or independent contractor;

(b) authorization from a licensed agency indicating that the agency will employ or contract with the applicant; and

(c) a surety bond for the applicant in an amount of not less than $10,000 as described in Subsection 53-9-110(3).

R722-330-5. Verification of Investigative Experience.

(1)(a) When completing the Verification of Investigative Experience Form for an agency or registrant license, the applicant shall describe, in detail, the number of hours and the type of investigative work which the applicant performed.

(b) The investigative experience shall have been performed within ten years from the date of the application while the applicant was working as a licensed private investigator or an investigator for a governmental entity.

(c)(i) The Verification of Investigative Experience Form shall be certified by the private investigator or governmental employer for whom the applicant performed the investigative work.

(ii) If the applicant is unable to provide certification from a private investigator or governmental employer, the applicant may provide certification from the individual for whom the applicant performed the investigative work.

(2) An applicant seeking to receive credit towards the investigative experience requirement for licensure under Subsection 53-9-108(5), shall provide written documentation of the degree or certification for which the applicant is seeking credit.

R722-330-6. Issuance of License.

(1)(a) Upon receipt of a completed application packet, the bureau shall conduct a thorough background investigation to determine if the applicant meets the requirements for licensure.

(b) Once the background check is complete, the bureau shall submit the completed application packet to the board for review, unless the application is for an apprentice license.

(c)(i) The bureau shall review all applications for apprentice licenses to determine whether the applicants meet the requirements for licensure.

(ii) If the bureau finds that an applicant for an apprentice license meets the requirements for licensure, the bureau shall issue the apprentice license within five days.

(iii) If the bureau finds that an applicant for an apprentice license does not meet the requirements for licensure, the bureau shall submit the application to the board.

(2)(a) The board shall review all application packets submitted by the bureau to determine whether an applicant meets the requirements for licensure.

(b) If the board determines that an applicant meets the requirements for licensure, the board shall direct the bureau to issue the license.

(3) If the background check indicates that an applicant does not meet the qualifications set forth in Subsection 53-9-108(1)(b), the board shall consider any mitigating circumstances submitted by the applicant.

(4)(a) If the board determines that an applicant does not meet the qualifications for licensure the board shall deny the application.

(b) The board shall issue a written denial which states the reasons why the license was denied and indicates that the applicant may request a hearing before the board by filing a written request within 30 calendar days from the date the board's written denial was issued.

(5)(a) If the applicant requests a hearing, the board shall conduct an informal hearing during which the applicant may present evidence and testimony in response to evidence and testimony presented by the bureau.

(b) The board shall issue a written decision, within ten business days of the hearing, which states the reason for the decision and indicates that the decision may be reviewed by the commissioner if the applicant files a written request for review with the commissioner within 30 calendar days.

(6)(a) If the applicant requests review of the board's decision, the commissioner or his designee shall review the materials in the bureau's file, any materials submitted by the applicant, and the findings of the board.

(b) The commissioner shall issue a written decision, within 30 calendar days from the date of the request for review, which states the reasons for the decision and indicates that the applicant may appeal to the district court by complying with the requirements found in Section 63G-4-402.

R722-330-7. Renewal of a License.

(1)(a) The bureau shall mail a renewal notice to a licensee at the last provided address, approximately 90 days prior to the expiration of the licensee's license.

(2)(a) A licensee seeking to renew a license shall submit a completed renewal packet to the bureau.

(b) The renewal packet shall include:

(i) a written renewal form provided by the bureau with the licensee's residential or physical address and mailing or business address;

(ii) one recent color photograph of passport quality which contains the licensee's name written on the back of the photograph, unless the licensee submitted a photo which meets these requirements to the bureau within the previous three years;

(iii) a photocopy of a driver license or identification card issued by the state of Utah; and

(iv) a non-refundable processing fee in the form of cash, check, money order, or credit card in the amount required by Section 53-9-111.

(3) If the licensee has an agency license, the licensee must also provide evidence that the licensee has a valid certificate of:

(a) liability insurance for the licensee in an amount of not less than $500,000 as described in Subsection 53-9-109(3); and

(b) workers' compensation insurance, if applicable.

(4) If the licensee has a registrant or an apprentice license, the licensee must provide evidence that the licensee has a valid surety bond for the licensee in an amount of not less than $10,000 as described in Subsection 53-9-110(3).

(5) A licensee whose license has been expired for more than 90 days, shall reapply and meet all requirements found in R722-330-4.

(6) If the licensee meets the qualifications for renewal the bureau shall renew the license.

(7)(a) If the bureau determines that the licensee does not meet the qualifications for renewal the bureau shall deny the renewal.

(b) The bureau's written denial shall state the reasons why the renewal was denied and indicate that the licensee may request a hearing before the board by filing a written request within 30 calendar days from the date the bureau's written denial was issued.

(8)(a) If the licensee requests review by the board, the board shall conduct an informal hearing during which the licensee may present evidence and testimony in response to evidence and testimony presented by the bureau.

(b) The board shall issue a written decision, within ten business days of the hearing, which states the reason for the decision, and indicates that the decision may be reviewed by the commissioner if the licensee files a written request for review with the commissioner within 30 calendar days.

(9)(a) If the licensee requests review of the board's decision, the commissioner or his designee shall review the materials in the bureau's file, any materials submitted by the licensee, and the findings of the board.

(b) The commissioner shall issue a written decision, within 30 calendar days from the date of the request for review, which states the reasons for the decision and indicates that the licensee may appeal to the district court by complying with the requirements found in Section 63G-4-402.

R722-330-8. Suspension and Revocation of a License.

(1) The bureau shall conduct an investigation, as provided in Section 53-9-117, if the bureau is made aware of an allegation that a licensee has engaged in conduct in violation of Section 53-9-118.

(2) The bureau shall notify a licensee who is the subject of an investigation of the date and time of the board meeting where the board will consider the bureau's investigative findings.

(3) The board shall conduct an informal hearing during which the licensee may present evidence and testimony in response to the bureau's investigative findings and recommendations.

(4) The board shall issue a written decision, within ten business days after the hearing, which states the reasons for the board's decision, and indicates that the licensee may appeal to the commissioner by filing a written request within 15 calendar days from the date that the board's written decision was issued.

(5)(a) If the licensee requests review of the board's decision, the commissioner or his designee shall review the materials in the bureau's file, any materials submitted by the licensee, and the findings of the board.

(b) The commissioner shall issue a written decision, within 30 calendar days from the date of the request for review, which states the reasons for the decision and indicates that the licensee may appeal to the district court by complying with the requirements found in Section 63G-4-402.

R722-330-9. Records Access.

(1)(a) Information gathered by the division in the course of investigating an application or complaint shall be considered "protected" information in accordance with Subsection 63G-2-305(10).

(b) If such information is used as the basis for the denial, suspension, or revocation of a license, the applicant or licensee shall be entitled to access the information.

KEY: private investigators, license
July 22, 2015 53-9-101 through 53-9-119
Notice of Continuation January 7, 2015

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-380. Firearm Background Check Information.
R722-380-1. Authority.

This rule is authorized by Subsection 76-10-526(11).

R722-380-2. Definitions.

(1) "Bureau" means the Utah Bureau of Criminal Identification within the Department of Public Safety established by Section 53-10-201.

(2) "Firearm dealer" means any firearm dealer who is licensed as defined in Utah Code Ann. Subsection 76-10-501(7).

(3) "NFA firearm" means a National Firearms Act firearm defined in Title 26 Section 5845 of the United States Code.

R722-380-3. Verification of Identification.

(1) For purposes of a criminal history background check as established in Section 76-10-526, the only form of photo identification the bureau shall accept is a driver license or identification card that may be accessed through the issuing state's database and verified as a valid form of identification.

R722-380-4. Inquiring Into Denial of Firearm Purchase.

(1)(a) An individual who has been denied the purchase of a firearm by the bureau may inquire why he or she was denied such a purchase by submitting a completed Request for Denial/Research Information form.

(b) The individual may have such denial information released to a third party by submitting a completed Third Party Release Form with a completed Request for Denial/Research Information form.

(2)(a) Within a reasonable time after receiving the completed request form, the Bureau shall release denial information regarding why the individual has been denied the purchase of a firearm, which shall be mailed, e-mailed, or faxed to the individual at the address, e-mail address, or fax number indicated on the request form.

R722-380-5. Law Enforcement Evidence Release.

(1)(a) A law enforcement agency seeking to obtain background clearance information from the bureau prior to releasing a firearm from custody must submit a completed Law Enforcement Evidence Release Form by mail or fax.

(b) Upon receipt of a completed Law Enforcement Evidence Release Form, the bureau shall conduct a thorough background investigation to determine whether the individual, to whom the firearm will be released, meets the requirements to possess a firearm established under Utah Code Ann. Section 76-10-503 and Title 18 Section 922 of the United State Code.

(c) Upon completion of the background investigation, the bureau shall notify the law enforcement agency by fax or telephone, at the number indicated on the release form, whether the individual, to whom the firearm will be released, may possess a firearm.

R722-380-6. Procedures on Background Checks for NFA Firearms.

(1)(a) An applicant seeking to transfer or register an NFA firearm according to Title 26 Chapter 53 of the United States Code must complete the Bureau of Alcohol, Tobacco, Firearms, and Explosives Application for Tax Paid Transfer and Registration of Firearm form and submit to a background check by the bureau as provided in Utah Code Ann. Section 76-10-526.

(b) Upon receipt of a request from a firearm dealer to perform the background check, the bureau shall conduct a thorough background investigation as provided in Utah Code Ann. Section 76-10-526.

(c) Once the background check is complete, the Bureau shall provide a transaction number to the firearm dealer.

(2)(a) After the transaction number has been provided by the bureau, the applicant must submit the Application for Tax Paid Transfer and Registration of Firearm to the Chief Law Enforcement Officer within 20 days in order to verify that a background check has been completed by the bureau.

(b) If the Application for Tax Paid Transfer and Registration of Firearm is not submitted to the Chief Law Enforcement Officer within 20 days after the transaction number has been provided, the individual must re-submit to a background check as provided in Section 76-10-503 to obtain a new transaction number from the bureau.

KEY: firearm purchases, firearm releases, firearm denials, firearm background check information

July 22, 2015	**53-10-201**
	76-10-526
	76-10-526
	76-10-503
	76-10-501

R746. Public Service Commission, Administration.
R746-360. Universal Public Telecommunications Service Support Fund.
R746-360-1. General Provisions.

A. Authorization -- Section 54-8b-15 authorizes the Commission to establish an expendable trust fund, known as the Universal Public Telecommunications Service Support Fund, the "universal service fund," "USF" or the "fund," to promote equitable cost recovery and universal service by ensuring that customers have access to basic telecommunications service at just, reasonable and affordable rates, consistent with the Telecommunications Act of 1996.

B. Purpose -- The purposes of these rules are:

1. to govern the methods, practices and procedures by which:

a. the USF is created, maintained, and funded by end-user surcharges applied to retail rates;

b. funds are collected for and disbursed from the USF to qualifying telecommunications corporations so that they are able to recover the reasonable and prudent costs of providing basic telecommunications service while charging just, reasonable and affordable rates; and,

2. to ensure funds collected and disbursed from the USF are used efficiently and in the public interest.

C. Application of the Rules -- The rules apply to all retail providers that provide intrastate public telecommunications services.

R746-360-2. Definitions.

A. Affordable Base Rate (ABR) -- means the monthly per line retail rates, charges or fees for basic telecommunications service which the Commission determines to be just, reasonable, and affordable for a designated support area. The Affordable Base Rate shall be established by the Commission. The Affordable Base Rate does not include the applicable USF retail surcharge, municipal franchise fees, taxes, and other incidental surcharges.

B. Average Revenue Per Line -- means the average revenue for each access line computed by dividing the sum of all revenue derived from a telecommunications corporation's provision of public telecommunications services, including, but not limited to, revenues received from the provision of services in both the interstate and intrastate jurisdictions, whether designated "retail," "wholesale," or some other categorization, all revenues derived from providing network elements, services, functionalities, etc. required under the Federal Telecommunications Act of 1996, Pub. L. 104-104,110 Stat.56 or the Utah Telecommunications Reform Act, Laws of Utah 1995, Chapter 269, all support funds received from the Federal Universal Service Support Fund, and each and every other revenue source or support or funding mechanism used to assist in recovering the costs of providing public telecommunications services in a designated support area by that telecommunications corporation's number of access lines in the designated support area.

C. Basic Telecommunications Service -- means a local exchange service consisting of access to the public switched network; touch-tone, or its functional equivalent; local flat-rated, unlimited usage, exclusive of extended area service; single-party service with telephone number listed free in directories that are received free; access to operator services; access to directory assistance, lifeline and telephone relay assistance; access to 911 and E911 emergency services; access to long-distance carriers; access to toll limitation services; and other services as may be determined by the Commission.

D. Designated Support Area -- means the geographic area used to determine USF support distributions. A designated support area, or "support area," need not be the same as a USF proxy model's geographic unit. The Commission will determine the appropriate designated support areas for determining USF support requirements. Unless otherwise specified by the Commission, the designated support area for a rate-of-return regulated Incumbent telephone corporation shall be its entire certificated service territory located in the State of Utah.

E. Facilities-Based Provider -- means a telecommunications corporation that uses its own facilities, a combination of its own facilities and essential facilities or unbundled network elements obtained from another telecommunications corporation, or a telecommunications corporation which solely uses essential facilities or unbundled network elements obtained from another telecommunications corporation to provide public telecommunications services.

F. Geographic Unit -- means the geographic area used by a USF proxy cost model for calculating costs of public telecommunications services. The Commission will determine the appropriate geographic area to be used in determining public telecommunications service costs.

G. Net Fund Distributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues collected by that company, when the former amount is greater than the latter amount.

H. Net Fund Contributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues generated by that company, when the latter amount is greater than the former amount.

I. USF Proxy Model Costs -- means the total, jurisdictionally unseparated, cost estimate for public telecommunications services, in a geographic unit, based on the forward-looking, economic cost proxy model(s) chosen by the Commission. The level of geographic cost disaggregation to be used for purposes of assessing the need for and the level of USF support within a geographic unit will be determined by the Commission. These models shall be provided by the Commission by January 2, 2001.

J. Universal Service Fund (USF or fund) -- means the Universal Public Telecommunications Service Support Fund established by 54-8b-15 and set forth by this rule.

R746-360-3. Duties of Administrator.

A. Selection of Administrator -- The Division of Public Utilities will be the fund administrator. If the Division is unable to fulfill that responsibility, the administrator, who must be a neutral third party, unaffiliated with any fund participant, shall be selected by the Commission.

B. Cost of Administration -- The cost of administration shall be borne by the fund; unless administered by a state agency.

C. Access to Books -- Upon reasonable notice, the administrator shall have access to the books of account of all telecommunications corporations and retail providers, which shall be used to verify the intrastate retail revenue assessed in an end-user surcharge, to confirm the level of eligibility for USF support and to ensure compliance with this rule.

D. Maintenance of Records -- The administrator shall maintain the records necessary for the operation of the USF and this rule.

E. Report Forms -- The administrator shall develop report forms to be used by telecommunications corporations and retail providers to effectuate the provisions of this rule and the USF. An officer of the telecommunications corporation or retail provider shall attest to and sign the reports to the administrator.

F. Administrator Reports -- The administrator shall file reports with the Commission containing information on the average revenue per line calculations, projections of future USF needs, analyses of the end-user surcharges and Affordable Base Rates, and recommendations for calculating them for the

following 12-month period. The report shall include recommendations for changes in determining basic telecommunications service, designated support areas, geographic units, USF proxy cost models and ways to improve fund collections and distributions.

G. Periodic Review -- The administrator, under the direction of the Commission, shall perform a periodic review of fund recipients to verify eligibility for future support and to verify compliance with all applicable state and federal laws and regulations.

H. Proprietary Information -- Information received by the administrator which has been determined by the Commission to be proprietary shall be treated in conformance with Commission practices.

I. Information Requested -- Information requested by the administrator which is required to assure a complete review shall be provided within 45 days of the request. Failure to provide information within the allotted time period may be a basis for withdrawal of future support from the USF or other lawful penalties to be applied.

R746-360-4. Application of Fund Surcharges to Customer Billings.

A. Commencement of Surcharge Assessments -- Commencing June 1, 1998, end-user surcharges shall be the source of revenues to support the fund. Surcharges will be applied to intrastate retail rates, and shall not apply to wholesale services.

B. Surcharge Based on a Uniform Percentage of Retail Rates -- The retail surcharge shall be a uniform percentage rate, determined and reviewed annually by the Commission and billed and collected by all retail providers.

C. Surcharge -- The surcharge to be assessed shall equal 1 percent of billed intrastate retail rates.

R746-360-5. Fund Remittances and Disbursements.

A. Remitting Surcharge Revenues --

1. Telecommunications corporations, not eligible for USF support funds, providing telecommunications services subject to USF surcharges shall collect and remit surcharge revenues to the Commission as follows:

a. if the average monthly USF surcharge collections over the prior six months was ten dollars or greater, within 45 days after the end of each month,

b. if the average monthly USF surcharge collections over the prior six months was less than ten dollars, the telecommunications corporation may accrue the USF surcharge collections and submit the accrued collections on a semiannual basis.

2. Telecommunications corporations eligible for USF support funds shall make remittances as follows:

a. Prior to the end of each month, the fund administrator shall inform each qualifying telecommunications corporation of the estimated amount of support that it will be eligible to receive from the USF for that month.

b. Net fund contributions shall be remitted to the Commission within 45 calendar days after the end of each month. If the net amount owed is not received by that date, remedies, including withholding future support from the USF, may apply.

3. The Commission will forward remitted revenues to the Utah State Treasurer's Office for deposit in a USF account.

B. Distribution of Funds -- Net Fund distributions to qualifying telecommunications corporations for a given month shall be made 60 days after the end of that month, unless withheld for failure to maintain qualification or failure to comply with Commission orders or rules.

R746-360-6. Eligibility for Fund Distributions.

A. Qualification --

1. To qualify to receive USF support funds, a telecommunications corporation shall be designated an "eligible telecommunications carrier," pursuant to 47 U.S.C. Section 214(e), and shall be in compliance with Commission orders and rules. Each telecommunications corporation receiving support shall use that support only to provide basic telecommunications service and any other services or purposes approved by the Commission.

2. Additional qualification criteria for Incumbent telephone corporations - In addition to the qualification criteria of R746-360-6A.1.,

a. Non-rate-of-return Incumbent telephone corporations, except Incumbent telephone corporations subject to pricing flexibility pursuant to 54-8b-2.3 shall make Commission approved, aggregate rate reductions for public telecommunications services, provided in the State of Utah, equal to each incremental increase in USF distribution amounts received after December 1, 1999.

b. Rate-of-return Incumbent telephone corporations shall complete a Commission review of their revenue requirement and public telecommunications services' rate structure prior to any change in their USF distribution which differs from a prior USF distribution, beginning with the USF distribution for December, 1999.

B. Rate Ceiling -- To be eligible, a telecommunications corporation may not charge retail rates in excess of the Commission determined Affordable Base Rates for basic telecommunications service or vary from the terms and conditions determined by the Commission for other telecommunications services for which it receives Universal Service Fund support.

C. Lifeline Requirement -- A telecommunications corporation may qualify to receive distributions from the fund only if it offers Lifeline service on terms and conditions prescribed by the Commission.

D. Exclusion of Resale Providers -- Only facilities-based providers, will be eligible to receive support from the fund. Where service is provided through one telecommunications corporation's resale of another telecommunications corporation's service, support may be received by the latter only.

R746-360-7. Calculation of Fund Distributions in Non-rate-of-Return Regulated Incumbent Telephone Corporation Territories.

A. Use of Proxy Cost Models -- The USF proxy cost model(s) selected by the Commission and average revenue per line will be used to determine fund distributions within designated support areas.

B. Use of USF Funds --Telecommunications corporations shall use USF funds to support each primary residential line in active service which it furnishes in each designated area.

C. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between USF proxy model cost estimates of costs to provide residential Basic Telecommunications Service in the designated support area and the product of the Incumbent telephone corporation's Average Revenue per line, for the designated support area, times the number of Incumbent telephone corporation's active residential access lines in the designated support area.

2. Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the Incumbent telephone corporation's average residential access line support amount for the respective designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active residential access lines in the designated support area, times the eligible telecommunications

corporation's number of active residential access lines.

D. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

E. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-8. Calculation of Fund Distributions in Rate-of-Return Incumbent Telephone Corporation Territories.

(A) Determination of Support Amounts --

(1) Incumbent telephone corporation - Monies from the fund will equal the numerical difference between the Incumbent telephone corporation's total embedded costs of providing public telecommunications services, for a designated support area, less the product of the Incumbent telephone corporation's Average Revenue Per Line, for the designated support area, times the Incumbent telephone corporation's active access lines in the designated support area. To the extent the Commission finds that inclusion of any cost will result in an inefficient use of USF funds or in a use of USF funds that is inconsistent with the public interest, such cost will be excluded from total embedded costs. Total embedded costs shall include a weighted average rate of return on capital of the intrastate and interstate jurisdictions. For example, in the case of an Incumbent telephone corporation whose costs are allocated fifty percent to each jurisdiction and whose interstate return is 11.25 percent and whose intrastate return authorized by the Commission is 9 percent, the weighted average return on capital would be 10.125 percent.

(a) In order to determine the interstate return on capital to calculate the weighted average rate of return on capital for Incumbent telephone corporations, the Commission shall:

(i) use the prior year return reported by the National Exchange Carriers Association (NECA) to the Federal Communications Commission (FCC) on FCC Form 492 for Incumbent telephone corporations that do separations between intrastate and interstate jurisdictions under 47 CFR Part 36. In the event that the Incumbent local telephone corporation uses a future test period as provided in Utah Code Ann. Subsection 54-4-4(3)(b)(i), the interstate return for these Incumbent telephone corporations shall be the average of the actual return for the prior three years as reported on FCC Form 492.

(ii) use NECA's most recent interstate allocation computation filed at the FCC under 47 CFR Part 69.606 and the actual interstate return on capital reported by NECA as described in R746-360-8 A.1.a.i. for average schedule Incumbent telephone corporations.

(iii) use the actual interstate return of an Incumbent telephone corporation's relevant tariff group reported to the FCC in its most recent FCC Form 492A for Incumbent telephone corporations that are regulated on a price-cap basis in the interstate jurisdiction.

(2) Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the respective Incumbent telephone corporation's average access line support amount for the designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active access lines in the designated support area, times the eligible telecommunications corporation's number of active access lines in the designated support area.

(B) Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission-approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

(C) Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-9. One-Time Distributions From the Fund.

A. Applications for One-Time Distributions -- Telecommunications corporations, whether they are or are not receiving USF funds under R746-360-7 or R746-360-8, potential customers not presently receiving service because facilities are not available, or customers receiving inadequate service may apply to the Commission for one-time distributions from the fund for extension of service to a customer, or customers, not presently served or for amelioration of inadequate service.

1. These distributions are to be made only in extraordinary circumstances, when traditional methods of funding and service provision are infeasible.

2. One-time distributions will not be made for:

a. New subdivision developments;

b. Property improvements, such as cable placement, when associated with curb and gutter installations; or

c. Seasonal developments that are exclusively vacation homes.

i. Vacation home is defined as: A secondary residence which is primarily used for recreation and is unoccupied for a period of four consecutive weeks per year.

3. An application for a one-time distribution may be filed with the Commission by an individual or group of consumers desiring telephone service or improved service, a telecommunications corporation on behalf of those consumers, the Division of Public Utilities, or any entity permitted by law to request agency action. An application shall identify the service(s) sought, the area to be served and the individuals or entities that will be served if the one-time distribution is approved.

4. Following the application's filing, affected telecommunications corporations shall provide engineering, facilities, costs, and any other pertinent information that will assist in the Commission's consideration of the application.

5. In considering the one-time distribution application, the Commission will examine relevant facts including the type and grade of service to be provided, the cost of providing the service, the demonstrated need for the service, whether the customer is within the service territory of a telecommunications corporation, whether the proposed service is for a primary residence, the provisions for service or line extension currently available, and other relevant factors to determine whether the one-time distribution is in the public interest.

B. Presumed Reasonable Amounts and Terms -- Unless otherwise ordered by the Commission, the maximum one-time distribution will be no more than $10,000 per customer for customers of rate-of-return regulated companies. For customers of non-rate of return companies, the maximum one-time distribution shall be calculated so that the required customer payments would equal the payments required from a customer of a rate-of-return regulated company. The Commission will presume a company's service or line extension terms and conditions reasonable, for a subscriber in connection with one-time universal service fund distribution requests, if the costs of service extension, for each extension, are recovered as follows:

1. For rate-of-return regulated Local Exchange Carriers who request USF One-Time Distribution support for facility

placement: The first $2,500 of cost coverage per account is provided by the company; and for cost amounts exceeding $2,500 per account up to two times the statewide average loop investment per account for rate-of-return regulated telecommunication companies, as determined annually by the Division of Public Utilities, the company will pay 50 percent of the costs of the project.

2. For non-rate-of-return Local Exchange Carriers who request USF One-Time Distribution support for facility placement the first $2,500 of cost coverage per account is provided by the company; and all other costs are shared between the customer and the fund as provided herein.

3. For projects that exceed $2,500 per account, but are equal to or less than $10,000 per account, the customer shall pay 25 percent of the costs that exceed $2,500. For projects that exceed $10,000 per account, but are equal to or less than $20,000 per account, the customer shall pay 50 percent of the costs that are greater than $10,000 plus the previously calculated amount. For projects exceeding $20,000 per account the customer shall pay 75 percent of the cost above $20,000 until the State Universal Service Support Fund has paid the maximum amount as provided herein, any project costs above that level will be paid for 100 percent by the customer.

4. The State Universal Service Support Fund shall pay the difference between the sum of the defined company contributions plus customer contribution amounts and the total project cost up to the maximum amount provided herein. To the extent the Commission finds that inclusion of any cost will result in an inefficient use of USF funds or in a use of USF funds that is inconsistent with the public interest, such cost will be excluded from the total project cost.

5. Other terms and conditions for service extension shall be reviewed by the Commission in its consideration of an application and may be altered by the Commission in order to approve the use of universal service funds through the requested one-time distribution.

C. Combination of One-Time Distribution Funds with Additional Customer Funds and Future Customer Payment Recovery --

1. At least 51 percent of the potential customers must be full-time residents in the geographic area being petitioned for and must be willing to pay the initial up-front contribution to the project as calculated by the Commission or its agent.

2. Qualified customers in the area shall be notified by the telecommunications corporation of the nature and extent of the proposed service extension including the necessary customer contribution amounts to participate in the project. Customer contribution payments shall be made prior to the start of construction. In addition to qualified customers, the Local Exchange Company needs to make a good faith effort to contact all known property owners within the geographic boundaries of the proposed project and invite them to participate on the same terms as the qualified customers. Local Exchange Companies may ask potential customers to help in the process of contacting other potential customers.

3. New developments and empty lots will not be considered in the cost analysis for USF construction projects unless the property owner is willing to pay the per account costs for each lot as specified in this rule.

4. Potential customers who are notified and initially decline participation in the line extension project, but subsequently decide to participate, prior to completion of the project, may participate in the project if they make a customer contribution payment, prior to completion of the project, of 105 percent of the original customer contribution amount.

5. For a period of five years following completion of a project, new customers who seek telecommunications service in the project area, shall pay a customer contribution payment equal to 110 percent of the amount paid by the original customers in the project.

6. The telecommunications corporation shall ensure that all customer contribution payments required by R746-360-9(C)(3), (4), and (5) are collected. Funds received through these payments shall be sent to the universal service fund administrator. The company is responsible for tracking and notification to the Commission when the USF has been fully compensated. All monies will be collected and reported by the end of each calendar year, December 31st.

7. For each customer added during the five-year period following project completion, the telecommunications corporation and new customers shall bear the costs to extend service pursuant to the company's service or line extension terms and conditions, up to the telecommunications corporation's original contribution per customer for the project and the customer contributions required by this rule. The company may petition the Commission for a determination of the recovery from the universal service fund and the new customer for costs which exceed this amount.

D. Impact of Distribution on Rate of Return Companies -- A one-time distribution from the fund shall be recorded on the books of a rate base, rate of return regulated LEC as an aid to construction and treated as an offset to rate base.

E. Notice and Hearing -- Following notice that a one-time distribution application has been filed, any interested person may request a hearing or seek to intervene to protect his interests.

F. Bidding for Unserved Areas -- If only one telecommunications corporation is involved in the one-time distribution request, the distribution will be provided based on the reasonable and prudent actual or estimated costs of that company. If additional telecommunications corporations are involved, the distribution will be determined on the basis of a competitive bid. The estimated amount of the one-time distribution will be considered in evaluating each bid. Fund distributions in that area will be based on the winning bid.

R746-360-10. Altering the USF Charges and the End-User Surcharge Rates.

The uniform surcharge shall be adjusted periodically to minimize the difference between amounts received by the fund and amounts disbursed.

R746-360-11. Support for Schools, Libraries, and Health Care Facilities. Calculation of Fund Distributions.

The Universal Service Fund rules for schools, libraries and health care providers, as prescribed by the Federal Communications Commission in Docket 96-45, 97-157 Sections X and XI, paragraphs 424 - 749, of Order issued May 8, 1996, and CFR Sections 54.500 through 54.623 inclusive, incorporated by this reference, is the prescribed USF method that shall be employed in Utah. Funding shall be limited to funds made available through the federal universal service fund program.

KEY: public utilities, telecommunications, universal service fund

July 8, 2015	**54-3-1**
Notice of Continuation November 13, 2013	**54-4-1**
	54-7-25
	54-7-26
	54-8b-12
	54-8b-15

R916. Transportation, Operations, Construction.
R916-4. Construction Manager/General Contractor Contracts.
R916-4-1. Purpose.

(1) Pursuant to Utah Code Section 63G-6a-106(3)(a), this rule establishes the Department's procedures to procure transportation construction under the Construction Manager/General Contractor (CM/GC) approach authorized in Utah Code Section 63G-6a-1302. CM/GC contracting seeks to provide a collaborative project delivery method which may result in: A savings of time and cost; improved quality expectations as to the end product, schedule, and budget; and risk management savings through lack of duplication of expenses, and through early, continuous and coordinated efforts.

R916-4-2. Authority.

(1) This rule is authorized by grants of rulemaking authority in Sections 63G-6a-106(3)(a) and 63G-6a-1302 of the Utah Procurement Code; Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and Sections 72-1-201(h), 72-2-206, and 72-6-105 of the Utah Transportation Code.

R916-4-3. Policy.

(1) When the Executive Director or designee determines it appropriate, Department may use CM/GC method of project delivery. CM/GC is not recommended for every project, therefore, the decision to use the method must take into account the factors listed in Utah Code Subsection 63G-6a-1302(3).

R916-4-4. Request for Proposals (RFP).

(1) The Department will issue a request for proposals (RFP) from interested contractors.

(2) The RFP may require separate technical and price proposals, meeting requirements as stated in the RFP.

(3) The RFP may require a minimum mandatory technical level.

R916-4-5. Evaluation Team.

(1) The Department shall establish a team for evaluating the technical proposals consisting of no fewer than 5 members.

(2) One member of the team may be an employee of a consulting engineering firm, selected based on recommendation from the American Council of Engineering Companies of Utah (ACEC); and

(3) One member may be an employee of a licensed contractor, selected based on recommendation from the Utah Chapter of the Association of General Contractors (AGC).

R916-4-6. Evaluation of Proposals and Discussions with Proposers.

(1) The Department shall evaluate proposals, in accordance with the evaluation criteria set forth in the RFP.

(2) As part of the qualifications specified in the RFP, the Department may require that potential contractors, at a minimum, demonstrate their:

(a) Construction experience with similar projects;

(b) financial, manpower and equipment resources available for the project;

(c) experience with other negotiated contracts; and

(d) preconstruction or design support experience.

(3) The Department may require potential contractors to participate in formal interviews as part of the selection process.

R916-4-7. Acceptable Bid Security; Performance and Payment Bonds.

(1) The Executive Director or designee shall have the authority to waive the requirement to provide bid security, or may reduce the amount of such security, if he or she determines that the bid security otherwise required by Part 11 of the Utah Procurement Code to be unnecessary to protect the State.

(2) The Executive Director or designee may reduce the amount of the payment and performance bonds below the 100% level required by Part 11 of the Utah Procurement Code, if he or she determines that a 100% bond is unnecessary to protect the State.

(3) Bid security, payment bonds and performance bonds must be provided on the forms included in the RFP.

R916-4-8. Required Contract Clauses.

The CM/GC contract documents shall include the contract clauses set forth in Utah Administrative Code Rule R23-1-60, subject to such modifications as the Executive Director or designee believes appropriate. Any modifications shall be supported by a written determination of the Executive Director or designee that describes the circumstances justifying the variations, and notice of any material variation shall be included in the RFP.

R916-4-9. Selection.

The basis for selection shall be stated in the RFP. Selection may be based on any of the following approaches.

(1) By the responsible proposer offering the lowest priced responsive proposal. If the RFP includes a mandatory technical level, no proposal shall be considered responsive unless it meets that level;

(2) By the responsible proposer whose proposal is evaluated as providing the best value to Department;

(3) By the responsible proposer whose proposal is evaluated as representing the most qualified proposer; or

(4) Other approaches as determined by the Executive Director or designee, which satisfy the requirements of the Utah Procurement Code.

R916-4-10. Award of Contracts.

(1) The CM/GC approach consists of the following two contract phases:

(a) Preconstruction or design services, which may include value engineering, cost estimating, conceptual estimating, constructability reviews, scheduling, and Maintenance of Traffic plans.

(b) Construction services, which will be awarded after the plans have been sufficiently developed and a price for construction services has been successfully validated and accepted. In the event that a price is not validated and accepted, the Department shall not award the construction phase of the contract. Incremental construction contracts may be awarded after prices are validated and accepted for each contract.

(2) The Department shall not be required to award a contract during either of the contract phases. However, following an award, the Department shall provide notice of the award to the successful CM/GC proposer followed by a notice to proceed with the work.

KEY: transportation, highways, contracts, construction
March 27, 2015 63G-6a-1302
Notice of Continuation July 9, 2015 63G-6a-106(3)(a)
72-1-201

R916. Transportation, Operations, Construction.
R916-6. Drug and Alcohol Testing in State Construction Contracts.
R916-6-1. Purpose.

The purpose of this rule is to comply with the provisions of Utah Code Section 63G-6a-1303.

R916-6-2. Authority.

This rule is required by Subsection 63G-6a-1303(4)(b) and is enacted under the authority of Subsection 72-1-201(1)(h).

R916-6-3. Definitions.

Except as otherwise provided in this rule, the terms used are defined in Subsection 63G-6a-1303(1), and "Department" means the Utah Department of Transportation.

R916-6-4. Requirements and Procedures.

A contractor or subcontractor shall demonstrate compliance with the requirements of Section 63G-6a-1303 by certifying in the contract documents that the contractor or subcontractor has and will maintain a drug and alcohol testing policy that meets all the requirements of Section 63G-6a-1303 during the period of the state construction contract.

R916-6-5. Penalties.

A contractor or subcontractor's failure to comply with the provisions of Section 63G-6a-1303 will be considered a breach of the terms of the contract and the Department may pursue all remedies and impose all penalties allowed by law, including but not limited to suspension and debarment.

R916-6-6. Reasonable Notice and Opportunity to Cure.

The Department shall give reasonable notice and an opportunity to cure a violation of Section 63G-6a-1303 before suspension or debarment of the contractor or subcontractor under R916-6-5.

KEY: contracts, drug and alcohol testing, contractors, subcontractors
June 21, 2010 63G-6-604, 72-1-201
Notice of Continuation June 22, 2015

R926. Transportation, Program Development.
R926-8. Guidelines for Partnering with Local Governments.
R926-8-1. Purpose and Authority.

The purpose of this rule is to increase the State's ability to carry out improvements on State highways by allowing counties and municipalities to provide local matching dollars or participate through other methods, such as providing right-of-way. This rule is required by Section 72-2-123(1) and is enacted under the authority of Title 63G, Chapter 3, Utah Administrative Rulemaking Act and Section 72-1-201.

R926-8-2. Process for Approving or Denying Proposals.

(1) If a county or municipality wishes to participate in a State highway improvement program, it shall notify the department and the Transportation Commission, in writing, at the earliest available opportunity and provide the information listed in Paragraphs (a) through (e). The county or municipality is encouraged to work with the department in formulating and developing the necessary information.

(a) Details of the specific improvement.

(b) A statement indicating whether the improvement has already been programmed into the Statewide Transportation Improvement Program (STIP) or Transportation Improvement Program (TIP) and, if not, whether it is in the Long-Range Plan and the phase of the Long-Range Plan.

(c) A textual description of the improvement, along with any engineering or technical information that may have been prepared.

(d) A statement indicating whether any environmental or other federal clearances or permits will be necessary and, if so, the status of any federal applications.

(e) The type of local participation being proposed and the source of any funding.

(f) A textual description of the benefit that the improvement will bring to the State highway system and the county or municipality along with its costs.

(2) Proposals for participation with local matching dollars will be accepted only if:

(a) environmental clearances are completed or highly probable; and

(b) the improvement is already programmed in the Statewide Transportation Improvement Program (STIP) or the Transportation Improvement Program (TIP); or

(c) the improvement is part of the Long-Range Plan and the Transportation Commission determines that advancing the project will not defer other projects that are already prioritized and programmed in the Statewide Transportation Improvement Program (STIP) or Transportation Improvement Program (TIP).

(3) The Transportation Commission may not consider local matching dollars unless the state provides an equal opportunity to raise local matching dollars for state highway improvements within each county, as required by Subsection 72-1-304(3)(b).

(4) Local matching dollars cannot be funded by federal funds, except with:

(a) Federal transportation (highway) formula funds normally programmed by local entities; or

(b) Federal discretionary funds with prior joint agreement by UDOT and the local entity. Nevertheless, earmarks in transportation authorizing legislation cannot be used for local match.

(5) Private sources or contributions may be considered part of local matching dollars if they pass through the local government.

(6) Upon receiving a partnering proposal, the Transportation Commission will be notified in a forthcoming public meeting. The department shall evaluate the proposal and all accompanying information to see whether it complies with this rule, is complete and feasible. The department shall also calculate an independent cost estimate.

(7) The department shall review the proposal and make a recommendation to the Transportation Commission at a public meeting along with the reasons for recommending denial or approval using the criteria listed in these rules for its review.

(8) At anytime in this process, the department may contact the county or municipality for additional information and may incorporate amendments requested by the county or municipality in its evaluation.

(9) The department shall notify the county or municipality of the date, time, and location of the Transportation Commission meeting that will hear the proposal. The department shall provide the county or municipality with at least 30 days written notice.

R926-8-3. Factors Used to Consider Proposals.

(1) In deciding whether to approve a county's or municipality's request for partnering, the Transportation Commission shall evaluate the proposal with the following factors in mind:

(a) whether the requested improvement is part of the Statewide Transportation Improvement Program (STIP), the Transportation Improvement Program (TIP), or the Long-Range Plan and, if part of the Long-Range Plan, will not delay any of the projects already included in the STIP;

(b) the benefits of the improvement to the State highway system and the county or municipality;

(c) the costs of the improvement;

(d) level of local commitment, based on the amount or percentage of funding proposed;

(e) whether the proposed improvement was subject to a local planning initiative;

(f) whether the improvement will alleviate significant existing or future congestion or hazards to the traveling public or provide other substantial improvements to the transportation system;

(g) whether the proposal has the potential to extend department resources to other needs; and

(h) whether the proposed improvement fulfills a need widely recognized by the public, elected officials, and transportation planners.

(2)(a) If a proposed improvement is to a surface street that approaches an interchange or ramp or for a new interchange or ramp and is being undertaken for economic development, the county or municipality shall provide at least a fifty percent (50%) local match. The match can include private contributions that are administered through the local entity. (Economic development may include such things as employment growth, employment retention, retail sales, tourism growth, freight movements, tax base increase, and traveler or user cost savings as compared to construction costs.)

(b) If a proposed improvement is to a surface street that approaches an interchange or ramp or for a new interchange or ramp and is being undertaken to relieve traffic congestion or to improve safety, the local match, if any, may be determined based on the benefit derived by the local entity.

R926-8-4. Record of Proposal and Interlocal Agreements.

(1) The department shall maintain a record on each partnering proposal. Except for individual records in the file that may be classified private or protected, the contents of the file shall otherwise be public.

(2) If the Transportation Commission agrees to the partnering proposal, the department shall develop an interlocal agreement with the county or municipality that will set forth the proposal, the method of participation, the work that will be done, and projected timelines.

KEY: transportation, local governments, partnering,

highways
June 22, 2006 72-2-123
Notice of Continuation July 7, 2015