R13. Administrative Services, Administration.

R13-2. Access to Records.

R13-2-1. Purpose and Authority.

Under authority of Subsections 63G-2-204(2)(d), and 63A-12-104(2), this rule provides procedures for access and denial of access to government records.

R13-2-2. Definitions.

Terms used in this rule are defined in Section 63G-2-103. Additional terms are defined as follows:

- (1) "Department" means the Department of Administrative Services.
- (2) "Division" means a division of the Department of Administrative Services.
- (3) "Office" means an office of the Department of Administrative Services.

R13-2-3. Records Officer.

Each division director shall comply with Section 63A-12-103 and shall appoint a records officer to perform the following functions:

- (a) the duties set forth in Section 63A-12-103; and
- (b) review and respond to requests for access to division records.

R13-2-4. Requests for Access.

- (1) Except as provided by R13-2-8, a request for access to records shall be directed to the records officer of the office or division which the requester believes generated or possesses the records.
- (2) The offices and divisions of the department are as described in Sections 63A-1-104 and 63A-1-109 and are located at the corresponding address indicated below:
- (a) Administrative Services Executive Director's Office, 3120 State Office Building, Salt Lake City, UT 84114.
- (b) Administrative Rules, 5110 State Office Building, Salt Lake City, UT 84114.
- (c) Archives and Records Service, 346 S. Rio Grande Street, Salt Lake City, UT 84101-1106.
- (d) Child Welfare Parental Defense, 3120 State Office Building, Salt Lake City, UT 84114.
- (e) Debt Collection, Division of Finance, 2110 State Office Building, Salt Lake City, UT 84114.
- (f) Facilities Construction and Management, 4110 State Office Building, Salt Lake City, UT 84114.
- (g) Finance, 2110 State Office Building, Salt Lake City, UT 84114.
- (h) Fleet Operations, 4120 State Office Building, Salt Lake City, UT 84114.
- (i) Purchasing and General Services, 3150 State Office Building, Salt Lake City, UT 84114.
- (j) Risk Management, 5120 State Office Building, Salt Lake City, UT 84114.
- (k) Surplus Property, Division of Purchasing and General Services, 3150 State Office Building, Salt Lake City, UT 84114.

R13-2-5. Appeal of Office or Division Decision.

- (1) Except as provided by R13-2-8, if a requester is dissatisfied with the initial decision rendered by an office or division, the requester may appeal the decision to the department executive director under the procedures of Section 63G-2-401 et seq.
- (2) An individual may contest the accuracy or completeness of a document pertaining to that individual pursuant to Section 63G-2-603. This type of request shall be made to the records officer.

R13-2-6. Fees.

(1) A fee schedule for the actual costs of providing a

record may be obtained from an office or division by contacting the records officer. The fee schedule is also available in the annual appropriations bill.

(2) Fees for providing a record may be waived under certain circumstances described in Subsection 63G-2-203(4). Requests for this waiver of fees may be made to the records officer.

R13-2-7. Forms.

Request forms are available from the records officer of each office or division.

R13-2-8. Access to Records in the Custody of the Division of Archives and Records Service.

- (1) An individual need not submit a formal records request to inspect public records of permanent or historical value stored at the state archives.
- (2) An individual may request access to records that are noncurrent records of permanent or historical value in the custody of the state archives. The individual shall direct that request to the state archives' research center, 346 S Rio Grande, Salt Lake City, UT 84101-1106.
- (3) If the requester is dissatisfied with the initial decision rendered by the research center, or if the state archives' research center denies access to these records, the requester may appeal the decision to the state archivist under the procedures of Section 63G-2-401 et seq.

KEY: freedom of information, public information, confidentiality of information, access to information August 7, 2012 63G-2-204(2)(d) Notice of Continuation October 4, 2011 63A-12-104(2)

R23. Administrative Services, Facilities Construction and Management.

R23-1. Procurement of Construction.

R23-1-1. Purpose and Authority.

- (1) In accordance with Subsection 63G-6-208, this rule establishes procedures for the procurement of construction by the Division.
- (2) The statutory provisions governing the procurement of construction by the Division are contained in Section 63G-6-208 and Title 63A, Chapter 5.

R23-1-2. Definitions.

- (1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63G-6-103.
 - (2) In addition:
- (a) "Acceptable Bid Security" means a bid bond meeting the requirements of Subsection R23-1-40(4).
- (b) "Board" means the State Building Board established pursuant to Section 63A-5-101.
- (c) "Cost Data" means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.
- (d) "Director" means the Director of the Division, including, unless otherwise stated, his duly authorized designee.
- (e) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.
- (f) "Established Market Price" means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources independent of the manufacturer or supplier.
- (g) "Price Data" means factual information concerning prices for supplies, services, or construction substantially identical to those being procured. Prices in this definition refer to offered or proposed selling prices and includes data relevant to both prime and subcontract prices.
- (h) "Procuring Agencies" means, individually or collectively, the state, the Division, the owner and the using agency.
- (i) "Products" means and includes materials, systems and equipment.
- (j) "Proprietary Specification" means a specification which uses a brand name to describe the standard of quality, performance, and other characteristics needed to meet the procuring agencies' requirements or which is written in such a manner that restricts the procurement to one brand.
- (k) "Public Notice" means the notice that is publicized pursuant to this rule to notify contractors of Invitations For Bids and Requests For Proposals.
- (l) "Record" shall have the meaning defined in Section 63G-2-103 of the Government Records Access and Management Act (GRAMA).
- (m) "Specification" means any description of the physical, functional or performance characteristics of a supply or construction item. It may include requirements for inspecting, testing, or preparing a supply or construction item for delivery or use.
 - (n) "State" means the State of Utah.
- (o) "Subcontractor" means any person who has a contract with any person other than the procuring agency to perform any portion of the work on a project.
- (p) "Using Agency" means any state agency or any political subdivision of the state which utilizes any services or construction procured under these rules.
- (q) "Work" means the furnishing of labor or materials, or both.

R23-1-5. Competitive Sealed Bidding.

- (1) Use. Competitive sealed bidding, which includes multi-step sealed bidding, shall be used for the procurement of construction if the design-bid-build method of construction contract management described in Subsection R23-1-45(5)(b) is used unless a determination is made by the Director in accordance with Subsection R23-1-15(1)(c) that the competitive sealed proposals procurement method should be used.
 - (2) Public Notice of Invitations For Bids.
- (a) Public notice of Invitations For Bids shall be publicized electronically on the Internet; and may be publicized in any or all of the following as determined appropriate:
- (i) In a newspaper having general circulation in the area in which the project is located;
 - (ii) In appropriate trade publications;
 - (iii) In a newspaper having general circulation in the state;
 - (iv) By any other method determined appropriate.
- (b) A copy of the public notice shall be available for public inspection at the principal office of the Division in Salt Lake City, Utah.
- (3) Content of the Public Notice. The public notice of Invitation For Bids shall include the following:
 - (a) The closing time and date for the submission of bids;
 - (b) The location to which bids are to be delivered;
 - (c) Directions for obtaining the bidding documents;
 - (d) A brief description of the project;
 - (e) Notice of any mandatory pre-bid meetings.
- (4) Bidding Time. Bidding time is the period of time between the date of the first publication of the public notice and the final date and time set for the receipt of bids by the Division. Bidding time shall be set to provide bidders with reasonable time to prepare their bids and shall be not less than ten calendar days, unless a shorter time is deemed necessary for a particular project as determined in writing by the Director.
- (5) Bidding Documents. The bidding documents for an Invitation For Bids:
- (a) shall include a bid form having a space in which the bid prices shall be inserted and which the bidder shall sign and submit along with all other required documents and materials;
 - (b) may include qualification requirements as appropriate.
 - (6) Addenda to the Bidding Documents.
- (a) Addenda shall be distributed or otherwise made available to all entities known to have obtained the bidding documents.
- (b) Addenda shall be distributed or otherwise made available within a reasonable time to allow all prospective bidders to consider them in preparing bids. If the time set for the final receipt of bids will not permit appropriate consideration, the bidding time shall be extended to allow proper consideration of the addenda.
 - (7) Pre-Opening Modification or Withdrawal of Bids.
- (a) Bids may be modified or withdrawn by the bidder by written notice delivered to the location designated in the public notice where bids are to be delivered prior to the time set for the opening of bids.
- (b) Bid security, if any, shall be returned to the bidder when withdrawal of the bid is permitted.
- (c) All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate project file.
- (8) Late Bids, Late Withdrawals, and Late Modifications. Any bid, withdrawal of bid, or modification of bid received after the time and date set for the submission of bids at the location designated in the notice shall be deemed to be late and shall not be considered, unless it is the only bid received in which case it may be considered.
 - (9) Receipt, Opening, and Recording of Bids.
- (a) Upon receipt, all bids and modifications shall be stored in a secure place until the time for bid opening.

- (b) Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the notice. The names of the bidders, the bid price, and other information deemed appropriate by the Director shall be read aloud or otherwise made available to the public. After the bid opening, the bids shall be tabulated or a bid abstract made. The opened bids shall be available for public inspection.
 - (10) Mistakes in Bids.
- (a) If a mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible but only at the discretion of the Director and only to the extent it is not contrary to the interest of the procuring agencies or the fair treatment of other bidders.
- (b) When it appears from a review of the bid that a mistake may have been made, the Director may request the bidder to confirm the bid in writing. Situations in which confirmation may be requested include obvious, apparent errors on the face of the bid or a bid substantially lower than the other bids submitted.
- (c) This subsection sets forth procedures to be applied in three situations described below in which mistakes in bids are discovered after opening but before award.
- (i) Minor formalities are matters which, in the discretion of the Director, are of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders and with respect to which, in the Director's discretion, the effect on price, quantity, quality, delivery, or contractual conditions is not or will not be significant. The Director, in his sole discretion, may waive minor formalities or allow the bidder to correct them depending on which is in the best interest of the procuring agencies. Examples include the failure of a bidder to:
- (A) Sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound;
- (B) Acknowledge receipt of any addenda to the Invitation For Bids, but only if it is clear from the bid that the bidder received the addenda and intended to be bound by its terms; the addenda involved had a negligible effect on price, quantity, quality, or delivery; or the bidder acknowledged receipt of the addenda at the bid opening.
- (ii) If the Director determines that the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.
- (iii) A bidder may be permitted to withdraw a low bid if the Director determines a mistake is clearly evident on the face of the bid document but the intended amount of the bid is not similarly evident, or the bidder submits to the Division proof which, in the Director's judgment, demonstrates that a mistake was made.
- (d) No bidder shall be allowed to correct a mistake or withdraw a bid because of a mistake discovered after award of the contract; provided, that mistakes of the types described in this Subsection (10) may be corrected or the award of the contract canceled if the Director determines that correction or cancellation will not prejudice the interests of the procuring agencies or fair competition.
- (e) The Director shall approve or deny in writing all requests to correct or withdraw a bid.
- (11) Bid Evaluation and Award. Except as provided in the following sentence, the contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the bidding documents and

- no bid shall be evaluated for any requirements or criteria that are not disclosed in the bidding documents. A reciprocal preference shall be granted to a resident contractor if the provisions of Section 63G-6-405 are met.
- (12) Cancellation of Invitations For Bids; Rejection Of Bids in Whole or In Part.
- (a) Although issuance of an Invitation For Bids does not compel award of a contract, the Division may cancel an Invitation For Bids or reject bids received in whole or in part only when the Director determines that it is in the best interests of the procuring agencies to do so.
- (b) The reasons for cancellation or rejection shall be made a part of the project file and available for public inspection.
- (c) Any determination of nonresponsibility of a bidder shall be made by the Director in writing and shall be based upon the criteria that the Director shall establish as relevant to this determination with respect to the particular project. An unreasonable failure of the bidder or to promptly supply information regarding responsibility may be grounds for a determination of nonresponsibility. Any bidder or determined to be nonresponsible shall be provided with a copy of the written determination within a reasonable time. The Board finds that it would impair governmental procurement proceedings by creating a disincentive for bidders to respond to inquiries of nonresponsibility. Therefore information furnished by a bidder or pursuant to any inquiry concerning responsibility shall be classified as a protected record pursuant to Section 63G-2-305 and may be disclosed only as provided for in Subsection R23-1-35.
- (13) Tie Bids. Tie bids shall be resolved in accordance with Section 63G-6-426.
- (14) Subcontractor Lists. For purposes of this Subsection (14), the definitions of Section 63A-5-208 shall be applicable. Within 24 hours after the bid opening time, not including Saturdays, Sundays and state holidays, the apparent lowest three bidders, as well as other bidders that desire to be considered, shall submit to the Division a list of their first-tier subcontractors that are in excess of the dollar amounts stated in Subsection 63-A-5-208(3)(a)(i)(A).
 - (a) The subcontractor list shall include the following:
 - (i) the type of work the subcontractor is to perform;
 - (ii) the subcontractor's name;
 - (iii) the subcontractor's bid amount;
- (iv) the license number of the subcontractor issued by the Utah Division of Occupational and Professional Licensing, if such license is required under Utah law; and
- (v) the impact that the selection of any alternate included in the solicitation would have on the information required by this Subsection (14).
- (b) The contract documents for a specific project may require that additional information be provided regarding any contractor, subcontractor, or supplier.
- (c) If pursuant to Subsection 63A-5-208(4)a, a bidder intends to perform the work of a subcontractor or obtain, at a later date, a bid from a qualified subcontractor, the bidder shall:
- (i) comply with the requirements of Section 63A-5-208 and
 - (ii) clearly list himself on the subcontractor list form.
- (d) Errors on the subcontractor list will not disqualify the bidder if the bidder can demonstrate that the error is a result of his reasonable reliance on information that was provided by the subcontractor and was used to meet the requirements of this section, and, provided that this does not result in an adjustment to the bidder's contract amount.
- (e) Pursuant to Sections 63A-5-208 and 63G-2-305, information contained in the subcontractor list submitted to the Division shall be classified public except for the amount of subcontractor bids which shall be classified as protected until a contract has been awarded to the bidder at which time the

subcontractor bid amounts shall be classified as public. During the time that the subcontractor bids are classified protected, they may only be made available to procurement and other officials involved with the review and approval of bids.

- (15) Change of Listed Subcontractors. Subsequent to twenty-four hours after the bid opening, the contractor may change his listed subcontractors only after receiving written permission from the Director based on complying with all of the following:
- (a) The contractor has established in writing that the change is in the best interest of the State and that the contractor establishes an appropriate reason for the change, which may include, but is not limited to, the following reasons:
- (i) the original subcontractor has failed to perform, or is not qualified or capable of performing,
- (ii) the subcontractor has requested in writing to be released:
- (b) The circumstances related to the request for the change do not indicate any bad faith in the original listing of the subcontractors:
- (c) Any requirement set forth by the Director to ensure that the process used to select a new subcontractor does not give rise to bid shopping;
- (d) Any increase in the cost of the subject subcontractor work shall be borne by the contractor; and
- (e) Any decrease in the cost of the subject subcontractor work shall result in a deductive change order being issued for the contract for such decreased amount.

R23-1-10. Multi-Step Sealed Bidding.

- (1) Description. Multi-step sealed bidding is a two-phase process. In the first phase bidders submit unpriced technical offers to be evaluated. In the second phase, bids submitted by bidders whose technical offers are determined to be acceptable during the first phase are considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to arrive at technical offers and terms acceptable to the Division and suitable for competitive pricing.
- (2) Use. The multi-step sealed bidding method may be used when the Director deems it to the advantage of the state. Multi-step sealed bidding may be used when it is considered desirable:
- (a) to invite and evaluate technical offers or statements of qualifications to determine their acceptability to fulfill the purchase description requirements;
- (b) to conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description;
 - (c) to accomplish (a) or (b) prior to soliciting bids; and
- (d) to award the contract to the lowest responsive and responsible bidder in accordance with the competitive sealed bidding procedures.
- (3) Pre-Bid Conferences In Multi-Step Sealed Bidding. The Division may hold one or more pre-bid conferences prior to the submission of unpriced technical offers or at any time during the evaluation of the unpriced technical offers.
- (4) Procedure for Phase One of Multi-Step Sealed Bidding.
- (a) Public Notice. Multi-step sealed bidding shall be initiated by the issuance of a Public Notice in the form required by Subsections R23-1-5(2) and (3).
- (b) Invitation for Bids. The multi-step Invitation for Bids shall state:
 - (i) that unpriced technical offers are requested;

- (ii) when bids are to be submitted (if they are to be submitted at the same time as the unpriced technical offers, the bids shall be submitted in a separate sealed envelope);
- (iii) that it is a multi-step sealed bid procurement, and bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase:
- (iv) the criteria to be used in the evaluation of the unpriced technical offers;
- (v) that the Division, to the extent the Director finds necessary, may conduct oral or written discussions of the unpriced technical offers;
- (vi) that the item being procured shall be furnished in accordance with the bidders technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids; and
- (vii) that bidders may designate those portions of the unpriced technical offers which the bidder believes qualifies as a protected record as provided in Section R23-1-35. Such designated portions may be disclosed only as provided for in Section R23-1-35.
- (c) Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers and they shall be allowed to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the Director, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids shall be canceled in accordance with Subsection R23-1-5(12) and a new Invitation for Bids may be issued.
- (d) Receipt and Handling of Unpriced Technical Offers. After the date and time established for the receipt of unpriced technical offers, a register of bidders shall be open to public inspection. Prior to award, unpriced technical offers shall be shown only to those involved with the evaluation of the offers who shall adhere to the requirements of GRAMA and this rule. Except for those portions classified as protected under Section R23-1-35 or otherwise subject to non-disclosure under applicable law, unpriced technical offers shall be open to public inspection after award of the contract.
- (e) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids which may include an evaluation of the past performance of the bidder. The unpriced technical offers shall be categorized as acceptable or unacceptable. The Director shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.
- (f) Discussion of Unpriced Technical Offers. Discussion of technical offers may be conducted with bidders who submit an acceptable technical offer. During the course of discussions, any information derived from one unpriced technical offer shall not be disclosed to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been found unacceptable may submit supplemental information modifying or otherwise amending its technical offer until the closing date established by the Director. Submission may be made at the request of the Director or upon the bidder's own initiative.
- (g) Notice of Unacceptable Unpriced Technical Offer. When the Director determines a bidder's unpriced technical offer to be unacceptable, he shall notify the bidder in writing. Such bidders shall not be afforded an additional opportunity to supplement technical offers.
- (h) Confidentiality of Past Performance and Reference Information. Confidentiality of past performance and reference information shall be maintained in accordance with Subsection R23-1-15(10).

- (5) Mistakes During Multi-Step Sealed Bidding. Mistakes may be corrected or bids may be withdrawn during phase one:
 - (a) before unpriced technical offers are considered;
- (b) after any discussions have commenced under Subsection R23-1-10(4)(f); or
- (c) when responding to any amendment of the Invitation for Bids. Otherwise mistakes may be corrected or withdrawal permitted in accordance with Subsection R23-1-5(10).
 - (6) Carrying Out Phase Two.
- (a) Initiation. Upon the completion of phase one, the Director shall either:
- (i) open bids submitted in phase one (if bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; provided, however, that the offers have remained unchanged, and the Invitation for Bids has not been amended subsequent to the submittal of bids; or
 - (ii) invite each acceptable bidder to submit a bid.
- (b) Conduct. Phase two is to be conducted as any other competitive sealed bid procurement except:
 - (i) as specifically set forth in Section R23-1-10; and
 - (ii) no public notice is given of this invitation to submit.

R23-1-15. Competitive Sealed Proposals.

- Use.
- (a) Construction Management. The competitive sealed proposals procurement method shall be used in the procurement of a construction manager under the construction manager/general contractor method of construction contract management described in Subsection R23-1-45(5)(d) due to the need to consider qualifications, past performance and services offered in addition to the cost of the services and because only a small portion of the ultimate construction cost is typically considered in this selection.
- (b) Design-Build. In order to meet the requirements of Section 63G-6-703, competitive sealed proposals shall be used to procure design-build contracts.
- (c) Design-Bid-Build. The competitive sealed proposals procurement method may be used for procuring a contractor under the design-bid-build method of construction contract management described in Subsection R23-1-45(5)(b) only after the Director makes a determination that it is in the best interests of the state to use the competitive sealed proposals method due to unique aspects of the project that warrant the consideration of qualifications, past performance, schedule or other factors in addition to cost.
- (2) Documentation. The Director's determination made under Subsection R23-1-15(1)(c) shall be documented in writing and retained in the project file.
 - (3) Public Notice.
- (a) Public notice of the Request for Proposals shall be publicized in the same manner provided for giving public notice of an Invitation for Bids, as provided in Subsection R23-1-5(2).
 - (b) The public notice shall include:
 - (i) a brief description of the project;
- (ii) directions on how to obtain the Request for Proposal documents;
- (iii) notice of any mandatory pre-proposal meetings; and(iv) the closing date and time by which the first submittalof information is required;
- (4) Proposal Preparation Time. Proposal preparation time is the period of time between the date of first publication of the public notice and the date and time set for the receipt of proposals by the Division. In each case, the proposal preparation time shall be set to provide offerors a reasonable time to prepare their proposals. The time between the first publication of the public notice and the earlier of the first required submittal of information or any mandatory pre-proposal meeting shall be not less than ten calendar days, unless a shorter time is deemed necessary for a particular procurement as

determined, in writing, by the Director.

- (5) Form of Proposal. The Request for Proposals may state the manner in which proposals are to be submitted, including any forms for that purpose.
- (6) Addenda to Requests for Proposals. Addenda to the requests for proposals may be made in the same manner provided for addenda to the bidding documents in connection with Invitations for Bids set forth in Subsection R23-1-5(6) except that addenda may be issued to qualified offerors until the deadline for best and final offers.
 - (7) Modification or Withdrawal of Proposals.
- (a) Proposals may be modified prior to the due dates established in the Request for Proposals.
- (b) Proposals may be withdrawn until the notice of selection is issued.
- (8) Late Proposals, and Late Modifications. Except for modifications allowed pursuant to negotiation, any proposal, or modification received at the location designated for receipt of proposals after the due dates established in the Request for Proposals shall be deemed to be late and shall not be considered unless there are no other offerors.

(9) Receipt and Registration of Proposals.

After the date established for the first receipt of proposals or other required information, a register of offerors shall be prepared and open to public inspection. Prior to award, proposals and modifications shall be shown only to procurement and other officials involved with the review and selection of proposals who shall adhere to the requirements of GRAMA and this rule.

- Confidentiality of Performance Evaluations and Reference Information. The Board finds that it is necessary to maintain the confidentiality of performance evaluations and reference information in order to avoid competitive injury and to encourage those persons providing the information to respond in an open and honest manner without fear of retribution. Accordingly, records containing performance evaluations and reference information are classified as protected records under the provisions of Section 63G-2-305 and shall be disclosed only to those persons involved with the performance evaluation, the contractor that the information addresses and procurement and other officials involved with the review and selection of proposals. The Division may, however, provide reference information to other governmental entities for use in their procurement activities and to other parties when requested by the contractor that is the subject of the information. Any other disclosure of such performance evaluations and reference information shall only be as required by applicable law.
 - (11) Evaluation of Proposals.
- (a) The evaluation of proposals shall be conducted by an evaluation committee appointed by the Director that may include representatives of the Division, the Board, other procuring agencies, and contractors, architects, engineers, and others of the general public. Each member of the selection committee shall certify as to his lack of conflicts of interest.
- (b) The Request for Proposals shall state all of the evaluation factors and the relative importance of price and other evaluation factors.
- (c) The evaluation shall be based on the evaluation factors set forth in the request for proposals. Numerical rating systems may be used but are not required. Factors not specified in the request for proposals shall not be considered.
- (d) Proposals may be initially classified as potentially acceptable or unacceptable. Offerors whose proposals are unacceptable shall be so notified by the Director in writing and they may not continue to participate in the selection process.
- (e) This classification of proposals may occur at any time during the selection process once sufficient information is received to consider the potential acceptability of the offeror.
 - (f) The request for proposals may provide for a limited

number of offerors who may be classified as potentially acceptable. In this case, the offerors considered to be most acceptable, up to the number of offerors allowed, shall be considered acceptable.

(12) Proposal Discussions with Individual Offerors.

- (a) Unless only one proposal is received, proposal discussions with individual offerors, if held, shall be conducted with no less than the offerors submitting the two best proposals.
 - (b) Discussions are held to:
- (i) Promote understanding of the procuring agency's requirements and the offerors' proposals; and
- (ii) Facilitate arriving at a contract that will be most advantageous to the procuring agencies taking into consideration price and the other evaluation factors set forth in the request for proposals.
- (c) Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. Any oral clarification or change of a proposal shall be reduced to writing by the offeror.
- (13) Best and Final Offers. If utilized, the Director shall establish a common time and date to submit best and final offers. Best and final offers shall be submitted only once unless the Director makes a written determination before each subsequent round of best and final offers demonstrating that another round is in the best interest of the procuring agencies and additional discussions will be conducted or the procuring agencies' requirements may be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.
 - (14) Mistakes in Proposals.
- (a) Mistakes discovered before the established due date. An offeror may correct mistakes discovered before the time and date established in the Request for Proposals for receipt of that information by withdrawing or correcting the proposal as provided in Subsection R23-1-15(7).
- (b) Confirmation of proposal. When it appears from a review of the proposal before award that a mistake has been made, the offeror may be asked to confirm the proposal. Situations in which confirmation may be requested include obvious, apparent errors on the face of the proposal or a proposal amount that is substantially lower than the other proposals submitted. If the offeror alleges mistake, the proposal may be corrected or withdrawn as provided for in this section.
- (c) Minor formalities. Minor formalities, unless otherwise corrected by an offeror as provided in this section, shall be treated as they are under Subsection R23-1-5(10)(c).
- (d) Mistakes discovered after award. Offeror shall be bound to all terms, conditions and statements in offeror's proposal after award of the contract.
 - (15) Award.
- (a) Award Documentation. A brief written justification statement shall be made showing the basis on which the award was found to be most advantageous to the state taking into consideration price and the other evaluation factors set forth in the Request for Proposals.
- (b) One proposal received. If only one proposal is received in response to a Request for Proposals, the Director may, as he deems appropriate, make an award or, if time permits, resolicit for the purpose of obtaining additional competitive sealed proposals.
 - (16) Publicizing Awards.
- (a) Notice. After the selection of the successful offeror(s), notice of award shall be available in the principal office of the Division in Salt Lake City, Utah and may be available on the

Internet.

- (b) Information Disclosed. The following shall be disclosed with the notice of award:
 - (i) the rankings of the proposals;
 - (ii) the names of the selection committee members;
 - (iii) the amount of each offeror's cost proposal;
- (iv) 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; and
- (v) the written justification statement supporting the selection.
- (c) Information Classified as Protected. After due consideration and public input, the following has been determined by the Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the Division and shall be classified as protected records:
- (i) the names of individual selection committee scorers in relation to their individual scores or rankings; and
 - (ii) non-public financial statements.

R23-1-17. Bids Over Budget.

- (1) In the event all bids for a construction project exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed those funds by more than 5%, the Director may, where time or economic considerations preclude resolicitation of work of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder in order to bring the bid within the amount of available funds.
- (2) As an alternative to the procedure authorized in Subsection (1), when all bids for a construction project exceed available funds as certified by the Director, and the Director finds that due to time or economic considerations the resolicitation of a reduced scope of work would not be in the interest of the state, the Director may negotiate an adjustment in the bid price using one of the following methods:
- (a) reducing the scope of work in specific subcontract areas and supervising the re-bid of those subcontracts by the low responsive and responsible bidder;
- (b) negotiating with the low responsive and responsible bidder for a reduction in scope and cost with the value of those reductions validated in accordance with Section R23-1-50; or
- (c) revising the contract documents and soliciting new bids only from bidders who submitted a responsive bid on the original solicitation. This re-solicitation may have a shorter bid response time than otherwise required.
- (3) The use of one of the alternative procedures provided for in this subsection (2) must provide for the fair and equitable treatment of bidders.
- (4) The Director's written determination, including a brief explanation of the basis for the decision shall be included in the contact file.
- (5) This section does not restrict in any way, the right of the Director to use any emergency or sole source procurement provisions, or any other applicable provisions of State law or rule which may be used to award the construction project.

R23-1-20. Small Purchases.

- (1) Procurements of \$100,000 or Less.
- (a) The Director may make procurements of construction estimated to cost \$100,000 or less by soliciting at least two firms to submit written quotations. The award shall be made to the firm offering the lowest acceptable quotation.
- (b) The names of the persons submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record by the Division.
 - (c) If the Director determines that other factors in addition

to cost should be considered in a procurement of construction estimated to cost \$100,000 or less, the Director shall solicit proposals from at least two firms. The award shall be made to the firm offering the best proposal as determined through application of the procedures provided for in Section R23-1-15 except that a public notice is not required and only invited firms may submit proposals.

- (2) Procurements of \$25,000 or Less. The Director may make small purchases of construction of \$25,000 or less in any manner that the Director shall deem to be adequate and reasonable.
- (3) Professional Services related to Construction. Small purchases for Architect or Engineer services may be procured as a small purchase in accordance with Rule R23-2-20. For other professional services related to construction, including cost estimators, project schedulers, building inspectors, code inspectors, special inspectors and testing entities; the Director may make small purchases of such professional services if the cost of such professional service is \$100,000 or less in any manner that the Director shall deem to be adequate and reasonable.
- (4) Division of Procurements. Procurements shall not be divided in order to qualify for the procedures outlined in this section.

R23-1-25. Sole Source Procurement.

(1) Conditions for Use of Sole Source Procurement.

The procedures concerning sole source procurement in this Section may be used if, in the discretion of the Director, a requirement is reasonably available only from a single source. Examples of circumstances which could also necessitate sole source procurement are:

- (a) where the compatibility of product design, equipment, accessories, or replacement parts is the paramount consideration;
- (b) where a sole supplier's item is needed for trial use or testing;
 - (c) procurement of public utility services;
- (d) when it is a condition of a donation that will fund the full cost of the supply, material, equipment, service, or construction item.
- (2) Written Determination. The determination as to whether a procurement shall be made as a sole source shall be made by the Director in writing and may cover more than one procurement. In cases of reasonable doubt, competition shall be solicited.
- (3) Negotiation in Sole Source Procurement. The Director shall negotiate with the sole source vendor for considerations of price, delivery, and other terms.

R23-1-30. Emergency Procurements.

- (1) Application. This section shall apply to every procurement of construction made under emergency conditions that will not permit other source selection methods to be used.
- (2) Definition of Emergency Conditions. An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, natural disasters, wars, destruction of property, building or equipment failures, or any emergency proclaimed by governmental authorities.
- (3) Scope of Emergency Procurements. Emergency procurements shall be limited to only those construction items necessary to meet the emergency.
 - (4) Authority to Make Emergency Procurements.
- (a) The Division makes emergency procurements of construction when, in the Director's determination, an emergency condition exists or will exist and the need cannot be met through other procurement methods.
 - (b) The procurement process shall be considered

- unsuccessful when all bids or proposals received pursuant to an Invitation For Bids or Request For Proposals are nonresponsive, unreasonable, noncompetitive, or exceed available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids or proposals. If emergency conditions exist after or are brought about by an unsuccessful procurement process, an emergency procurement may be made.
- (5) Source Selection Methods. The source selection method used for emergency procurement shall be selected by the Director with a view to assuring that the required services of construction items are procured in time to meet the emergency. Given this constraint, as much competition as the Director determines to be practicable shall be obtained.
- (6) Specifications. The Director may use any appropriate specifications without being subject to the requirements of Section R23-1-55.
- (7) Required Construction Contract Clauses. The Director may modify or not use the construction contract clauses otherwise required by Section R23-1-60.
- (8) Written Determination. The Director shall make a written determination stating the basis for each emergency procurement and for the selection of the particular source. This determination shall be included in the project file.

R23-1-35. Protected Records.

- (1) General Classification. Records submitted to the Division in a procurement process are classified as public unless a different classification is determined in accordance with Title 63G, Chapter 2, U.C.A., Government Records Access and Management Act, hereinafter referred to as GRAMA.
- (2) Protected Records. Records meeting the requirements of Section 63G-2-305 will be treated as protected records if the procedural requirements of GRAMA are met. Examples of protected records include the following:
- (a) trade secrets, as defined in Section 13-24-2, if the requirements of Subsection R23-1-35(3) are met;
- (b) commercial information or nonindividual financial information if the requirements of Subsection 63G-2-305(2) and Subsection R23-1-35(3) are met; and
- (c) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the Division, including, but not limited to, those records for which such a determination is made in this rule R23-1, Procurement of Construction, or Rule R23-2, Procurement of Architect-Engineer Services.
- (3) Requests for Protected Status. Persons who believe that a submitted record, or portion thereof, should be protected under the classifications listed in Subsections R23-1-35(2)(a) and R23-1-35(2)(b) shall provide with the record a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality. Such statements must address each portion of a document for which protected status is requested.
- (4) Notification. A person who complies with this Section R23-1-35 shall be notified by the Division prior to the Division's public release of any information for which business confidentiality has been asserted.
- (5) Disclosure of Records and Appeal. The records access determination and any further appeal of such determination shall be made in accordance with the provisions of Sections 63G-2-309 and 63G-2-401 et seq., GRAMA.
- (6) Not Limit Rights. Nothing in this rule shall be construed to limit the right of the Division to protect a record from public disclosure where such protection is allowed by law.

R23-1-40. Acceptable Bid Security; Performance and Payment Bonds.

- (1) Application. The requirements for bid security and bonds under this Rule R23-1-40 shall apply as follows:
- (a) For the Division, the award of construction contracts where the face amount of the contract is \$100,000 or more.
- (b) For other state agencies that are required to use the same or similar documents as the Division for their construction contracts, the award of construction contracts where the face amount of the contract is \$50,000 or more, unless the Division Director, in writing, approves a \$100,000 or more requirement similarly to the Division, based on:
- (i) The Division Director's finding that the agency has a selection process for such contracts that are under \$100,000, that ensures a responsible, financially solvent contractor is selected: and
- (ii) that the agency has the financial capability to absorb the potential responsibility that can occur due to the lack of the bid security and bonding requirements for the contract under \$100.000.
- (c) At any time the Division or any other state agency can require acceptable bid security as well as performance and payment bonds on contracts that are for amounts below the standard requirements set forth above in this Rule.
 - (2) Acceptable Bid Security.
- (a) Invitations for Bids and Requests For Proposals shall require the submission of acceptable bid security in an amount equal to at least five percent of the bid, at the time the bid is submitted. If a contractor fails to accompany its bid with acceptable bid security, the bid shall be deemed nonresponsive, unless this failure is found to be nonsubstantial as hereinafter provided.
- (b) If acceptable bid security is not furnished, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Director to be nonsubstantial. Failure to submit an acceptable bid security may be deemed nonsubstantial if:
- (i)(A) the bid security is submitted on a form other than the Division's required bid bond form and the bid security meets all other requirements including being issued by a surety meeting the requirements of Subsection (5); and
- (B) the contractor provides acceptable bid security by the close of business of the next succeeding business day after the Division notified the contractor of the defective bid security; or
 - (ii) only one bid is received.
- (3) Payment and Performance Bonds. Except as provided in Rule 23-1-40 (1) above, payment and performance bonds in the amount of 100% of the contract price are required for all contracts in excess of \$50,000. These bonds shall cover the procuring agencies and be delivered by the contractor to the Division at the same time the contract is executed. If a contractor fails to deliver the required bonds, the contractor's bid shall be found nonresponsive and its bid security shall be forfeited.
- (4) Forms of Bonds. Bid Bonds, Payment Bonds and Performance Bonds must be from sureties meeting the requirements of Subsection (5) and must be on the exact bond forms most recently adopted by the Board and on file with the Division
- (5) Surety firm requirements. All surety firms must be authorized to do business in the State of Utah and be listed in the U.S. Department of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies for an amount not less than the amount of the bond to be issued. A cosurety may be utilized to satisfy this requirement.
- (6) Waiver. The Director may waive the bonding requirement if the Director finds, in writing, that bonds cannot be reasonably obtained for the work involved.
- R23-1-45. Methods of Construction Contract Management.

- (1) Application. This section contains provisions applicable to the selection of the appropriate type of construction contract management.
- (2) Flexibility. The Director shall have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the procuring agencies. In each instance consideration commensurate with the project's size and importance should be given to all the appropriate and effective means of obtaining both the design and construction of the project. The methods for achieving the purposes set forth in this rule are not to be construed as an exclusive list.
- (3) Selecting the Method of Construction Contracting. In selecting the construction contracting method, the Director shall consider the results achieved on similar projects in the past, the methods used, and other appropriate and effective methods and how they might be adapted or combined to fulfill the needs of the procuring agencies. The use of the design-bid-build method is an appropriate contracting method for the majority of construction contracts entered into by the Division with a cost equal to or less than \$1,500,000 and the construction manager/general contractor method is an appropriate contracting method for the majority of construction contracts entered into by the Division with a cost greater than \$1,500,000. The Director shall include a statement in the project file setting forth the basis for using any construction contracting method other than those suggested in the preceding sentence.
- (4) Criteria for Selecting Construction Contracting Methods. Before choosing the construction contracting method to use, the Director shall consider the factors outlined in Subsection 63G-6-501(1)(c).
 - General Descriptions.
- (a) Application of Descriptions. The following descriptions are provided for the more common contracting methods. The methods described are not all mutually exclusive and may be combined on a project. These descriptions are not intended to be fixed for all construction projects of the State. In each project, these descriptions may be adapted to fit the circumstances of that project.
- (b) Design-Bid-Build. The design-bid-build method is typified by one business, acting as a general contractor, contracting with the state to complete a construction project in accordance with drawings and specifications provided by the state within a defined time period. Generally the drawings and specifications are prepared by an architectural or engineering firm under contract with the state. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.
- (c) Design-Build. In a design-build project, a business contracts directly with the Division to meet requirements described in a set of performance specifications. The design-build contractor is responsible for both design and construction. This method can include instances where the design-build contractor supplies the site as part of the package.
- (d) Construction Manager/General Contractor. A construction manager/general contractor is a firm experienced in construction that provides professional services to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders. The Division may contract with the construction manager/general contractor early in a project to assist in the development of a cost effective design. The construction manager/general contractor will generally become the general contractor for the project and procure subcontract work at a later date. The procurement of a construction manager/general contractor may be based, among

other criteria, on proposals for a management fee which is either a lump sum or a percentage of construction costs with a guaranteed maximum cost. If the design is sufficiently developed prior to the selection of a construction manager/general contractor, the procurement may be based on proposals for a lump sum or guaranteed maximum cost for the construction of the project. The contract with the construction manager/general contractor may provide for a sharing of any savings which are achieved below the guaranteed maximum When entering into any subcontract that was not specifically included in the Construction Manager/General Contractor's cost proposal submitted in the original procurement of the Construction Manager/General Contractor's services, the Construction Manager/General Contractor shall procure that subcontractor by using one of the source selection methods provided for in Sections 63G-6-401 through 63G-6-426, in a similar manner as if the subcontract work was procured directly by the Division.

R23-1-50. Cost or Pricing Data and Analysis; Audits.

- Applicability. Cost or pricing data shall be required when negotiating contracts and adjustments to contracts if:
- (a) adequate price competition is not obtained as provided in Subsection (2); and
 - (b) the amounts set forth in Subsection (3) are exceeded.
- (2) Adequate Price Competition. Adequate price competition is achieved for portions of contracts or entire contracts when one of the following is met:
- (a) When a contract is awarded based on competitive sealed bidding;
- (b) When a contractor is selected from competitive sealed proposals and cost was one of the selection criteria;
- (c) For that portion of a contract that is for a lump sum amount or a fixed percentage of other costs when the contractor was selected from competitive sealed proposals and the cost of the lump sum or percentage amount was one of the selection criteria:
- (d) For that portion of a contract for which adequate price competition was not otherwise obtained when competitive bids were obtained and documented by either the Division or the contractor:
- (e) When costs are based upon established catalogue or market prices;
 - (f) When costs are set by law or rule;
- (g) When the Director makes a written determination that other circumstances have resulted in adequate price competition.
 - (3) Amounts. This section does not apply to:
- (a) Contracts or portions of contracts costing less than \$100,000, and
- (b) Change orders and other price adjustments of less than \$25,000.
- (4) Other Applications. The Director may apply the requirements of this section to any contract or price adjustment when he determines that it would be in the best interest of the state.
- (5) Submission of Cost or Pricing Data and Certification. When cost or pricing data is required, the data shall be submitted prior to beginning price negotiation. The offeror or contractor shall keep the data current throughout the negotiations certify as soon as practicable after agreement is reached on price that the cost or pricing data submitted are accurate, complete, and current as of a mutually determined date.
- (6) Refusal to Submit. If the offeror refuses to submit the required data, the Director shall determine in writing whether to disqualify the noncomplying offeror, to defer award pending further investigation, or to enter into the contract. If a contractor refuses to submit the required data to support a price adjustment, the Director shall determine in writing whether to further

investigate the price adjustment, to not allow any price adjustment, or to set the amount of the price adjustment.

- (7) Defective Cost or Pricing Data. If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the Division shall be entitled to an adjustment of the contract price to exclude any significant sum, including profit or fee, to the extent the contract sum was increased because of the defective data. It is assumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee; therefore, unless there is a clear indication that the defective data were not used or relied upon, the price should be reduced by this amount. In establishing that the defective data caused an increase in the contract price, the Director shall not be required to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.
- (8) Audit. The Director may, at his discretion, and at reasonable times and places, audit or cause to be audited the books and information of a contractor, prospective contractor, subcontractor, or prospective subcontractor which are related to the cost or pricing data submitted.
- (9) Retention of Books and Information. Any contractor who receives a contract or price adjustment for which cost or pricing data is required shall maintain all books and information that relate to the cost or pricing data for three years from the date of final payment under the contract. This requirement shall also extend to any subcontractors of the contractor.

R23-1-55. Specifications.

- (1) General Provisions.
- (a) Purpose. The purpose of a specification is to serve as a basis for obtaining a supply or construction item adequate and suitable for the procuring agencies' needs and the requirements of the project, in a cost-effective manner, taking into account, the costs of ownership and operation as well as initial acquisition costs. Specifications shall permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the procuring agencies' requirements.
- (b) Preference for Commercially Available Products. Recognized, commercially-available products shall be procured wherever practicable. In developing specifications, accepted commercial standards shall be used and unique products shall be avoided, to the extent practicable.
- (c) Nonrestrictiveness Requirements. All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply, or construction item, or procurement from a sole source, unless no other manner of description will suffice. In that event, a written determination shall be made that it is not practicable to use a less restrictive specification.
 - Director's Responsibilities.
- (a) The Director is responsible for the preparation of all specifications.
- (b) The Division may enter into contracts with others to prepare construction specifications when there will not be a substantial conflict of interest. The Director shall retain the authority to approve all specifications.
- (c) Whenever specifications are prepared by persons other than Division personnel, the contract for the preparation of specifications shall require the specification writer to adhere to the requirements of this section.
- (3) Types of Specifications. The Director may use any method of specifying construction items which he considers to be in the best interest of the state including the following:
- (a) By a performance specification stating the results to be achieved with the contractor choosing the means.

- (b) By a prescriptive specification describing a means for achieving desired, but normally unstated, ends. Prescriptive specifications include the following:
- (i) Descriptive specifications, providing a detailed written description of the required properties of a product and the workmanship required to fabricate, erect and install without using trade names; or
- (ii) Proprietary specifications, identifying the desired product by using manufacturers, brand names, model or type designation or important characteristics. This is further divided into two classes:
- (A) Sole Source, where a rigid standard is specified and there are no allowed substitutions due to the nature of the conditions to be met. This may only be used when very restrictive standards are necessary and there is only one proprietary product known that will meet the rigid standards needed. A sole source proprietary specification must be approved by the Director.
- (B) Or Equal, which allows substitutions if properly approved.
- (c) By a reference standard specification where documents or publications are incorporated by reference as though included in their entirety.
- (d) By a nonrestrictive specification which may describe elements of prescriptive or performance specifications, or both, in order to describe the end result, thereby giving the contractor latitude in methods, materials, delivery, conditions, cost or other characteristics or considerations to be satisfied.
 - (4) Procedures for the Development of Specifications.
- (a) Specifications may designate alternate supplies or construction items where two or more design, functional, or proprietary performance criteria will satisfactorily meet the procuring agencies' requirements.
- (b) The specification shall contain a nontechnical section to include any solicitation or contract term or condition such as a requirement for the time and place of bid opening, time of delivery, payment, liquidated damages, and similar contract matters.
 - (c) Use of Proprietary Specifications.
- (i) The Director shall seek to designate three brands as a standard reference and shall state that substantially equivalent products to those designated will be considered for award, with particular conditions of approval being described in the specification.
- (ii) Unless the Director determines that the essential characteristics of the brand names included in the proprietary specifications are commonly known in the industry or trade, proprietary specifications shall include a description of the particular design, functional, or performance characteristics which are required.
- (iii) Where a proprietary specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.
- (iv) The Division shall solicit sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made in accordance with Section R23-1-25.

R23-1-60. Construction Contract Clauses.

- (1) Required Contract Clauses. Pursuant to Section 63G-6-601, the document entitled "Required Construction Contract Clauses", Dated May 25, 2005, and on file with the Division, is hereby incorporated by reference. Except as provided in Subsections R23-1-30(7) and R23-1-60(2), the Division shall include these clauses in all construction contracts.
- (2) Revisions to Contract Clauses. The clauses required by this section may be modified for use in any particular

contract when, pursuant to Subsection 63G-6-601(5), the Director makes a written determination describing the circumstances justifying the variation or variations. Notice of any material variations from the contract clauses required by this section shall be included in any invitation for bids or request for proposals. Examples of changes that are not material variations include, but are not limited to, the following: grammatical corrections; corrections made that resolve conflicts in favor of the intent of the document as a whole; and changes that reflect State law or rule and applicable court case law.

KEY: contracts, public buildings, procurement August 7, 2012 63G-6-101 et seq. Notice of Continuation May 3, 2012

R25. Administrative Services, Finance.

Travel-Related Reimbursements for State R25-7. Employees.

R25-7-1. Purpose.

The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

R25-7-2. Authority and Exemptions.

This rule is established pursuant to:

- (1) Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel
- (2) Section 63A-3-106, which authorizes the Division of Finance to make rules establishing per diem rates.

R25-7-3. Definitions.

- "Agency" means any department, division, (1) commission, council, board, bureau, committee, office, or other administrative subunit of state government.
- "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.
- (3) "Department" means all executive departments of state government.
 - (4) "Finance" means the Division of Finance.(5) "Per diem" means an allowance paid daily.
- (6) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures.'
 - (7) "Rate" means an amount of money.
- (8) "Reimbursement" means money paid to compensate an employee for money spent.
- (9) "State employee" means any person who is paid on the state payroll system.

R25-7-4. Eligible Expenses.

- (1) Reimbursements are intended to cover all normal areas of expense.
- (2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

R25-7-5. Approvals.

- (1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.
- (2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization".
- (3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.
- (4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

R25-7-6. Reimbursement for Meals.

- (1) State employees who travel on state business may be eligible for a meal reimbursement.
- (2) The reimbursement will include tax, tips, and other expenses associated with the meal.

- (3) Allowances for in-state travel differ from those for outof-state travel.
- (a) The daily travel meal allowance for in-state travel is \$38.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	\$9.00
Lunch	\$13.00
Dinner	\$16.00
Total	\$38.00

(b) The daily travel meal allowance for out-of-state travel is \$47.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	\$10.00
Lunch	\$14.00
Dinner	\$23.00
Total	\$47.00

- (4) When traveling to premium cities (New York, Los Angeles, Chicago, San Francisco, Washington DC, Boston, San Diego, Orlando, Atlanta, Baltimore, and Arlington), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to \$62 per day.
- (a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.
- Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the \$62 premium allowance as follows:
- (i) If breakfast is provided deduct \$14, leaving a premium allowance for lunch and dinner of actual up to \$48.
- (ii) If lunch is provided deduct \$19, leaving a premium allowance for breakfast and dinner of actual up to \$43.
- (iii) If dinner is provided deduct \$29, leaving a premium allowance for breakfast and lunch of actual up to \$33
- (c) The traveler must use the same method of reimbursement for an entire day.
 - (d) Actual meal cost includes tips.
 - (e) Alcoholic beverages are not reimbursable.
- (5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the reasonable, actual meal cost, with original receipts.
- (a) The traveler may combine the reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.
 - (b) Actual meal cost includes tips.
 - (c) Alcoholic beverages are not reimbursable.
- (6) The meal reimbursement calculation is comprised of three parts:
- (a) The day the travel begins. The traveler's entitlement is determined by the time of day the traveler leaves their home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

The Day Travel Begins

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
a.m.		p.m.	p.m.
12:00-5:59	6:00-11:59	12:00-5:59	6:00-11:59

*B, L, D	*L, D	*D	*no	meals
In-State				
\$38.00	\$29.00	\$16.00	\$0	
Out-of-State				
\$47.00	\$37.00	\$23.00	\$0	
*B=Breakfast,	L=Lunch,	D=Dinner		

- (b) The days at the location.
- Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance.
- (ii) Meals provided on airlines will not reduce the meal allowance.
- (c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day the traveler returns to their home base, as illustrated in the following

TARIF 4

The Day Travel Ends

		,	
1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
a.m.	a.m.	p.m.	p.m.
12:00-5:59	6:00-11:59	12:00-6:59	7:00-11:59
*no meals	*B	*B, L	*B, L, D
In-State			
\$0	\$9.00	\$22.00 \$38.00	
Out-of-State			
\$0	\$10.00	\$24.00	\$47.00
*B=Breakfast.	L=Lunch. D=Dinn	er	

- (7) An employee may be authorized by the Department Director or designee to receive a taxable meal allowance when the employee's destination is at least 100 miles from their home base and the employee does not stay overnight.
- (a) Breakfast is paid when the employee leaves their home base before 6:00 a.m.
- (b) Lunch is paid when the trip meets one of the following requirements:
- (i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.
- (ii) The employee leaves their home base before 10 a.m. and returns after 2 p.m.
- (iii) The Department Director provides prior written approval based on circumstances.
- (c) Dinner is paid when the employee leaves their home base and returns after 7 p.m.
- (d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.

R25-7-7. Meal Per Diem for Statutory Non-Salaried State Boards.

- (1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.
- (2) Where salaried employees of the State of Utah or other advisors or consultants must, of necessity, attend such a meeting in order to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the boards are requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.

R25-7-8. Reimbursement for Lodging.

State employees who travel on state business may be eligible for a lodging reimbursement.

(1) For stays at a conference hotel, the state will reimburse the actual cost plus tax for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A or FI

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to \$65 per night for single occupancy plus tax except as noted in the table below:

TARLE 5

Cities with Differing Rates

American Fork	\$75.00	plus	tax
Beaver	\$70.00	plus	tax
Blanding	\$75.00	plus	tax
Bryce	\$70.00	plus	tax
Cedar City	\$70.00	plus	tax
Delta	\$70.00	plus	tax
Ephraim	\$70.00	plus	tax
Fillmore	\$70.00	plus	tax
Green River	\$75.00	plus	tax
Heber City / Midway	\$90.00	plus	tax
Kanab	\$75.00	plus	tax
Layton	\$75.00	plus	tax
Logan	\$75.00	plus	tax
Moab	\$95.00	plus	tax
Monticello	\$70.00	plus	tax
Nephi	\$70.00	plus	tax
Ogden	\$75.00	plus	tax
Park City	\$90.00	plus	tax
Price	\$75.00	plus	tax
Provo / Orem / Lehi	\$75.00	plus	tax
Roosevelt	\$85.00	plus	tax
Salt Lake City Metropolitan Area			
(Draper to Centerville), Tooele	\$95.00	plus	tax
Springville	\$70.00	plus	tax
St George / Washington / Springdale	\$75.00	plus	tax
Torrey	\$70.00	plus	tax
Tremonton	\$90.00	plus	tax
Vernal	\$90.00	plus	tax
All Other Utah Cities	\$65.00	plus	tax

- (3) State employees traveling less than 50 miles in excess of their normal office commute are not entitled to lodging reimbursement.
- (4) When the State of Utah pays for a person from out-ofstate to travel to Utah, the in-state lodging per diem rates will
- (5) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax, not to exceed the federal lodging rate for the location. reservations must be made through the State Travel Office.
- (6) The state will reimburse the actual cost per night plus tax for in-state or out-of-state travel stays where the department/traveler makes reservations through the State Travel
- (7) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add \$20, for triple state employee occupancy, add \$40, for quadruple state employee occupancy, add \$60.
- (8) Exceptions will be allowed for unusual circumstances when approved in writing by the Department Director or designee prior to the trip.
- (a) For out-of-state travel, the approval may be on the form FÍ 5.
- (b) Attach the written approval to the Travel Reimbursement Request, form FI 51B or FI 51D.
- (9) A proper receipt for lodging accommodations must accompany each request for reimbursement.
 - (a) The tissue copy of the charge receipt is not acceptable.
- (b) A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date(s) of occupancy, amount and date paid, signature of agent, number in the party, and (single, double, triple, or quadruple occupancy).

(10) When lodging is required, travelers should stay at the lodging facility nearest to the meeting/training/work location where state lodging per diem rates are accepted in order to minimize transportation costs.

- (11) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.
- (a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:
 - (i) \$25 per night with no receipts required or
- (ii) Actual cost up to \$40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.
- (12) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:
- (a) First 30 days follow regular rules for lodging and meals. Lodging receipt is required.
- (b) After 30 days \$46 per day for lodging and meals. No receipt is required.

R25-7-9. Reimbursement for Incidentals.

State employees who travel on state business may be eligible for a reimbursement for incidental expenses.

- (1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips and transportation costs.
- (a) Tips for maid service, doormen, and meals are not reimbursable.
 - (b) No other gratuities will be reimbursed.
- (c) Include an original receipt for each individual incidental item above \$20.00 and for all airport parking.
- (2) The state will reimburse incidental ground transportation and parking expenses.
- (a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.
- (b) Personal use of such transportation to restaurants is not reimbursable.
- (c) Parking at the Salt Lake City airport will be reimbursed at a maximum of the airport long-term parking rate with a receipt for amounts of \$20 or more.
- (3) Registration should be paid in advance on a state warrant.
- (a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.
- (b) If a traveler must pay the registration when they arrive, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with them.
- (4) Telephone calls related to state business are reimbursed at the actual cost.
- (a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51B.
- (b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls made during stays of five nights or more.
- (5) Allowances for personal telephone calls made while out of town on state business overnight will be based on the number of nights away from home.
- (a) Four nights or less actual amount up to \$2.50 per night (documentation is not required for personal phone calls made during stays of four nights or less)
 - (b) Five to eleven nights actual amount up to \$20.00
- (c) Twelve nights to thirty nights actual amount up to \$30.00
 - (d) More than thirty days start over
- (6) Actual laundry expenses up to \$18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

- (a) The traveler must provide receipts for the laundry expense.
- (b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.
- (7) An amount of \$5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.
- (a) This amount covers miscellaneous incidentals not covered in this rule.
- (b) This allowance is not available for travelers going to conferences.
- (8) Travel on a Weekend during Trips of More Than 10 Nights' Duration A department may provide for employees to return home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

R25-7-10. Reimbursement for Transportation.

State employees who travel on state business may be eligible for a transportation reimbursement.

- (1) Air transportation is limited to Air Coach or Excursion
- (a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.
 - (b) Only one change fee per trip will be reimbursed.
- (c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.
- (d) In order to preserve insurance coverage and because of federal security regulations, travelers must fly on tickets in their names only.
- (2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.
- (a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the airport long-term parking rate.
- (b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B for amounts of \$20 or more.
- (c) Travelers may be reimbursed for mileage to and from the airport to allow someone to drop them off and to pick them up.
- (3) Travelers may use private vehicles with approval from the Department Director or designee.
- (a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.
- (b) Reimbursement for a private vehicle will be at the rate of 38 cents per mile or 55.5 cents per mile if a state vehicle is not available to the employee.
- (i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at 55.5 cents per mile.
- (ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 38 cents per mile.
 - (c) Agencies may establish a reimbursement rate that is

more restrictive than the rate established in this Section.

- (d) Exceptions must be approved in writing by the Director of Finance.
- (e) Mileage will be computed using Mapquest or other generally accepted map/route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.
- (f) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.
- (g) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.
- (h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51B, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if preapproved by the Department Director or designee.

- (a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.
- (b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 38 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director or designee.
- (i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.
- (ii) An itinerary printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.
- (iii) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.
- (iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.
- (c) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.
- (d) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.
- (5) Use of rental vehicles must be approved in writing in advance by the Department Director or designee.
- (a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director or designee.
- (b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.
- (c) When making rental car arrangements through the State Travel Office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.
- (i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.
- (ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director or designee.

- (iii) The traveler will be reimbursed the actual rate charged by the rental agency.
- (iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.
- (6) Travel by private airplane must be approved in advance by the Department Director or designee.
- (a) The pilot must certify to the Department Director or designee that the pilot is certified to fly the plane being used for state business.
- (b) If the plane is owned by the pilot/employee, the pilot must certify the existence of at least \$500,000 of liability insurance coverage.
- (c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least \$500,000 for liability coverage.
 - (d) Reimbursement will be made at 55.5 cents per mile.
- (e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.
- (7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 20 cents per mile.
- (8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Executive Director of the Department of Administrative Services, and the Governor is required.

KEY: air travel, per diem allowances, state employees, transportation

July 1, 2012 63A-3-107 Notice of Continuation April 29, 2008 63A-3-106

R68. Agriculture and Food, Plant Industry.

R68-15. Quarantine Pertaining to Japanese Beetle, (Popillia Japonica).

R68-15-1. Authority.

- A. Promulgated under authority of Subsection 4-2-2-(1)(j) and 4-2-2(1)(l)(ii).
- B. Refer to the Notice of Quarantine, Japanese Beetle, (Popillia Japonica), Effective January 4, 1993, issued by Utah Department of Agriculture and Food.

R68-15-2. Pest.

Japanese beetle, Popillia japonica, a beetle, family Scarabaeidae, which in the larval state attacks the roots of many plants and as an adult attacks the leaves and fruits of many plants.

R68-15-3. Areas Under Quarantine.

- A. The following states have been placed under a general quarantine to prohibit the entry of Japanese Beetle into Utah through the sale of plants and plant products: the entire states of Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia.
- B. The same general quarantine shall apply to the following states in provinces of Canada:
- 1. In the Province of Ontario: Lincoln, Welland, and Wentworth.
 - 2. In the Province of Quebec: Missiquoi and St. Jean.
- C. Any areas not mentioned above where Japanese Beetle has been found or known to occur, shall also be placed under this same general quarantine.

R68-15-4. Articles and Commodities Under Quarantine.

- A. The following are hereby declared to be hosts and possible carriers of all stages of the Japanese beetle:
- 1. Soil, humus, compost and manure (except when commercially packaged and treated);
- All plants with roots (except bareroot plants free from soil).
 - 3. Grass Sod;
- 4. Plant crowns or roots for propagation (except when free from soil);
- 5. Bulbs, corms, tubers, and rhizomes of ornamental plants (except when free from soil);
- 6. Any other plant, plant part, article, or means of conveyance when it is determined by a Utah State Plant Quarantine Officer to present a hazard of spreading live Japanese beetle due to infestation or exposure to infestation by Japanese beetle.
- B. Packing material added to bareroot plants after harvesting would not normally pose a pest risk. Packing material would be covered under (6) above, at the inspector's discretion.
- C. Free From Soil For the purposes of this quarantine, free from soil is defined as soil in amounts that could not contain concealed Japanese beetle larvae or pupae.

R68-15-5. Restrictions.

All commodities covered are prohibited entry into Utah from the area under quarantine unless they have the required certification. Plants may be shipped from the area under quarantine into Utah provided such shipments conform to one of the options below and are accompanied by a certificate issued by an authorized state agricultural official at origin. Note that not all protocols approved in the U.S. Domestic Japanese Beetle

- Harmonization Plan are acceptable for Utah. Advance notification of regulated commodity shipment is required. The certificate shall bear the name and address of the shipper and receiver as well as the inspection/certificate date and the signature of state agricultural officer. The certifying official shall mail, FAX or e-mail a copy of the certificate to Director, Plant Industry Division, Utah Department of Agriculture and Food, 350 North Redwood Road, P.O. Box 146500, Salt Lake City, Utah 84114-6500, FAX: (801) 538-7189,e-mail: UDAF-Nursery@utah.gov. The shipper shall notify the receiver to hold such commodities for inspection by the Utah Department of Agriculture and Food. The receiver must notify the Utah Department of Agriculture and Food of the arrival of commodities imported under the provisions of this quarantine and must hold such commodities for inspection. Such certificates shall be issued only if the shipment conforms fully with (a), (b), (c), (d) or (e) below:
- (a) Production in an Approved Japanese Beetle Free Greenhouse/Screenhouse. All the following criteria apply: All media must be sterilized and free of soil; All stock must be free of soil (bareroot) before planting into the approved medium; The potted plants must be maintained within the greenhouse/screenhouse during the entire adult flight period; During the adult flight period the greenhouse/screenhouse must be made secure so that adult Japanese beetles cannot gain entry. Security will be documented by the appropriate phytosanitary officials of the origin state department of agriculture and must be specifically approved as a secure area. They shall be inspected by the same officials for the presence of all life stages of the Japanese beetle; The plants and their growing medium must be appropriately protected from subsequent infestation while being stored, packed and shipped; Certified greenhouse/screenhouse nursery stock may not be transported into or through any infested areas unless identity is preserved and adequate safeguards are applied to prevent possible infestation; Each greenhouse/screenhouse operation must be approved by the phytosanitary officials as having met and maintained the above criteria, and issued an appropriate certificate bearing the following declaration: "The rooted plants (or crowns) were produced in an approved Japanese beetle free greenhouse or screenhouse." The certificate accompanying the shipment must have the same statement as an additional declaration.
- (b) Production During a Pest Free Window. The entire rooted plant production cycle will be completed within a pest free window, in clean containers with sterilized and soilless growing medium, i.e., planting, growth, harvest, and shipment will occur outside the adult Japanese beetle flight period, June through October. The accompanying phytosanitary certificate shall bear the following additional declaration: "These plants were produced outside the Japanese beetle flight season."
- (c) Applications of Approved Regulatory Treatments. All treatments will be performed under direct supervision of a phytosanitary official of the origin state department of agriculture or under a compliance agreement thereof. Treatments and procedures under a compliance agreement will be monitored closely throughout the season. State phytosanitary certificates listing and verifying the treatment used must be forwarded to the receiving state via fax or electronic mail, as well as accompanying the shipment. Note that not all treatments approved in the U.S. Domestic Japanese Beetle Harmonization Plan are acceptable for Utah. The phytosanitary certificate shall bear the following additional declaration: "The rooted plants were treated to control "Popillia japonica" according to the criteria for shipment to category 1 states as provided in the U.S. Domestic Japanese Beetle Harmonization Plan and Utah Japanese Beetle Quarantine.'
- (A) Dip Treatment B and B and Container Plants. Not approved.

- (B) Drench Treatments Container Plants Only. Not approved for ornamental grasses or sedges. Potting media used must be sterile and soilless, containers must be clean. Field potted plants are not eligible for certification using this protocol. This is a prophylactic treatment protocol targeting eggs and early first instar larvae. If the containers are exposed to a second flight season they must be retreated.
- (1) Imidacloprid (Marathon 60WP). Apply one-half (0.5) gram of active ingredient per gallon as a prophylactic treatment just prior to Japanese beetle adult flight season (June 1, or as otherwise determined by the phytosanitary official). Apply tank mix as a drench to wet the entire surface of the potting media. A twenty-four (24) gallon tank mix should be enough to treat 120-140 one-gallon containers. Avoid over drenching so as not to waste active ingredient through leaching. During the adult flight season, plants must be retreated after sixteen (16) weeks if not shipped to assure adequate protection.
- (2) Bifenthrin (Talstar Nursery Flowable 7.9%). Mix at the rate of twenty (20) ounces per 100 gallons of water. Apply, as a drench, approximately eight (8) ounces of tank mix per six (6) inches of container diameter.
- (C) Media (Granule) Incorporation Container Plants Only. All pesticides used for media incorporation must be mixed prior to potting and plants potted a minimum of thirty (30) days prior to shipment. Potting media used must be sterile and soilless; containers must be clean. The granules must be incorporated into the media prior to potting. Field potted plants are not eligible for treatment. This treatment protocol targets eggs and early first instar larvae and allows for certification of plants that have been exposed to only one flight season after application. If the containers are to be exposed to a second flight season they must be repotted with a granule incorporated mix or retreated using one of the approved drench treatments. Pesticides approved for media incorporation are:
- (1) Imidacloprid (Marathon 1G). Mix at the rate of five (5) pounds per cubic yard.
- (2) Bifenthrin (Talstar Nursery Granular or Talstar T and O Granular (0.2)). Mix at the rate of 25 ppm or one-third (0.33) of a pound per cubic yard based on a potting media bulk density of 200.
- (3) Tefluthrin (Fireban 1.5 G). Mix at the rate of 25 ppm based on a potting media bulk density of 400.
- (D) Methyl Bromide Fumigation. Nursery stock: methyl bromide fumigation at NAP, chamber or tarpaulin. See the California Commodity Treatment Manual for authorized schedules.
- (E) Other treatment or protocol not described herein may be submitted for review and approval to the Commissioner of Utah Department of Agriculture and Food.
- (d) Detection Survey for Origin Certification. Japanese Beetle Harmonization Plan protocol not approved. Alternative approved protocol: States listed in the area under quarantine may have counties that are not infested with Japanese beetle. Shipments of commodities covered may be accepted from these noninfested counties if annual surveys are made in such counties and adjacent counties and the results of such surveys are negative for Japanese beetle. In addition, the plants must be greenhouse grown or contained in media that is sterilized and free of soil and the shipping nursery must grow all their own stock from seed, unrooted cuttings or bareroot material. A list of counties so approved will be maintained by the Utah Department of Agriculture and Food. Agricultural officials from a quarantined state or province may recommend a noninfested county be placed on the approved county list by writing for such approval and stating how surveys were conducted giving the following information:
 - (A) Areas surveyed
 - (B) How survey was carried out
 - (C) Number of traps

- (D) Results of survey
- (E) History of survey
- If a county was previously infested, give date of last infestation. If infestations occur in neighboring counties, approval may be denied. To be maintained on the approved list, each county must be reapproved every twelve (12) months. Shipments of commodities covered from noninfested counties will only be allowed entry into Utah if the uninfested county has been placed on the approved list prior to the arrival of the shipment in Utah. The certificate must have the following additional declaration: The plants in this consignment were produced in (name of county), state of (name of state of origin) that is known to be free of Japanese beetle.
- (e) Privately owned house plants obviously grown, or certified at the place of origin as having been grown indoors without exposure to Japanese beetle may be allowed entry into this state without meeting the requirements of section (4). Contact the Utah Department of Agriculture and Food for requirements: Director, Plant Industry Division, Utah Department of Agriculture and Food, 350 North Redwood Road, P.O. Box 146500, Salt Lake City, Utah 84114-6500, FAX: (801) 538-7189, e-mail: UDAF-Nursery@utah.gov.

R68-15-6. Disposition of Violations.

Any or all shipments or lots of quarantined articles or commodities listed in R68-15-4 above arriving in Utah in violation of this quarantine shall immediately be sent out of the state, destroyed, or treated by a method and in a manner as directed by the Commissioner of the Utah Department of Agriculture and Food or his agent. Treatment shall be performed at the expense of the owner, or owners, or their duly authorized agent.

KEY: quarantine
December 14, 2007

Notice of Continuation August 28, 2012

4-2-2
4-35-9

R151. Commerce, Administration.

R151-4. Department of Commerce Administrative Procedures Act Rule.

R151-4-101. Title and Organization.

This rule (R151-4) is:

- known as the "Department of Commerce Administrative Procedures Act Rule;" and
 - (2) organized into the following Parts:
- (a) Part 1, General Provisions (R151-4-101 through R151-4-114);
 - (b) Part 2, Pleadings (R151-4-201 through R151-4-205);
 - (c) Part 3, Motions (R151-4-301 through R151-4-305);
- (d) Part 4, Filing and Service (R151-4-401 through R151-
- (e) Part 5, Discovery Formal Proceedings (R151-4-501 through R151-4-516);
- (f) Part 6, Depositions Formal Proceedings (R151-4-601 through R151-4-611);
 - (g) Part 7, Hearings (R151-4-701 through R151-4-712);
 - (h) Part 8, Orders (R151-4-801 through R151-4-803); and
- (i) Part 9, Agency Review and Judicial Review (R151-4-901 through R151-4-907).

R151-4-102. Definitions.

In addition to the definitions in Title 63G, Chapter 4, Administrative Procedures Act, as used in this rule (R151-4):

- (1) "Agency head" means the executive director of the department or the director of a division.
- (2) "Applicant" means a person who submits an application.
 - (3) "Application" means a request for:
 - (a) licensure;
 - (b) certification;
 - (c) registration;
 - (d) permit; or
 - (e) other right or authority granted by the department.(4) "Department" means:

 - (a) the Utah Department of Commerce; or
 - (b) a division of the department.
 - (5) "Division" means a division of the department.
 - (6) "Electronic" means a:
 - (a) facsimile transmission; or
 - (b) PDF file attached to an email.
- (7) "Intervenor" means a person permitted to intervene in an adjudicative proceeding before the department.
- (8) "Motion" means a request for any action or relief in an adjudicative proceeding.
 - (9) "Party in interest:"
 - (a) includes:
 - (i) a party;
 - (ii) a relative of a party; or
- (iii) an individual with a financial interest in the outcome of the proceeding; and
 - (b) does not include:
 - (i) a party's counsel; or
 - (ii) an employee of a party's counsel.
 - (10) "Petition" means the charging document setting forth:
 - (a) statement of jurisdiction;
 - (b) statement of one or more allegations;
 - (c) statement of legal authority; and
 - (d) request for relief.
- (11) "Pleadings" include the following along with any response:
 - (a) notice of agency action or request for agency action;
- (b) the petition, motions, briefs or other documents filed by the parties to an adjudicative proceeding;
 - (c) a request for agency review or agency reconsideration;
- (d) motions, briefs or other documents filed by the parties on agency review; and

(e) a response submitted to a pleading.

R151-4-103. Authority.

This rule (R151-4) is adopted under Subsection 63G-4-102(6) and Section 13-1-6 to define, clarify, or establish the procedures that govern adjudicative proceedings before the department.

R151-4-104. Supplementing Provisions.

Any provision of this rule (R151-4) may be supplemented by a division rule unless expressly prohibited by this rule.

R151-4-105. Purpose and Scope.

- (1) This rule (R151-4) is intended to secure the just, speedy, and economical determination of all issues presented in adjudicative proceedings before the department.
- (2) In the event of a conflict between this rule and a statute, the statute governs.

R151-4-106. Utah Rules of Civil Procedure.

The Utah Rules of Civil Procedure and related case law are persuasive authority in this rule (R151-4), but may not, except as otherwise provided by Title 63G, Chapter 4, Administrative Procedures Act or by this rule, be considered controlling authority.

R151-4-107. Computation of Time.

- (1) Periods of time in department proceedings shall:
- (a) exclude the first day of the act, event, or default from which the time begins to run; and
- (b) include the last day unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

 (2) When a period of time is less than seven days,
- Saturdays, Sundays, and legal holidays are excluded.
- (3)(a)(i) When a period of time runs after the service of a document by mail, three days shall be added to the end of the prescribed period.
- (ii) Except as provided in R151-4-107(1)(b), these three days include Saturdays, Sundays, and legal holidays.
- (b) No additional time is provided if service is accomplished by electronic means.

R151-4-108. Timeliness of Administrative Proceedings.

In both informal and formal proceedings, the hearing date shall be scheduled to provide for the hearing to be concluded not more than 180 calendar days after the day on which:

- (1) the notice of agency action is issued; or
- (2) the initial decision with respect to a request for agency action is issued.

R151-4-109. Extension of Time and Continuance of Hearing.

- (1) When ruling on a motion or request for extension of time or continuance of a hearing, the presiding officer shall consider:
- (a) whether there is good cause for granting the extension or continuance:
- (b) the number of extensions or continuances the requesting party has already received;
- (c) whether the extension or continuance will work a significant hardship upon the other party;
- whether the extension or continuance will be (d) prejudicial to the health, safety or welfare of the public; and
- (e) whether the other party objects to the extension or continuance.
- (2)(a) Except as provided in R151-4-109(2)(b), an extension of a time period or a continuance of a hearing may not result in the hearing being concluded more than 240 calendar

days after the day on which:

- (i) the notice of agency action was issued; or
- (ii) the initial decision with respect to a request for agency action was issued.
- (b) Notwithstanding R151-4-109(2)(a), an extension of a time period or a continuance may exceed the time restriction in R151-4-109(2)(a) only if:
- (i)(A) a party provides an affidavit or certificate signed by a licensed physician verifying that an illness of the party, the party's counsel, or a necessary witness precludes the presence of the party, the party's counsel, or a necessary witness at the hearing;
- (B) counsel for a party withdraws shortly before the final hearing, unless the presiding officer finds the withdrawal was for the purpose of delaying the hearing, in which case the hearing will go forward with or without counsel; or
- (C) a parallel criminal proceeding or investigation exists based on facts at issue in the administrative proceeding, in which case the continuance must address the expiration of the continuance upon the conclusion of the criminal proceeding; and
- (ii) the presiding officer finds that injustice would result from failing to grant the extension or continuance.
- (c) The failure to conclude a hearing within the required time period is not a basis for dismissal.
- (3) The presiding officer may not grant an extension of time or continuance that is not authorized by statute or rule.

R151-4-110. Representation of Parties.

- (1) A party may:
- (a) be represented by counsel who is an active member of a state bar if counsel submits a written notice of appearance;
 - (b) represent oneself individually; or
- (c) if not an individual, represent itself through an officer or employee.
- (2) Counsel licensed by the bar of a state other than Utah shall submit a certificate of good standing from the relevant state bar

R151-4-111. Review of Emergency Orders.

Unless otherwise provided by statute or rule:

- (1)(a) A division shall schedule a hearing to determine whether an emergency order should be affirmed, set aside, or modified based on the standards in Section 63G-4-502 if:
 - (i) the division has previously:
- (A) commenced an emergency adjudicative proceeding in the matter; and
- (B) issued an order in accordance with Section 63G-4-502 that results in a continued impairment of the affected party's rights or legal interests; and
- (ii) the affected party timely submits a written request for a hearing.
- (b) A hearing under this rule (R151-4-111) shall be conducted in conformity with Section 63G-4-206.
- (2)(a) Upon request for a hearing under this rule, the Division shall conduct a hearing as soon as reasonably practical but not later than 20 days from the receipt of a written request unless the Division and the party requesting the hearing agree in writing to conduct the hearing at a later date.
- (b) The Division has the burden of proof to establish, by a preponderance of the evidence, that the requirements of Section 63G-4-502 have been met.
- (3)(a) Except as otherwise provided by statute, the division director or designee shall select an individual or body of individuals to act as presiding officer at the hearing.
- (b) An individual who directly participated in issuing the emergency order may not act as the presiding officer.
- (4)(a) Within 15 calendar days after the day on which the hearing to consider the emergency order concludes, the

- presiding officer shall issue an order in accordance with Section 63G-4-208.
- (b) The order of the presiding officer is subject to agency review.

R151-4-112. Declaratory Orders.

- (1)(a) A petition for the issuance of a declaratory order under Section 63G-4-503 shall be filed with the agency head who has primary jurisdiction to enforce or implement the statute, rule, or order for which a declaratory order is sought.
 - (b) The petition shall:
 - (i) set forth:
 - (A) the question to be answered;
 - (B) the facts and circumstances related to the question;
- (C) the statute, rule, or order to be applied to the question;
- (D) whether oral argument is sought in conjunction with the petition; and
 - (ii) comply with Part 2, Pleadings.
- (2)(a) If the agency head issues a declaratory order without setting the matter for an adjudicative proceeding, the order shall be based on:
 - (i) a review of the petition;
 - (ii) oral argument, if any;
 - (iii) laws and rules applicable to the petition;
 - (iv) applicable records maintained by the department; and
- (v) other relevant information reasonably available to the department.
- (b) If the agency head sets the matter for an adjudicative proceeding, the department shall issue a notice of adjudicative proceeding under Subsection 63G-4-201(2)(a).
- (3) The department may not issue a declaratory order in any of the following classes of circumstances:
- (a) questions involving circumstances set forth in Subsection 63G-4-503(3)(a)(ii) or (3)(b);
- (b) questions that are not within the jurisdiction of the department;
- (c) questions that have been addressed by the department in an order, rule, or policy;
 - (d) questions that can be addressed by informal advice;
 - (e) questions that are addressed by statute;
- (f) questions that would be more properly addressed by statute or rule;
- (g) questions that arise out of pending or anticipated litigation in a civil, criminal, or administrative forum; or
- (h) questions that are irrelevant, insignificant, meaningless, or spurious.
- (4) The recipient of a declaratory order may request agency review.

R151-4-113. Record of an Adjudicative Proceeding.

The record of an adjudicative proceeding includes:

- (1) the pleadings and exhibits filed by the parties;
- (2) the recording of a hearing;
- (3) a transcript of a hearing; and
- (4) orders or other documents issued:
- (a) by a presiding officer; or
- (b) on agency review or reconsideration.

R151-4-114. Informal Adjudicative Proceedings in General.

- (1) Any provision of R151-4 that is specific to a formal adjudicative proceeding is not mandatory for an informal adjudicative proceeding.
- (2) By rule or order a division may apply a provision applicable to a formal adjudicative proceeding to an informal adjudicative proceeding, except that a provision relating to discovery, including depositions, may not be applied to an informal adjudicative proceeding.

R151-4-201. Docket Number and Title.

- (1) The department shall assign a docket number to each notice of agency action and, where appropriate, to each request for agency action.
 - (2) At a minimum the docket number shall consist of:
- (a) a letter code identifying where the matter originated, as follows:
 - (i) CORP-Corporations;
 - (ii) CP-Consumer Protection;
- (iii) DOPL-Occupational and Professional Licensing, including additional designations that division may implement for diversion, lien recovery fund, or other programs;
 - (iv) NAFA-New Automobile Franchise Act;
 - (v) PVFA-Powersport Vehicle Franchise Act;
 - (vi) RE-Real Estate;
 - (vii) AP-Real Estate Appraisers;
 - (viii) MG-Mortgage; and
 - (ix) SD-Securities;
- (b) a numerical code indicating the calendar year the matter arises; and
- (c) another number indicating chronological position among notices of agency action or requests for agency action filed during the year.
- (3) The department shall give each adjudicative proceeding a title in substantially the following form:

TABLE I

BEFORE THE (DIVISION)
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

In the Matter of (Notice of Agency Action) (the application, petition or license of John Doe) No. AA-2000-001

R151-4-202. Content and Size of Pleadings.

Pleadings shall:

- (1) be double-spaced, typewritten, and presented on standard $8\ 1/2\ x\ 11$ inch white paper; and
 - (2) contain:
- (a) a clear and concise statement of the allegations or facts relied upon as the basis for the pleading; and
 - (b) an appropriate request for relief when relief is sought.

R151-4-203. Signing of Pleadings.

- (1) Pleadings shall be signed by the party or the party's representative and shall show the signer's address.
 - (2) The signature is a certification that:
 - (a) the signer has read the pleading; and
- (b) to the best of the signer's knowledge and belief, there is good ground to support the pleading.

R151-4-204. Amendments to Pleadings.

- (1)(a) A party may amend a pleading once as a matter of course at any time before a responsive pleading is served.
- (b) A party that does not qualify to amend a pleading under (1)(a) may amend a pleading only by leave of the presiding officer or by written consent of the adverse party.
- (2) A party shall respond to an amended pleading within the later of:
- (a) the time remaining for response to the original pleading; or
 - (b) ten days after service of the amended pleading.
- (3) Defects in a pleading that do not affect substantial rights of a party need not be amended and shall be disregarded.

R151-4-205. Response to a Notice of Agency Action.

- A respondent in a formal adjudicative proceeding shall file a response to the notice of agency action.
 - (2)(a) A respondent in an informal adjudicative proceeding

may file a response to a notice of agency action.

- (b) The presiding officer may, by a written order, require a respondent in an informal adjudicative proceeding to submit a response.
- (3) Unless a different date is established by law or rule the following shall be filed within 30 days after the mailing date of the notice:
 - (a) a response to a notice of agency action; or
 - (b) a notice of receipt of request for agency action.

R151-4-301. General Provisions.

- (1) A party may file a motion that is relevant and timely.
- (2) All motions shall be filed in writing unless the necessity for a motion arises at a hearing and could not have been anticipated prior to the hearing.
- (3) Subsection 63G-4-102(4)(b) may not be construed to prohibit a presiding officer from granting a timely motion to dismiss for
 - (a) failure to prosecute;
- (b) failure to comply with this rule (R151-4), except where this rule expressly provides that a matter is not a basis for dismissal:
- (c) failure to establish a claim upon which relief may be granted; or
 - (d) other good cause basis.

R151-4-302. Time for Filing a Motion to Dismiss.

A motion to dismiss on a ground described in Rule 12(b)(1) through (7) of the Utah Rules of Civil Procedure shall be filed prior to filing a responsive pleading.

R151-4-303. Memoranda and Affidavits.

- (1) The presiding officer shall permit and may require memoranda and affidavits in support of, or in response to, a motion
- (2) Unless otherwise governed by a scheduling order issued by the presiding officer:
- (a) memoranda or affidavits in support of a motion shall be filed concurrently with the motion;
- (b) memoranda or affidavits in response to a motion shall be filed no later than 10 days after service of the motion; and
- (c) a final reply shall be filed no later than five days after service of the response.

R151-4-304. Oral Argument.

- (1) The presiding officer may permit or require oral argument on a motion.
- (2) Oral argument on a motion shall be scheduled to take place no more than 10 days after the last day on which the party:
- (a) who did not make the motion could have filed a response if that party does not file a response; or
 - (b) the party who made the motion:
- (i) replies to the opposing party's response to the motion;
- (ii) could have replied to the opposing party's response to the motion.

R151-4-305. Ruling on a Motion.

- (1) The presiding officer shall verbally rule on a motion at the conclusion of oral argument whenever possible.
- (2) When a presiding officer verbally rules on a motion, the presiding officer shall issue a written ruling within 30 calendar days after the day on which the presiding officer makes the verbal ruling.
- (3) If the presiding officer does not verbally rule on a motion at the conclusion of oral argument, the presiding officer shall issue a written ruling on the motion no more than 30 calendar days after:
 - (a) oral argument; or

- (b) if there is no oral argument, the final submission on the motion as outlined in R151-4-304(2).
- (4) The failure of the presiding officer to comply with the requirements of R151-4-305:
 - (a) is not a basis for dismissal of the matter; and
- (b) may not be considered an automatic denial or grant of the motion.

R151-4-306. Motion to Recuse or Disqualify a Board or Commission Member.

- (1)(a) A motion to recuse or disqualify a Board or Commission member must be filed no later than 14 days prior to the scheduled hearing before the Board or Commission and may include affidavits supporting the basis for the motion. Service of such motion to the opposing party shall be by electronic mail, facsimile or overnight mail.
- (b) A response to a motion to recuse or disqualify a Board or Commission member is permitted but not mandatory. Any response shall be filed no later than seven days before the scheduled hearing. Service of a response to the opposing party shall be by electronic mail, facsimile or overnight mail.
 - (c) No reply is permitted.
- (2)(a) The decision on a motion to recuse or disqualify a Board or Commission member shall be made by the Board or Commission member the motion seeks to recuse or disqualify. A written decision is not necessary.
- (b) At the beginning of the scheduled hearing, the Board or Commission member shall state on the record his or her decision. The Board or Commission member may choose to notify the presiding officer of his or her decision prior to the hearing, and the presiding officer shall then state the decision on the record
- (c) The Board or Commission member may ask the advice of the other members at the beginning of a scheduled hearing, but the Board or Commission member shall not be bound by any such advice.
- (d) The Division, presiding officer, or filing party may not subject the Board or Commission member to questioning or examination on the motion.
- (e) The Division or presiding officer may not reverse a recusal or disqualification decision made by a Board or Commission member.
- (f) Like all interlocutory matters, a decision on a motion to recuse or disqualify a Board or Commission member is not subject to an interlocutory appeal or agency review.
- (3) This rule does not apply to any adjudicative proceedings under the New Automobile Franchise Act, Utah Code Ann. Sections 13-14-101 et seq., or the Powersport Vehicle Franchise Act, Utah Code Ann. Sections 13-35-101 et seq.
- (4) A Board or Commission member may recuse him or herself at any time regardless of whether a party has filed a motion to recuse or disqualify the Board or Commission member.

R151-4-401. Filing.

- (1)(a) Pleadings shall be filed with:
- (i) the department or division in which the adjudicative proceeding is being conducted, which:
- (A) maintains the official file and should receive original documents: and
- (B) shall provide the pleading to the applicable board or commission; and
- (ii) an administrative law judge who is conducting all or part of the adjudicative proceeding, whose copy is a courtesy copy.
- (b) The filing of discovery documents is governed by R151-4-512.
 - (2)(a)(i) A filing may be accomplished by hand delivery or

by mail to the department or division in which the adjudicative proceeding is being conducted.

- (ii) a filing by hand delivery or mail is complete when it is received and date stamped by the department.
- (b)(i) A filing may be accomplished by electronic means if the original document is also mailed to the department or division the same day, as evidenced by a postmark or mailing certificate.
- (ii) Filing by electronic means is complete upon transmission if transmission is completed and received during the department's operating hours; otherwise, filing is complete on the next business day.
- (iii) A filing by electronic means is not effective unless the department or division receives all pages of the document transmitted.
- (iv) The burden is on the party filing the document to ensure that a transmission is properly completed.

R151-4-402. Service.

- (1)(a) Pleadings filed by the parties and documents issued by the presiding officer shall be concurrently served on all parties.
- (b) The party who files a pleading is responsible for service of the pleading.
- (c) The presiding officer who issues a document is responsible for service of the document.
 - (2)(a) Service may be made:
- (i) on a person upon whom a summons may be served pursuant to the Utah Rules of Civil Procedure; and
 - (ii) personally or on the agent of the person being served.
- (b) If a party is represented by an attorney, service shall be made on the attorney.
- (3)(a) Service may be accomplished by hand delivery or by mail to the last known address of the intended recipient.
 - (b) Service by mail is complete upon mailing.
 - (c) Service may be accomplished by electronic means.
- (d) Service by electronic means is complete on transmission if transmission is completed during normal business hours at the place receiving the service; otherwise, service is complete on the next business day.
- (4) There shall appear on all documents required to be served a certificate of service in substantially the following form:

TABLE II

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing document on the parties of record in this proceeding set forth below (by delivering a copy thereof in person) (by mailing a copy thereof, properly addressed by first class mail with postage prepaid, to) (by electronic means and first class mail to):

(Name(s) of parties of record)
(Address(es))
Dated this (day) day of (month), (year).

(Signature) (Name and Title)

R151-4-501. Applicability.

- (1) This part (R151-4-501 to -516) applies only to formal adjudicative proceedings.
- (2) Discovery is prohibited in informal adjudicative proceedings.

R151-4-502. Scope of Discovery.

- (1) Parties may obtain discovery regarding a matter that:
- (a) is not privileged;
- (b) is relevant to the subject matter involved in the proceeding; and

- (c) relates to a claim or defense of:
- (i) the party seeking discovery; or
- (ii) another party.
- (2)(a) Subject to R151-4-502(3) and R151-4-504, a party may obtain discovery of documents and tangible things otherwise discoverable under R151-4-502(1) and prepared in anticipation of litigation or for hearing by or for another party or by or for that party's representative, including the party's attorney, consultant, insurer or other agent, only on a showing that the party seeking discovery:
- (i) has substantial need of the materials in the preparation of the case; and
- (ii) is unable without undue hardship to obtain the substantial equivalent of the materials by other means.
- (b) In ordering discovery of materials described in R151-4-502(2)(a), the presiding officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney of a party.
- (3) Discovery of facts known and opinions held by experts, otherwise discoverable under R151-4-502(1) and acquired or developed in anticipation of litigation or for hearing, may be obtained only through the disclosures required by R151-4-504.

R151-4-503. Disclosures Required by Prehearing Order.

- (1) In the prehearing order the presiding officer may require each party to disclose in writing:
- (a)(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting the party's claims or defenses; and
- (ii) identification of the topic(s) addressed in the information maintained by each individual; and
- (b)(i) a copy of all discoverable documents, data compilations, and tangible things that:
 - (A) are in the party's possession, custody, or control; and
 - (B) support the party's claims or defenses; or
- (ii)(A) a description, by category and location, of the tangible things identified in R151-4-503(1)(b)(i); and
 - (B) reasonable access.
- (2)(a) The order may not require disclosure of expert testimony, which is governed by R151-4-504.

 (b) The order shall not require the disclosure of
- (b) The order shall not require the disclosure of information regarding persons or things intended to be used solely for impeachment.
- (3)(a) Each party shall make the disclosures required by R151-4-503(1) within 14 days after the prehearing order is issued.
- (b) A party joined after the prehearing conference shall make these disclosures within 30 days after being served.
- (c) A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because:
- (i) the party has not fully completed the investigation of the case:
- (ii) the party challenges the sufficiency of another party's disclosures; or
 - (iii) another party has not made disclosures.
- (4) Disclosures required under R151-4-503 shall be made in writing, signed, and served.

R151-4-504. Disclosures Otherwise Required.

- (1)(a) A party shall:
- (i) disclose in writing the name, address and telephone number of any person who might be called as an expert witness at the hearing; and
- (ii) provide a written report pursuant to the requirements for disclosure of expert testimony of Rule 26 of the Utah Rules of Civil Procedure.
- (b) Unless otherwise stipulated in writing by the parties or ordered in writing by the presiding officer, the disclosures

required by R151-4-504(1) shall be made:

- (i) within 30 days after the deadline for completion of discovery; or
- (ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under R151-4-504(1)(a), within 60 days after the disclosure made by the other party.
- (c) If either party fails to file its disclosure within the time frames in R151-4-504(1), the presiding officer:
- (i) shall exclude the expert testimony from the proceeding;
- (ii) may not continue the hearing to allow additional time for the disclosures.
- (2)(a) In addition to the disclosures required by R151-4-504(1), a party shall disclose information regarding evidence the party may present at hearing other than solely for impeachment purposes pursuant to the pretrial disclosures provisions of Rule 26 of the Utah Rules of Civil Procedure.
- (b)(i) The disclosures required by R151-4-504(2) shall be made at least 45 days before the hearing.
- (ii) Within 14 days after service of the disclosures a party may serve and file an objection to the:
 - (A) use of a deposition designated by another party; and
- (B) admissibility of materials identified under R151-4-504(2)(a).
 - (iii) An objection not timely made is waived.

R151-4-505. Other Discovery Methods.

Parties may obtain discovery by one or more of the following methods:

- (1) depositions upon oral examination;
- (2) production of documents or things;
- (3) permission to enter upon land or other property for inspection and other purposes; and
 - (4) physical and mental examinations.

R151-4-506. Limits on Use of Discovery.

The frequency and extent of discovery shall be limited by the presiding officer regardless of whether either party files a motion to limit discovery if:

- (1) the discovery sought is unreasonably cumulative, duplicative, or is obtainable from some other source that is:
 - (a) more convenient;
 - (b) less burdensome; or
 - (c) less expensive;
- (2) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
- (3) the discovery is unduly burdensome or expensive, taking into account:
 - (a) the needs of the case;
 - (b) the amount in controversy;
 - (c) limitations on the parties' resources; and
 - (d) the importance of the issues at stake in the litigation.

R151-4-507. Protective Orders.

- (1) Upon motion by a party or by the person from whom discovery is sought the presiding officer may make an order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:
 - (a) that the discovery not be had;
- (b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (d) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
 - (e) that discovery be conducted with no one present except

persons designated by the presiding officer;

- (f) that a deposition after being sealed be opened only by order of the presiding officer;
- (g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or
- (h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.
- (2) If the motion for a protective order is denied in whole or in part, the presiding officer may order that a party or person provide or permit discovery.

R151-4-508. Timing, Completion, and Sequence of Discovery.

- (1) Parties are encouraged to initiate appropriate discovery procedures in advance of the prehearing conference so that discovery disputes can be addressed at that conference to the extent possible.
- (2)(a) All discovery, except for prehearing disclosures governed by R151-4-504, shall be completed within 120 calendar days after the day on which:
 - (i) the notice of agency action was issued; or
- (ii) the initial decision with respect to a request for agency action was issued.
- (b) Factors the presiding officer shall consider in determining whether to shorten this time period include:
- (i) whether a party's interests will be prejudiced if the time period is not shortened;
- (ii) whether the relative simplicity or nonexistence of factual issues justifies a shortening of discovery time; and
- (iii) whether the health, safety or welfare of the public will be prejudiced if the time period is not shortened.
- (c) Factors the presiding officer shall consider in determining whether a party has demonstrated good cause to extend this time period include, in addition to those set forth in R151-4-109:
- (i) whether the complexity of the case warrants additional discovery time; and
- (ii) whether that party has made reasonable and prudent use of the discovery time that has already been available to the party since the proceeding commenced.
- (d) Notwithstanding R151-4-508(2)(c), the presiding officer may not extend discovery in a way that prevents the hearing from taking place within the time frames established in R151-4-108.
- (3)(a) Unless the presiding officer orders otherwise for the convenience of parties and witnesses, and except as otherwise provided by this rule (R151-4), discovery methods may be used in any sequence.
- (b) The fact that a party is conducting discovery shall not operate to delay another party's discovery.

R151-4-509. Supplemented Disclosures and Amended Responses.

- (1) A party who has made a disclosure or responded to a request for discovery with a response that was complete when made shall supplement the disclosure or amend the response to include subsequent information if:
 - (a) ordered by the presiding officer; or
- (b) a circumstance described in R151-4-509(2) or (3) exists.
 - (2)(a) A party shall supplement disclosures if:
- (i) the party learns that in some material respect the information disclosed is incomplete or incorrect; and
- (ii) the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.
 - (b) With respect to testimony of an expert from whom a

report is required under R151-4-504:

- (i) the duty extends to information contained in the report;
 and
- (ii) additions or other changes to this information shall be disclosed by the time the party's disclosures under R151-4-504 are due.
- (3) A party shall amend a prior response to a request for production:
- (a) within a reasonable time after the party learns that the response is in some material respect incomplete or incorrect;
 and
- (b) if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

R151-4-510. Prehearing Conference - Scheduling the Hearing Date.

- (1) Each notice of agency action or initial decision with respect to a request for agency action:
- (a) shall contain the time, date, and location of a prehearing conference, which shall be at least 45 calendar days but not more than 60 calendar days after the date of the notice of agency action or initial decision with respect to a request for agency action;
- (b) shall contain a clear notice that failure to respond within 30 calendar days may result in:
 - (i) cancellation of the prehearing conference; and
 - (ii) a default order; and
- (c) may contain the date, consistent with R151-4-108, of the scheduled hearing.
- (2)(a) The prehearing conference may be in person or telephonic.
- (b) All parties, or their counsel, shall participate in the conference.
- (c) The conference shall include discussion and scheduling of discovery, prehearing motions, and other necessary matters.
- (3) During the prehearing conference, the presiding officer shall issue a verbal order, and shall issue a written order to the same effect within 2 business days after the conference is concluded, which shall address each of the following:
- (a) if necessary, scheduling an additional prehearing conference;
- (b) setting a deadline for the filing of all prehearing motions and cross-motions, including motions for summary judgment, which deadline shall allow for all motions to be submitted and ruled on prior to the hearing date;
 - (c) modifying, if appropriate, a deadline for disclosures;
 - (d) resolving discovery issues;
- (e) establishing a schedule for briefing, discovery needs, expert witness reports, witness and exhibit lists, objections, and other necessary or appropriate prehearing matters;
- (f) if not already scheduled, scheduling a hearing date in compliance with R151-4-108; and
 - (g) dealing with other necessary matters.
- (4) A party joined after the prehearing conference is bound by the order issued as a result of that conference unless the order is modified in writing pursuant to a stipulation or motion.
- (5)(a) Notwithstanding any other rule, the presiding officer shall schedule all prehearing matters consistent with R151-4-108
 - (b) The presiding officer may:
- (i) adjust time frames as necessary to accommodate R151-4-108; and
- (ii) schedule appropriate prehearing matters to occur concurrently.

R151-4-511. Signing of Disclosures, Discovery Requests, Responses, and Objections.

(1)(a) Every disclosure shall:

- (i) be signed by:
- (A) at least one attorney of record; or
- (B) the party if not represented; and
- (ii) include the mailing address of the signer.
- (b) The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it was made.
- (2)(a) Every request for discovery or response or objection to discovery shall:
 - (i) be signed by:
 - (A) at least one attorney of record; or
 - (B) the party if not represented; and
 - (ii) include the mailing address of the signer.
- (b) The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is:
- (i) consistent with this rule (R151-4) and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;
- (ii) not interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and
- (iii) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, and the importance of the issues at stake in the proceeding.
- (3)(a) If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection.
- (b) A party is not obligated to take an action with respect to a request, response, or objection until it is signed.

R151-4-512. Filing of Discovery Requests or Disclosures.

- (1) Unless otherwise ordered by the presiding officer:
- (a) a party may not file a request for or response to discovery, but shall file only the original certificate of service stating that the request or response has been served on the other parties and the date of service;
- (b) a party may not file any of the disclosures required by the prehearing order or any of the expert witness disclosures required by R151-4-504, but shall file only the original certificate of service stating that the disclosures have been served on the other parties and the date of service;
- (c) except as may be required by Rule 30 of the Utah Rules of Civil Procedure, depositions shall not be filed; and
- (d) a party shall file the disclosures required by R151-4-504.
- (2) A party filing a motion for a protective order or a motion for an order compelling discovery shall attach to the motion a copy of the request or response at issue.

R151-4-513. Subpoenas.

- (1) Each subpoena:
- (a) shall be issued and signed by the presiding officer;
- (b) shall state the title of the action;
- (c) shall command each person to whom it is directed to attend and give testimony at a hearing or deposition at a time and place specified;
- (d) may command the person to whom it is directed to produce designated books, papers, or tangible things, and in the case of a subpoena for a deposition, may permit inspection and copying of the items; and
- (e) shall limit its designation of books, papers, or tangible things to matters properly within the scope of discoverable information.
- (2) A subpoenaed individual shall receive the fee for attendance and mileage reimbursement required by law.

- (3)(a) A subpoena commanding a person to appear at a hearing or a deposition in Utah may be served at any place in Utah
- (b) A person who resides in Utah may be required to appear at a deposition:
- (i) in the county where the person resides, is employed, or transacts business in person; or
- (ii) at any reasonable location as the presiding officer may order
- (c) A person who does not reside in this state may be required to appear at a deposition:
- (i) in the county in Utah where the person is served with a subpoena; or
- (ii) at any reasonable location as the presiding officer may
- (4) A subpoena shall be served in accordance with the requirements of the jurisdiction in which service is made.
- (5) Upon a motion made promptly to quash or modify a subpoena, but no later than the time specified in the subpoena for compliance, the presiding officer may:
- (a) quash or modify the subpoena, if it is shown to be unreasonable and oppressive; or
- (b) conditionally deny the motion with the denial conditioned on the payment of the reasonable cost of producing the requested materials by the person on whose behalf the subpoena is issued.
- (6)(a) In the case of a subpoena requiring the production of books, papers, or other tangible things at a deposition, the person to whom the subpoena is directed may, within 10 days after service or on or before the time specified in the subpoena for compliance if the time is less than 10 days after service, serve on the attorney designated in the subpoena a written objection to production, inspection, or copying of any of the designated materials.
- (b) If this objection is made, the party serving the subpoena is not entitled to production, inspection, or copying of the materials except pursuant to a further order of the presiding officer who issued the subpoena.

R151-4-514. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.

- (1) Upon approval by the presiding officer, a party may serve on another party a request:
 - (a) to produce and permit the party making the request to:
- (i) inspect and copy a data compilation from which information can be obtained and translated into a reasonably usable form; or
- (ii) inspect and copy, test, or sample a document or tangible thing that:
- (A) constitutes or contains matters within the scope of R151-4-502(1); and
- (B) are in the possession, custody or control of the party upon whom the request is served; or
- (b) to permit, within the scope of R151-4-502(1), entry on designated land, property, object, or operation in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing, or sampling.
- (2)(a) Before permitting a party to serve a request for production of documents, the presiding officer must first find that the requesting party has demonstrated the records have not already been provided.
- (b) After approval by the presiding officer, the request may be served on a party.
 - (c) The request shall:
- (i) set forth the items to be inspected either by individual item or by category;
 - (ii) describe each item and category with particularity; and
 - (iii) specify a reasonable time, place, and manner of

making the inspection and performing the related acts.

- (d)(i) The party upon whom the request is served shall serve a written response within 20 days after service of the request unless the presiding officer allows a shorter or longer time in a written order.
- (ii) The response shall state, with respect to each specific item or category:
- (A) that inspection and related activities will be permitted as requested; or
 - (B) an objection.
- (iii) The party submitting the request may move for an order under R151-4-516 with respect to any:
 - (A) objection;
 - (B) failure to respond to any part of the request; or
 - (C) failure to permit inspection as requested.
 - (e) A party who produces documents for inspection shall:
- (i) produce them as they are kept in the usual course of business; or
- (ii) organize and label them to correspond with the categories in the request.

R151-4-515. Physical and Mental Examination of Persons.

- (1)(a) When the mental or physical condition, including the blood group, of a party or of a person in the custody or under the legal control of a party is in controversy, the presiding officer may order the party or person to:
- (i) submit to a physical or mental examination by a physician; or
- (ii) produce for examination the person in the party's custody or legal control.
 - (b) The order:
- (i) may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties; and
 - (ii) shall specify:
- (A) the time, place, manner, conditions, and scope of the examination; and
 - (B) the person or persons by whom it is to be made.
- (2)(a)(i) If requested by the party against whom an order is made under this rule or the person examined, the party causing the examination to be made shall deliver to the requester a copy of a detailed written report of the examining physician including findings, diagnoses, conclusions, test results, and reports of any earlier examination of the same condition.
- (ii)(A) After delivery, the party causing the examination is entitled, on request, to receive from the party against whom the order is made a like report of an examination, previously or thereafter made, of the same condition unless, in the case of an examination of a person not a party, the party shows that the party is unable to obtain it.
- (B) The presiding officer on motion may order a party to deliver a report, and if a physician fails or refuses to make a report, the presiding officer may exclude the physician's testimony at the hearing.
- (b) By requesting and obtaining an examination report or by taking the deposition of the examiner, the party examined waives any privilege regarding the testimony of every other person who has examined or may thereafter examine the party for the same mental or physical condition.
 - (c) R151-4-515(2):
- (i) applies to examination made by agreement of the parties unless the agreement expressly provides otherwise; and
- (ii) does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician under any other rule.

R151-4-516. Motion to Compel Discovery - Sanctions.

- (1)(a) The discovering party may move for an order compelling discovery if:
 - (i) a party fails to make disclosures required by a

prehearing order;

- (ii) a party fails to make the disclosures required by R151-4-504;
 - (iii) a deponent fails to answer a question;
- (iv) a corporation or other entity named as a deponent fails to designate an individual to testify pursuant to Rule 30 of the Utah Rules of Civil Procedure; or
- (v) a party, in response to a request for inspection under R151-4-514, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested.
- (b) When taking a deposition, the proponent of the question may complete or adjourn the examination before applying for an order.
- (c) If the presiding officer denies the motion in whole or in part, the presiding officer may make a protective order that otherwise would be authorized by R151-4-507.
- (d) An evasive or incomplete answer is treated as a failure to answer.
- (2)(a) If a party or other person fails to comply with an order compelling discovery:
- (i) the department may seek civil enforcement in the district court under Section 63G-4-501; or
- (ii) the presiding officer may, for good cause, issue an order:
- (A) that the related matters and facts shall be taken to be established:
- (B) refusing to allow the disobedient party to support or oppose designated claims or defenses; or
- (C) prohibiting the disobedient party from introducing designated matters in evidence;
 - (D) striking out pleadings or portions of pleadings;
- (E) dismissing the proceeding or a portion of the proceeding; or
- (F) rendering a judgment by default against the disobedient party.

R151-4-601. Applicability - Scope.

- (1)(a) This part (R151-4-601 to -611) applies only to formal adjudicative proceedings.
- (b) Discovery is prohibited in informal adjudicative proceedings.
- (2)(a) Only as provided in this part and with a written order of the presiding officer, a party may take the testimony by deposition upon oral examination of certain persons, including parties, who have knowledge of facts relevant to the claims or defenses of a party in the proceeding.
- (b) The attendance of witnesses may be compelled by subpoena.
 - (c) A party may not depose an expert witness.

R151-4-602. General Provisions - Persons who may be Deposed.

- (1) Before a party may request leave to take a person's deposition, the party must first make diligent efforts to obtain discovery from that person by means of an informal interview.
- (2) A party may not be granted leave to take a deposition unless the party, upon motion, demonstrates to the satisfaction of the presiding officer that the person has knowledge of facts relevant to the claims or defenses of a party in the proceeding and:
- (a) has refused a reasonable request by the moving party for an informal interview;
- (b) after having notice of at least two reasonable requests by that party for an informal interview, has failed to respond to those requests;
- (c) has refused to answer reasonable questions propounded to him by that party in an informal interview; or
 - (d) will be unavailable to testify at the hearing.
 - (3) In deciding whether to grant the motion, the presiding

officer shall consider the probative value the testimony is likely to have in the proceeding.

(4) The moving party has the burden of demonstrating the need for a deposition.

R151-4-603. Notice of Deposition - Requirements.

- (1)(a) A party permitted to take a deposition shall give notice pursuant to the notice requirements of Rule 30 of the Utah Rules of Civil Procedure.
- (2)(a) The parties may stipulate in writing or, upon motion, the presiding officer may order in writing that the testimony at a deposition be recorded by means other than stenographic means.
 - (b) The stipulation or order:
- (i) shall designate the person before whom the deposition shall be taken;
- (ii) shall designate the manner of recording, preserving and filing the deposition; and
- (iii) may include other provisions to assure the recorded testimony will be accurate and trustworthy.
- (c) A party may arrange to have a transcript made at the party's own expense.
- (d) A deposition recorded by means other than stenographic means shall set forth in writing:
 - (i) any objections;
 - (ii) any changes made by the witness;
- (iii) the signature of the witness identifying the deposition as the witness's own or the statement of the court reporter required if the witness does not sign; and
- (iv) any certification required by Rule 30 of the Utah Rules of Civil Procedure.
- (3) The notice to a party deponent may be accompanied by a request in compliance with R151-4-514 for the production of documents and tangible things at the deposition.
- (4) Rule 30(b)(6) of the Utah Rules of Civil Procedure shall apply where a deponent is:
 - (a) a public or private corporation;
 - (b) a partnership;
 - (c) an association; or
 - (d) a government agency.
- (5) The parties may stipulate in writing or, upon motion, the presiding officer may order a deposition be taken by telephone.

R151-4-604. Examination and Cross-Examination.

(1) Examination and cross-examination of witnesses may proceed as permitted at a hearing under the Utah Administrative Procedures Act and pursuant to Rule 30 of the Utah Rules of Civil Procedure.

R151-4-605. Motion to Terminate or Limit Examination.

(1) The presiding officer may order the court reporter conducting the examination to end the deposition or may limit the scope and manner of taking the deposition pursuant to Rule 30 of the Utah Rules of Civil Procedure.

R151-4-606. Submission to Witness - Changes - Signing.

A deposition shall be submitted to the witness, changed, and signed pursuant to Rule 30 of the Utah Rules of Civil Procedure.

R151-4-607. Certification - Delivery - Exhibits.

- (1) The transcript or recording of a deposition shall be certified and delivered pursuant to Rule 30 of the Utah Rules of Civil Procedure.
- (2) Exhibits shall be marked for identification, inspected, copied, and delivered pursuant to Rule 30 of the Utah Rules of Civil Procedure.

R151-4-608. Persons Before Whom Depositions May Be Taken.

Depositions shall be taken before a certified court reporter holding a current and active license under Utah Code Title 58, Chapter 74, Certified Court Reporters Licensing Act.

R151-4-609. Use of Depositions.

- (1) Pursuant to the other provisions of R151-4-609, a part of a deposition, if admissible under the rules of evidence applied as though the witness were present and testifying, may be used against a party who:
- (a) was present or represented at the taking of the deposition; or
 - (b) had reasonable notice of the deposition.
 - (2) A party may use a deposition:
- (a) to contradict or impeach the testimony of the deponent as a witness; or
- (b) for another purpose permitted by the Utah Rules of Evidence.
 - (3) An adverse party may use a deposition for any purpose.
- (4) A party may use the deposition of a witness, whether or not a party, for any purpose if the presiding officer finds that:
 - (a) the witness is dead;
- (b) the witness is more than 100 miles from the hearing, unless it appears the absence of the witness was procured by the party offering the deposition;
- (c) the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or
- (d) the party offering the deposition has been unable to procure the attendance of the witness by subpoena.
- (5) If part of a deposition is offered in evidence by a party, an adverse party may require introduction of any other part which ought, in fairness, to be considered with the part introduced.
- (6) A deposition lawfully taken and filed in a court or another agency within Utah may be used as if originally taken in the pending proceeding.
- (7) A deposition previously taken may otherwise be used as permitted by the Utah Rules of Evidence.

R151-4-610. Objections to Admissibility.

A party may object at a hearing to receiving in evidence any part of a deposition for a reason that would require the exclusion of the evidence if the witness were present and testifying.

R151-4-611. Effect of Errors and Irregularities in Depositions.

- (1) An error or irregularity in the notice for taking a deposition is waived unless a party promptly serves a written objection on the party giving the notice.
- (2) Objection to taking a deposition because of disqualification of the court reporter before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.
- (3) An objection to the competency of a witness or to the competency, relevancy, or materiality of testimony is not waived by failure to make it before or during the taking of the deposition, unless the basis of the objection is one that could have been obviated or removed if presented at that time.
- (4) An error or irregularity occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and an error that might be obviated, removed, or cured if promptly presented, is waived unless an objection is made at the taking of the deposition.
- (5) An error or irregularity in the manner in which the testimony is transcribed or the deposition is prepared, signed,

certified, sealed, endorsed, transmitted, filed, or otherwise dealt with is waived unless a motion to suppress is made with reasonable promptness after the defect is, or with due diligence should have been, discovered.

R151-4-701. Hearings Required or Permitted.

A hearing shall be held in an adjudicative proceedings in which a hearing is:

- (1) required by statute or rule and not waived by the parties; or
 - (2) permitted by statute or rule and timely requested.

R151-4-702. Time to Request Permissive Hearing.

A request for a hearing permitted by statute or rule must be received no later than:

- (1) the time period for filing a response to a notice of agency action if a response is required or permitted;
- (2) twenty days following the issuance of a notice of agency action if a response is not required or permitted; or
 - (3) the filing of the request for agency action.

R151-4-703. Hearings Open to Public - Exceptions.

- (1) A hearing in an adjudicative proceeding is open to the public unless closed by:
- (a) the presiding officer conducting the hearing, pursuant to Title 63G, Chapter 4, the Administrative Procedures Act; or
- (b) a presiding officer who is a public body, pursuant to Title 52, Chapter 4, the Open and Public Meetings Act.
- (2)(a) The deliberative process of an adjudicative proceeding is a quasi-judicial function exempt from the Open and Public Meetings Act.
 - (b) Deliberations are closed to the public.

R151-4-704. Bifurcation of Hearing.

The presiding officer may, for good cause, order a hearing bifurcated into a findings phase and a sanctions phase.

R151-4-705. Order of Presentation in Hearings.

The order of presentation of evidence in hearings in formal adjudicative proceedings shall be as follows:

- (1) opening statement of the party with the burden of proof:
- (2) opening statement of the opposing party, unless the party reserves the opening statement until the presentation of its case-in-chief;
- (3) case-in-chief of the party with the burden of proof and cross examination of witnesses by opposing party;
- (4) case-in-chief of the opposing party and cross examination of witnesses by the party with the burden of proof;
- (5) if the presiding officer finds it to be necessary, rebuttal evidence by the party which has the burden of proof;
- (6) if the presiding officer finds it to be necessary, rebuttal evidence by the opposing party;
 - (7) closing argument by the party with the burden of proof;
 - (8) closing argument by the opposing party; and
 - (9) final argument by the party with the burden of proof.

R151-4-706. Testimony Under Oath.

Testimony presented at a hearing shall be given under oath administered by the presiding officer and under penalty of perjury.

R151-4-707. Electronic Testimony.

- (1) As used in this section (R151-4-707), electronic testimony includes testimony by telephone or by other audio or video conferencing technology.
- (2)(a) Electronic testimony is permissible in a formal proceeding only:
 - (i) on the consent of all parties; or

- (ii) if warranted by exigent circumstances.
- (b) Expenses to produce in-person testimony do not constitute an exigent circumstance in a formal proceeding. (c) Electronic testimony generally is permissible in an informal proceeding on the request of a party.
- (3)(a) When electronic testimony is to be presented, the presiding officer shall require identification of the witness.
 - (b) The presiding officer shall provide safeguards to:
- (ii) assure the witness does not refer to documents improperly; and
- (iii) reduce the possibility the witness may be coached or influenced during the testimony.

R151-4-708. Standard of Proof.

Unless otherwise provided by statute or a rule applicable to a specific proceeding, the standard of proof in a proceeding under this rule (R151-4), whether initiated by a notice of agency action or request for agency action, is a preponderance of the evidence.

R151-4-709. Burden of Proof.

Unless otherwise provided by statute:

- (1) the department has the burden of proof in a proceeding initiated by a notice of agency action; and
- (2) the party who seeks action from the department has the burden of proof in a proceeding initiated by a request for agency action.

R151-4-710. Default Orders.

- (1) The presiding officer may enter a default order under Section 63G-4-209, with or without a motion from a party.
- (2) If a basis exists for a default order, the order may enter without notice to the defaulting party or a hearing.
- (3) A default order is not required to be accompanied by a separate order.

R151-4-711. Record of Hearing.

- (1) The presiding officer shall make a record of all prehearing conferences and hearings.
- (2)(a) The presiding officer shall make the record of a hearing in a formal proceeding by means of:
- (i) a certified court reporter licensed under Title 58, Chapter 74, Certified Court Reporters Licensing Act; or
- (ii) a digital audio or video recording in a commonly used file format.
- (b) The presiding officer shall make record of a hearing in an informal proceeding by:
 - (i) a method required for a formal proceeding; or
- (ii) minutes or an order prepared or adopted by the presiding officer.
- (3) A hearing in an adjudicative proceeding shall be recorded at the expense of the department.
- (4)(a) If a party is required by R151-4-902 to obtain a transcript of a hearing for agency review, the party must ensure that the record is transcribed:
- (i) in a formal adjudicative proceeding, by a certified court reporter; or
 - (ii) in an informal adjudicative proceeding, by:
 - (A) a certified court reporter; or
 - (B) a person who is not a party in interest.
- (b) Where a transcript is prepared by someone other than a certified court reporter, a party shall file an affidavit of the transcriber stating under penalty of perjury that the transcript is a correct and accurate transcription of the hearing record.
- (c) Pages and lines in a transcript shall be numbered for referencing purposes.
- (d) The party requesting the transcript shall bear the cost of the transcription.
 - (5) The original transcript of a record of a hearing shall be

filed with the presiding officer.

R151-4-712. Fees.

- (1)(a) Witnesses appearing on the demand or at the request of a party may receive payment from that party of:
 - (i) \$18.50 for each day in attendance; and
- (ii) if traveling more than 50 miles to attend and return from the hearing, 25 cents per mile for each mile actually and necessarily traveled.
- (b) A witness subpoenaed by a party other than the department may:
- (i) demand one day's witness fee and mileage in advance;
 - (ii) be excused from appearance unless the fee is provided.
- (2) Interpreters and translators may receive compensation for their services.
- (3) An officer or employee of the United States, the State of Utah, or a county, incorporated city, or town within the State of Utah, may not receive a witness fee unless the officer or employee is required to testify at a time other than during normal working hours.
- (4) A witness may not receive fees in more than one adjudicative proceeding on the same day.

R151-4-801. Requirements and Timeliness.

- (1) For default orders and orders issued subsequent to a default order, the requirements of Subsections 63G-4-203(1)(i)(iii) and (iv) and 63G-4-208(1)(e),(f) and (g) are satisfied if the order includes a notice of the right to seek to set aside the order as provided in Subsection 63G-4-209(3).
- (2) Except as provided in Sections 63G-4-502 and R151-4-111, the presiding officer shall issue an order within 45 calendar days after the day on which the hearing concludes.
- (3) If the presiding officer permits the filing of posthearing documents, that filing shall be scheduled in a way that allows the presiding officer to issue an order within 45 calendar days after the day on which the hearing concludes.
- (4) The failure of the presiding officer to comply with the requirements of this section (R151-4-801):
 - (a) is not a basis for dismissal of the matter; and
- (b) may not be considered an automatic denial or grant of a motion

R151-4-802. Effective Date.

The effective date of an order is 30 calendar days after its issuance unless otherwise provided in the order.

R151-4-803. Clerical Mistakes.

- (1) The department may correct clerical mistakes in orders or other parts of the record and errors arising from oversight or omission on:
 - (a) its own initiative; or
 - (b) the motion of a party.
- (2) Mistakes described in this section (R151-4-803) may be corrected:
- (a) at any time prior to the docketing of a petition for judicial review; or
- (b) as governed by Rule 11(h) of the Utah Rules of Appellate Procedure.

R151-4-901. Availability of Agency Review and Reconsideration.

- (1) Except as otherwise provided in Subsection 63G-4-209(3)(c), an aggrieved party may obtain agency review of a final order by filing a request with the executive director within 30 calendar days after the issuance of the order.
- (2)(a) Agency review is not available for an order or decision entered by:
 - (i) the Utah Motor Vehicle Franchise Advisory Board; or

- (ii) the Utah Powersport Vehicle Franchise Advisory
- (b) Agency review is not available for an order or decision entered by the Division of Occupational and Professional Licensing for:
- (i) Prelitigation proceedings under Title 78B, Chapter 3, the Utah Health Care Malpractice Act;
 - (ii) a request for modification of a disciplinary order; or
- (iii) a request under Section 58-1-404(4) for entry into the Diversion Program.
- (c) Agency review is not available for an order or decision entered by the Division of Corporations and Commercial Code for:
- (i) refusal to file a document under the Utah Revised Business Corporations Act pursuant to Section 16-10a-126;
- (ii) revocation of a foreign corporation's authority to transact business pursuant to Section 16-10a-1532;
- (iii) refusal to file a document under the Utah Revised Limited Liability Company Act pursuant to Section 48-2c-211;
- (iv) revocation of a foreign limited liability company's authority to transact business pursuant to Section 48-2c-1614.
- (d)(i) A party may request agency reconsideration pursuant to Section 63G-4-302 for an order or decision exempt from agency review under R151-4-901(2)(a), (2)(b)(ii), and (2)(c).
- (ii) Pursuant to Subsections 58-1-404(4)(d) and 78B-3-416(1)(c), agency reconsideration is not available for an order or decision exempt from agency review under R151-4-901(2)(b)(i) and (2)(b)(iii).

R151-4-902. Request for Agency Review - Transcript of Hearing - Service.

- (1) A request for agency review shall:
- (a) comply with Subsection 63G-4-301(1)(b) and this section (R151-4-902); and
- (b) include a copy of the order that is the subject of the request.
- (2) A party requesting agency review shall set forth any factual or legal basis in support of that request, including adequate supporting arguments and citation to:
 - (a) appropriate legal authority; and
 - (b) the relevant portions of the record.
- (3)(a) If a party challenges a finding of fact, the party must demonstrate, based on the entire record, that the finding is not supported by substantial evidence.
- (b) A party challenging a finding of fact bears the burden to:
- (i) marshal or gather all the evidence in support of the finding; and
- (ii) show that despite that evidence, the finding is not supported by substantial evidence.
- (c) The failure to marshal the evidence permits the executive director to accept a division's findings of fact as conclusive.
- (d) A party challenging a legal conclusion must support the argument with citation to:
 - (i) relevant authority; and
 - (ii) the portions of the record relevant to the issue.
- (4)(a) If the grounds for agency review include a challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall order and cause a transcript of the record relevant to the finding or conclusion to be prepared.
- (b) When a transcript is required, the party seeking review shall:
 - (i) certify that the transcript has been ordered;
- (ii) notify the department when the transcript will be available; and
 - (iii) file the transcript with the executive director in

accordance with the time frame stated in the certification regarding transcript.

- (c) The party seeking agency review bears the cost of the transcript.
- (5)(a) A party seeking agency review shall, in the manner described in R151-4-401 and -402, file and serve on all parties copies of correspondence, pleadings, and other submissions.
- (b) If an attorney enters an appearance on behalf of a party, service shall be made on the attorney instead of the party.
- (6) Failure to comply with this section (R151-4-902) may result in dismissal of the request for agency review.

R151-4-903. Stay Pending Agency Review.

- (1)(a) With a timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review.
- (b) If a stay is not timely requested and subsequently granted, the order subject to review shall take effect according to its terms
- (2)(a) The division that issued the order subject to review may oppose a request for a stay in writing within ten days from the date the stay is requested.
- (b) Failure to oppose a timely request for a stay shall result in an order granting the stay unless the department determines that a stay would not be in the best interest of the public.
- (c) If a division opposes a motion for a stay, the department may permit a final response by the party requesting the stay.
- (d) The department may enter an interim order granting a stay pending a decision on the motion for a stay.
- (3)(a) In determining whether to grant a request for a stay, the department shall review the division's findings of fact, conclusions of law and order to determine whether granting a stay would, or might reasonably be expected to, pose a significant threat to the public health, safety and welfare.
 - (b) The department may issue:
 - (i) an order granting the motion for a stay;
- (ii) a conditional stay imposing terms, conditions or restrictions on a party pending agency review;
 - (iii) a partial stay; or
 - (iv) an order denying the motion for a stay.

R151-4-904. Agency Review - Memoranda.

- (1)(a) The department may order or permit the parties to file memoranda to assist in conducting agency review.
 - (b) Memoranda shall comply with:
 - (i) this rule (R151-4); and
 - (ii) a scheduling order entered by the department.
- (2)(a) If a transcript is not necessary to conduct agency review, a memorandum supporting a request for agency review shall be concurrently filed with the request.
- (b) If a transcript is necessary to conduct agency review, a supporting memorandum shall be filed no later than 15 days after the filing of the transcript with the department.
- (3)(a) A response to a request for agency review and a memorandum supporting that response shall be filed no later than 30 days after the service of the memoranda supporting the request.
- (b) A final reply memorandum shall be filed no later than 10 days after the service of a response to the request for agency review.
- (4) If agency review involves more than two parties the department shall conduct a telephonic scheduling conference to address briefing deadlines.

R151-4-905. Agency Review - Standards of Review.

In both formal and informal adjudicative proceedings, the standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings under Subsection 63G-4-403(4).

R151-4-906. Agency Review - Type of Relief - Order on Review.

- (1) The type of relief available on agency review shall be the same as the type of relief available on judicial review under Subsection 63G-4-404(1)(b).
- (2) The order on review constitutes final agency action for purposes of Subsection 63G-4-401(1).

R151-4-907. Stay and Other Temporary Remedies Pending Judicial Review.

- (1) Unless otherwise provided by statute, a motion for a stay of an order or other temporary remedy during the pendency of judicial review shall include:
 - (a) a statement of the reasons for the relief requested;
 - (b) a statement of the facts relied upon;
- (c) affidavits or other sworn statements if the facts are subject to dispute;
- (d) relevant portions of the record of the adjudicative proceeding and agency review;
- (e) a memorandum of law identifying the issues to be presented on appeal and supporting the aggrieved party's position that those issues raise a substantial question of law or fact reasonably likely to result in reversal, remand for a new hearing, or relief from the order entered;
- (f) clear and convincing evidence that if the requested stay or other temporary remedy is not granted, the aggrieved party will suffer irreparable injury;
- (g) clear and convincing evidence that if the requested stay or other temporary remedy is granted, it will not substantially harm other parties to the proceeding; and
- (h) clear and convincing evidence that if the requested stay or other temporary remedy is granted, the aggrieved party will not pose a significant danger to public health, safety and welfare.
- (2) The executive director may grant a motion for a stay of an order or other temporary remedy during the pendency of judicial review if all of the criteria in R151-4-907 are met.

KEY: administrative procedures, adjudicative proceedings, government hearings

August 21, 2012 13-1-6 63G-4-102(6)

R156. Commerce, Occupational and Professional Licensing. R156-60d. Substance Use Disorder Counselor Act Rule. R156-60d-101. Title.

This rule is known as the "Substance Use Disorder Counselor Act Rule."

R156-60d-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60 or this rule:

- (1) "Accredited institution of higher education that meet division standards", as used in Subsections 58-60-506(2)(a)(i) and (5)(a)(i), means an educational institution that has accreditation that is recognized by the Council for Higher Education Accreditation of the American Council on Education (CHEA)
- (2) "ASAM" means the American Society of Addiction Medicine Patient Placement Criteria.
- (3) "DSM-IV" means the Diagnostic Statistical Manual of Mental Health Disorders published by the American Psychiatric Association.
- (4) "General supervision" means that the supervisor provides consultation with the supervisee by personal face to face contact, or direct voice contact by telephone or some other means within a reasonable time consistent with the acts and practices in which the supervisee is engaged.

(5) "ICRC" means the International Certification and Reciprocity Consortium.

- (6) "Initial assessment" means the procedure of gathering psycho-social information, which may include the application of the Addiction Severity Index, in order to recommend a level of treatment and to assist the mental health therapist supervisor in the information collection process and may include a referral to an appropriate treatment program.
- (7) "NAADAC" means the National Association of Alcohol and Drug Abuse Counselors.
- (8) "Prerequisite courses, as used in Subsection 58-60-506(2)(a)(iii) and (5)(a)(iii) means courses completed before qualifying for licensure.
- qualifying for licensure.

 (9) "SASSI" means Substance Abuse Subtle Screening Inventory.
- (10) "Screening", as used in Subsection 58-60-502(9)(b) and (10)(b), means a brief interview conducted in person or by telephone to determine if there is a potential substance abuse problem. If a potential problem is identified, the screening may include a referral for an initial assessment or a substance use disorder evaluation. The screening may also include a preliminary ASAM level recommendation in order to expedite the subsequent assessment and evaluation process. Screening instruments such as the SASSI may be included in the screening process.
- (11) "Substance use disorder evaluation" means the process used to interpret information gathered from an initial assessment, other instruments as needed, and a face to face interview by a licensed mental health therapist in order to determine if an individual meets the DSM-IV criteria for substance abuse or dependence and is in need of treatment. If the need for treatment is determined, the substance use disorder evaluation process includes the determination of a DSM-IV diagnosis and the determination of an individualized treatment
- (12) "Substance use disorder education program", as used in Subsection 58-60-506(2)(b) and (5)(b), means college or university coursework at an accredited institution.
- (13) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 60, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-60d-502.

R156-60d-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 60, Part 5.

R156-60d-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.

R156-60d-302a. Qualifications for Licensure - Education Requirements.

- (1) In accordance with Subsection 58-60-506(2)(a)(iii) and (5)(a)(iii), three prerequisite courses shall be completed at an accredited institution and shall cover the following subjects:
 - (a) human development across the lifespan;
 - (b) general psychology; and
 - (c) human biology.

R156-60d-302b. Qualifications for Licensure - Experience Requirements.

- (1) In accordance with Subsection 58-60-506(2)(c), the 4,000 hours of supervised experience in substance use disorder treatment required to qualify an applicant for the advanced substance use disorder counselor license shall be:
- (a) supervised experience providing substance use disorder counseling services as defined in Subsection 58-60-502(9);
- (b) supervised at a ratio of one hour of face to face direct supervision for every 40 hours of substance use disorder counseling supervision provided by a supervisor meeting qualifications established in Section 58-60-508; and
- (c) completed only under the direct supervision of an advanced substance use disorder counselor or mental health therapist unless otherwise approved by the Division in collaboration with the Board.
- (2) In accordance with Subsection 58-60-506(5)(c), the 2,000 hours of supervised experience in substance use disorder treatment required to qualify an applicant for the substance use disorder counselor license shall be:
- (a) supervised experience providing substance use disorder counseling services as defined in Subsection 58-60-502(10);
- (b) supervised at a ratio of one hour of face to face direct supervision for every 40 hours of substance use disorder counseling supervision provided by a supervisor meeting qualifications established in Section 58-60-508; and
- (c) completed only when under the direct supervision of a substance use disorder counselor or mental health therapist unless otherwise approved by the Division in collaboration with the Board.

R156-60d-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-60-506(1)(e) and 58-60-115(5)(b), the examination required is:

- (1) for licensure as a certified advanced substance use disorder counselor and an advanced substance use disorder counselor:
- (a) the written NAADAC National Certification Exam Level II or MAC with a minimum criterion score set by NAADAC; or
- (b) the written ICRC Advanced Alcohol and Drug (AADC) Examination with a minimum criterion score as set by ICRC; and
- (2) for licensure as a certified substance use disorder counselor or substance use disorder counselor:
- (a) the written NAADAC National Certification Exam Levels I, II or MAC with a minimum criterion score set by NAADAC; or
- (b) the written ICRC Alcohol and Drug Counselor (ADC) or Advanced Alcohol and Drug Counselor (AADC) Examination with a minimum criterion score as set by ICRC.

R156-60d-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 60, Part 5 is established by rule in Subsection R156-1-308a(1).
- (2) Renewal procedures shall be in accordance with Section R156-1-308c.

R156-60d-304. Continuing Education.

- (1) In accordance with Section 58-60-105, there is created a continuing education requirement as a condition for renewal or reinstatement of a licensed advanced substance use disorder counselor, certified advanced substance use disorder counselor, licensed substance use disorder counselor, or a certified substance use disorder counselor issued under Title 58, Chapter 60, Part 5.
- (2) Continuing education shall consist of 40 hours of education directly related to the licensee's professional practice. A licensed advanced substance use disorder counselor and licensed substance use disorder counselor shall complete the requirement during each two year license renewal cycle. A certified advanced substance use disorder counselor and a certified substance use disorder counselor shall complete the requirement during each two year period following the date of initial licensure. At least six of the 40 required hours must be in the area of professional ethics and responsibilities.
- 3) The required number of hours of continuing education for a licensed advanced substance use disorder counselor or a licensed substance use disorder counselor who first becomes licensed during the two year renewal cycle shall be decreased in a pro rata amount equal to any part of that two year renewal cycle preceding the date on which that individual first became licensed.
 - (4) The standards for continuing education shall include:
- (a) a clear statement of purpose and defined objective for the educational program directly related to the practice of a substance use disorder counselor;
- (b) documented relevance to the licensee's professional practice;
- (c) a competent, well-organized, and sequential presentation consistent with the stated purpose and objective of
- (d) preparation and presentation by individuals who are qualified by education, training, and experience; and
- (e) a competent method of registration of individuals who actually completed the continuing education program and records of that registration completion available for review.
- (5) Credit for continuing education shall be recognized in accordance with the following:
- (a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, conferences, workshops, institutes, or in services;
- (b) a maximum of ten hours per two year period may be recognized for teaching in a college or university, or teaching continuing education courses in the field of substance use disorder counseling; and
- (c) a maximum of six hours per two year period may be recognized for clinical readings or internet-based courses directly related to practice as a substance use disorder counselor.
- (6) A licensee shall be responsible for maintaining competent records of completed 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 continuing education to demonstrate it meets the requirements under this section.
- (7) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing education requirements

established under this section may be excused from the requirement for a period of up to five years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-60d-307. License Reinstatement - Requirements.

In accordance with Section R156-1-308g, an applicant for reinstatement of a license after two years following expiration of that license shall demonstrate competency by:

- (1) meeting with the Board upon request for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a substance use disorder counselor and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;
- (2) passing the examination required in Section R156-60d-302c if it is determined necessary by the Board to demonstrate the applicant's ability to engage safely and competently in practice as a substance use disorder counselor; and
- (3) completing at least 40 hours of continuing education in subjects determined by the Board as necessary to ensure the applicant's ability to engage safely and competently in practice as a substance use disorder counselor.

R156-60d-502. Unprofessional Conduct.

'Unprofessional conduct" includes:

- (1) violation of any provision of the NAADAC Code of Ethics: Teaching Tool, January 2011 edition, which is hereby incorporated by reference;
- (2) acting as a supervisor without ensuring that the supervisee holds the requisite license;
- (3) exercising undue influence over the clinical judgment of a supervisor over whom the licensee has administrative control:
- (4) if licensed as a licensed advanced substance use disorder counselor or a licensed substance use disorder counselor, accepting the duties as a supervisor of a certified advanced substance use disorder counselor, certified advanced substance use disorder counselor intern, certified substance use disorder counselor, or a certified substance use disorder counselor intern who has any supervisory control over the licensed advanced substance use disorder counselor or licensed substance use disorder counselor; and
- (5) directing one's mental health therapist supervisor to engage in a practice that would violate any statute, rule, or generally accepted professional or ethical standard of the supervisor's profession.

KEY: licensing, substance use disorder counselors July 30, 2012 58-60-501 58-1-106(1)(a)

Notice of Continuation January 31, 2011

58-1-202(1)(a)

R162. Commerce, Real Estate.

R162-2f. Real Estate Licensing and Practices Rules. R162-2f-101. Title and Authority.

- (1) This chapter is known as the "Real Estate Licensing and Practices Rules."
- (2) The authority to establish rules for real estate licensing and practices is granted by Section 61-2f-103.
- (3) The authority to establish rules governing undivided fractionalized long-term estates is granted by Section 61-2f-307.
- (4) The authority to collect fees is granted by Section 61-2f-105.

R162-2f-102. Definitions.

- (1) "Active license" means a license granted to an applicant who:
- (a) qualifies for licensure under Section 61-2f-203 and these rules;
 - (b) pays all applicable nonrefundable license fees; and
 - (c) affiliates with a principal brokerage.
 - (2) "Advertising" means solicitation through:
 - (a) newspaper;
 - (b) magazine;
 - (c) Internet;
 - (d) e-mail;
 - (e) radio;
 - (f) television;
 - (g) direct mail promotions;
 - (h) business cards;
 - (i) door hangers;
 - (j) signs; or
 - (k) any other medium.
 - (3) "Affiliate":
- (a) when used in reference to licensure, means to form, for the purpose of providing a real estate service, an employment or non-employment association with another individual or entity licensed or registered under Title 61, Chapter 2f et seq. and these rules; and
- (b) when used in reference to an undivided fractionalize long-term estate, means an individual or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified individual or entity.
- (4) "Branch broker" means an associate broker who manages a branch office under the supervision of the principal broker.
- (5) "Branch office" means a principal broker's real estate brokerage office other than the principal broker's main office.
- (6) "Brokerage" means a real estate sales or a property management company.
- (7) "Brokerage record" means any record related to the business of a principal broker, including:
 - (a) record of an offer to purchase real estate;
- (b) record of a real estate transaction, regardless of whether the transaction closed;
 - (c) licensing records;
 - (d) banking and other financial records;
 - (e) independent contractor agreements;
 - (f) trust account records, including:
- (i) deposit records in the form of a duplicate deposit slip, deposit advice, or equivalent document; and
- (ii) conveyance records in the form of a check image, wire transfer verification, or equivalent document; and
 - (g) records of the brokerage's contractual obligations.
 - (8) "Business day" is defined in Subsection 61-2f-102(3). (9) "Certification" means authorization from the division
- to:
 (a) establish and operate a school that provides courses
- approved for prelicensing education or continuing education; or (b) function as an instructor for courses approved for

- prelicensing education or continuing education.
- (10) "Commission" means the Utah Real Estate Commission.
- (11) "Continuing education" means professional education required as a condition of renewal in accordance with Section R162-2f-204 and may be either:
- (a) core: topics identified in Subsection R162-2f-206c(5)(c); or
- (b) elective: topics identified in Subsection R162-2f-206c(5)(e).
- (12) "Day" means calendar day unless specified as "business day."
- (13) "Distance education" means education in which the instruction does not take place in a traditional classroom setting, but occurs through other interactive instructional methods where teacher and student are separated by distance and sometimes by time, including:
 - (a) computer conferencing;
 - (b) satellite teleconferencing;
 - (c) interactive audio;
 - (d) interactive computer software;
 - (e) Internet-based instruction; and
 - (f) other interactive online courses.
 - (14) "Division" means the Utah Division of Real Estate.
- (15) "Double contract" means executing two or more purchase agreements, one of which is not made known to the prospective lender or loan funding entity.
- (16) "Expired license" means a license that is not renewed pursuant to Section 61-2f-204 and Section R162-2f-204 by:
- (a) the close of business on the expiration date, if the expiration date falls on a day when the division is open for business; or
- (b) the next business day following the expiration date, if the expiration date falls on a day when the division is closed.
 - (17) "Guaranteed sales plan" means:
- (a) a plan in which a seller's real estate is guaranteed to be sold; or
- (b) a plan whereby a licensee or anyone affiliated with a licensee agrees to purchase a seller's real estate if it is not purchased by a third party:
 - (i) in the specified period of a listing; or
 - (ii) within some other specified period of time.
- (18) "Inactive license" means a license that has been issued pursuant to Sections R162-2f-202a through 202c or renewed pursuant to Section R162-2f-204, but that may not be used to conduct the business of real estate because the license holder is not affiliated with a principal broker. Pursuant to Section R162-2f-203, a license may be inactivated:
 - (a) voluntarily, with the assent of the license holder; or
 - (b) involuntarily, without the assent of the license holder.
- (19) "Informed consent" means written authorization, obtained from both principals to a single transaction, to allow a licensee to act as a limited agent.

 (20) "Limited agency" means the representation of all
- (20) "Limited agency" means the representation of all principals in the same transaction to negotiate a mutually acceptable agreement:
 - (a) subject to the terms of a limited agency agreement; and
- (b) with the informed consent of all principals to the transaction.
- (21) "Net listing" means a listing agreement under which the real estate commission is the difference between the actual selling price of the property and a minimum selling price as set by the seller.
 - (22) "Nonresident applicant" means a person:
 - (a) whose primary residence is not in Utah; and
- (b) who qualifies under Title 61, Chapter 2f et seq. and these rules for licensure as a principal broker, associate broker, or sales agent.
 - (23) "Principal brokerage" means the main real estate or

property management office of a principal broker.

- (24) "Principal" in a transaction means an individual who is represented by a licensee and may be:
 - (a) the buyer or lessee;
- (b) an individual having an ownership interest in the
- (c) an individual having an ownership interest in the entity that is the buyer, seller, lessor, or lessee; or
- (d) an individual who is an officer, director, partner, member, or employee of the entity that is the buyer, seller, lessor, or lessee.
- (25) "Property management" is defined in Subsection 61-2f-102(19).
- (26) "Registration" means authorization from the division to engage in the business of real estate as:
 - (a) a corporation;
 - (b) a partnership;
 - (c) a limited liability company;
 - (d) an association;
 - (e) a dba;
 - (f) a professional corporation;
 - (g) a sole proprietorship; or
- (h) another legal entity of a real estate brokerage. (27) "Reinstatement" is defined in Subsection 61-2f-102(22).
 - (28) "Reissuance" is defined in Subsection 61-2f-102(23).
- (29) The acronym RELMS means "real estate licensing and management system," which is the online database through which licensees can submit certain licensing information to the
 - (30) "Renewal" is defined in Subsection 61-2f-102(24).
- (31) "Residential property" means real property consisting of, or improved by, a single-family one- to four-unit dwelling.
 (32) "School" means:
- (a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;
 - (b) any community college or vocational-technical school:
- (c) any local real estate organization that has been approved by the commission as a school; or
 - (d) any proprietary real estate school.
- (33) "Sponsor" means the party that is the seller of an undivided fractionalized long-term estate.
- (34) "Third party service provider" means an individual or entity that provides a service necessary to the closing of a specific transaction and includes:
 - (a) mortgage brokers;
 - (b) mortgage lenders;
 - (c) loan originators;
 - (d) title service providers;
 - (e) attorneys;
 - (f) appraisers;
 - (g) providers of document preparation services;
 - (h) providers of credit reports;
 - (i) property condition inspectors;
 - (j) settlement agents;
 - (k) real estate brokers;
 - (l) marketing agents;
 - (m) insurance providers; and
- (n) providers of any other services for which a principal or investor will be charged.
- (35) "Traditional education" means education in which instruction takes place between an instructor and students where all are physically present in the same classroom.
- (36) "Undivided fractionalized long-term estate" is defined in Subsection 61-2f-102(26).

R162-2f-105. Fees.

Any fee collected by the division is nonrefundable.

R162-2f-201. Qualification for Licensure.

- (1) Character. Pursuant to Subsection 61-2f-203(1)(c), an applicant for licensure as a sales agent, associate broker, or principal broker shall evidence honesty, integrity, truthfulness, and reputation.
 - (a) An applicant shall be denied a license for:
 - (i) a felony that resulted in:
- (A) a conviction occurring within the five years preceding the date of application;
- (B) a plea agreement occurring within the five years preceding the date of application; or
- (C) a jail or prison term with a release date falling within the five years preceding the date of application; or
- (ii) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in:
- (A) a conviction occurring within the three years preceding the date of application; or
- (B) a jail or prison term with a release date falling within the three years preceding the date of application.
- (b) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past that reflect negatively on the applicant's honesty, integrity, truthfulness, and reputation. In evaluating an applicant for these qualities, the division and commission may consider:
- (i) criminal convictions or plea agreements other than those specified in this Subsection (1)(a);
- (ii) past acts related to honesty or truthfulness, with particular consideration given to any such acts involving the business of real estate, that would be grounds under Utah law for sanctioning an existing license;
- (iii) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;
 - (iv) court findings of fraudulent or deceitful activity;
- (v) evidence of non-compliance with court orders or conditions of sentencing; and
 - (vi) evidence of non-compliance with:
- (A) terms of a diversion agreement not yet closed and dismissed;
 - (B) a probation agreement; or
 - (C) a plea in abeyance.
- (c)(i) An applicant who, as of the date of application, is serving probation or parole for a crime that contains an element of violence or physical coercion shall, in order to submit a complete application, provide for the commission's review current documentation from two licensed therapists, approved by the division, stating that the applicant does not pose an ongoing threat to the public.
- (ii) For purposes of applying this rule, crimes that contain an element of violence or physical coercion include, but are not limited to, the following:
 - (A) assault, including domestic violence;
 - (B) rape;
 - (C) sex abuse of a child;
 - (D) sodomy on a child;
 - (E) battery;
 - (F) interruption of a communication device;
 - (G) vandalism;
 - (H) robbery;
 - (I) criminal trespass;
 - (J) breaking and entering;
 - (K) kidnapping;
 - (L) sexual solicitation or enticement;
 - (M) manslaughter; and
 - (N) homicide.
- (iii) Information and documents submitted in compliance with this Subsection (1)(c) shall be reviewed by the commission, which may exercise discretion in determining whether the applicant qualifies for licensure.
 - Competency. In evaluating an applicant for

competency, the division and commission may consider evidence including:

- (a) civil judgments, with particular consideration given to any such judgments involving the business of real estate;
- (b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;
 - (c) suspension or revocation of a professional license;
 - (d) sanctions placed on a professional license; and
- (e) investigations conducted by regulatory agencies relative to a professional license.
 - (3) Age. An applicant shall be at least 18 years of age.
 - (4) Minimum education. An applicant shall have:
 - (a) a high school diploma;
 - (b) a GED: or
 - (c) equivalent education as approved by the commission.

R162-2f-202a. Sales Agent Licensing Fees and Procedures.

- (1) To obtain a Utah license to practice as a sales agent, an individual who is not currently and actively licensed in any state shall:
- (a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
- (b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);
- (c)(i) successfully complete 120 hours of approved prelicensing education;
- (ii) evidence current membership in the Utah State Bar; or
- (iii) apply to the division for waiver of all or part of the education requirement by virtue of:
- (A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or
- (B) completing other equivalent real estate education within the 12-month period prior to the date of application;
- (d)(i) apply with a testing service designated by the division to sit for the licensing examination; and
- (ii) pay a nonrefundable examination fee to the testing center:
- (e) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination;
- (f) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:
- (i) documentation indicating successful completion of the required prelicensing education;
- (ii) a report of the examination showing a passing score for each component of the examination; and
 - (iii) the applicant's business, home, and e-mail addresses;
- (g) if applying for an active license, affiliate with a principal broker; and
- (h) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund.
- (2) To obtain a Utah license to practice as a sales agent, an individual who is currently and actively licensed in another state shall:
- (a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
- (b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);
- (c)(i) successfully complete 120 hours of approved prelicensing education;
 - (ii) evidence current membership in the Utah State Bar; or
- (iii) apply to the division for waiver of all or part of the education requirement by virtue of:
- (A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree;
 - (B) completing other equivalent real estate education

within the 12-month period prior to the date of application; or

(C) having been licensed in a state that has substantially equivalent prelicensing education requirements;

- (d)(i) apply with a testing service designated by the division to sit for the licensing examination; and
- (ii) pay a nonrefundable examination fee to the testing center:
- (e)(i) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination;
- (ii) if actively licensed during the two years immediately preceding the date of application in a state that has substantially equivalent licensing examination requirements:
- (A) take and pass the state component of the licensing examination; and
- (B) apply to the division for a waiver of the national component of the licensing examination;
- (f) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:
- (i) documentation indicating successful completion of the required prelicensing education;
- (ii) a report of the examination showing a passing score for each component of the examination; and
 - (iii) the applicant's business, home, and e-mail addresses;
 - (g) provide from any state where licensed:
 - (i) a written record of the applicant's license history; and
- (ii) complete documentation of any disciplinary action taken against the applicant's license;
- (h) if applying for an active license, affiliate with a principal broker, and
- (i) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund.
 - (3) Deadlines.
- (a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:
- (i) within six months of the date on which the individual achieves a passing score on the passed component; and
- (ii) within 12 months of the date on which the individual completes the prelicensing education.
 - (b) An application for licensure shall be submitted:
- (i) within 90 days of the date on which the individual achieves passing scores on both examination components; and
- (ii) within 12 months of the date on which the individual completes the prelicensing education.
- (c) If any deadline in this Section R162-2f-202a falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-202b. Principal Broker Licensing Fees and Procedures.

- (1) To obtain a Utah license to practice as a principal broker, an individual shall:
- (a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
- (b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);
- (c)(i) successfully complete 120 hours of approved prelicensing education, including:
 - (A) 45 hours of broker principles;
 - (B) 45 hours of broker practices; and
 - (C) 30 hours of Utah law and testing; or
- (ii) apply to the division for waiver of all or part of the education requirement by virtue of:
- (A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or
 - (B) completing other equivalent real estate education

within the 12-month period prior to the date of application;

- (d)(i) apply with a testing service designated by the division to sit for the licensing examination; and
- (ii) pay a nonrefundable examination fee to the testing center;
- (e) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination;
- (f)(i) unless Subsection (2)(a) applies, evidence the individual's having, within the five-year period preceding the date of application, a minimum of three years experience related to real estate, including the following:
- (A) at least two years full-time licensed, active experience selling, listing, or managing the property types identified in Appendix 1; and
- (B) up to one year full-time professional experience related to real estate, as outlined in Appendix 3; and
- (ii) evidence having accumulated, within the five-year period preceding the date of application, a total of at least 60 experience points as follows:
- (A) 45 to 60 points pursuant to the experience points tables found in Appendices 1 and 2; and
- (B) 0 to 15 points pursuant to the experience point table found in Appendix 3;
- (g) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:
- (i) documentation indicating successful completion of the approved broker prelicensing education;
- (ii) a report of the examination showing a passing score for each component of the examination; and
 - (iii) the applicant's business, home, and e-mail addresses;
- (h) provide from any state where licensed as a real estate agent or broker:
 - (i) a written record of the applicant's license history; and
- (ii) complete documentation of any disciplinary action taken against the applicant's license;
- (i) if applying for an active license, affiliate with a registered company;
- (j) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund: and
- (k) establish real estate and property management trust accounts, as applicable pursuant to Section R162-2f-403, that:
- (i) contain the term "real estate trust account" or "property management trust account", as applicable, in the account name; and
- (ii) are separate from any operating account(s) of the registered entity for which the individual will serve as a broker;
- (l) identify the location(s) where brokerage records will be kept.
- (2)(a) If an individual applies under this Subsection R162-2f-202b within two years of allowing a principal broker license to expire, the experience required under Subsection (1)(f) shall be accumulated within the seven-year period preceding the date of application.
- (b) Pursuant to Section R162-2f-407, an individual whose application is denied by the division for failure to meet experience requirements under this Subsection (1)(f) may bring the application before the commission.
 - (3) Deadlines.
- (a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:
- (i) within six months of the date on which the individual achieves a passing score on the passed component; and
- (ii) within 12 months of the date on which the individual completes the prelicensing education.
 - (b) An application for licensure shall be submitted:
 - (i) within 90 days of the date on which the individual

- achieves passing scores on both examination components; and
- (ii) within 12 months of the date on which the individual completes the prelicensing education.
- (c) If any deadline in this Section R162-2f-202b falls on a day when the division is closed for business, the deadline shall be extended to the next business day.
- (4) Restriction. A principal broker license may not be granted to an applicant whose sales agent license is on suspension or probation at the time of application.

R162-2f-202c. Associate Broker Licensing Fees and Procedures.

- To obtain a Utah license to practice as an associate broker, an individual shall:
- (1) comply with Subsections R162-2f-202b(1)(a) through (j); and
- (2) if applying for an active license, affiliate with a principal broker.

R162-2f-203. Inactivation and Activation.

- (1) Inactivation.
- (a) To voluntarily inactivate the license of a sales agent or an associate broker, the holder of the license shall complete and submit a change form through RELMS pursuant to Section R162-2f-207.
- (b) To voluntarily inactivate a principal broker license, the principal broker shall:
 - (i) prior to inactivating the license:
- (A) give written notice to each licensee affiliated with the principal broker of the date on which the principal broker proposes to inactivate the license; and
- (B) provide to the division evidence that the licensee has complied with this Subsection (1)(b)(i)(A); and
- (ii) complete and submit a change form through RELMS pursuant to Section R162-2f-207.
- (c) The license of a sales agent or associate broker is involuntarily inactivated upon:
- (i) termination of the licensee's affiliation with a principal broker;
- (ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the sales agent or associate broker is affiliated; or
- (iii) inactivation or termination of the registration of the entity with which the licensee's principal broker is affiliated.
- (d) The registration of an entity is involuntarily inactivated upon:
- (i) termination of the entity's affiliation with a principal broker; or
- (ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the entity is affiliated.
- (e) The license of a principal broker is involuntarily inactivated upon termination of the licensee's affiliation with a registered entity.
- (f) If the division or commission orders that a principal broker's license is to be suspended or revoked:
- (i) the order shall state the effective date of the suspension or revocation; and
 - (ii) prior to the effective date, the entity shall:
 - (A)(I) affiliate with a new principal broker; and
- (II) submit change forms through RELMS to affiliate each licensee with the new principal broker; or
- (B)(I) provide written notice to each licensee affiliated with the principal broker of the pending suspension or revocation; and
 - (II) comply with Subsection R162-2f-207(3)(c)(ii)(B).
 - (2) Activation.
- (a) To activate a license, the holder of the inactive license shall:

- (i) complete and submit a change card through RELMS pursuant to Section R162-2f-207;
 - (ii) submit proof of:
- (A) having been issued an active license at the time of last renewal;
- having completed, within the one-year period preceding the date on which the licensee requests activation, 18 hours of continuing education, including nine hours of core topics; or
- (C) having passed the licensing examination within the six-month period prior to the date on which the licensee requests activation;
- (iii)(A) if applying to activate a sales agent or associate broker license, evidence affiliation with a principal broker; or
- (B) if applying to activate a principal broker license, evidence affiliation with a registered entity; and
 - (iv) pay a non-refundable activation fee.
- (b) A licensee who submits continuing education to activate a license may not use the same continuing education to renew the license at the time of the licensee's next renewal.

R162-2f-204. License Renewal.

- (1) Renewal period and deadlines.
- (a) A license issued under these rules is valid for a period of two years from the date of licensure.
- (b) By the 15th day of the month of expiration, an applicant for renewal shall submit to the division proof of having completed all continuing education required under this Subsection (2)(b).
 - (c) In order to renew on time without incurring a late fee:
- (i) an individual who is required to submit a renewal application through the online RELMS system shall complete the online process, including the completion and banking of continuing education credits, by the license expiration date; and
- (ii) an individual whose circumstances require a "yes" answer to a disclosure question on the renewal application shall submit a paper renewal:
- (A) by the license expiration date, if that date falls on a day when the division is open for business; or
- (B) on the next business day following the license expiration date, if that date falls on a day when the division is closed for business.
 - (2) Qualification for renewal.
 - (a) Character and competency.
- (i) An individual applying for a renewed license shall evidence that the individual maintains character and competency as required for initial licensure.
- (ii) An individual applying for a renewed license may not have:
 - (A) a felony conviction since the last date of licensure; or
- (B) a finding of fraud, misrepresentation, or deceit entered against the applicant, related to activities requiring a real estate license, by a court of competent jurisdiction or a government agency since the last date of licensure, unless the finding was explicitly considered by the division in a previous application.
- (b) Continuing education.(i) To renew at the end of the first renewal cycle, an individual shall complete:
- (A) the 12-hour new sales agent course certified by the division; and
- (B) an additional six non-duplicative hours of continuing education:
 - (I) certified by the division as either core or elective; or
- (II) acceptable to the division pursuant to this Subsection (2)(b)(ii)(B).
- (ii) To renew at the end of a renewal cycle subsequent to the first renewal, an individual shall:
- (A) complete 18 non-duplicative hours of continuing education:

- (I) certified by the division;
- (II) including at least nine non-duplicative hours of core curriculum: and
 - (III) taken during the previous license period; or
- (B) apply to the division for a waiver of all or part of the required continuing education hours by virtue of having completed non-certified courses that:
- were not required under Subsection R162-2f-206c(1)(a) to be certified; and
- (II) meet the continuing education objectives listed in Subsection R162-2f-206c(2)(f).
- (iii)(A) Completed continuing education courses will be credited to an individual when the hours are uploaded by the course provider pursuant to Subsection R162-2f-401d(1)(k).
- (B) If a provider fails to upload course completion information within the ten-day period specified in Subsection R162-2f-401d(1)(k), an individual who attended the course may obtain credit by:
 - (I) filing a complaint against the provider; and
- (II) submitting the course completion certificate to the division.
- Principal broker. In addition to meeting the requirements of this Subsection (2)(a) and (b), an individual applying to renew a principal broker license shall certify that:
- (i) the business name under which the individual operates is current and in good standing with the Division of Corporations and Commercial Code; and
- (ii) the trust account maintained by the principal broker is current and in compliance with Section R162-2f-403.
 - (3) Renewal and reinstatement procedures.
- (a) To renew a license, an applicant shall, prior to the expiration of the license:
- (i) submit the forms required by the division, including proof of having completed continuing education pursuant to this Subsection (2)(b); and
 - (ii) pay a nonrefundable renewal fee.
- (b) To reinstate an expired license, an applicant shall, according to deadlines set forth in Subsections 61-2f-204(2)(b) -
- (i) submit all forms required by the division, including proof of having completed continuing education pursuant to Subsection 61-2f-204(2); and
 - (ii) pay a nonrefundable reinstatement fee.
- (4) Transition to online renewal. An individual licensee shall submit an application for renewal through the online RELMS system unless the individual's circumstances require a "yes" answer in response to a disclosure question.

R162-2f-205. Registration of Entity.

- (1) A principal broker shall not conduct business through an entity, including a branch office, dba, or separate property management company, without first registering the entity with the division.
- (2) Exemptions. The following locations may be used to conduct real estate business without being registered as branch offices:
 - (a) a model home;
 - (b) a project sales office; and
- (c) a facility established for twelve months or less as a temporary site for marketing activity, such as an exhibit booth.
- (3) To register an entity with the division, a principal broker shall:
- (a) evidence that the name of the entity is registered with the Division of Corporations;
- (b) certify that the entity is affiliated with a principal broker who:
 - (i) is authorized to use the entity name; and
- (ii) will actively supervise the activities of all sales agents, associate brokers, branch brokers, and unlicensed staff;

- (c) if registering a branch office, identify the branch broker who will actively supervise all licensees and unlicensed staff working from the branch office;
 - (d) submit an application that includes:
 - (i) the physical address of the entity;
- (ii) if the entity is a branch office, the name and license number of the branch broker;
- (iii) the names of associate brokers and sales agents assigned to the entity; and
- (iv) the location and account number of any real estate and property management trust account(s) in which funds received at the registered location will be deposited;
 - (e) inform the division of:
- (i) the location and account number of any operating account(s) used by the registered entity; and
 - (ii) the location where brokerage records will be kept; and
 - (f) pay a nonrefundable application fee.
 - (4) Restrictions.
- (a)(i) The division shall not register an entity proposing to use a business name that:
- (A) is likely to mislead the public into thinking that the entity is not a real estate brokerage or property management company;
- (B) closely resembles the name of another registered entity; or
- (C) the division determines might otherwise be confusing or misleading to the public.
- (ii) Approval by the division of an entity's business name does not ensure or grant to the entity a legal right to use or operate under that name.
- (b) A branch office shall operate under the same business name as the principal brokerage.
- (c) An entity may not designate a post office box as its business address, but may designate a post office box as a mailing address.
- (\bar{d}) All trust accounts and operating accounts used by a registered entity shall be maintained in a bank or credit union located in the state of Utah.
 - (5) Registration not transferable.
- (a) A registered entity shall not transfer the registration to any other person.
- (b) A registered entity shall not allow an unlicensed person to use the entity's registration to perform work for which licensure is required.
- (c) If a change in corporate structure of a registered entity creates a separate and unique legal entity, that entity shall obtain a unique registration, and shall not operate under an existing registration.
- (d) The dissolution of a corporation, partnership, limited liability company, association, or other entity registered with the division terminates the registration.

R162-2f-206a. Certification of Real Estate School.

- (1) Prior to offering real estate prelicensing or continuing education, a school shall:
 - (a) obtain division approval of the school name; and
- (b) certify the school with the division pursuant to this Subsection (2).
- (2) To certify, a school applicant shall, at least 90 days prior to teaching any course, prepare and supply the following information to the division:
 - (a) contact information, including:
- (i) name, phone number, and address of the physical facility;
- (ii) name, phone number, and address of each school director;
- (iii) name, phone number, and address of each school owner; and
 - (iv) an e-mail address where correspondence will be

received by the school;

- (b) evidence that the school directors and owners meet the character requirements outlined in Subsection R162-2f-201(1) and the competency requirements outlined in Subsection R162-2f-201(2);
- (c) evidence that the school name as approved by the division pursuant to this Subsection (1)(a) is registered with the Division of Corporations and Commercial Code as a real estate education provider;
 - (d) school description, including:
 - (i) type of school; and
 - (ii) description of the school's physical facilities;
 - (e) list of courses offered;
- (f) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;
 - (g) proof that each instructor is:
 - (i) certified by the division;
 - (ii) qualified as a guest lecturer by having:
 - (A) requisite expertise in the field; and
 - (B) approval from the division; or
- (iii) exempt from certification under Subsection R162-2f-206d(4);
- (h) schedule of courses offered, including the days, times, and locations of classes;
- (i) statement of attendance requirements as provided to students:
 - (j) refund policy as provided to students;
 - (k) disclaimer as provided to students;
- (l) criminal history disclosure statement as provided to students; and
 - (m) any other information the division requires.
 - (3) Minimum standards.
- (a) The course schedule may not provide or allow for more than eight credit hours per student per day.
- (b) The attendance statement shall require that each student attend at least 90% of the scheduled class periods, excluding breaks.
- (c) The disclaimer shall adhere to the following requirements:
 - (i) be typed in all capital letters at least 1/4 inch high; and
- (ii) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the real estate brokerages that may be soliciting for licensees at this school."
 - (d) The criminal history disclosure statement shall:
- (i) be provided to each student prior to the school accepting payment; and
- (ii) clearly inform the student that upon application with the division, the student will be required to:
- (A) accurately disclose the student's criminal history according to the licensing questionnaire provided by the division;
- (B) submit fingerprint cards to the division and consent to a criminal background check; and
- (C) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;
- (iii) clearly inform the student that the division will consider the applicant's criminal history pursuant to Subsection 61-2f-204(1)(e) and Subsection R162-2f-201(1) in making a decision on the application; and
- (iv) include a section for the student's attestation that the student has read and understood the disclosure.
- (e) Within 15 days after the occurrence of any material change in the information outlined in this Subsection (2)(a), the school shall provide to the division written notice of the change.
- (4)(a) A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

- (b) To renew a school certification, an applicant shall:
- (i) complete a renewal application as provided by the division; and
 - (ii) pay a nonrefundable renewal fee.
- (c) To reinstate an expired school certification within 30 days following the expiration date, a person shall:
 - (i) comply with all requirements for a timely renewal; and
 - (ii) pay a nonrefundable late fee.
- (d) To reinstate an expired school certification after 30 days and within six months following the expiration date, a person shall:
 - (i) comply with all requirements for a timely renewal; and
 - (ii) pay a non-refundable reinstatement fee.
- (e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.
- (f) If a deadline specified in this Subsection (4) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206b. Certification Prelicensing Course.

- (1) To certify a prelicensing course for traditional education, a person shall, no later than 30 days prior to the date on which the course is proposed to begin, provide the following to the division:
 - (a) comprehensive course outline including:
 - (i) description of the course;
 - (ii) number of class periods spent on each subject area;
- (iii) minimum of three to five learning objectives for every three hours of class time; and
- (iv) reference to the course outline approved by the commission for each topic;
 - (b) number of quizzes and examinations;
- (c) grading system, including methods of testing and standards of grading;
- (d)(i) a copy of at least two final examinations to be used in the course;
- (ii) the answer key(s) used to determine if a student has passed the exam; and
- (iii) an explanation of procedure if the student fails the final examination and thereby fails the course; and
- (e) a list of the titles, authors and publishers of all required textbooks.
- (2) To certify a prelicensing course for distance education, a person shall, no later than 60 days prior to the date on which the course is proposed to begin, provide the following to the division:
 - (a) all items listed in this Subsection (1);
 - (b) description of each method of course delivery;
 - (c) description of any media to be used;
- (d) course access for the division using the same delivery methods and media that will be provided to the students;
- (e) description of specific and regularly scheduled interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives;
- (f) description of how the students' achievement of the stated learning objectives will be measured at regular intervals;
- (g) description of how and when certified prelicensing instructors will be available to answer student questions; and
- (h) attestation from the school director of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.
 - (3) Minimum standards. A prelicensing course shall:
- (a) address each topic required by the course outline as approved by the commission;
- (b) meet the minimum hourly requirement as established by Subsection 61-2f-203(1)(d)(i) and these rules;
 - (c) limit the credit that students may earn to no more than

eight credit hours per day;

- (d) be taught in an appropriate classroom facility unless approved for distance education;
- (e) allow a maximum of 10% of the required class time for testing, including:
 - (i) practice tests; and
 - (ii) a final examination; and
- (f) use only texts, workbooks, and supplemental materials that are appropriate and current in their application to the required course outline.
- (4) A prelicensing course certification expires at the same time as the school certification and is renewed automatically when the school certification is renewed.

R162-2f-206c. Certification of Continuing Education Course.

- (1)(a) The division may not award continuing education credit for a course that is advertised in Utah to real estate licensees unless the course is certified prior to its being taught.
- (b) A licensee who completes a course that is not required to be certified pursuant to this Subsection (1)(a), and who believes that the course satisfies the objectives of continuing education pursuant to this Subsection (2)(f), may apply to the division for an award of continuing education credit after successfully completing the course.
- (2) To certify a continuing education course for traditional education, a person shall, no later than 30 days prior to the date on which the course is proposed to begin, provide the following to the division:
 - (a) name and contact information of the course provider;
- (b) name and contact information of the entity through which the course will be provided;
- (c) description of the physical facility where the course will be taught;
 - (d) course title;
 - (e) number of credit hours;
- (f) statement defining how the course will meet the objectives of continuing education by increasing the participant's:
 - (i) knowledge;
 - (ii) professionalism; and
 - (iii) ability to protect and serve the public;
- (g) course outline including a description of the subject matter covered in each 15-minute segment;
- (h) a minimum of three learning objectives for every three hours of class time;
- (i) name and certification number of each certified instructor who will teach the course;
 - (j) copies of all materials to be distributed to participants;
- (k) signed statement in which the course provider and instructor(s):
 - (i) agree not to market personal sales products;
- (ii) allow the division or its representative to audit the course on an unannounced basis; and
- (iii) agree to upload, within ten business days after the end of a course offering, to the database specified by the division, the following:
 - (A) course name:
 - (B) course certificate number assigned by the division;
 - (C) date(s) the course was taught;
 - (D) number of credit hours; and
- (E) names and license numbers of all students receiving continuing education credit;
 - (l) procedure for pre-registration;
 - (m) tuition or registration fee;
 - (n) cancellation and refund policy;
- (o) procedure for taking and maintaining control of attendance during class time;
 - (p) sample of the completion certificate;

- (q) nonrefundable fee for certification as required by the division; and
 - (r) any other information the division requires.
- (3) To certify a continuing education course for distance education, a person shall:
 - (a) comply with this Subsection (2);
- (b) submit to the division a complete description of all course delivery methods and all media to be used;
- (c) provide course access for the division using the same delivery methods and media that will be provided to the students;
- (d) describe specific and regularly scheduled interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives;
- (e) describe how and when certified instructors will be available to answer student questions; and
- (f) provide an attestation from the sponsor of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.
 - (4) Minimum standards.
- (a) Except for distance education courses, all courses shall be taught in an appropriate classroom facility and not in a private residence.
- (b) The minimum length of a course shall be one credit hour.
- (c) Except for online courses, the procedure for taking attendance shall be more extensive than having the student sign a class roll.
- (d) The completion certificate shall allow for entry of the following information:
 - (i) licensee's name;
 - (ii) type of license;
 - (iii) license number;
 - (iv) date of course;
 - (v) name of the course provider;
 - (vi) course title;
 - (vii) number of credit hours awarded;
 - (viii) course certification number;
 - (ix) course certification expiration date;
 - (x) signature of the course sponsor; and
 - (xi) signature of the licensee.
 - (5) Certification procedures.
- (a) Upon receipt of a complete application for certification of a continuing education course, the division shall, at its own discretion, determine whether a course qualifies for certification.
- (b) Upon determining that a course qualifies for certification, the division shall determine whether the content satisfies core or elective requirements.
 - (c) Core topics include the following:
 - (i) state approved forms and contracts;
 - (ii) other industry used forms or contracts;
 - (iii) ethics;
 - (iv) agency;
 - (v) short sales or sales of bank-owned property;
 - (vi) environmental hazards;
 - (vii) property management;
 - (viii) prevention of real estate and mortgage fraud;
 - (ix) federal and state real estate laws;
 - (x) division administrative rules; and
 - (xi) broker trust accounts;
- (d) If a course regarding an industry used form or contract is approved by the division as a core course, the provider of the course shall:
- (i) obtain authorization to use the form(s) or contract(s) taught in the course;
- (ii) obtain permission for licensees to subsequently use the form(s) or contract(s) taught in the course; and
 - (iii) if applicable, arrange for the owner of each form or

contract to make it available to licensees for a reasonable fee.

- (e) Elective topics include the following:
- (i) real estate financing, including mortgages and other financing techniques;
 - (ii) real estate investments;
 - (iii) real estate market measures and evaluation;
 - (iv) real estate appraising;
 - (v) market analysis;
 - (vi) measurement of homes or buildings;
 - (vii) accounting and taxation as applied to real property;
 - (viii) estate building and portfolio management for clients;
 - (ix) settlement statements;
 - (x) real estate mathematics;
 - (xi) real estate law;
 - (xii) contract law;
 - (xiii) agency and subagency;
 - (xiv) real estate securities and syndications;
- (xv) regulation and management of timeshares, condominiums, and cooperatives;
 - (xvi) resort and recreational properties;
 - (xvii) farm and ranch properties;
 - (xviii) real property exchanging;
 - (xix) legislative issues that influence real estate practice;
 - (xx) real estate license law;
 - (xxi) division administrative rules;
 - (xxii) land development;
 - (xxiii) land use;
 - (xxiv) planning and zoning;
 - (xxv) construction;
 - (xxvi) energy conservation in buildings;
 - (xxvii) water rights;
 - (xxviii) landlord/tenant relationships;
 - (xxix) property disclosure forms;
 - (xxx) Americans with Disabilities Act;
 - (xxxi) fair housing;
 - (xxxii) affirmative marketing;
 - (xxxiii) commercial real estate;
 - (xxxiv) tenancy in common;
 - (xxxv) professional development;
 - (xxxvi) business success;
 - (xxxvii) customer relation skills;
 - (xxxviii) sales promotion, including:
 - (A) salesmanship;
 - (B) negotiation;
 - (C) sales psychology;
 - (D) marketing techniques related to real estate knowledge;
 - (E) servicing clients; and
 - (F) communication skills;
- (xxxix) personal and property protection for licensees and their clients;
- (xl) any topic that focuses on real estate concepts, principles, or industry practices or procedures, if the topic enhances licensee professional skills and thereby advances public protection and safety; and
- (xli) any other topic that directly relates to the real estate brokerage practice and directly contributes to the objective of continuing education.
 - (f) Unacceptable topics include the following:
- (i) offerings in mechanical office and business skills, including:
 - (A) typing;
 - (B) speed reading;
 - (C) memory improvement;
 - (D) language report writing;
 - (E) advertising: and
- (F) technology courses with a principal focus on technology operation, software design, or software use;
 - (ii) physical well-being, including:
 - (A) personal motivation;

- (B) stress management; and
- (C) dress-for-success;
- (iii) meetings held in conjunction with the general business of the licensee and the licensee's broker, employer, or trade organization, including:
 - (A) sales meetings;
 - (B) in-house staff meetings or training meetings; and
 - (C) member orientations for professional organizations;
- (iv) courses in wealth creation or retirement planning for licensees; and
- (v) courses that are specifically designed for exam preparation.
- (g) If an application for certification of a continuing education course is denied by the division, the person making application may appeal to the commission.
- (6)(a) A continuing education course certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.
- (b) To renew a continuing education course certification, an applicant shall:
- (i) complete a renewal application as provided by the division; and
 - (ii) pay a nonrefundable renewal fee.
- (c) To reinstate an expired continuing education course certification within 30 days following the expiration date, a person shall:
 - (i) comply with all requirements for a timely renewal; and
 - (ii) pay a nonrefundable late fee.
- (d) To reinstate an expired continuing education course certification after 30 days and within six months following the expiration date, a person shall:
 - (i) comply with all requirements for a timely renewal; and
 - (ii) pay a non-refundable reinstatement fee.
- (e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.
- (f) If a deadline specified in this Subsection (6) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206d. Certification of Prelicensing Course Instructor.

- (1) An instructor shall certify with the division prior to teaching a prelicensing course.
- (2) To certify, an applicant shall provide, within the 30-day period prior to the date on which the applicant proposes to begin instruction:
- (a) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);
- (b) evidence of having graduated from high school or achieved an equivalent education;
- (c) evidence that the applicant understands the real estate industry through:
- (i) a minimum of five years of full-time experience as a real estate licensee;
- (ii) post-graduate education related to the course subject;
- (iii) demonstrated expertise on the subject proposed to be taught;
 - (d) evidence of ability to teach through:
- (i) a minimum of 12 months of full-time teaching experience;
- (ii) part-time teaching experience equivalent to 12 months of full-time teaching experience; or
- (iii) attendance at a division instructor development workshop totaling at least two days in length;
- (e) evidence of having passed an examination designed to test the knowledge of the subject matter proposed to be taught;

- (f) name and certification number of the certified prelicensing school for which the applicant will work;
- (g) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;
- (h) a signed statement agreeing not to market personal sales products;
 - (i) any other information the division requires;
 - (j) an application fee; and
 - (k) course-specific requirements as follows:
- (i) sales agent prelicensing course: evidence of being a licensed sales agent or broker; and
- (ii) broker prelicensing course: evidence of being a licensed associate broker, branch broker, or principal broker.
- (3) An applicant may certify to teach a subcourse of the broker prelicensing course by meeting the following requirements:
 - (a) Brokerage Management. An applicant shall:
 - (i) hold a current real estate broker license;
- (ii) possess at least two years practical experience as an active real estate principal broker; and
 - (iii)(A) have experience managing a real estate office; or
- (B) hold a certified residential broker or equivalent professional designation in real estate brokerage management.
 - (b) Advanced Real Estate Law. An applicant shall:
 - (i) hold a current real estate broker license;
 - (ii) evidence current membership in the Utah State Bar; or
- (iii)(A) have graduated from an $\mbox{\normalfont\AA}$ merican Bar Association accredited law school; and
 - (B) have at least two years real estate law experience.
 - (c) Advanced Appraisal. An applicant shall hold:
 - (i) a current real estate broker license, or
- (ii) a current appraiser license or certification from the division.
 - (d) Advanced Finance. An applicant shall:
- (i) evidence at least two years practical experience in real estate finance; and
 - (ii)(A) hold a current real estate broker license;
- (B) evidence having been associated with a lending institution as a loan officer; or
 - (C) hold a degree in finance.
- (e) Advanced Property Management. An applicant shall hold a current real estate license and:
- (i) evidence at least two years full-time experience as a property manager; or
- (ii) hold a certified property manager or equivalent professional designation.
- (4) A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the division academic training or experience qualifying the faculty member to teach the course.
- (5)(a) A prelicensing instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.
- (b) To renew a prelicensing course instructor certification, an individual shall:
 - (i) submit all forms required by the division;
- (ii) evidence having taught, within the two-year period prior to the date of application, at least 20 hours of in-class instruction in a certified real estate course;
- (iii) evidence having attended, within the two-year period prior to the date of application, an instructor development workshop sponsored by the division; and
 - (iv) pay a nonrefundable renewal fee.
- (c) To reinstate an expired prelicensing course instructor certification within 30 days following the expiration date, a person shall:
 - (i) comply with all requirements for a timely renewal; and
 - (ii) pay a nonrefundable late fee.

- (d) To reinstate an expired prelicensing course instructor certification after 30 days and within six months following the expiration date, a person shall:
 - (i) comply with all requirements for a timely renewal; and
 - (ii) pay a non-refundable reinstatement fee.
- (e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.
- (f) If a deadline specified in this Subsection (5) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206e. Certification of Continuing Education Course Instructor.

- (1) An instructor shall certify with the division before teaching a continuing education course.
- (2) To certify, an applicant shall, within the 30-day period prior to the date on which the applicant proposes to begin instruction, provide the following:
 - (a) name and contact information of the applicant;
- (b) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);
- (c) evidence of having graduated from high school or achieved an equivalent education;
- (d) evidence that the applicant understands the subject matter to be taught through:
- (i) a minimum of two years of full-time experience as a real estate licensee;
 - (ii) college-level education related to the course subject; or
- (iii) demonstrated expertise on the subject proposed to be taught;
 - (e) evidence of ability to teach through:
- (i) a minimum of 12 months of full-time teaching experience;
- (ii) part-time teaching experience equivalent to 12 months of full-time teaching experience; or
- (iii) attendance at a division instructor development workshop totaling at least two days in length;
- (f) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;
- (g) a signed statement agreeing not to market personal sales products;
 - (h) any other information the division requires; and
 - (i) a nonrefundable application fee.
- (3)(a) A continuing education course instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.
- (b) To renew a continuing education course instructor certification, a person shall:
 - (i) submit all forms required by the division;
- (ii)(A) evidence having taught, within the previous renewal period, a minimum of 12 continuing education credit hours; or
 - (B) submit written explanation outlining:
- (I) the reason for not having taught a minimum of 12 continuing education credit hours; and
- (II) documentation to the division that the applicant maintains satisfactory expertise in the subject area proposed to be taught; and
 - (iii) pay a nonrefundable renewal fee.
- (c) To reinstate an expired continuing education instructor certification within 30 days following the expiration date, a person shall:
 - (i) comply with all requirements for a timely renewal; and
 - (ii) pay a nonrefundable late fee.
 - (d) To reinstate an expired continuing education instructor

- certification after 30 days and within six months following the expiration date, a person shall:
 - (i) comply with all requirements for a timely renewal; and
 - (ii) pay a non-refundable reinstatement fee.
- (e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.
- (f) If a deadline specified in this Subsection (3) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-207. Reporting a Change of Information.

- (1) Individual notification requirements.
- (a) An individual licensed as a sales agent, associate broker, or principal broker shall report the following to the division:
 - (i) change in licensee's name; and
- (ii) change in licensee's business, home, e-mail, or mailing address.
 - (b) In addition to complying with this Subsection (1)(a):
- (i) an individual licensed as a sales agent or associate broker shall report to the division a change in affiliation with a principal broker; and
- (ii) an individual licensed as a principal broker shall report to the division:
- (A) termination of a sales agent, associate broker, or branch broker, if the change is not reported pursuant to this Subsection (1)(b)(i);
 - (B) change in assignment of branch broker; and
- (C) termination of the principal broker's affiliation with an entity.
- (2) Entity notification requirements. A registered entity shall report the following to the division:
 - (a) change in entity's name;
 - (b) change in entity's affiliation with a principal broker;
 - (c) change in corporate structure;
 - (d) dissolution of corporation; and
 - (e) change of location where brokerage records are kept.
 - (3) Notification procedures.
- (a) Name. To report a change in name, a person shall submit to the division a paper change form and:
- (i) if the person is an individual, attach to it official documentation such as a:
 - (A) marriage certificate;
 - (B) divorce decree;
 - (C) court order; or
 - (D) driver license; and
 - (ii) if the person is an entity:
- (A) obtain prior approval from the division of the new entity name; and
- (B) attach to the change form proof that the new name as approved by the division pursuant to this Subsection (3)(a)(ii)(A) is registered with, and approved by, the Division of Corporations.
- (b) Address. To report a change in address, a person shall enter the change into RELMS.
 - (c) Affiliation.
- (i) To terminate an affiliation between an individual and a principal broker, a person shall submit a change form through RELMS to inactivate or transfer the individual's license; and
- (A)(I) obtain the electronic affirmation of the other party to the terminated affiliation; or
 - (II) comply with this Subsection (4); and
- (B) if a sales agent, associate broker, or branch broker simultaneously establishes an affiliation with a new principal broker, obtain the electronic affirmation of the new principal broker on a change form.
- (ii) To terminate an affiliation between a principal broker and an entity:

- (A) the principal broker shall submit a paper change form to the division to inactivate or transfer the principal broker's license; and
- (B) if the entity does not simultaneously affiliate with a new principal broker, the entity shall:
 - (I) cease operations;
- (II) submit to the division a paper company/branch change form to inactivate the entity registration;
- (III) submit change forms through RELMS to inactivate the license of any licensee affiliated with the entity;
- (IV) advise the division as to the location where records will be stored;
- (V) notify each listing and management client that the entity is no longer in business and that the client may enter into a new listing or management agreement with a different brokerage;
- (VI) notify each party and cooperating broker to any existing contracts; and
- (VII) retain money held in trust under the control of a signer on the trust account, or an administrator or executor, until all parties to each transaction agree in writing to the disposition or until a court of competent jurisdiction issues an order relative to the disposition.
- (iii) Branch broker. To change an assignment of branch broker, a principal broker shall submit a paper change form to the division.
 - (d) Corporate structure.
- (i) To report a change in corporate structure of a registered entity, the affiliated principal broker shall:
- (A) if the change does not involve a new business license, or a new registration with the Utah Division of Corporations and Commercial Code, submit a letter to the division, fully explaining the change; and
- (B) if the change involves a new business license or a new registration with the Utah Division of Corporations and Commercial Code for a purpose other than a company name change, obtain a new registration.
- (ii) To report the dissolution of an entity registered with the division, a person shall comply with this Subsection (3)(c)(ii)(B).
- (e) Brokerage records. To report a change in the location where brokerage records are kept, the principal broker of the registered entity shall submit to the division a letter on brokerage letterhead.
- (4) Unavailability of individual. If an individual is unavailable to sign or electronically affirm a change form, the person responsible to report the change may do so by:
- (a) sending a letter by certified mail to the last known address of the individual to notify that individual of the change; and
 - (b) as applicable:
- (i) entering the certified mail reference number into the appropriate field on the electronic change form; or
- (ii) providing to the division a copy of the certified mail receipt.
- (5) Fees. The division may require a notification submitted pursuant to this subsection to be accompanied by a nonrefundable change fee.
 - (6) Deadlines.
- (a) A change in affiliation shall be reported to the division before the change is made.
- (b) A change in branch manager shall be reported to the division at the time the change is made.
- (c) Any other change shall be reported to the division within ten business days of the change taking effect.
- (d) As to a change that requires submission of a paper form or document, if the deadline specified in this Section R162-2f-207 falls on a day when the division is closed for business, the deadline shall be extended to the next business

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(7) Effective date. A change reported in compliance with this Section R162-2f-207 becomes effective with the division the day on which the properly executed change form is received by the division.

R162-2f-307. Undivided Fractionalized Long-Term Estate.

- (1) A real estate licensee who markets an undivided fractionalized long-term estate shall:
- (a) obtain from the sponsor written disclosures pursuant to this Subsection (2) regarding the sponsor and each affiliate; and
- (b) provide the disclosures to purchasers prior to closing so as to allow adequate review by the purchaser.
 - (2) Required disclosures.
- (a) Disclosure as to the sponsor and the sponsor's affiliates, including the following:
 - (i) current certified financial statements;
 - (ii) current credit reports;
- (iii) information concerning any bankruptcies or civil lawsuits;
 - (iv) proposed use of purchaser proceeds;
- (v)(A) if applicable, financial statements of the master lease tenant, audited according to generally accepted accounting principles; and
- (B) if the master lease tenant is an entity formed for the sole purpose of acting as the master lease tenant, audited financial statements of the owners of that entity;
- (vi) statement as to whether the sponsor is an affiliate of a master lease tenant; and
 - (vii) statement as to whether any affiliate of the sponsor is:
 - (A) a third-party service provider; or
 - (B) a master lease tenant.
- (b) Disclosure as to the real property in which the undivided fractionalized long-term estate is offered, including the following:
- (i) material information concerning any leases or subleases affecting the real property;
- (ii) material information concerning any environmental issues affecting the real property;
 - (iii) a preliminary title report on the real property;
- (iv) if available, financial statements on any tenants for the life of the entity or the last five years, whichever is shorter;
 - (v) if applicable, rent rolls and operating history;
 - (vi) if applicable, loan documents;
 - (vii)(A) a tenants in common agreement; or
- (B) any agreement that forms the substance of the undivided fractionalized long-term estate, including definition of the undivided fractionalized interest;
 - (viii) third party reports acquired by the sponsor;
 - (ix) a narrative appraisal report that:
- (A) is effective no more than six months prior to the date the offer of sale is made; and
 - (B) includes, at a minimum:
 - (I) pictures;
 - (II) type of construction;
 - (III) age of building; and
- (IV) site information such as improvements, parking, cross easements, site and location maps;
- (x) material information concerning the market conditions for the property class; and
- (xi) material information concerning the demographics of the general market area.
- (c) Disclosure as to the asset managers and the property managers of the real property in which the undivided fractionalized long-term estate is offered, including the following:
- (i) contact information for any existing or recommended asset managers and property managers;
 - (ii) description of any relationship between:

- (A) the asset managers and the sponsor; and
- (B) the property managers and the sponsor; and
- (iii) copies of any existing:
- (A) asset management agreements; and
- (B) property management agreements.
- (d) Disclosure as to potential tax consequences, including the following:
- (i) a statement that there might be tax consequences for a failure to close on the purchase;
- (ii) a statement that there might be risks involved in the purchase; and
- (iii) a statement advising purchasers to consult with tax advisors and other professionals for advice concerning these matters
- (3) The division and commission shall consider any offering of a fractionalized undivided long-term estate in real property that complies with the Securities and Exchange Commission Regulation D, Rule 506, 17 C.F.R. Sec. 203.506 to be in compliance with these rules.

R162-2f-401a. Affirmative Duties Required of All Licensed Individuals.

An individual licensee shall:

- (1) uphold the following fiduciary duties in the course of representing a principal:
- (a) loyalty, which obligates the agent to place the best interests of the principal above all other interests, including the agent's own;
- (b) obedience, which obligates the agent to obey all lawful instructions from the principal;
- (c) full disclosure, which obligates the agent to inform the principal of any material fact the agent learns about:
 - (i) the other party; or
 - (ii) the transaction;
- (d) confidentiality, which prohibits the agent from disclosing, without permission, any information given to the agent by the principal that would likely weaken the principal's bargaining position if it were known, but excepting any known material fact concerning:
 - (i) a defect in the property; or
 - (ii) the client's ability to perform on the contract;
 - (e) reasonable care and diligence;
- (f) holding safe and accounting for all money or property entrusted to the agent; and
 - (g) any additional duties created by the agency agreement;
- (2) for the purpose of defining the scope of the individual's agency, execute a written agency agreement between the individual and the individual's principal, including:
 - (a) a seller the individual represents;
 - (b) a buyer the individual represents;
- (c) a buyer and seller the individual represents as a limited agent in the same transaction pursuant to this Subsection (4);
- (d) the owner of a property for which the individual will provide property management services; and
 - (e) a tenant whom the individual represents;
- (3) in order to represent both principals in a transaction as a limited agent, obtain informed consent by:
 - (a) clearly explaining in writing to both parties:
- (i) that each is entitled to be represented by a separate agent;
- (ii) the type(s) of information that will be held confidential;
 - (iii) the type(s) of information that will be disclosed; and
- (iv) the circumstances under which the withholding of information would constitute a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations;
- (b) obtaining a written acknowledgment from each party affirming that the party waives the right to:

- (i) undivided loyalty;
- (ii) absolute confidentiality; and
- (iii) full disclosure from the licensee; and
- (c) obtaining a written acknowledgment from each party affirming that the party understands that the licensee will act in a neutral capacity to advance the interests of each party;
 - (4) when acting under a limited agency agreement:
 - (a) act as a neutral third party; and
 - (b) uphold the following fiduciary duties to both parties:
- (i) obedience, which obligates the limited agent to obey all lawful instructions from the parties, consistent with the agent's duty of neutrality;
 - (ii) reasonable care and diligence;
- (iii) holding safe all money or property entrusted to the limited agent; and
 - (iv) any additional duties created by the agency agreement;
- (5) prior to executing a binding agreement, disclose in writing to clients, agents for other parties, and unrepresented parties:
- (a) the licensee's position as a principal in any transaction where the licensee operates either directly or indirectly to buy, sell, lease, or rent real property;
- (b) the fact that the licensee holds a license with the division, whether the license status is active or inactive, in any circumstance where the licensee is a principal in an agreement to buy, sell, lease, or rent real property;
 - (c) the licensee's agency relationship(s);
- (d)(i) the existence or possible existence of a due-on-sale clause in an underlying encumbrance on real property; and
- (ii) the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of an underlying encumbrance;
- (6) in order to offer any property for sale or lease, make reasonable efforts to verify the accuracy and content of the information and data to be used in the marketing of the property;
- (7) in order to offer a residential property for sale, disclose the source on which the licensee relies for any square footage data that will be used in the marketing of the property:
- (a) in the written agreement, executed with the seller, through which the licensee acquires the right to offer the property for sale; and
- (b) in a written disclosure provided to the buyer, at the licensee's direction, at or before the deadline for the seller's disclosure per the contract for sale;
- (8) upon initial contact with another agent in a transaction, disclose the agency relationship between the licensee and the client:
- (9) when executing a binding agreement in a sales transaction, confirm the prior agency disclosure:
- (a) in the currently approved Real Estate Purchase Contract; or
- (b) in a separate provision with substantially similar language incorporated in or attached to the binding agreement;
- (10) when executing a lease or rental agreement, confirm the prior agency disclosure by:
 - (a) incorporating it into the agreement; or
 - (b) attaching it as a separate document;
- (11) when offering an inducement to a buyer who will not pay a real estate commission in a transaction:
- (a) obtain authorization from the licensee's principal broker to offer the inducement;
- (b) comply with all underwriting guidelines that apply to the loan for which the borrower has applied; and
- (c) provide notice of the inducement, using any method or form, to:
- (i) the principal broker of the seller's agent, if the seller paying a commission is represented; or
 - (ii) the seller, if the seller paying a commission is not

represented;

- (12) if the licensee desires to act as a sub-agent for the purpose of showing property owned by a seller who is under contract with another brokerage, prior to showing the seller's property:
- (a) notify the listing brokerage that sub-agency is requested; and
- (b) enter into a written agreement with the listing brokerage with which the seller has contracted:
 - (i) consenting to the sub-agency; and
 - (ii) defining the scope of the agency;
- (c) obtain from the listing brokerage all available information about the property; and
- (d) uphold the same fiduciary duties outlined in this Subsection (1);
- (13) provide copies of a lease or purchase agreement, properly signed by all parties, to the party for whom the licensee acts as an agent;
- (14)(a) in identifying the seller's brokerage in paragraph 5 of the approved Real Estate Purchase Contract, use:
 - (i) the principal broker's individual name; or
 - (ii) the principal broker's brokerage name; and
- (b) personally fulfill the licensee's agency relationship with the client, notwithstanding the information used to complete paragraph 5:
- (15) timely inform the licensee's principal broker or branch broker of real estate transactions in which:
 - (a) the licensee is involved as agent or principal;
- (b) the licensee has received funds on behalf of the principal broker; or
 - (c) an offer has been written;
- (16)(a) disclose in writing to all parties to a transaction any compensation in addition to any real estate commission that will be received in connection with a real estate transaction; and
- (b) ensure that any such compensation is paid to the licensee's principal broker;
 - (17) in negotiating and closing transactions, use:
- (a)(i) the standard forms approved by the commission and identified in Section R162-2f-401f;
- (ii) standard supplementary clauses approved by the commission; and
- (iii) as necessary, other standard forms including settlement statements, warranty deeds, and quit claim deeds;
- (b) forms prepared by an attorney for a party to the transaction, if:
- (i) a party to the transaction requests the use of the attorney-drafted forms; and
- (ii) the licensee first verifies that the forms have in fact been drafted by the party's attorney; or
- (c) if no state-approved form exists to serve a specific need, any form prepared by an attorney, regardless of whether the attorney is employed for the purpose by:
 - (i) the principal; or
 - (ii) an entity in the business of selling blank legal forms;
- (18) use an approved addendum form to make a counteroffer or any other modification to a contract;
- (19) in order to sign or initial a document on behalf of a principal:
- (a) obtain prior written authorization in the form of a power of attorney duly executed by the principal;
- (b) retain in the file for the transaction a copy of said power of attorney;
- (c) attach said power of attorney to any document signed or initialed by the individual on behalf of the principal;
- (d) sign as follows: "(Principal's Name) by (Licensee's Name), Attorney-in-Fact;" and
- (e) initial as follows: "(Principal's Initials) by (Licensee's Name), Attorney-in-Fact for (Principal's Name);"
 - (20) if employing an unlicensed individual to provide

- assistance in connection with real estate transactions, adhere to the provisions of Section R162-2f-401g;
- (21) strictly adhere to advertising restrictions as outlined in Section R162-2f-401h;
- (22) as to a guaranteed sales agreement, provide full disclosure regarding the guarantee by executing a written contract that contains:
- (a) the conditions and other terms under which the property is guaranteed to be sold or purchased;
 - (b) the charges or other costs for the service or plan;
- (c) the price for which the property will be sold or purchased; and
- (d) the approximate net proceeds the seller may reasonably expect to receive;
- (23) immediately deliver money received in a real estate transaction to the principal broker for deposit; and
- (24) as contemplated by Subsection 61-2f-401(18), when notified by the division that information or documents are required for investigation purposes, respond with the required information or documents in full and within ten business days.

R162-2f-401b. Prohibited Conduct As Applicable to All Licensed Individuals.

An individual licensee may not:

- (1) engage in any of the practices described in Section 61-2f-401 et seq., whether acting as agent or on the licensee's own account, in a manner that:
- (a) fails to conform with accepted standards of the real estate sales, leasing, or management industries;
- (b) could jeopardize the public health, safety, or welfare; or
- (c) violates any provision of Title 61, Chapter 2f et seq. or the rules of this chapter;
- (2) require parties to acknowledge receipt of a final copy of any document prepared by the licensee prior to all parties signing a contract evidencing agreement to the terms thereof;
 - (3) make a misrepresentation to the division:
 - (a) in an application for license renewal; or
 - (b) in an investigation.
- (4)(a) propose, prepare, or cause to be prepared a document, agreement, settlement statement, or other device that the licensee knows or should know does not reflect the true terms of the transaction; or
- (b) knowingly participate in a transaction in which such a false device is used;
- (5) participate in a transaction in which a buyer enters into an agreement that:
 - (a) is not disclosed to the lender; and
- (b) if disclosed, might have a material effect on the terms or the granting of the loan;
 - (6) use or propose the use of a double contract;
- (7) place a sign on real property without the written consent of the property owner;
 - (8) take a net listing;
- (9) sell listed properties other than through the listing broker;
- (10) subject a principal to paying a double commission without the principal's informed consent;
- (11) enter or attempt to enter into a concurrent agency representation when the licensee knows or should know that the principal has an existing agency representation agreement with another licensee;
- (12) pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect in a real estate transaction, except that a licensee may give a gift valued at \$150 or less to an individual in appreciation for an unsolicited referral of a prospect that results in a real estate transaction;
 - (13) accept a referral fee from:

- (a) a lender; or
- (b) a mortgage broker;
- (14) act as a real estate agent or broker in the same transaction in which the licensee also acts as a:
- (a) mortgage loan originator, associate lending manager, or principal lending manager;
 - (b) appraiser or appraiser trainee;
 - (c) escrow agent; or
 - (d) provider of title services;
- (15) act or attempt to act as a limited agent in any transaction in which:
 - (a) the licensee is a principal in the transaction; or
- (b) any entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal in the transaction;
- (16) make a counteroffer by striking out, whiting out, substituting new language, or otherwise altering:
- (a) the boilerplate provisions of the Real Estate Purchase Contract; or
- (b) language that has been inserted to complete the blanks of the Real Estate Purchase Contract;
- (17) advertise or offer to sell or lease property without the written consent of:
 - (a) the owner of the property; and
 - (b) if the property is currently listed, the listing broker;
- (18) advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor;
- (19) represent on any form or contract that the individual is holding client funds without actually receiving funds and securing them pursuant to Subsection R162-2f-401a(23);
- (20) when acting as a limited agent, disclose any information given to the agent by either principal that would likely weaken that party's bargaining position if it were known, unless the licensee has permission from the principal to disclose the information:
- (21) disclose, or make any use of, a short sale demand letter outside of the purchase transaction for which it is issued; or
- (22) in a short sale, have the seller sign a document allowing the licensee to lien the property.

R162-2f-401c. Additional Provisions Applicable to Principal Brokers.

- (1) A principal broker shall:
- (a)(i) maintain all records pertaining to a real estate transaction for at least three calendar years following the year in which:
 - (A) an offer is rejected; or
 - (B) the transaction either closes or fails; and
- (ii) make such records available for inspection and copying by the division;
- (b) unless otherwise authorized by the division in writing, maintain business records at:
- (i) the principal business location designated by the principal broker on division records; or
- (ii) where applicable, a branch office as designated by the principal broker on division records;
- (c) notify the division in writing within ten business days after terminating business operations as to where business records will be maintained;
- (d) upon filing for brokerage bankruptcy, notify the division in writing of:
 - (i) the filing; and
 - (ii) the current location of brokerage records;
- (e) provide to the person whom the principal broker represents in a transaction:
- (i) a detailed statement showing the current status of a transaction upon the earlier of:

- (A) the expiration of 30 days after an offer has been made and accepted; or
- (B) a buyer or seller making a demand for such statement;
- (ii) an updated transaction status statement at 30-day intervals thereafter until the transaction either closes or fails;
- (f)(i) regardless of who closes a transaction, ensure that final settlement statements are reviewed for content and accuracy at or before the time of closing by:
 - (A) the principal broker;
- (B) an associate broker or branch broker affiliated with the principal broker; or
 - (C) the sales agent who is:
 - (I) affiliated with the principal broker; and
 - (II) representing the principal in the transaction; and
- (ii) ensure the principals in each closed transaction receive copies of all documents executed in the transaction closing;
- (g) in order to assign all or part of the principal broker's compensation to an associate broker or sales agent in accordance with Section 61-2f-305, provide written instructions to the title insurance agent that include the following:
- (i) an identification of the property involved in the real estate transaction;
- (ii) an identification of the principal broker and sales agent or associate broker who will receive compensation in accordance with the written instructions;
- (iii) a designation of the amount of compensation that will be received by both the principal broker and the sales agent or associate broker;
- (iv) a prohibition against alteration of the written instructions by anyone other than the principal broker; and
- (v) additional instructions at the discretion of the principal broker;
- (h) obtain written consent from both the buyer and the seller before retaining any portion of an earnest money deposit being held by the principal broker;
- (i) exercise active supervision over the conduct of all licensees and unlicensed staff employed by or affiliated with the principal broker, whether acting as:
 - (i) the principal broker for an entity; or
 - (ii) a branch broker;
- (j) strictly adhere to the rules governing real estate auctions, as outlined in Section R162-2f-401i;
- (k) strictly adhere to the rules governing property management, as outlined in Section R162-2f-401j;
- (l)(i) except as provided in this Subsection (1)(l)(ii), within three business days of receiving a client's money in a real estate transaction, deposit the client's money into a trust account:
- (A) maintained by the principal broker pursuant to Section R162-2f-403; or
- (B) if the parties to the transaction agree in writing, maintained by:
 - (I) a title company pursuant to Section 31A-23a-406; or
 - (II) another authorized escrow entity;
- (ii) a principal broker is not required to comply with this Subsection (1)(1)(i) if:
- (A) the Real Estate Purchase Contract or other agreement states that the money is to be:
 - (I) held for a specific length of time; or
 - (II) deposited upon acceptance by the seller; or
- (B) the Real Estate Purchase Contract or other agreement states that a promissory note may be tendered in lieu of good funds and the promissory note:
 - (I) names the seller as payee; and
 - (II) is retained in the principal broker's file until closing;
- (m)(i) maintain at the principal business location a complete record of all consideration received or escrowed for real estate transactions; and

- (ii) be personally responsible at all times for deposits held in the principal broker's trust account;
- (n)(i) assign a consecutive, sequential number to each offer, such that all pertinent documents may be readily identified as relating to the offer;
- (ii) maintain a separate transaction file for each offer, including a rejected offer, that involves funds tendered through the brokerage and deposited into a trust account;
- (iii) maintain a record of each rejected offer that does not involve funds deposited to trust:
 - (A) in separate files; or
 - (B) in a single file holding all such offers; and
- (o) if the principal broker assigns an affiliated associate broker or branch broker to assist the principal broker in accomplishing the affirmative duties outlined in this Subsection (1):
- (i) actively supervise any such associate broker or branch broker; and
- (ii) remain personally responsible and accountable for adequate supervision of all licensees and unlicensed staff affiliated with the principal broker.
- (2) A principal broker shall not be deemed in violation of this Subsection (1)(i) where:
- (a) an affiliated licensee or unlicensed staff member violates a provision of Title 61, Chapter 2f et seq. or the rules promulgated thereunder;
- (b) the supervising broker had in place at the time of the violation specific written policies or instructions to prevent such a violation;
- (c) reasonable procedures were established by the broker to ensure that licensees receive adequate supervision and the broker has followed those procedures;
- (d) upon learning of the violation, the broker attempted to prevent or mitigate the damage;
 - (e) the broker did not participate in the violation;
 - (f) the broker did not ratify the violation; and
- (g) the broker did not attempt to avoid learning of the violation.

R162-2f-401d. School Conduct.

- (1) Affirmative duties. A school's owner(s) and director(s) shall:
- (a) within 15 days after the occurrence of any material change in the information provided to the division under Subsection R162-2f-206a(2)(a), give the division written notice of that change;
- (b)(i) provide instructors of prelicensing courses with the state-approved course outline; and
- (ii) ensure that any prelicensing course adheres to the topics mandated in the state-approved course outline;
- (c) ensure that all instructors comply with Section R162-2f-401e.
- (d) prior to accepting payment from a prospective student for a prelicensing education course:
- (i) provide the criminal history disclosure statement described in Subsection R162-2f-206a(3)(d); and
- (ii) obtain the student's signature on the criminal history disclosure:
- (e)(i) retain signed criminal history disclosures for a
- minimum of three years from the date of course completion; and (ii) make the signed criminal history disclosures available for inspection by the division upon request;
 - (f) maintain for a minimum of three years after enrollment:
 - (i) the registration record of each student;
 - (ii) the attendance record of each student; and
- (iii) any other prescribed information regarding the offering, including exam results, if any;
 - (g) ensure that course topics are taught only by:
 - (i) certified instructors; or

- (ii) guest lecturers;
- (h)(i) limit the use of approved guest lecturers to a total of 20% of the instructional hours per approved course; and
- (ii) prior to using a guest lecturer to teach a portion of a course, document for the division the professional qualifications of the guest lecturer;
- (i) furnish to the division an updated roster of the school's approved instructors and guest lecturers each time there is a change:
 - (j) at the conclusion of a course:
- (i) provide to each student who completes the course a course evaluation in the form required by the division; and
- (ii) submit the completed course evaluations to the division within ten business days;
- (k) within ten days of teaching a course, upload course completion information for any student who:
 - (i) successfully completes the course; and
- (ii) provides an accurate name or license number within seven business days of attending the course;
- (1) substantiate, upon request by the division, any claims made in advertising; and
- (m) include in all advertising materials the continuing education course certification number issued by the division.
 - (2) Prohibited conduct. A school may not:
- (a) award continuing education credit for a course that has not been certified by the division prior to its being taught;
- (b) award continuing education credit to any student who fails to:
 - (i) attend a minimum of 90% of the required class time; or
 - (ii) pass a course final examination;
- (c) accept a student for a reduced number of hours without first having a written statement from the division defining the exact number of hours the student must complete;
- (d) allow a student to challenge by examination any course or part of a course in lieu of attendance;
 - (e) allow a course approved for traditional education to be:
 - (i) taught in a private residence; or
 - (ii) completed through home study;
- (f) make a misrepresentation in advertising about any course of instruction;
- (g) disseminate advertisements or public notices that disparage the dignity and integrity of the real estate profession;
- (h) make disparaging remarks about a competitor's services or methods of operation;
- (i) attempt by any means to obtain or use the questions on the prelicensing examinations unless the questions have been dropped from the current exam bank;
- (j) give valuable consideration to a real estate brokerage or licensee for referring students to the school;
- (k) accept valuable consideration from a real estate brokerage or licensee for referring students to the brokerage;
- (l) allow real estate brokerages to solicit for agents at the school during class time, including the student break time;
- (m) obligate or require students to attend any event in which a brokerage solicits for agents;
 - (n) award more than eight credit hours per day per student;
- (o) award credit for an online course to a student who fails to complete the course within one year of the registration date;
- (p) advertise or market a continuing education course that has not been:
 - (i) approved by the division; and
- (ii) lissued a current continuing education course certification number; or
- (q) advertise, market, or promote a continuing education course with language indicating that division certification is pending or otherwise forthcoming.

R162-2f-401e. Instructor Conduct.

(1) Affirmative duties. An instructor shall:

- (a) adhere to the approved outline for any course taught;
- (b) comply with a division request for information within ten business days of the date of the request; and
- (c) maintain a professional demeanor in all interactions with students.
 - (2) Prohibited conduct. An instructor may not:
- (a) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or
- (b) continue to teach any course after the course has expired and without renewing the course certification.

R162-2f-401f. Approved Forms.

The following standard forms are approved by the commission and the Office of the Attorney General for use by all licensees:

- (1) August 27, 2008, Real Estate Purchase Contract;
- (2) January 1, 1999 Real Estate Purchase Contract for Residential Construction;
 - (3) January 1, 1987, Uniform Real Estate Contract;
 - (4) October 1, 1983, All Inclusive Trust Deed;
- (5) October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;
- (6) August 5, 2003, Addendum to Real Estate Purchase Contract:
- (7) August 27, 2008, Seller Financing Addendum to Real Estate Purchase Contract;
 - (8) January 1, 1999, Buyer Financial Information Sheet;
- (9) August 27, 2008, FHA/VA Loan Addendum to Real Estate Purchase Contract;
- (10) January 1, 1999, Assumption Addendum to Real Estate Purchase Contract;
- (11) January 1, 1999, Lead-based Paint Addendum to Real Estate Purchase Contract; and
- (12) January 1, 1999, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards.

R162-2f-401g. Use of Personal Assistants.

In order to employ an unlicensed individual to provide assistance in connection with real estate transactions, an individual licensee shall:

- (1) obtain the permission of the licensee's principal broker before employing the individual;
- (2) supervise the assistant to ensure that the duties of an unlicensed assistant are limited to those that do not require a real estate license, including the following:
- (a) performing clerical duties, including making appointments for prospects to meet with real estate licensees, but only if the contact is initiated by the prospect and not by the unlicensed assistant;
- (b) at an open house, distributing preprinted literature written by a licensee, where a licensee is present and the unlicensed person provides no additional information concerning the property or financing, and does not become involved in negotiating, offering, selling or completing contracts:
- (c) acting only as a courier service in delivering documents, picking up keys, or similar services, so long as the courier does not engage in any discussion or completion of forms or documents;
 - (d) placing brokerage signs on listed properties;
 - (e) having keys made for listed properties; and
- (f) securing public records from a county recorder's office, zoning office, sewer district, water district, or similar entity;
- (3) compensate a personal assistant at a predetermined rate that is not:
- (a) contingent upon the occurrence of real estate transactions; or
 - (b) determined through commission sharing or fee

splitting; and

(4) prohibit the assistant from engaging in telephone solicitation or other activity calculated to result in securing prospects for real estate transactions, except as provided in this Subsection (2)(a).

R162-2f-401h. Requirements and Restrictions in Advertising.

- (1) Advertising shall include the name of the real estate brokerage or, as applicable, the property management brokerage as shown on division records except where:
- (a) a licensee advertises unlisted property in which the licensee has an ownership interest; and
- (b) the advertisement identifies the licensee as "owneragent" or "owner-broker."
- (2) An advertisement that includes the name of an individual licensee shall also include the name of the licensee's brokerage in lettering that is at least one-half the size of the lettering identifying the individual licensee.
- (3) An advertisement that includes a photograph of an individual who is not a licensee shall identify the individual's role in terms that make it clear that the individual is not licensed.
- (4) An advertisement may not include artwork or text that states or implies that an individual has a position or status other than that of sales agent, associate broker, or principal broker affiliated with a brokerage.
- (5) An advertising team, group, or other marketing entity that is not registered as a brokerage:
 - (a) shall, in all types of advertising, clearly:
- (i) disclose that the team, group, or other marketing entity is not itself a brokerage; and
- (ii) state the name of the registered brokerage with which the property being advertised is listed;
- (b) shall, in any printed advertising material, clearly and conspicuously identify, in lettering that is at least one-half the size of the largest lettering used in the advertisement, the name of the registered brokerage with which the property being advertised is listed; and
- (c) may not advertise as an "owner-agent" or "owner-broker."
- (6)(a) A written advertisement of a guaranteed sales plan shall include, in print at least one-fourth as large as the largest print in the advertisement:
 - (i) a statement that costs and conditions may apply; and
- (ii) information about how to contact the licensee offering the guarantee so as to obtain the disclosures required under Subsection R162-2f-401a(22).
- (b) Any radio or television advertisement of a guaranteed sales plan shall include a conspicuous statement advising if any conditions and limitations apply.

R162-2f-401i. Standards for Real Estate Auctions.

- A principal broker who contracts or in any manner affiliates with an auctioneer or auction company to sell at auction real property in this state shall:
- (1) ensure that all aspects of the auction comply with the requirements of this section and all other laws otherwise applicable to real estate licensees in real estate transactions;
- (2) ensure that advertising and promotional materials associated with an auction name the principal broker;
 - (3) attend and supervise the auction;
- (4) ensure that any purchase agreement used at the auction:
- (a) meets the requirements of Subsection R162-2f-401a(18); and
- (b) is completed by an individual holding an active Utah real estate license;
 - (5) ensure that any money deposited at the auction is

placed in trust pursuant to Subsection R162-2f-401c(1)(1); and

(6) ensure that adequate arrangements are made for the closing of any real estate transaction arising out of the auction.

R162-2f-401j. Standards for Property Management.

- (1) Property management performed by a real estate brokerage, or by licensees or unlicensed assistants affiliated with the brokerage, shall be done under the name of the brokerage unless the principal broker obtains a separate registration pursuant to Section R162-2f-205 for a separate business name.
- (2)(a) The principal broker shall diligently supervise the activities of each sales agent or associate broker who is affiliated with the principal broker and assigned to perform property management tasks.
- (b) If property management activities are conducted at a branch office, the branch broker shall actively supervise the licensees and unlicensed assistants working from that branch.
- (3) The principal broker shall sign and submit forms as required by the division to affiliate the property management company with each associate broker, branch broker, and sales agent who will conduct the business of property management.
- (4) No real estate sales activity may be conducted by a property management company.
- (5) Individuals who are principals or owners of an entity registered as a property management company may not engage in activities that require licensure as a sales agent, associate broker, or principal broker without first obtaining a license and establishing an affiliation pursuant to Sections R162-2f-202a through 202c.
- (6) An individual employed by a property management company may perform the following services under the supervision of the principal broker without holding an active real estate license:
- (a) providing a prospective tenant with access to a vacant unit:
- (b) providing secretarial, bookkeeping, maintenance, or rent collection services;
 - (c) quoting predetermined rent and lease terms; and
 - (d) completing pre-printed lease or rental agreements.

R162-2f-402. Investigations.

The investigative and enforcement activities of the division shall include the following:

- (1) verifying information provided on new license applications and applications for license renewal;
 - (2) evaluation and investigation of complaints;
- (3) auditing licensees' business records, including trust account records:
- (4) meeting with complainants, respondents, witnesses and attorneys:
 - (5) making recommendations for dismissal or prosecution;
- (6) preparation of cases for formal or informal hearings, restraining orders, or injunctions;
- (7) working with the assistant attorney general and representatives of other state and federal agencies; and
- (8) entering into proposed stipulations for presentation to the commission and the director.

R162-2f-403. Trust Accounts.

- (1) A principal broker shall:
- (a) maintain a trust account in a bank or credit union located within the state of Utah;
 - (b) notify the division in writing of:
 - (i) the account number; and
- (ii) the address of the bank or credit union where the account is located; and
- (c) use the account for the purpose of securing client funds:
 - (i) deposited with the principal broker in connection with

- a real estate transaction regulated under Title 61, Chapter 2f et sea.:
- (ii) if the principal broker is also a builder or developer, deposited under a Real Estate Purchase Contract, construction contract, or other agreement that provides for the construction of a dwelling; and
- (iii) collected in the performance of property management duties as specified in this Subsection (4)(b).
- (2) A principal broker who deposits in any trust account more than \$500 of the principal broker's own funds violates Subsection 61-2f-401(4)(b).
- (3) A principal broker may not deposit into the principal broker's real estate trust account funds received in connection with rental of tourist accommodations where the rental period is less than 30 consecutive days.
- (4)(a) A principal broker who regularly engages in property management on behalf of seven or more individual units shall establish a property management trust account separate from the real estate trust account.
- (b) A principal broker who collects rents or otherwise manages property for no more than six individual units at any given time may use the real estate trust account to secure funds received in connection with the principal broker's property management activities.
- (5) A trust account maintained by a principal broker shall be non-interest-bearing, unless:
- (a) the parties to the transaction agree in writing to deposit the funds in an interest-bearing account;
- (b) the parties to the transaction designate in writing the person to whom the interest will be paid upon completion or failure of the sale;
 - (c) the person designated under this Subsection (5)(b):
- (i) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code: and
- (ii) operates exclusively to provide grants to affordable housing programs in Utah; and
- (d) the affordable housing program that is the recipient of the grant under this Subsection (5)(c)(ii) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code.
 - (6) Disbursement of funds held in trust.
- (a) A principal broker may disburse funds only in accordance with:
- (i) specific language in the Real Estate Purchase Contract authorizing disbursement;
- (ii) other proper written authorization of the parties having an interest in the funds; or
 - (iii) court order.
- (b) A principal broker may not release for construction purposes those funds held as deposit money under an agreement that provides for the construction of a dwelling unless the purchaser authorizes such disbursement in writing.
- (c) A principal broker may not withdraw any portion of the principal broker's sales commission:
- (i) without written authorization from the seller and buyer; or
- (ii)(A) until after the settlement statements have been delivered to the buyer and seller; and
- (B) the buyer or seller has been paid for the amount due as determined by the settlement statement.
- (d) Unless otherwise agreed pursuant to this Subsection (6)(a), a principal broker may not pay a commission from the real estate trust account without first:
 - (i) closing or otherwise terminating the transaction;
 - (ii) making a record of each disbursement; and
- (iii) depositing the withdrawn funds into the principal broker's operating account.
 - (e) A principal broker may not release earnest money or

other trust funds associated with a failed transaction unless:

- (i) a condition in the Real Estate Purchase Contract authorizing disbursement has occurred; or
- (ii) the parties execute a separate signed agreement containing instructions and authorization for disbursement.
- (f) If both parties to a contract make a written claim to the earnest money or other trust funds and the principal broker cannot determine from any signed agreement which party's claim is valid, the principal broker may:
 - (i) interplead the funds into court and thereafter disburse:
- (A) upon written authorization of the party who will not receive the funds; or
- (B) pursuant to the order of a court of competent jurisdiction; or
- (ii) within 15 days of receiving written notice that both parties claim the funds, refer the parties to mediation if:
- (A) no party has filed a civil suit arising out of the transaction; and
- (B) the parties have contractually agreed to submit disputes arising out of their contract to mediation.
- (g) If a principal broker is unable to disburse trust funds within five years after the failure of a transaction, the principal broker shall remit the funds to the State Treasurer's Office as unclaimed property pursuant to Title 67, Chapter 4a et seq.

R162-2f-407. Administrative Proceedings.

- (1) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.
 - (2) Informal adjudicative proceedings.
- (a) An adjudicative proceeding as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as an informal adjudicative proceeding.
- (b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Real Estate Licensing and Practices Act or by these rules.
- (3) Hearings required. A hearing before the commission shall be held in a proceeding:
- (a) commenced by the division for disciplinary action pursuant to Section 61-2f-401 and Subsection 63G-4-201(2); and
- (b) to adjudicate an appeal from an automatic revocation under Subsection 61-2f-204(1)(e), if the appellant requests a hearing.
- (4) Procedures for hearings in informal adjudicative proceedings.
- (a) The division director shall be the presiding officer for any informal adjudicative proceeding unless the matter has been delegated to a member of the commission or an administrative law judge.
- (b) All informal adjudicative proceedings shall adhere to procedures as outlined in:
- (i) Utah Administrative Procedures Act Title 63G, Chapter
 - (ii) Utah Administrative Code Rule R151-4 et seq.; and
 - (iii) the rules promulgated by the division.
- (c) Except as provided in this Subsection (5)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.
- (d) In any proceeding under this Subsection 407, the commission and the division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the commission and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.
- (e) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first

- class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing:
- (i) to the respondent at the address last provided to the division pursuant to Section 61-2f-207; and
- (ii) if the respondent is an actively licensed sales agent or associate broker, to the principal broker with whom the respondent is affiliated.
 - (f) Formal discovery is prohibited.
- (g) The division may issue subpoenas or other orders to compel production of necessary and relevant evidence:
 - (i) on its own behalf; or
 - (ii) on behalf of a party where the party:
 - (A) makes a written request;
- (B) assumes responsibility for effecting service of the subpoena; and
- (C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.
- (h) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.
- (i) The division shall adhere to Title 63G, Chapter 2, Government Records Access and Management Act in addressing a request for information obtained by the division through an investigation.
- (j) The division may decline to provide a party with information that it has previously provided to that party.
 - (k) Intervention is prohibited.
- (l) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:
- (i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or
 - (ii) Title 52, Chapter 4, the Open and Public Meetings Act.
- (m) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code Section R151-4-110(1)(a), an attorney may represent a party.
 - (5) Additional procedures for disciplinary proceedings.
- (a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:
 - (i) a notice of agency action;
- (ii) a petition setting forth the allegations made by the division:
 - (iii) a witness list, if applicable; and
 - (iv) an exhibit list, if applicable.
 - (b) Answer.
- (i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.
- (ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.
- (iii) Any answer shall be filed with the division within thirty days after the mailing date of the notice of agency action and petition.
 - (c) Witness and exhibit lists.
- (i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of hearing.
- (ii) The respondent shall provide its witness and exhibit lists to the division no later than thirty days after the mailing date of the division's notice of agency action and petition.
 - (iii) Any witness list shall contain:
- (A) the name, address, and telephone number of each witness; and
 - (B) a summary of the testimony expected from the witness.
 - (iv) Any exhibit list:
- (A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and
 - (B) shall be accompanied by copies of the exhibits.
 - (d) Pre-hearing motions.

5 points

- (i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.
- (ii) The division director shall receive and rule upon any pre-hearing motions.

R162-2f-501. Appendices.

(j) Leasing of commercial space

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TABLE 1
APPENDIX 1 - REAL ESTATE TRANSACTIONS EXPERIENCE TABLE

RESIDENTIAL - points can be accumulated from either the selling or the listing side of a real estate closing:
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or the	insting side of a real estate closing:				
(a)	One unit dwelling	2.5 points			
(b)	Two- to four-unit dwellings	5 points			
(c)	Apartments, 5 units or over	10 points			
(d)	Improved lot	2 points			
(e)	Vacant land/subdivision	10 points			
COMMERCIAL					
(f)	Hotel or motel	10 points			
(g)	Industrial or warehouse	10 points			
(h)	Office building	10 points			
(i)	Retail building	10 points			

TABLE 2 APPENDIX 2 - PROPERTY MANAGEMENT EXPERIENCE TABLE

RESIDENTIAL

(a) Each unit managed 0.25 pt/month

COMMERCIAL - hotel/motel, industrial/warehouse, office, or retail building
(b) Each contract OR each separate

(b) Each contract OR each separate
property address or location for
which licensee has direct responsibility 1 pt/month

TABLE 3 APPENDIX 3 - OPTIONAL EXPERIENCE TABLE

Real Estate Attorney	1	pt/month
CPA-Certified Public Accountant	1	pt/month
Mortgage Loan Officer	1	pt/month
Licensed Escrow Officer	1	pt/month
Licensed Title Agent	1	pt/month
Designated Appraiser	1	pt/month
Licensed General Contractor	1	pt/month
Bank Officer in Real Estate Loans	1	pt/month
Certified Real Estate Prelicensing Instructor	.5	pt/month

KEY: real estate business, operational requirements, trust account records, notification requirements

August 21, 2012 61-2f-103(1) 61-2f-105 61-2f-307

R162. Commerce, Real Estate.

R162-57a. Timeshare and Camp Resort Rules.

R162-57a-1. Title and Authority.

- (1) This section shall be known as the "Timeshare and Camp Resort Rules.'
- (2) The authority to make rules for the timeshare and camp resort industries is granted to the division director by Section 57-19-3.

R162-57a-2. Definitions.

- (1) "Affiliation" means an employment or independent contractor relationship between a salesperson and a developer.
- "Amendment" means a change to an original registration as to information submitted pursuant to Subsection R162-57a-5(3)(j)-(y).
- (3) "Annual report" means information submitted to the division in order to renew a project registration, including the following:
- (a) the number of intervals, memberships, or other interests sold since the registration was issued or last renewed;
- (b) the total number of intervals, memberships, or other interests sold since the date of initial registration;
- (c) the number of intervals, memberships, or other interests reacquired by foreclosure or similar proceeding that had previously been reported as sold;
- (d) the total number of registered but unsold intervals, memberships, or other interests as of the date of the annual report; and
- (e) the total number of intervals, memberships, or other interests that have been registered.
- (4) The acronym "ATR" means ARELLO Timeshare Registry, which is the online database system through which developers may register projects with the division.
 - (5) "Business day" means a day other than a:
 - (a) Saturday;
 - (b) Sunday; or
 - (c) state or federal holiday.
- (6) "Common promotional plan" means a plan whereby multiple timeshare or camp resort interests, whether in the same location or not, are advertised and/or offered for disposition without the ownership of the interests being differentiated or distinguished.
- (7) "Common facilities" means areas and amenities within a project to which all purchasers share an equal right of access and use.
- (8) "Consolidation" means the registration of additional interests in a project for which the director has previously issued a registration.
- (9) "Day" means calendar day unless specified as "business
- (10) "Direct sales presentation" means a meeting in which a salesperson provides information about project(s) or interest(s) to one or more prospective purchasers.
 - (11) "Entity" means:
 - (a) a corporation;
 - (b) a limited liability company;
 - (c) a partnership;
 - (d) a company;
 - (e) an association;
 - (f) a joint venture;
 - (g) a business trust;
 - (h) a trust; or
 - (i) another organization.
- (12) "Expired registration" means a project or salesperson registration that may not be used to market interests because the holder of the registration failed to renew it by or before the expiration date.
- (13) "Marketing of interests" means implementing a common promotional plan through:

- (a) print media;
- (b) direct mailings;
- (c) television, radio, or Internet advertising;
- (d) in-person communication;
- (e) sales presentations; or
- any other method of contacting a prospective (f) purchaser.
- (14) "Notice of defect" means a written communication from the director informing an applicant that the applicant must submit additional information to clarify, complete, or correct an application for:
 - (a) registration;
 - (b) consolidation; or
 - (c) renewal.
 - (15) "Person" means an individual or an entity.
- (16) "Personal information" means data that may be used to identify or contact a prospective purchaser, including:
 - (a) name;
 - (b) home or business address;
 - (c) home, business, or cell telephone number; and
 - (d) e-mail address.
 - (17) "Prospective purchaser" means a person who:
 - (a) attends a sales presentation;
- (b) communicates with a developer or salesperson in order to obtain information about a project;
- (c) provides personal information to a developer or salesperson; or
- (d) is solicited by a developer or salesperson through any type of marketing.
 - (18) "Property report" means a document that includes:
 - (a) disclosures required pursuant to Section 57-19-11;
- (b) a cover sheet as generated and provided by the division; and
 - (c) a receipt generated by the division.
- (19) "Public offering statement" has the same meaning as "property report."
 (20) "Registration" means:
- (a) as to a project, division approval of the project as being suitable for marketing of interests; and
- (b) as to a salesperson, division approval for the salesperson to engage in the marketing of interests.
- (21) "Reinstatement period" means a 30-day period following the expiration of registration during which a person may reinstate an expired registration by submitting all required renewal materials and paying applicable fees.
- (22) The acronym "RELMS" means Real Estate License Management System, which is the online forum through which registered salespersons may submit forms and information to the division.
- (23)"Renewal" means extending a registration for an additional period on or before the date the registration expires.
- (24) "Supplement" means a change in the information
- submitted pursuant to Subsection R162-57a-5(3)(a)-(i). (25) "Temporary permit" means authorization from the division for a developer to engage in the marketing of interests for a period not to exceed 30 days.

R162-57a-5. Project Registration.

- (1) Registration required.
- (a) A person may not engage in the marketing of interests unless:
- (i) the project is properly registered with the division pursuant to Section 57-19 et seq. and these rules; and
- (ii) each individual who will engage in marketing is registered as salesperson pursuant to Section 57-19 et seq. and these rules.
- (b)(i) A project is not considered registered until the developer seeking registration obtains from the division:
 - (A) a complete property report, approved by the division;

and

- (B) an order of registration.
- (ii) A salesperson is not considered registered until the individual receives a registration from the division.
- (c) Absent the issuance of a property report or registration, acceptance by the division of a registration fee does not authorize a person to engage in the marketing of interests.
- (2) Registration procedure. A developer shall submit all information required under Subsection (3) to the division:
 - (a) through the ATR; or
- (b) if the developer obtains advance permission from the division, directly to the division.
- (3) Required Information. A developer shall submit to the division:
- (a) property report pursuant to Section 57-19-11 and Subsection R162-57a-11;
- (b) as to each officer, partner, director, and owner of the developer:
- (i) as applicable, documentation of any disciplinary or adverse licensing action taken against a professional license held by the individual in any jurisdiction;
- (ii)(A) a statement of the type and extent of any financial interest the individual has in the project; and
- (B) an explanation of any options the individual may exercise to acquire additional financial interest in the project;
- (iii) as applicable, court records from any criminal proceeding taken against the individual in any jurisdiction, regardless of whether the proceeding was resolved by:
 - (A) conviction;
 - (B) plea in abeyance;
 - (C) diversion agreement;
 - (D) sentence of confinement; or
 - (E) dismissal; and
- (iv) as applicable, documentation of any bankruptcy filing
- (A) the individual; or
 - (B) an entity in which the individual has held:
 - (I) an ownership interest; or
 - (II) a position as a manager, officer, or director;
- (c) evidence that the developer is registered in good standing with the Utah Division of Corporations;
- (d) corporate resolution naming a resident agent to act on behalf of the developer;
- (e) copy of the current articles of incorporation or other instrument creating the developer entity;
 - (f) copy of the current bylaws of the developer entity;
- (g)(i) states or jurisdictions in which the developer has filed an application for registration or similar document;
- (ii) copy of the property report or other disclosure document required to be given to purchasers by any jurisdiction in which the project is registered or the developer is otherwise authorized to market interests;
- (iii) full documentation of any adverse order, judgment, or decree entered in connection with the project by any regulatory authority in any jurisdiction;
 - (h) name of any salesperson who will market the project;(i) name of the individual who will be responsible for
- directly supervising the salesperson(s) marketing the project;

 (i) legal description of the property upon which the project
- (j) legal description of the property upon which the project is located;
- (k) statement, generated or updated within the 30-day period preceding the date of application, of the condition of the title to the property upon which the project is located, including encumbrances:
- (l)(i) copy of any instrument by which the developer acquired interest in the project; or
- (ii) if the developer does not hold fee title to the property, evidence that the developer is legally entitled to use the property, as follows:

- (A) if the property is situated within Utah:
- (I) a title opinion from a title insurer licensed in Utah; or (II) an opinion letter from an independent, third party
- attorney actively licensed in Utah;
- (B) if the property is situated outside of Utah, an opinion letter from an independent, third party attorney who is actively licensed to practice in the jurisdiction where the property is situated: and
- (C) if the property is located in a jurisdiction such as a foreign country where property title opinions are issued by parties other than title companies and attorneys, other evidence of title as specified and approved by the director;
- (m) copy of any instrument creating a lien, easement, restriction, or other encumbrance affecting the project, including any recording data, but redacted as to the consideration paid upon acquisition of the project;
- (n) statement of the zoning and other governmental regulations affecting the use of the project;
- (o) existing and proposed taxes or special assessments that affect the project:
- (p)(i) copies of the instruments that will be delivered to a purchaser to evidence the purchaser's interest in the project; and
- (ii) copies of the contracts and other agreements that a purchaser will be required to agree to or sign;
- (q) topograhic map and accompanying statement describing the general topography and physical characteristics of the project, including:
 - (i) terrain;
 - (ii) soil conditions;
 - (iii) flood control; and
 - (iv) climate;
 - (r) copy of any:
 - (i) recorded declaration of condominium;
- (ii) recorded covenants, conditions, and restrictions (CCRs); and
- (iii) instrument governing the project and incorporating all covenants of the grantor or lessor;
- (s) copy of any plan to create an association for project owners;
- (t) narrative description of the promotional plan for the disposition of the project;
- (u) statement disclosing any inducement that will be offered in connection with the marketing of the project;
 - (v) map showing:
- (i) the location of the interests and other improvements on the property;
- (ii) the relation of the project to existing streets, roads, and other off-site improvements; and
- (iii) the relation of the project to factors that might negatively impact the quiet enjoyment of an interest;
- (w)(i) statement of improvements and amenities to be installed that have not been completed;
 - (ii) schedule for completion;
- (iii) evidence that the developer has obtained all necessary permits; and
- (iv) if the city or county in which the property is located does not require means of assurance that all improvements and amenities referred to in the application will be completed, copies of:
 - (A) escrow or trust agreements;
 - (B) performance bonds; or
- (C) other documentation to evidence that adequate financing is available and arrangements have been made for the installation of all streets, sewers, electricity, gas, water, telephone, drainage, and other improvements;
- (x)(i) provisions for maintenance to both existing and planned improvements and amenities; and
 - (ii) estimated cost of such maintenance to purchasers;
 - (y) description of any corrective work that must be

performed on or relating to the project before particular interests are suitable for use;

- (z) completed application as required by the division; and
- (aa) a nonrefundable registration fee.
- (4) The director may waive production of an item required pursuant to Subsection (3) if the developer shows that the item is not necessary to fulfill the purposes of Section 56-19 et seq.
 - (5) Consolidation.
- (a) An application for consolidation shall be prepared and submitted in the same format as an application for initial registration.
- (b) Where there is no change in the information submitted by the developer for the initial registration, the documents required by Subsection (3) may be incorporated by reference to documents on file with the division.
- (c) An incomplete application for consolidation shall be treated as provided in Subsection (6).
- (d) New inventory added to a project through consolidation is subject to inspection by the division.
 - (6) Notice of defect.
- (a) If an application is incomplete, or otherwise fails to comply with Section 57-19 et seq. or these rules, the director shall send a notice of defect to the developer or the developer's legal representative specifying:
- (i) what additional information is required to cure the defect; and
- (ii) the deadline by which the division must receive the additional information.
- (b) After receipt of a notice of defect, the developer may not offer units to the public:
 - (i) until the defect is cured and a registration obtained; or
- (ii) without obtaining a temporary permit pursuant to Section 57-19-6(3) and Subsection (8).
- (c)(i) If the additional information is not received by the division by the deadline specified in the notice of defect, the director may deny the registration.
- (ii) An order of denial may be appealed pursuant to Section 57-19-17.
 - (7) Standards for approval.
- (a) The director may not approve an application for registration of a project unless:
- (i) the documents submitted pursuant to Subsection (3) meet the requirements of Section 57-19 et seq. and these rules; and
- (ii) the developer demonstrates the ability to convey or cause to be conveyed the interests offered for disposition.
- (b) The division may not issue a project registration to a developer that has an officer, partner, director, or owner who has:
 - (i) been prosecuted for a felony that resulted in a:
- (A) conviction within the five-year period preceding the date of application;
- (B) plea agreement within the five-year period preceding the date of application; or
- (C) jail or prison release date falling within the five-year period preceding the date of application; or
- (ii) been prosecuted for a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in a:
- (A) conviction within the three-year period preceding the date of application; or
- (B) jail or prison release date falling within the three-year period preceding the date of application.
- (c) If the director determines that a registration application and supporting documentation meet the criteria for registration, the division shall issue:
- (i) an order of registration designating the form of the property report that the developer is required to provide to a prospective purchaser pursuant to Section 57-19-11;
 - (ii) a property report cover sheet, which the developer

shall attach to the property report as its first page; and

- (iii) a receipt for property report, which the developer shall attach to the property report as its last page.
 - (8) Temporary permit.
 - (a) To apply for a temporary permit, a person shall:
- (i) make application by submitting a written request to the director:
 - (ii) comply with Section 57-19-6(3); and
 - (iii) pay all fees required for registration.
- (b) A temporary permit issued by the director is valid for a period of 30 days from the date of issue.
 - (c) A temporary permit may not be renewed.
 - (9) Notification of changes.
- (a) A developer whose project is registered under Section 57-19 et seq. shall report to the division within 10 business days any change in:
 - (i) the developer's contact information;
 - (ii) the disclosures required under Section 57-19-11;
- (iii) the information provided under this Subsection (3), including changes in salespersons employed or contracted to market interests in the project;
- (iv)(A) the bankruptcy of an entity controlled or owned by the developer that engages in the marketing of interests; and
- (B) if the developer is an individual, the filing of a personal bankruptcy;
- (v) the suspension, revocation, surrender, cancellation, or denial or a professional license or professional registration issued to the developer, whether the license or registration is issued by this state or another jurisdiction;
- (vi) the entry of a cease and desist order, a temporary or permanent injunction, or a regulatory action:
- (A) against the developer by a court or a government agency; and
 - (B) based on:
- (I) conduct or a practice involving the marketing of interests; or
- (II) conduct involving fraud, misrepresentation, or deceit;
- (vii) a finding of fraud, misrepresentation, or deceit entered against the developer in a judicial or administrative proceeding instituted by a purchaser and arising out of or relating to:
 - (A) the advertising or sale of an interest;
 - (B) disclosures required under Section 57-19-11; or
 - (C) rescission rights.
- (b) If a deadline for notification falls on a day when the division is closed for business, the deadline shall be extended to the next business day.
 - (10) Amendment and supplement to initial registration.
- (a) To submit an amendment to a registration, a developer shall:
 - (i) complete an amendment filing through the ATR; or
- (ii) obtain prior permission from the division to submit the information by mail.
- (b) To submit a supplement to a registration, a developer shall:
 - (i) complete a courtesy filing through the ATR; or
- (ii) obtain prior permission from the division to submit the information by mail.
- (c) Pursuant to Section 57-19-8(4), the certification of a class in a class-action lawsuit against a developer on the basis of the developer's advertising, selling, or managing a project or interest requires the filing of an amendment.

R162-57a-8. Restrictions on Proposed Advertising.

- (1) Advertising that promotes gifts and other awards in connection with attending a sales presentation shall:
- (a) disclose any conditions precedent to the receipt of the gift or other award; and

- (b) if receipt of a specific advertised gift or other award is not guaranteed by virtue of attendance at the sales presentation, state the odds of any attendee's chance of receiving the gift or other award.
 - (2) A substitute gift, inducement, or award:
- (a) shall be equal in value or use to the gift, inducement, or award that was originally promised; and
- (b) may not burden the recipient with additional travel expense in order to receive the value of the gift, inducement, or award.

R162-57a-9. Renewal and Reinstatement of Project Registration.

- (1) Project registration renewal. To renew a registration of a project, a person shall submit to the division, no later than the expiration date set forth on the order of registration:
 - (a) an annual report;
- (b)(i) an updated property report, with changes underlined in red; or
- (ii) a statement that no changes have occurred in the property report that is on record with the division;
- (c) a description of any change in the information provided in the application for registration;
- (d) documentation of any judicial proceeding or regulatory investigation instituted by complaint of a purchaser against the developer and arising out of or relating to:
 - (i) the advertising or sale of an interest;
 - (ii) disclosures required under Section 57-19-11;
 - (iii) rescission rights;
 - (iv) fraud; or
- (v) misrepresentation of interests represented by the registration; and
 - (e) a nonrefundable renewal fee.
 - (2) Reinstatement.
- (a) To reinstate an expired project registration, a person shall submit to the division, no later than 30 calendar days following the expiration of the registration:
 - (i) all materials required for a timely renewal; and
 - (ii) a nonrefundable late fee.
- (b) A registration that is expired more than 30 days may not be renewed or reinstated. To obtain a registration, a person shall apply as a new applicant.

R162-57a-11. Disclosure Required.

- (1) The disclosures required by Section 57-19-11 and submitted to the division as part of the application for project registration shall be:
- (a)(i) reproduced on good quality white paper 8-1/2 by 11 inches in size;
- (ii) typed in a font no smaller than 10-point type, except that financial statements or other statistical or tabular matter may be set in type as small as 8-point type; and
- (iii) organized into reasonably short paragraphs or sections with appropriate captions or headings to identify each paragraph or section; or
 - (b) if acceptable to the director, approved by another state.
- (2)(a) Upon approving the developer's disclosures, the division shall supply to the developer:
- (i) a cover sheet, which the developer shall use as the first page of the property report; and
- (ii) a receipt for property report, which the developer shall use as the last page of property report.
- (b)(i) The developer shall provide a copy of the complete property report, reproduced in a manner that allows all text to remain visible and legible, not obscured by shading or watermarks, to each prospective purchaser prior to obtaining the prospective purchaser's signature on a contract for purchase of an interest.
 - (ii) The developer shall, in connection with an offer to sell

an interest, provide a notice of the purchaser's right to cancel described in Section 57-19-12, reproduced in a manner that allows all text to remain visible and legible, not obscured by shading or watermarks, to each prospective purchaser:

(A) at the beginning of a direct sales presentation; or

(B) if the prospective purchaser does not attend a direct sales presentation, at the same time the developer obtains the prospective purchaser's personal information.

R162-57a-13. Unprofessional Conduct.

- (1) Developer.
- (a) Affirmative duties. A developer or an individual designated by the developer shall:
- (i) actively supervise project salesperson(s) to ensure compliance with Section 57-19 et seq. and these rules;
- (ii) provide the complete property report to each prospective purchaser;
- (iii) obtain a signed receipt for property report from a prospective purchaser prior to:
 - (A) executing a purchase agreement; or
- (B) receiving any item of value toward the purchase of an interest; and
- (iv)(A) clearly inform a purchaser of the purchaser's right to rescind the agreement if, during the rescission period mandated by Section 57-19-12, the purchaser expresses a desire to terminate a contract or agreement entered into by the purchaser; and
 - (B) ensure compliance with this Subsection (iv)(A) by:
 - (I) all subsidiaries of the developer;
 - (II) all persons affiliated with the developer; and
- (III) all persons affiliated with a subsidiary of the developer.
- (b) Prohibited conduct. A developer is subject to discipline if the developer or an affiliated person:
- (i) makes a misrepresentation or material omission in a document submitted to the division; or
 - (ii) fails to comply with an order of the division.
 - (2) Salesperson. A salesperson shall comply with:
 - (a) Section 57-19 et seq.;
 - (b) these rules; and
 - (c) this Subsection (1)(a)(ii)-(iv).

R162-57a-15. Application for Registration of Project Sales Persons.

- (1) An individual applying for registration as a project salesperson shall provide the following information to the division:
 - (a) identifying information, including:
 - (i) full legal name;
 - (ii) date of birth; and
 - (iii) social security number;
 - (b) contact information, including:
 - (i) home address;
 - (ii) home telephone and cell telephone numbers;
 - (iii) mailing address;
 - (iv) e-mail address;
 - (v) sales office location and e-mail address;
 - (vi) sales office telephone number; and
- (vii) name of developer or an individual designated by the developer who will supervise the applicant pursuant to Subsection R162-57a-13(1)(a).
- (c)(i) disclosure as to whether the individual has ever been licensed or registered in a real estate-related profession; and
- (ii) documentation of any adverse regulatory action on such license or registration, including:
 - (A) denial;
 - (B) restriction, including probation;
 - (C) suspension;
 - (D) revocation; or

- (E) fine;
- (d) disclosure as to whether the individual has ever resigned or surrendered a real estate-related license or registration, or allowed such a license or registration to expire, while under investigation or while action was pending against the individual by a government agency;
- (e) information as to any disciplinary action pending against the individual at the time of application by any real estate, professional, or occupational licensing agency;
- (f) documentation of any criminal investigation proceeding against the individual at the time of application;
- (g) complete documentation of any past criminal offense, including:
 - (i) charge(s) filed;
 - (ii) plea(s) entered;
 - (iii) case disposition; and
 - (iv) terms of sentencing;
- (h) complete documentation of any past civil judgment entered against the person in a case brought on allegations involving fraud, misrepresentation, or deceit;
- (i) completed five-year employment history form as provided by the division;
- (j) affidavit stating whether the individual has ever been terminated from employment on an allegation of theft, fraud, or dishonesty; and
 - (k) a nonrefundable application fee.
- (2) An application for registration as a project salesperson shall be signed by:
 - (a) the applicant; and
- (b)(i) the developer with which the salesperson is affiliated; or
- (ii) the developer's authorized representative pursuant to Subsection R162-57a-13(1)(a).
- (3) Standards for approval. The director may not issue a salesperson registration to any individual who:
 - (a) submits an incomplete application;
 - (b) has been prosecuted for a felony that resulted in a:
- (i) conviction within the five-year period preceding the date of application;
- (ii) plea agreement within the five-year period preceding the date of application; or
- (iii) jail or prison release date falling within the five-year period preceding the date of application; or
- (c) has been prosecuted for a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in a:
- (i) conviction within the three-year period preceding the date of application; or
- (ii) jail or prison release date falling within the three-year period preceding the date of application.
 - (4) Notification of changes.
- (a) A registered salesperson shall inform the division within ten days of:
 - (i) any change in the individual's legal name;
- (ii) any change in the individual's contact information pursuant to Subsection (1)(b);
- (iii) as to a criminal offense, whether prosecuted in Utah or in another jurisdiction:
 - (A) a conviction:
 - (B) the entry of a plea in abeyance;
 - (C) a diversion agreement; or
- (D) any other agreement under which a criminal charge is held in suspense for a period of time.
- (b) To notify the division of a name change, an individual shall:
 - (i) complete and submit a paper change form; and
 - (ii) attach to the form official documentation such as a:
 - (A) marriage license;
 - (B) divorce decree;
 - (C) driver license; or

- (D) court order.
- (c) To notify the division of a change in contact information, an individual shall submit a change form:
- (i) by mail or fax, until such time as RELMS is configured to accommodate timeshare salespersons; and
- (ii) through RELMS, once the system is configured to accommodate timeshare salespersons.
- (d) To notify the division of proceedings in a criminal case, an individual shall:
- (i) send to the division a cover letter explaining the circumstances under which charges were brought; and
 - (ii) attach all available documentation, including:
 - (A) charging documents;
 - (B) police reports; and
 - (C) court dockets.
 - (5) Renewal and reinstatement.
- (a) A salesperson registration expires two years following the date the registration is approved by the division.
- (b) To renew a salesperson registration, an individual shall submit to the division, no later than the date on which the individual's registration expires:
- (i) a completed renewal application as required by the division; and
 - (ii) a nonrefundable fee.
- (c) To reinstate an expired salesperson registration, and individual shall submit to the division, no later than 30 days following the date on which the individual's registration expires:
 - (i) all materials required for a timely renewal; and
 - (ii) a nonrefundable late fee.
- (d) An application that is expired more than 30 days may not be renewed. To obtain a registration, an individual shall apply as a new applicant.

R162-57a-17. Administrative Procedures.

The following matters shall be decided by the director through an informal adjudicative proceeding, with no hearing permitted:

- (1) issuance of an initial registration;
- (2) renewal or reinstatement of an existing registration;
- (3) denial of any application for registration; and
- (4) a request:
- (a) to amend a property report;
- (b) for consolidation of a registration;
- (c) for waiver of, or exemption from, registration requirements; and
- (d) for a temporary permit pending registration with the division.

R162-57a-26. Exemptions.

- (1) The following sales are essentially noncommercial and, therefore, exempt from the requirements of Section 57-19, et seq. by operation of law:
- (a) the bulk sale of interests by a developer to another person who will become the developer of the project;
- (b) after a project has been sold out and its registration with the division has expired, the resale of interests that are foreclosed by the developer or the developer's successor-in-interest, so long as:
- (i) no more than ten interests in the project are foreclosed and resold over the life of the project; and
- (ii) the foreclosed interests are not offered with interests in other projects as part of a common promotional plan;
- (c) the resale by a lender of foreclosed interests, so long as the lender does not foreclose more than ten interests in the project over the life of the project;
- (d) the sale, to a person who has previously purchased an interest in a project, of additional interests in the same project, provided that the person is timely provided with a valid property report at the time of the original purchase; and

- (e) the sale of a purchaser's individual interest on a for-sale-by-owner basis.
- (2)(a) A person who believes a sale not specifically delineated in Subsection (1) is essentially non-commercial shall apply to the division for an order of exemption.

 (b) An exemption granted under this Subsection (2)(a) is valid for a period of one year and expires unless renewed through reapplication.

KEY: timeshare, camp resort, registration, professional conduct

57-19-3 57-19-5 through 57-19-26 August 21, 2012

R182. Community and Culture, Administration. R182-2. Preservation Pro Fee.

R182-2-1. Purpose.

The purpose of this rule is to establish the procedure regarding user fees for the Preservation Pro tool that is maintained online by the Division of State History within the Department of Heritage and Arts.

The department is committed to maintaining Preservation Pro in order to streamline the cultural resource management processes. Therefore, the fees collected will contribute, along with ongoing digitization funds, to the ongoing operation, maintenance, and improvement of the application.

R182-2-2. Authority.

The department may make, amend, or repeal rules for the conduct of its business in accordance with Subsection 63G-3-201(2), Utah Administrative Rulemaking Act.

R182-2-3. Definitions.

- (1) "Preservation Pro" is an online tool intended to help stakeholders manage Utah's cultural resources data. It contains both public and protected information. Access to protected information will be governed according to 63G-2, Government Records Access and Management Act.
- (2) "Department" is the Utah Department of Heritage and Arts
- (3) "Executive Director" is the director of the Department of Heritage and Arts.
- (4) "Division" is the Utah Division of State History in the Department of Heritage and Arts.
- (5) "Director" is the director of the Division of State History.

R182-2-4. Fee.

- (1) The Preservation Pro fee will be established annually through the legislative appropriations process.
- (2) Fees can be remitted to the Department of Heritage and Arts, Director of Finance, 300 S. Rio Grande, SLC, UT, 84101. Other payment options may be available. Contact the Director for details.
- (3) Fees are assessed annually, and are due on the first day of July. Only entities that have paid their fee or received a fee waiver from the department will be allowed access to Preservation Pro.
- (4) The annual fee will be prorated by month for entities who request access mid-year.

R182-2-5. Fee Waiver Process.

- (1) Organizations that provide grants or data to maintain and improve the application and the database may receive full or partial waivers.
 - (2) Other requests for fee waivers may also be considered.
- (a) A waiver request application is available from the division.
- (b) Individuals or organizations seeking a fee waiver should submit their application to the Director, 300 S. Rio Grande, SLC, UT, 84101.
 - (c) Each request shall include justification for the waiver.
- (d) The Director shall review and determine all fee waivers. In doing so, the Director shall convene a committee that consists of the department's Finance Director, as well as representatives from the division and the Department of Technology Services.
- This committee will review all waiver requests, and the Director will make the final determination.
- (ii) The division will then notify the applicant of the decision within 10 business days.
- (iii) Appeals of decisions shall be made to the Department of Heritage and Arts, Executive Director, 300 S. Rio Grande,

SLC, UT, 84101.

KEY: archaeology, preservation pro, user fee, cultural resources
August 31, 2012 9-1-201

R277. Education, Administration.

R277-401. Child Abuse-Neglect Reporting by Education Personnel.

R277-401-1. Definitions.

- A. This rule uses the definition of neglected child found in Section 78A-6-105(26).
- B. This rule uses the definition of abused child found in Section 78A-6-105(2).
- C. "Board" means the Utah State Board of Education.
 D. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

R277-401-2. Authority and Purpose.

- A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board and 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 clarify:
- (1) the Board's support for taking early protective measures towards allegations of child abuse. The daily contact of education personnel with children places them in an ideal position for identifying and referring suspected cases of abuse.
- (2) the role of school employees in reporting and participating in investigations of suspected child abuse as required by Section 62A-4a-403.

R277-401-3. Policies and Procedures.

- A. Each LEA shall develop and adopt a child abuseneglect policy.
- (1) School officials shall cooperate with social service and law enforcement agency employees authorized to investigate charges of child abuse and neglect.
- (2) LEA policies shall ensure that the anonymity of those reporting or investigating child abuse or neglect is preserved in a manner required by Section 62A-4a-412.
- (3) An LEA policy may direct a school employee to notify the building principal of the neglect or abuse. Such a report to a principal, supervisor, school nurse or psychologist does not satisfy the employee's personal duty to report to law enforcement or DFS.
- (4) LEA policies shall direct school employees to cooperate appropriately with law enforcement and DCFS investigators who come into the school, including:
- (a) allowing authorized representatives to interview children consistent with DCFS and local law enforcement protocols;
 - (b) allowing appropriate access to student records;
- (c) making no contact with parents/legal guardians of children being questioned by DCFS or local law enforcement; and
- cooperating with ongoing investigations and maintaining appropriate confidentiality.
 - B. School employee responsibilities
- (1) Any school employee who knows or reasonably believes that a child has been neglected, or physically or sexually abused, shall immediately notify the nearest peace officer, law enforcement agency, or office of the State Division of Child and Family Services (DCFS).
- (2) It is not the responsibility of school employees to prove that the child has been abused or neglected, or determine whether the child is in need of protection. Investigations are the responsibility of the Division of Child and Family Services. Investigation by education personnel prior to submitting a report should not go beyond that necessary to support a reasonable belief that a reportable problem exists.
- Persons making reports or participating in an investigation of alleged child abuse or neglect in good faith are immune from any civil or criminal liability that otherwise might

arise from those actions, as provided by law.

KEY: child abuse, education policy, faculty, students **December 8, 2011** Art X Sec 3 **Notice of Continuation August 14, 2012** 53A-1-401(3)

R277. Education, Administration. R277-407. School Fees. R277-407-1. Definitions.

- A. Fee: Any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods. Admission fees, transportation charges, and similar payments to third parties are fees if the charges are made in connection with an activity or function sponsored by or through a school. For purposes of this policy, charges related to the National School Lunch Program are not fees.
- B. "LEA" means a local education agency, including local school boards/public school districts and charter schools.
- C. Optional Project: A project chosen and retained by a student in lieu of a meaningful and productive project otherwise available to the student which would require only school-supplied materials.
- D. "Provision in Lieu of Fee Waiver" means an alternative to fee payment and waiver of fee payment. A plan under which fees are paid in installments or under some other delayed payment arrangement is not a waiver or provision in lieu of fee waiver.
- E. Student Supplies: Items which are the personal property of a student which, although used in the instructional process, are also commonly purchased and used by persons not enrolled in the class or activity in question and have a high probability of regular use in other than school-sponsored activities. The term includes pencils, papers, notebooks, crayons, scissors, basic clothing for healthy lifestyle classes, and similar personal or consumable items over which a student retains ownership. The term does not include items such as the foregoing for which specific requirements such as brand, color, or a special imprint are set in order to create a uniform appearance not related to basic function.
- F. "Supplemental Security Income for children with disabilities (SSI)" is a benefit administered through the Social Security Administration that provides payments for qualified children with disabilities in low income families.
- G. "Temporary Assistance for Needy Families (TANF)," (formerly AFDC) provides monthly cash assistance and food stamps to low-income families with children under age 18 through the Utah Department of Workforce Services.
- H. Textbook: Book, workbook, and materials similar in function which are required for participation in a course of instruction.
- I. Waiver: Release from the requirement of payment of a fee and from any provision in lieu of fee payment.

R277-407-2. Authority and Purpose.

- A. This rule is authorized under Article X, Sections 2 and 3 of the Utah Constitution which vests general control and supervision of the public education system in the State Board of Education and provides that public elementary and secondary schools shall be free except that fees may be imposed in secondary schools if authorized by the Legislature. Section 53A-12-102(1) authorizes the State Board of Education to adopt rules regarding student fees. This rule is consistent with the State Board of Education document, Principles Governing School Fees, adopted by the State Board of Education on March 18, 1994. This rule is also consistent with the Permanent Injunction, Doe v. Utah State Board of Education, Civil No. 920903376.
 - B. The purpose of this rule is:
- (1) to permit the orderly establishment of a reasonable system of fees;
- (2) to provide adequate notice to students and families of fee and fee waiver requirements; and
- (3) to prohibit practices that would exclude those unable to pay from participation in school-sponsored activities.

R277-407-3. Classes and Activities During the Regular School Day.

- A. No fee may be charged in kindergarten through sixth grades for materials, textbooks, supplies, or for any class or regular school day activity, including assemblies and field trips.
- B. Textbook fees may only be charged in grades seven through twelve.
- Č. If a class is established or approved which requires payment of fees or purchase of materials, tickets to events, etc., in order for students to participate fully and to have the opportunity to acquire all skills and knowledge required for full credit and highest grades, the class shall be subject to the fee waiver provisions of R277-407-6.
- D. Students of all grade levels may be required to provide materials for their optional projects, but a student may not be required to select an optional project as a condition for enrolling in or completing a course. Project-related courses must be based upon projects and experiences that are free to all students.
- E. Schools shall provide school supplies for K-6 students. A student may, however, be required to replace supplies provided by the school which are lost, wasted, or damaged by the student through careless or irresponsible behavior.
- F. An elementary school or teacher may provide to parents or guardians a suggested list of supplies. The suggested list shall contain the express language in Section 53A-12-102(2)(c).
- G. Secondary students may be required to provide their own student supplies, subject to the provisions of Section R277-407-6

R277-407-4. School Activities Outside of the Regular School Day.

- A. Fees may be charged, subject to the provisions of Section R277-407-6, in connection with any school-sponsored activity which does not take place during the regular school day, regardless of the age or grade level of the student, if participation is voluntary and does not affect a student's grade or ability to participate fully in any course taught during the regular school day.
- B. Fees related to extracurricular activities may not exceed limits established by the LEA. Schools shall collect these fees consistent with LEA policies and state law.

R277-407-5. General Provisions.

- A. No fee may be charged or assessed in connection with any class or school-sponsored or supported activity, including extracurricular activities, unless the fee has been set and approved by the LEA and distributed in an approved fee schedule or notice in accordance with this rule.
- B. Fee schedules and policies for the entire LEA shall be adopted at least once each year by the LEA in a regularly scheduled public meeting of the LEA. Provision shall be made for broad public notice and participation in the development of fee schedules and waiver policies. Minutes of LEA meetings during which fee and waiver policies are developed or adopted, together with copies of approved policies, shall be kept on file by the LEA and made available upon request.
- C. Each LEA shall adopt procedures to reasonably ensure that the parent or guardian of each child who attends school within the LEA receives written notice of all current and applicable fee schedules and fee waiver policies, including easily understandable procedures for obtaining waivers and for appealing a denial of waiver, as soon as possible prior to the time when fees become due. Copies of the schedules and waiver policies shall be included with all registration materials provided to potential or continuing students.
- D. No present or former student may be denied receipt of transcripts or a diploma for failure to pay school fees. A reasonable charge may be made to cover the cost of duplicating or mailing transcripts and other school records. No charge may

be made for duplicating or mailing copies of school records to an elementary or secondary school in which the student is enrolled or intends to enroll.

- E. To preserve equal opportunity for all students and to limit diversion of money and school and staff resources from the basic school program, each LEA's fee policies shall be designed to limit student expenditures for school-sponsored activities, including expenditures for activities, uniforms, clubs, clinics, travel, and subject area and vocational leadership organizations, whether local, state, or national.
- F. Donations or contributions may be solicited and accepted in accordance with LEA policies, but all such requests must clearly state that donations and contributions are voluntary. A donation is a fee if a student is required to make a donation in order to participate in an activity.
- G. In the collection of school fees, LEAs shall comply with statutes and State Tax Commission rules regarding the collection of state sales tax.

R277-407-6. Waivers.

A. An LEA shall provide, as part of any fee policy or schedule, for adequate waivers or other provisions in lieu of fee waivers to ensure that no student is denied the opportunity to participate in a class or school-sponsored or supported activity because of an inability to pay a fee.

The LEA fee waiver policy shall include procedures to ensure that:

- (1) at least one person at an appropriate administrative level is designated in each school to administer the policy and grant waivers;
- (2) the process for obtaining waivers or pursuing alternatives is administered fairly, objectively, and without delay, and avoids stigma and unreasonable burdens on students and parents:
- (3) students who have been granted waivers or provisions in lieu of fee waivers are not treated differently from other students or identified to persons who do not need to know;
- (4) fee waivers or other provisions in lieu of fee waivers are available to any student whose parent is unable to pay the fee in question; fee waivers shall be verified by a school or LEA administrator consistent with requirements of Section 53A-12-103(5);
- (5) the LEA requires documentation of fee waivers consistent with Section 53A-12-103(5);
- (6) schools and the LEA submit fee waiver compliance forms consistent with Doe v. Utah State Board of Education, Civil No. 920903376 that affirm compliance with provisions of the Permanent Injunction and provisions of Section 53A-12-103(5);
- (7) the LEA does not retain required fee waiver verification documentation for protection of privacy and confidentiality of family income records consistent with 53A-12-103(6):
- (8) textbook fees are waived for all eligible students in accordance with Sections 53A-12-201 and 53A-12-204 of the Utah Code and this Section;
- (9) parents are given the opportunity to review proposed alternatives to fee waivers;
- (10) a timely appeal process is available, including the opportunity to appeal to the LEA or its designee;
- (11) any requirement that a given student pay a fee is suspended during any period during which the student's eligibility for waiver is being determined or during which a denial of waiver is being appealed; and
- (12) the LEA provides for balancing of financial inequities among schools so that the granting of waivers and provisions in lieu of fee waivers do not produce significant inequities through unequal impact on individual schools.
 - B. A student is eligible for fee waiver as follows:

- (1) income verification consistent with Section 53A-12-103(5);
- (2) the student receives (SSI) Supplemental Security Income (ONLY THE STUDENT WHO RECEIVES THE SSI BENEFIT QUALIFIES FOR FEE WAIVERS);
- (3) the family receives TANF (currently qualified for financial assistance or food stamps);
- (4) the student is in foster care (under Utah or local government supervision);
 - (5) the student is in state custody.
- C. In lieu of income verification, supporting documents shall be required for each special category of fee waiver-eligible students:
- (1) For TANF, a letter of decision covering the period for which fee waiver is sought from Utah Department of Workforce Services;
- (2) For SSI, a benefit verification letter from Social Security;
- (3) For state custody or foster care, the youth in custody required intake form and school enrollment letter or both provided by the case worker from the Utah Division of Child and Family Services or the Utah Juvenile Justice Department.
- D. ČASE BY CASE DETERMINATIONS MAY BE MADE FOR THOSE WHO DO NOT QUALIFY UNDER ONE OF THE FOREGOING STANDARDS but who, because of extenuating circumstances such as, but not limited to, exceptional financial burdens such as loss or substantial reduction of income or extraordinary medical expenses, are not reasonably capable of paying the fee.
- E. Expenditures for uniforms, costumes, clothing, and accessories (other than items of typical student dress) which are required for school attendance, participation in choirs, pep clubs, drill teams, athletic teams, bands, orchestras, and other student groups, and expenditures for student travel as part of a school team, student group, or other school-approved trip, are fees requiring approval of the LEA, and are subject to the provisions of this section, consistent with Doe v. Utah State Board of Education, Civil No. 920903376, p. 43.
 - F. Student Records
- (1) An LEA or school may pursue reasonable methods to collect fees, but shall not exclude students from school or withhold official student records, including written or electronic grade reports, diploma, or transcripts, for fees owed.
- (2) An LEA or school may withhold the official student records of a student responsible for lost or damaged school property consistent with Section 53A-11-806, but may not withhold a student's records that would prevent a student from attending school or being properly placed in school.
- (3) Consistent with Section 53A-11-504, a school requested to forward a certified copy of a transferring student's record to a new school shall comply within 30 school days of the request.
- G. Charges for class rings, letter jackets, school photos, school yearbooks, and similar articles not required for participation in a class or activity are not fees and are not subject to the waiver requirements.

R277-407-7. Fee Waiver Reporting Requirements.

Beginning with fiscal year 1990-91, each LEA shall attach to its annual S-3 statistical report for inclusion in the State Superintendent of Public Instruction's annual report the following:

- (1) a summary of the number of students in the LEA given fee waivers, the number of students who worked in lieu of a waiver, and the total dollar value of student fees waived by the LEA:
 - (2) a copy of the LEA's fee and fee waiver policies;
 - (3) a copy of the LEA's fee schedule for students; and
 - (4) the notice of fee waiver criteria provided by the LEA

to a student's parent or guardian.
(5) consistent fee waiver compliance forms provided by the Utah State Office of Education and required by Doe v. Utah State Board of Education, Civil No. 920903376.

KEY: education, school fees July 9, 2012 Art X Sec 3 **Notice of Continuation August 14, 2012** 53A-12-102 53A-12-201 53A-12-204 53A-11-806(2)

Doe v. Utah State Board of Education, Civil No.

920903376

R277-408. Grants for Online Testing. R277-408-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "LEA" means a local education agency, including local school boards/public school districts, and charter schools.
- C. "U-PASS testing requirements" as defined in Section 53A-1-602, include Criterion-Referenced tests (CRT) or Adaptive tests, Board-designated 10th grade test, and Direct Writing Assessment (DWA).
 - D. "USOE" means the Utah State Office of Education.
- E. "Utah's core standards" means a statement of what students enrolled in public schools are expected to know and be able to do at specific grade levels or following completion of identified courses.

R277-408-2. 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-1-708(4) which directs the Board to make rules establishing procedures for grant applications and awards that satisfy the minimum requirements of Section 53A-1-708(4), and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of the rule is to provide for grants to LEAs to implement uniform online testing required under U-PASS testing requirements, including meeting technology standards established by the Board aligned with Utah's core standards, and provide local matching funds.

R277-408-3. Applications for Funding.

- A. The USOE shall provide applications for LEAs to apply for available online testing grant funds before May 15 annually.
- B. LEAs may submit applications for funds for online delivery of required U-PASS tests.
 - C. Grant applications shall provide the following:
 - (1) names of participating schools within the LEA;
- (2) U-PASS assessments that shall be provided within and by the LEA;
 - (3) U-PASS assessments that shall be provided online;
 - (4) a budget for use of grant funds;
- (5) an assurance from the applicant that online testing shall be implemented at 100 percent of students and assessments as required under Section 53A-1-708(4);
- (6) an assurance that the LEA shall meet the technology standards for online adaptive testing, as provided in R277-408-4.
- (7) an assurance that personally identifiable student data shall only be released to appropriate entities consistent with the law and this rule;
- (8) participation in the online readiness tool as per USOE direction; and
- (9) the amount and source of the matching funds that shall be used by the LEA to satisfy the requirements of Section 53A-1-708(4)(f).
- D. Applications shall be submitted for funding to the USOE before June 15 annually.

R277-408-4. Online Adaptive Testing Technology Standards.

- A. The USOE shall provide online adaptive testing technology standards to LEAs before January 15, 2013.
 - B. Technology standards shall include:
 - (1) minimum hardware requirements;
 - (2) minimum bandwidth requirements; and
 - (3) minimum operating system and software requirements.

Online grant funds may be used for the following:

- A. computer equipment and peripherals, including electronic data capture devices designed for electronic test administration and scoring;
 - B. software;

Printed: October 11, 2012

- C. networking equipment;
- D. upgrades of existing equipment or software;
- E. upgrades of existing physical plant facilities; and
- F. personnel to provide technical support, coordination, management, and teacher professional development (combined expenditure for personnel shall not exceed 10 percent of the grant funds allocated to an LEA).

R277-408-6. Distribution of Funds.

- A. The USOE shall notify successful grant applicants before July 1, 2012.
- B. The USOE shall notify successful grant applicants of the base and per pupil funds that LEAs shall receive, based on required and complete information submitted in grant applications, before July 15, 2012.
- C. If LEAs that received notice of funding choose not to participate in the grant award or otherwise fail to meet eligibility requirements for funds under Section 53A-1-708 or this rule, the funds designated for those LEAs shall be distributed to other eligible LEAs after August 15, 2012.

KEY: online testing, grants August 8, 2012

Art X, Sec 3 53A-1-708(4) 53A-1-401(3)

R277-408-5. Appropriate Use of Funds.

R277. Education, Administration. R277-433. Disposal of Textbooks in the Public Schools. R277-433-1. Definitions.

- A. "Textbook" means any book, workbook, or materials similar in function which are required for participation in a course of instruction. The term also includes texts approved for pilot or trial use by the State Textbook Commission or books used in classes for which textbooks are generally not adopted at the state level.
- B. "Useable textbooks" means a set of at least 25 textbooks, as defined above, that are not badly damaged, worn out or outdated.
 - C. "USOE" means the Utah State Office of Education

R277-433-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution, Article X, Section 3 which places general control and supervision of the public school system under the Board and by Section 53A-12-207 which requires the USOE to make rules providing for the disposal or reuse of textbooks in the public schools.
- B. The purpose of this rule is to provide procedures for school district and charter school policies for the reuse or disposal of textbooks in the public schools.

R277-433-3. School District and Charter School Policies on Disposal of Textbooks.

- A. School districts and charter schools shall develop policies regarding the reuse or disposal of textbooks.
- B. School district and charter school policies shall provide procedures for notification to other school districts and charter schools of available textbooks and timelines for disposal of textbooks.
- C. School districts and charter school policies shall provide procedures for negotiating the exchange of the textbooks.
- D. A required policy and implementation shall be suspended consistent with Section 53A-12-207(1) until the 2013-2014 school year.

KEY: textbooks August 9, 2010 Art X Sec 3 Notice of Continuation August 14, 2012 53A-12-207

R277. Education, Administration.

R277-445. Classifying Small Schools as Necessarily Existent. R277-445-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "USOE" means the Utah State Office of Education.
- C. "WPU" means weighted pupil unit: the basic unit used to calculate the amount of state funds a school district may receive
- D. "Superintendent" means the State Superintendent of Public Instruction.
 - E. "ADM" means average daily membership.

R277-445-2. Authority and Purpose.

- A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-109(2) which directs the Board to adopt standards to classify schools as necessarily existent small rural schools.
- B. The purpose of this rule is to specify the standards by which the Board classifies schools as necessarily existent. Schools so classified may receive state funds which are in addition to those received on the basis of the regular WPU formula.

R277-445-3. Standards.

- A. A school may be classified as necessarily existent if it meets the following standards:
- (1) the average daily membership for the school does not exceed:
- (a) 160 for elementary schools, including kindergarten at a weighting of .55 per average daily membership; or
 - (b) 300 for one or two-year secondary schools; or
 - (c) 450 for three-year secondary schools; or
 - (d) 550 for four-year secondary schools; or
 - (e) 600 for six-year secondary schools.
- (2) the school meets the criteria of Subsection 3(A)(1) and one-way bus travel over Board approved bus routes from the school to the nearest school within the district of the same type requires:
- (a) students in kindergarten through grade six to travel more than 45 minutes;
- (b) students in grades seven through twelve to travel more than one hour and 15 minutes.
- (3) the school meets the criteria of Subsection 3(A)(1) for grades K-6 if it is an elementary school or grades 7-12 if it is a secondary school except as provided below:
- (a) schools with less than six grades are not recognized as necessarily existent small schools if it is feasible in terms of school plant to consolidate them into larger schools and if consolidated would not meet the criteria listed in Subsections 3(A)(1) and 3(A)(2) above;
- (b) a secondary complex or attendance area which when analyzed on a 7-12 grade basis, meets the criteria of necessarily existent, shall not have its qualifying status invalidated by a reorganization pattern determined by a district;
- (c) in unusual circumstances, where in the judgment of a panel of at least five USOE staff members designated by the Superintendent, the existing conditions warrant approval of a middle school, such a school may be designated by the Superintendent as a necessarily existent small school, provided it meets the criteria listed in Subsection 3(A)(1) above or 3(A)(4) below.
- (4) the school meets the criteria of Subsection 3(A)(1), may not meet the criteria of Subsection 3(A)(2), but is in a district which has been consolidated to the maximum extent possible, and activities in cooperation with neighboring districts within or across county boundaries are appropriately combined;

- (5) the school meets the criteria of Subsection 3(A)(1), does not meet the criteria of Subsections 3(A)(2), but there is evidence acceptable to the Superintendent of increased growth in the school sufficient to take it out of the small school classification within a period of three years.
- (a) The school may be classified as necessarily existent until its ADM surpasses the size standard for small schools of the same type.
- (b) The school's ADM shall be annually compared to the school's projected ADM to determine increases or decreases in enrollment.
- (c) An increase in the school's ADM shall be 80 percent of the projected annual increase. If the assessment for the first or second year shows the increase in the ADM is less than 80 percent, the school shall no longer be classified as necessarily existent:
- (6) the school meets both the criteria of Subsection 3(A)(1) and at least the accredited with comment level of Board accreditation standards (as provided in R277-410, R277-411, and R277-412), does not meet the criteria of Subsections 3(A)(2), 3(A)(3), 3(A)(4), or 3(A)(5), but there is evidence as determined by the Superintendent that consolidation may result in undesirable social, cultural, and economic changes in the community, and:
- (a) the school has a safe and educationally adequate school facility with a life expectancy of at least ten years, as judged, at least every five years, by the USOE after consultation with the district; or
- (b) the district shall incur construction costs by combining a school seeking necessarily existent small school status with an existing school and such construction and land costs exceed the insurance replacement value of the exiting school by 30 percent. The existing school shall have a life expectancy of at least ten years. In the event that the ADM from the school seeking necessarily existent small school status when combined with the ADM at the existing school exceed criteria in R277-445-3A(1), the existing school would be disqualified.
- (c) schools qualifying under standard (b) above shall be evaluated every five years.
- (7) the school meets the criteria of Subsection 3(A)(1), does not meet the criteria of Subsections 3(A)(2), 3(A)(3), 3(A)(4), 3(A)(5), or 3(A)(6), and the removal of the necessarily existent status results in capital costs which the school district cannot meet within three years when utilizing all funds available from local, state, or federal sources or a combination of the sources.
- B. Additional WPU funds allocated to school districts for necessarily existent small schools shall be utilized for programs at the school for which the units were allocated. The funds must supplement and not supplant other funds allocated to special schools by the local board of education.
- C. Schools shall be classified after consultation with the district and in accordance with applicable state statutes and Board standards.

KEY: school enrollment, educational facilities September 1, 2000 Art X Sec 3 Notice of Continuation August 14, 2012 53A-1-401(3)

R277. Education, Administration. R277-467. Distribution of Funds Appropriated for Library Media Materials and Electronic Resources. R277-467-1. Definitions.

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

Printed: October 11, 2012

- B. "Electronic resources" means databases, CDs, DVDs, software, online materials, or other items in electronic format which may be included in the school library media collection and made available for use.
- C. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
- D. "Library media materials" means trade books including electronic versions, that support the school curriculum or are provided for recreational reading interests. This definition does not include textbooks or materials used solely for classroom instruction or classroom libraries.
 - E. "USOE" means the Utah State Office of Education.

R277-467-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public schools in the Board, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to distribute an on-going appropriation, subject to budget constraints, to LEAs. The appropriation is designated for school library media materials and electronic resources.

R277-467-3. Distribution of Funds.

- A. Each Utah LEA shall receive an allocation from the annual appropriation as follows:
- (1) 25 percent shall be divided equally among all LEAs;
- (2) 75 percent shall be divided among public schools based on each public school's average daily membership as compared to the total average daily membership of all public schools.
- B. An LEA may not use money appropriated in this allocation to supplant other monies used to purchase library media materials or electronic resources.
- C. LEAs shall spend these fund allocations only for library media materials and electronic resources that shall be part of the school library collection and available for general use and checkout by students and staff or both.

R277-467-4. Accountability and Evaluation.

The USOE may review LEAs' use of funds to determine if funds were expended consistently with the purpose of this rule and the appropriation.

KEY: libraries, educational media August 8, 2012 Art X Sec 3 Notice of Continuation June 15, 2012 53A-1-401(3)

R277. Education, Administration.

R277-470. Charter Schools - General Provisions. R277-470-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Chartering entities" means entities that authorize a charter school under Section 53A-1a-501.3(2).
- C. "Charter schools" means schools acknowledged as charter schools by chartering entities under Sections 53A-1a-515, 53A-1a-521, and this rule or by the Board under Section 53A-1a-505.
- D. "Charter school governing board" means the board designated by the charter school to make decisions for the operation of the school.
- E. "Expansion" means a proposed ten percent increase of students or adding grade level(s) in an operating charter school
- at a single location.

 F. "Mentor," for purposes of the mentoring program, means an individual with experience as a charter school governing board member, employee, advisor, or a public educator with an area of expertise or demonstrated competence, willing to advise charter schools, approved by the State Charter School Board to participate in the mentoring program.
- G. "Mentoring program," for purposes of this rule, means the State Charter School Board mentoring program.
- H. "No Child Left Behind (NCLB)" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.
- I. "Satellite school" means a charter school affiliated with an operating charter school having a common governing board and a similar program of instruction, but located at a different site or in a different geographical area. The parent school and all satellites shall be considered a single local education agency (LEA) for purposes of public school funding and reporting.
- "State Charter School Board" means the board designated in Section 53A-1a-501.5.
- K. "USOE" means the Utah State Office of Education.
 L. "Utah Consolidated Application (UCA)" means to "Utah Consolidated Application (UCA)" means the web-based grants management tool employed by the Utah State Office of Education by which local education agencies submit plans and budgets for approval of the Utah State Office of Education.

R277-470-2. 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, Section 53A-1a-513 which directs the Board to distribute funds for charter school students directly to the charter school, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and 20 U.S.C., Section 8063(3) which directs the Board to submit specific information prior to charter schools' receipt of federal funds.
- B. The purpose of this rule is to establish procedures for authorizing, funding, and monitoring charter schools and for repealing charter school authorizations. The rule also establishes timelines as required by law to provide for adequate training for beginning charter schools.

R277-470-3. Maximum Authorized Charter School Students.

- A. Local school boards and institutions of higher education may approve charter schools by notifying the State Charter School Board by April 1 of the calendar year two years prior to opening of proposed charter schools, including authorized numbers of students and other information as required in Sections 53A-1a-515 and 53A-1a-521.
- B. The Board, in consultation with the State Charter School Board and chartering entities, may approve schools, expansions and satellite charter schools for the total number of

students authorized under Section 53A-1a-502.5

C. The number of students requested from all chartering entities shall be considered as students are allocated by the State Charter School Board and approved by the Board.

R277-470-4. Charter Schools and NCLB Funds.

- A. Charter schools that desire to receive NCLB funds shall comply with the requirements of R277-470-4.
- B. To obtain its allocation of NCLB formula funds, a charter school shall complete all appropriate sections of the Utah Consolidated Application (UCA) and identify its economically disadvantaged students in the October upload of the Data Clearinghouse.
- C. If the school does not operate a federal school lunch program, the school:
- (1) shall determine the economically disadvantaged status for its students on the basis of criteria no less stringent than those established by the U.S. Department of Agriculture for identifying students who qualify for reduced price lunch for the fiscal year in question; or
- (2) may use the Charter School Declaration of Household Income form provided by the USOE for this purpose.
- D. A school which does not use the form shall maintain equivalent documentation in its records, which may be subject

R277-470-5. Charter School Start-up and Implementation Grants.

- A. Charter schools that desire to receive State Charter School Board start-up and implementation grant funds shall comply with the requirements of R277-470-5.
- B. To receive a State Charter School Board start-up or implementation grant, a charter school shall be eligible and meet the requirements consistent with Section 53A-1a-507.
- C. Eligible charter schools shall complete an application and may be awarded a grant for no more than 36 months.
- D. Only schools that have not received state start-up or implementation grant funds in prior years are eligible.
- E. Amounts and conditions of distribution of state start-up or implementation grant funds shall be determined annually in conjunction with the State Charter School Board's new charter approval process.
- Grant funds may only be used for allowable F. expenditures as provided by the State Charter School Board.
- G. Grant recipients shall participate in monitoring activities.
- H. Grantee schools shall provide monitoring information to the USOE, as directed.
- I. Charter schools shall repay grant funds to the State Charter School Board if recipients change to non-charter status within ten years of receiving grant funds. An exception may be made for schools that convert status due to either federal or state law requirements for academic purposes.

R277-470-6. Charter School Mentoring Program.

- A. Board-approved or existing charter schools may choose to participate in the mentoring program.
- B. Charter schools choosing to participate in the mentoring program shall submit an application to the USOE, consistent with USOE timelines.
- C. Subject to the availability of funds, participating charter schools shall be eligible for reimbursement of allowable expenditures through the mentoring program if the charter school:
 - (1) submits an approved reimbursement form; and
 - (2) submits an approved mentor and program evaluation.
- Ď. Allowable expenditures in the mentoring program include:
 - mileage for mentor to and from home base to

participating charter school, consistent with the USOE adopted travel policy;

- (2) lodging consistent with the USOE adopted travel policy;
- (3) meals consistent with the USOE adopted travel policy;
- (4) substitute per diem (paid to mentor's employer) of \$65 for a full day or \$32.50 for a half day, if the mentor has to miss work and a substitute is necessary.
- E. A mentor shall submit an application to the State Charter School Board to participate in the mentoring program that identifies areas of expertise and demonstrated competencies.
 - F. The State Charter School Board shall:
 - (1) receive an annual program report from the USOE;
 - (2) evaluate the mentoring program annually;
- (3) publish, on its website, information from participating schools regarding mentor evaluations; and
 - (4) maintain a list of approved mentors.

R277-470-7. Charter School Parental Involvement.

- A. Charter schools shall encourage and provide opportunities for parental involvement in management decisions at the school level.
- B. Charter schools that elect to receive School LAND Trust funds shall have a committee consisting of a majority of parents elected from parents of students currently attending the charter school that is designated to make decisions about the School LAND Trust funds consistent with R277-477-3E.

R277-470-8. Transportation.

- A. Charter schools are not eligible for to-and-from school transportation funds.
- B. A charter school that provides transportation to students shall comply with Utah law Section 53-8-211.
- C. A school district may provide transportation for charter school students on a space-available basis on approved routes.
- D. Charter school students and their parents who participate in transportation by the school district as guests shall receive notice of applicable district transportation policies and may forfeit with no recourse the privilege of transportation for violation of the policies.

R277-470-9. Miscellaneous Provisions.

- A. The State Charter School Board shall provide a form on its website for individuals to report threats to health, safety or welfare of students consistent with Section 53A-1a-510(3).
- (1) Individuals making reports shall be directed to report suspected criminal activity to local law enforcement and suspected child abuse to local law enforcement or the Division of Child and Family Services consistent with Sections 62A-4a-403 and 53A-11-605(3)(a)).
- (2) Additionally, individuals may report threats to the health, safety or welfare of students to the charter school governing board.
 - (a) reports shall be made in writing;
 - (b) reports shall be timely;
 - (c) anonymous reports shall not be reviewed further.
- (3) Charter school governing boards shall verify that potential criminal activity or suspected child abuse has been reported consistent with state law and this rule.
- (4) Charter school governing boards shall act promptly to investigate disciplinary action, if appropriate, against students who may be participants in threatening activities or take appropriate and reasonable action to protect students or both.
- C. The Board shall have authority for final approval of all charter schools. All charter schools shall be subject to accountability standards established by the Board and to monitoring and auditing by the Board.

KEY: education, charter schools August 8, 2012 Notice of Continuation October 10, 2008

Art X, Sec 3 53A-1a-515 53A-1a-505 53A-1a-513 53A-1-401(3) 53A-1a-510 53A-1a-519 53A-1a-501.5 53A-1-301 53A-1a-502.5 53-8-211 62A-4a-403 53A-11-605 53A-1a-522 53A-1a-521 53A-1a-501.3 53A-1a-513.5

R277. Education, Administration.

R277-482. Charter School Timelines and Approval Processes.

R277-482-1. Definitions.

- A. "Amendment," for purposes of this rule, means a change or addition to the charter agreement.
 - B. "Board" means the Utah State Board of Education.
- C. "Chartering entities" means entities that authorize a charter school under Section 53A-1a-501.3(2).
- D. "Charter schools" means schools acknowledged as charter schools by chartering entities under Sections 53A-1a-515, 53A-1a-521, and this rule or by the Board under Section 53A-1a-505
- E. "Charter school agreement (charter agreement)" means the terms and conditions for the operation of an approved charter school. The charter school agreement shall be maintained at the USOE and is considered the final, official and complete agreement.
- F. "Charter school application" means the official chartering document by which a prospective charter school seeks recognition and funding under Section 53A-1a-505. The application includes the basic elements of the charter to be established between the charter school and the chartering board.
- G. "Charter school governing board" means the board designated by the charter school to make decisions for the operation of the school.
- H. "Expansion" means a proposed ten percent increase of students or adding grade level(s) in an operating charter school at a single location.
- at a single location.

 I. "No Child Left Behind (NCLB)" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.
- J. "Satellite school" means a charter school affiliated with an operating charter school having a common governing board and a similar program of instruction, but located at a different site or in a different geographical area. The parent school and all satellites shall be considered a single local education agency (LEA) for purposes of public school funding and reporting.
- K. "State Charter School Board" means the board designated in Section 53A-1a-501.5.
 - L. "USOE" means the Utah State Office of Education.

R277-482-2. 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, Section 53A-1a-513 which directs the Board to distribute funds for charter school students directly to the charter school, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and 20 U.S.C., Section 8063(3) which directs the Board to submit specific information prior to charter schools' receipt of federal funds.
- B. The purpose of this rule is to establish procedures for timelines and approval processes for charter schools.

R277-482-3. Charter School Application and Training.

- A. All charter school applicants shall attend preapplication and planning year training sessions, as well as other training sessions designated by the State Charter School Board.
- B. Pre-application training sessions shall be scheduled four times annually and may be available electronically, as determined by the State Charter School Board.
- C. Charter schools and applicants that attend training sessions shall be eligible for additional funds, upon approval, in an amount to be determined by the State Charter School Board provided through federal charter school funds or a General Fund appropriation to the extent of funds available. Charter school applicants that attend training sessions may receive priority for approval from the State Charter School Board and the Board.

- D. Training sessions shall provide information including:
- (1) charter school implementation requirements;
- (2) charter school statutory and Board requirements;
- (3) charter school financial and data management requirements;
 - (4) charter school legal requirements;
 - (5) federal requirements for charter school funding; and
- (6) other items as determined by the State Charter School Board.

R277-482-4. New or Expanding Charter School Notification to Prospective Students and Parents.

- A. All new or expanding charter schools shall have available on its website and notify all families consistent with the schools' outreach plans described in the charter agreements of:
- (1) the school's approved charter, purpose, focus and governance structure, including names, qualifications, and contact information of all governing board members;
- (2) the number of new students that will be admitted into the school by grade:
- (3) the proposed school calendar for the charter school, including at a minimum the first and last days of school, scheduled holidays, scheduled professional development days (no student attendance), and other scheduled non-school days;
- (4) the charter school's timelines for acceptance of new students consistent with Section 53A-1a-506.5;
- (5) the requirement and availability of a State-approved charter school student application;
- (6) procedures for transferring to or from a charter school, together with applicable timelines; and
- (7) provisions for payment, if required, of a one-time fee per secondary school enrollment, not to exceed \$5.00, consistent with Section 53A-12-103.
- B. New or expanding charter schools shall provide written notice of the information in R277-482-4A consistent with the school's outreach plan and on the school's website at least 180 days before the proposed opening day of school.
- C. New or expanding charter schools shall have an operative and readily accessible electronic website providing information required under R277-482-4A in place. The completed charter school website shall be provided to the State Charter School Board for review at least 210 days prior to the proposed opening day of school and prior to posting the websites publicly.
- D. The State Charter School Board and the Board shall, in the recommendation and approval process, consider and may give priority to charter school applications that target underserved student populations, or provide an innovative educational program, service, or setting as determined by the State Charter School Board, among traditional public schools and operating charter schools.
- (1) Underserved student populations may include economically disadvantaged students, students with disabilities, English language learners, children of refugee families, or students in remote areas of the state who have limited access to the full range of academic courses;
- (2) Innovative educational opportunities shall be described on the State Charter School Board's website;
- (3) Priority may also be given to charter school applicants for proposed schools that do not have other charter schools within the school district; and
- (4) To be given priority, the charter school application and proposed employee and site information shall support the school's designated focus.
- E. The Board or State Charter School Board may request documentation of underserved student criteria that schools designate and for which they request a preference.
 - F. The Board shall have authority for final approval of all

charter schools.

R277-482-5. Timelines - Charter School Starting Date.

- A. The State Charter School Board shall accept a proposed starting date from a charter school applicant, or the State Charter School Board shall negotiate and recommend a starting date prior to recommending final charter approval to the Board.
- B. Only charter schools approved within the state fiscal year two years prior to the state fiscal year it intends to serve students shall be eligible for state funds.
- C. A state-chartered school shall acquire a facility and enter into a written agreement, or begin construction on a new or existing facility no later than January 1 of the year the school is scheduled to open.
- D. Each charter school shall submit any lease, leasepurchase agreement, or other contract or agreement relating to the charter school's facilities or financing the charter school facilities to its chartering entity for review and advice prior to the charter school entering into the lease, agreement, or contract, consistent with Section 53A-1a-507(9).
- E. A state-chartered school that intends to lease a facility requiring only minimal renovation shall enter into a written agreement no later than May 1 of the calendar year the school is scheduled to open.
- F. If students are not enrolled and attending classes by October 1, a charter school shall not receive funding from the state for that school year.
- G. Despite a charter school meeting starting dates, a charter school shall be required to satisfy R277-419 requirements of 180 days and 990 hours of instruction time, unless otherwise exempted by the Board under Section 53A-1a-511
- H. The Board may, following review of information, approve the recommended starting date or determine a different charter school starting date after giving consideration to the State Charter School Board recommendation.

R277-482-6. Procedures and Timelines to Change Chartering Entities.

- A. A charter school may change chartering entities.
- B. A charter school shall submit an application provided by the new chartering entity to the Board to request a new chartering entity at least three months prior to the proposed change.
- C. The application may require some or all of the following, as determined by the new chartering entity:
 - (1) current board members and founding members;
- (2) financial records, including most recent annual financial report (AFR), annual project report (APR) and audited financial statement;
- (3) test scores, including U-PASS, Adequate Yearly Progress, and status under No Child Left Behind;
- (4) current employees: identifying assignments and licensing status, if applicable;
- (5) school calendar for previous school year and prospective school year;
 - (6) course offerings, if applicable;
- (7) affidavits, signed by all board members providing or certifying (documentation may be required):
- (a) the school's nondiscrimination toward students and employees;
- (b) the school's compliance with all state and federal laws and regulations;
- (c) that all information on application provided is complete and accurate:
- (d) that school meets/complies with all health and safety codes/laws;
- (e) that the school is current with all required policies (personnel, salaries, and fees), including board minutes for the

most recent three months;

- (f) that the school is operating consistent with the school's charter:
- (g) that there are no outstanding lawsuits or judgments or identifying outstanding lawsuits filed or judgments against the school;
- D. A charter school seeking to change chartering entities shall submit a position statement from the current chartering entity about school status, compliance with the chartering entity requirements and any unresolved concerns to the proposed new chartering entity.
- E. An application for changing a chartering entity shall be reviewed for acceptance by the new chartering entity within 60 days of submission of complete application, including all required documentation.
- F. The Board shall consider an application to change chartering entities to the State Charter School Board within 60 days of State Charter School Board approval, or next possible monthly Board meeting, whichever is sooner.
- G. Final approval or denial of changing chartering entities to the State Charter School Board is final administrative action by the Board.

R277-482-7. Approved Charter School Expansion.

- A. The following shall apply to requests for expansion from approved and operating charter schools:
- (1) The school satisfies all requirements of federal and state law, regulations, Board rule and charter agreement.
- (2) The approved charter agreement shall provide for an expansion consistent with the request; or
- (3) The charter school governing board has submitted a formal amendment request to the State Charter School Board that provides documentation that:
- (a) the school district in which the charter school is located has been notified of the proposed expansion and location of the school in the same manner as required in Section 53A-1a-505(1);
- (b) the school can accommodate the expansion within existing facilities or that necessary structures will be completed, meeting all requirements of law and Board rule, by the proposed date of operation;
- (c) the securing of the building site shall be verified by a real estate closing document, signed lease agreement, or other contract indicating a right of occupancy pursuant to R277-482-5C:
- (d) failure to secure a site by the required date may, at the discretion of the State Charter School Board, delay the expansion for at least one school year;
- (e) written certification that no later than 15 days after securing a building site, the charter school governing board shall notify the State Charter School board and school district of the specific school location;
- (f) students at the school are performing on standardized assessments at or above the standard in the charter agreement;
- (g) adequate qualified administrators and staff shall be available to meet the needs of the increased number of students at the time the expansion is implemented.
- B. If an expansion request requires a new facility, the request shall be submitted to the State Charter School Board before April 1 of the state fiscal year two state fiscal years prior to the date the school intends to expand.
- C. If the expansion request does not require a new facility, the request shall be made before April 1 of the state fiscal year one state fiscal year prior to the intended expansion date.
- D. If the expansion request is for an increase in enrollment capacity in the amount of 0.25 times or less, the number of students in grades 9 through 12 enrolled in an online course in the previous school year through the Statewide Online

Education Program, the request shall be submitted to the Board by October 1 of the school year for which the increase is requested.

- Requests under R277-482-7D are subject to the availability of sufficient funds appropriated under Section 53A-1a-513 to provide the full amount of the per student allocation for each charter school student in the state to supplement school district property tax revenues.
- D. Expansion requests shall be considered by the State Charter School Board as part of the total number of charter school students allowed under Section 53A-1a-502.5(1).

R277-482-8. Satellite School for Approved Charter Schools.

- A. An existing charter school may submit an amendment request to the State Charter School Board for a satellite school no later than April 1 of the state fiscal year two state fiscal years prior to the date of the proposed implementation of the satellite if the charter school fully satisfies the following:
- (1) The school currently satisfies all requirements of state law and Board rule;
- (2) The school has operated successfully for at least three years meeting the terms of its charter agreement;
- (3) Students at the school are performing on standardized assessments at or above the standard in the charter agreement;
- (4) The proposed satellite school will provide educational services, assessment, and curriculum consistent with the services, assessment, and curriculum currently being offered at the existing charter school;
- (5) Adequate qualified administrators, including at least one onsite administrator, and staff are available to meet the needs of the proposed student population at the satellite school;
- (6) The school provides any additional information or documentation requested by the State Charter School Board or the Board.
- (7) A satellite school that receives School LAND Trust funds shall have a School LAND Trust committee and satisfy all requirements for School LAND Trust committees consistent with R277-477.
- B. The satellite school amendment request shall include
- (1) Written certification from the charter school governing board that the charter school currently satisfies all requirements of federal and state law, Board rule and charter agreement;
- (2) A detailed explanation of the governance structure for satellite school, including appointed or elected representation on the governing board;
- (3) Information detailing the grades to be served, the number of students to be served and general information regarding the physical facilities anticipated to serve the school;
- (4) A detailed financial plan for the satellite school;(5) A signed acknowledgment by the charter school governing board certifying board members' understanding that a physical site for the building must be secured no later than January 1 of the year the satellite school is scheduled to open;
- (a) the securing of the building site must be verified by a real estate closing document, signed lease agreement, or other contract indicating a right of occupancy pursuant to R277-482-5C;
- (b) failure to secure a site by the required date may, at the discretion of the State Charter School Board, delay the opening of the satellite school for at least one academic year.
- (6) Notification to both the school district in which the charter school is located and the school district of the proposed satellite school location in the same manner as required in Section 53A-1a-505(1);
- (7) Written certification that no later than 15 days after securing a building site, the charter school governing board shall notify the school district in which the satellite school is located of the school location, grades served, and anticipated enrollment

by grade with a copy of the notification sent to the State Charter School Board; and

(8) A signed acknowledgment by the charter school governing board that the board understands the satellite school shall be held to its own charter agreement, including academic and operational performance.

Č. The approval of the satellite school by the State Charter School Board requires ratification by the State Board of Education and will expire 24 months following such ratification if a building site has not been secured for the satellite school.

KEY: training, timelines, expansion, satellite August 8, 2012

Art X Sec 3 53A-1a-513 53A-1-401(3) 53A-1a-502.5

R277. Education, Administration. R277-488. Critical Languages Program. R277-488-1. Definitions.

- A. "ACTFL OPI" means the American Council of Teachers of Foreign Language Oral Proficiency Interview which is an oral test, offered at most Utah colleges and universities.
 - B. "Board" means the Utah State Board of Education.
- C. "Credentialed international teacher" means a teacher sponsored under a separate Memoranda of Understanding between the USOE and China, Spain, Mexico, France or Taiwan. The Memoranda of Understanding are hereby incorporated by reference. Sponsored teachers shall satisfy all conditions of the Memoranda of Understanding prior to working with Utah students.
- D. "Critical languages" means those languages described under Section 53A-15-104(1).
- E. "Critical Languages Program" means the program described under Section 53A-15-104.
- F. "Dual language immersion" means a distinctive dual language education program in which native English speakers and active speakers of another language are integrated for academic content.
 - G. Dual language immersion instructional models are:
- (1) "One-way" immersion is a program in which a student population consists of English language speakers with limited to no proficiency in the foreign immersion language. In such a model, less than 30 percent of the students have a native language other than English.
- (2) "Two-way" immersion is a program in which a student population consists of a majority of English language speakers and a minority of language speakers other than English with dominance in their first language and home language support for this language. A 1:1 ratio is ideally maintained for these two language groups, but a minimum of one-third of each language group (such as 2:1 ratio) is required.
- H. "Secondary school" means grades 7-12 in whatever schools the grade levels exist.
 - I. "USOE" means the Utah State Office of Education.

R277-488-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-15-104 which directs the State Superintendent of Public Instruction and the Board to track, monitor, and may expand the Critical Languages Program and dual immersion programs subject to student interest and available funding, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is to establish criteria and procedures for distributing funds to secondary schools participating in the Critical Languages Program and funds to elementary schools participating in the Dual Language Program. The intent of this appropriation is to increase the number of students who reach proficiency in a critical language as well as build overall foreign language capacity in the state of Utah and to increase the number of biliterate and bilingual students.

R277-488-3. Critical Language Program Requirements.

- A. A secondary school that desires to offer critical languages (traditional instruction or visiting guest teacher program) shall submit an application, provided by the USOE and available each April 1 to the USOE no later than May 1.
 - B. The application shall designate:
 - (1) the name of the school district or charter school;
- (2) a plan and procedure to notify students and parents of the names of the critical language(s) that will support the dual language immersion continuation into secondary schools consistent with Section 53A-15-104(1);
 - (3) requirements for the visiting guest teacher exchange

program:

- (a) programs shall operate under a Memorandum of Understanding between the USOE and the country providing qualified guest teachers;
- (b) international teacher expenses shall be paid as provided by the designated Memorandum of Understanding;
- (c) all other conditions provided by individual Memoranda of Understanding shall be satisfied.
- C. Schools applying for either the traditional instruction or the visiting guest teacher program shall use materials identified and recommended by the USOE including texts and consumables, purchased with funds appropriated by the Legislature.

R277-488-4. Dual Language Immersion Program Requirements.

- A. The program shall provide funds July 1 of each fiscal year the Legislature continues to provide funding for the program. The Dual Language Immersion programs shall support the following foreign languages:
 - (1) Chinese:
 - (2) French;
 - (3) Portuguese; and
 - (4) Spanish.
- B. An elementary school that desires to participate in the Dual Language Immersion Program shall submit an application, provided by the USOE and available annually by April 14 to the USOE by May 14.
- C. The application shall provide for an immersion model that uses 50 percent of instruction in English and 50 percent of instruction in another language including:
- (1) an identified, instructional model (one-way or twoway), and language choice (Chinese, French, Portuguese or Spanish);
- (2) beginning the instructional model in kindergarten, grade 1 or both, and adding an additional grade each year; and
- (3) a plan and procedure in place to notify students and parents of the availability of at least one dual language immersion course identified in Section 53A-15-104(1).
- D. Priority in funding shall be given to schools in school districts or charter schools that do not currently teach the requested language choice; and
- (a) demonstrate adequate local funding and infrastructure to begin a program or expand existing programs;
- (b) demonstrate community interest and students committed and prepared to participate in a new or expanded program, including prepared instructors for the program;
- (c) have adequate interest, resources, and infrastructure, but do not presently have a program under R277-488;
- (d) have a demonstrated community need for improved or expanded foreign language instruction in a specific school or community; and
- (e) allow language programs to include all languages identified in Section 53A-15-105.
 - E. Schools shall hire qualified language teachers who:
- (1) have a world language endorsement in the language of instruction (Chinese, French, Portuguese or Spanish for a one-way dual language immersion program and a Dual Language Immersion endorsement in the language of instruction (Chinese, French, Portuguese or Spanish for both a one-way and two-way dual language immersion program;
- (2) are Utah licensed elementary or secondary educators;
- (3) have completed a criminal background check, including review of identified offenses by the USOE.

R277-488-5. USOE Responsibilities and Funds.

A. Applications for the expanded Critical Languages Program and Dual Immersion Program shall be provided by the ene (ns of September 1, 2012)

USOE.

B. Secondary and elementary schools shall be selected for funding for both programs based on an evaluation of applications by a USOE-designated committee which shall include statewide experts.

Printed: October 11, 2012

- C. Awards shall be made to individual schools and funds allocated to school districts and charter schools to be fully distributed to designated schools.
- D. Each secondary school selected for funding shall receive a base allocation per critical language offered at the school, designated in Section 53A-15-104(6)(a).
- E. Each elementary school selected for funding shall receive a base allocation per dual language immersion offered at the elementary school, designated in Section 53A-15-104(6)(a).
- F. New schools eligible for funding shall be notified by the USOE by June 1 annually and shall receive funds in the subsequent fiscal year.

R277-488-6. Evaluation and Reports.

- A. Each school selected for funding shall be required to submit an annual evaluation report to the USOE consistent with Section 53A-15-104.
- B. The USOE may request additional data from secondary or elementary schools that receive funding.

KEY: critical languages, dual language immersion

August 8, 2012 Art X Sec 3
Notice of Continuation June 15, 2012 53A-15-104
53A-1-401(3)

R277. Education, Administration. R277-489. Early Intervention Program. R277-489-1. Definitions.

- A. "Adaptive learning technology and assessments" means technology tools and software that adjust the presentation of educational material according to students' weaknesses and strengths, as indicated by student responses to questions.
 - B. "Board" means the Utah State Board of Education.
- C. "Early intervention program" means a program that provides additional instruction to kindergarten age students either as an extended period before or after school, on Saturdays, during the summer, or through other means.
- D. "Enrollment" means class enrollment of not more than the student enrollment of other kindergarten classes within the school
- E. "Kindergarten readiness assessment" means an assessment based on research and data that determines a child's readiness to begin kindergarten, as determined by the school district or charter school.
- F. "LEA" means a local education agency, including local school boards/public school districts and charter schools.
- G. "LEA plan" means the Early Intervention Program plan submitted by LEAs and approved and accepted for funding by the Board.
 - H. "Program" means the Early Intervention Program.
- I. "Student learning gains" means the score a student obtains by comparing performance on a pre-test at the beginning of an intervention to the performance on a post-test at the end of an intervention (post-test score minus pre-test score equals learning gains score).
 - J. "USOE" means the Utah State Office of Education.

R277-489-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and by Section 53A-17a-167 which directs the Board to distribute funds appropriated for the Early Intervention Program, consistent with state law, to LEAs that apply for the funds.
- B. The purpose of this rule is to establish criteria and procedures for application and reporting procedures to administer the early intervention program.

R277-489-3. Board/USOE Responsibilities.

- A. The Board shall accept applications from LEAs for Early Intervention Programs delivered through enhanced kindergarten programs that satisfy the requirements of Section 53A-17a-167 and the provisions of this rule.
- (1) The USOE shall accept applications annually beginning on June 1 for the 2012-2013 school year and April 1 in subsequent years and closing as determined by the USOE.
- (2) The USOE shall distribute funds to eligible LEAs based on a formula identifying the count of economically disadvantaged students consistent with timelines established by the USOE.
- (3) The USOE shall require pre and post-assessments from all funded programs and year-end data.
- (4) The USOE shall require year-end data and a report from funded programs.
- B. The Board shall select one or more technology providers through an RFP to provide adaptive learning technology and assessments for reading, mathematics, or science for early intervention kindergarten students and an adaptive computer program for literacy instruction for early grade interventions students in kindergarten through grade 1.
- The USOE shall accept applications from LEAs for grants to be used to purchase Board-selected adaptive learning

- technology and assessments for reading, mathematics, or science for early intervention kindergarten students or an adaptive computer program for literacy instruction, or both, for early grade interventions for students in kindergarten through grade 1
- (2) The USOE shall require pre and post-assessments from all participating LEAs.
- (3) The USOE shall require an annual report from all participating LEAs that assesses the impact of the adaptive learning technology and assessments or adaptive computer program for literacy instruction used by the LEA, including final testing data and student learning gain scores.
- (4) The Board shall report final testing data and student learning scores regarding adaptive learning technology and assessments or adaptive computer program for literacy instruction on or before November 1, 2012 and every year thereafter to the Education Interim Committee and the Governor.

R277-489-4. LEA Responsibilities.

- A. LEA applications for Early Intervention Programs shall include:
- (1) names of schools for which Program funds shall be used;
- (2) a description of the delivery method or methods that shall be used to serve eligible students (such as full-day kindergarten, two half-days, extra hours, summer program, or other means);
- (3) a description of the evidence-based early intervention model used by the LEA;
- (4) a description of how the program shall focus on ageappropriate literacy and numeracy skills;
- (5) a description of how the program shall be targeted to at-risk students:
- (6) a description of the assessment procedures and tools that shall be used by participating schools within the LEA; and
 - (7) other information as requested by the USOE.
- B. LEAs may apply for grants to be used to purchase Board-selected adaptive learning technology and assessments for reading, mathematics, or science for early intervention kindergarten students and an adaptive computer program for literacy instruction, or both, for early grade interventions students in kindergarten through grade 1.
- (1) LEA adaptive learning technology and assessments grant recipients shall use a pre-test before using the technology tools and software with early intervention kindergarten students and shall administer a post-test at the end of the year.
- (2) LEAs shall prepare and submit a report to the USOE detailing final testing data including student learning gains regarding the adaptive learning technology.
- (3) LEA adaptive computer program for literacy instruction for early grade interventions grant recipients shall use a pre-test before using the technology tools and software with early intervention students in kindergarten through first grade and shall administer a post-test at the end of the year.
- (4) LEAs shall prepare and submit a report to the USOE detailing final testing data including student learning gains regarding the adaptive computer program for literacy instruction for early grade interventions.
- C. LEAs that fail to provide complete and accurate data and reports as requested shall not receive Program funding in subsequent years.
- D. An LEA may not require a student to participate in an early intervention program.

R277-489-5. Assessment, Accountability and Reporting.

- A. LEAs shall use a self-selected kindergarten preassessment with all kindergarten students:
 - (1) The days used for assessment shall be consistent with

- R277-419-7, Pupil Accounting.

 (2) The USOE may provide a model kindergarten assessment from a list of appropriate assessments.

 (3) Post assessments shall be completed by LEAs prior to the ending of the school year and reported to the Board as soon
- as reasonably possible.

 (4) Post assessment results for all kindergarten students shall provide evidence of student learning matched to the program's pre-assessments used for program placement.

 B. LEAs that fail to provide complete, accurate and timely reports shall not receive funding in subsequent years.

KEY: early intervention

August 8, 2012 Notice of Continuation June 15, 2012 Art X Sec 3 53A-17a-167

R277. Education, Administration. R277-502. Educator Licensing and Data Retention. R277-502-1. Definitions.

- A. "Accredited" means a teacher preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC) or one of the major regional accrediting associations as defined under R277-503-1L.
- B. "Accredited school" for purposes of this rule, means 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;
 - (5) professional development information; and
- (6) a record of disciplinary action taken against the educator.
- F. "LEA" means a local education agency, including local school boards/public school districts and charter schools.
- 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 Contract, 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 satisfaction of all requirements for a Level 1 license as well as any additional requirements established by law or rule relating to professional preparation or experience.
- 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, in the educator's field of practice, National Board certification or a doctorate from an accredited institution.
- 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 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, 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.
- L. "License endorsement (endorsement)" means a specialty field or area earned through course work equivalent to at least an academic minor (with pedagogy) or through demonstrated competency; the endorsement shall be listed on the Professional Educator License indicating the specific qualification(s) of the holder.

- M. "Professional development plan" means a plan developed by an educator and approved by the educator's supervisor that includes locally or Board-approved education-related training or activities that enhance an educator's background. Professional development points are required for periodic educator license renewal.
- N. "Renewal" means reissuing or extending the length of a license consistent with R277-501.
- O. "State Approved Endorsement Program (SAEP)" means a professional development plan on which an educator is working to obtain an endorsement.

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 of 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.

- A. The Board shall accept educator license recommendations from NCATE accredited, TEAC accredited or competency-based regionally accredited organizations.
- B. The Board, or its designee, shall establish deadlines and uniform forms and procedures for all aspects of licensing.

R277-502-4. License Levels, Procedures, and Periods of Validity.

- A. 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.
- (1) LEAs and educator preparation institutions 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.
- (2) 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.
 - (3) The Level 1 license is issued for three years.
- (4) An educator shall satisfy all requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.
- (5) An educator shall satisfy all federal requirements for an educator license prior to moving from Level 1 to Level 2.
- (6) 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.
- B. A Level 2 license may be issued by the Board to a Level 1 license holder upon satisfaction of all USOE requirements for the Level 2 license and upon the recommendation of the employing LEA.
- (1) 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.

(2) A Level 2 license shall be issued for five years and shall be valid unless suspended or revoked for cause by the Board

- (3) The Level 2 license may be renewed for successive five year periods consistent with R277-501, Educator Licensing Renewal.
- (4) A Level 2 license holder shall satisfy all federal requirements for an educator license holder prior to renewal after June 30, 2006 to remain highly qualified.
- C. A Level 3 license may be issued by the Board to a Level 2 license holder who has achieved National Board Professional Teaching Standards Certification or who holds a current Certificate of Clinical Competence from the American Speech-Language-Hearing Association (ASHA), or who holds a doctorate in the educator's field of practice.
- (1) A Level 3 license is valid for seven years unless suspended or revoked for cause by the Board.
- (2) The Level 3 license may be renewed for successive seven year periods consistent with R277-501.
- (3) A Level 3 license may be renewed if the holder maintains National Board Professional Teaching Standards Certification status or maintains a current Certificate of Clinical Competence from the American Speech-Language-Hearing Association.
- D. Licenses expire on June 30 of the year of expiration recorded on CACTUS and may be renewed any time after January of that year. Responsibility for securing renewal of the license 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, but not issued after 1988, 5-9);
 - (5) Secondary (6-12);
 - (6) Administrative;
 - (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 but 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) Letters of Authorization
- (a) Local boards may request from the Board a Letter of Authorization for educators employed by the local board who have not completed requirements for areas of concentration or endorsements.
- (b) An approved Letter of Authorization is valid for one year and may be renewed for a total of three years.
 - (c) Educators working under letters of authorization shall

not be considered highly qualified.

- (d) Following the expiration of the Letter of Authorization, the educator who has still not been completely approved for licensing shall be considered under qualified.
- C. Licenses may be endorsed to indicate qualification in a subject or content area. An endorsement is not valid for employment purposes without a current license.

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 approval by the Utah Professional Practices Advisory Commission;
 - (2) Employment by a school district/charter school;
- (3) A professional development plan developed jointly by the school principal or charter school director and the returning educator that 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 school district/charter school 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 Educator Quality and Licensing website.
- B. 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 school district/charter school evaluation, if available, the employing LEA may recommend reinstatement of licensure at a Level 2 or 3.
- C. 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 a graduate of an educator preparation program from an accredited institution of higher education in another state.
- (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. Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS).

- A. CACTUS maintains public, protected and private information on licensed Utah educators. Private or protected information includes such items as home address, date of birth, social security number, and any disciplinary action taken against an individual's license.
- B. A CACTUS file shall be opened on a licensed Utah educator when:
 - (1) the individual initiates a USOE background check, or
- (2) the USOE receives an application for a license from an individual seeking licensing in Utah.
 - 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 staffmay change 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 may 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 personal 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 consistent with Section 63G-2-301(1) under the Government Records Access and Management Act are public information and shall be released by the USOE.

R277-502-9. Professional Educator License Fees.

- A. The Board, or its designee, shall 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 of 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;
- (3) Differentiated fees shall be set consistent with the time and resources required to adequately review all applicants for educator licenses.
- E. Costs may include an expediting fee if an applicant seeks to have a license application reviewed before applications received earlier.

KEY: professional competency, educator licensing October 22, 2009 Art X Sec 3 Notice of Continuation August 14, 2012 53A-6-104 53A-1-401(3)

R277-505. Administrative License Areas of Concentration and Programs.

R277-505-1. Definitions.

- A. "Acceptable professional experience" means successful, full-time experience in public or accredited private or parochial schools in an area for which certification is required for employment in the public schools.
- B. "Administrative license area of concentration" means the initial credential issued by the Board which permits the holder to be employed in a position which requires administration or supervision of elementary, middle, or secondary levels within the public education system.
 - C. "Board" means the Utah State Board of Education.
- D. "District-specific educator license with an administrative license area of concentration" means an area of concentration awarded by a school district or charter school to an administrator following verification of criteria consistent with this rule.
- E. "Internship" means an on-site supervised experience in an accredited public or private school or other approved location.
- F. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:
 - (1) requirements established by law or rule;
- (2) three years of successful education experience within a five-year period in a Utah public or accredited private school; and
- (3) 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 or accredited private school.
- G. "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, in the educator's field of practice, National Board certification or a doctorate from an accredited institution.
- H. "Outstanding professional qualifications" means a person who has completed a Bachelor's degree from an accredited institution of higher education and who has demonstrated successful managerial experience in business, government, or similar setting.
 - I. "USOE" means the Utah State Office of Education.

R277-505-2. Authority and Purpose.

- A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Sections 53A-6-101(1) and (2) which permit the Board to issue certificates for educators, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.
 - B. The purpose of this rule is to:
- (1) specify the requirements for Administrative license areas of concentration, including meaningful internships; and
- (2) provide standards and procedures for district-specific and charter school-specific Administrative license areas of concentration.

R277-505-3. Administrative License Area of Concentration Positions.

- A. Local boards and charter schools shall determine, consistent with Sections 53A-3-301(4), 53A-6-104.5, 53A-6-110, and this rule, required licenses or letters of authorization for administrators working in various positions and settings.
- B. Local boards and charter schools shall, by board policy determined in an open meeting, notify the public of required licenses or credentials for administrators in their schools.
 - C. Local boards and charter schools that have designated

- appropriate administrative requirements consistent with the law and this rule shall receive professional staff costs only for administrators licensed consistent with the policies and this rule.
- D. Administrative interns currently registered for academic credit in an institution of higher education for the internship are not required to hold an Administrative license area of concentration but shall hold a Level 2 or Level 3 license.
- E. The Board strongly recommends that all educators who supervise educators complete Administrative license areas of concentration programs and participate in ongoing professional development.

R277-505-4. Administrative License Area of Concentration Requirements.

- A. An applicant for the Administrative license area of concentration shall have successfully completed or received all of the following:
- (1) a Level 2 teaching license or equivalent from another state with area of concentration;
 - (2) a master's degree or more advanced degree;
 - (3) an education administrative program; and
 - (4) a Board-approved administrative test;
- (5) Exceptions may be made to R277-505-4A(1)(2) or (3) by the USOE for exceptional professional experience, exceptional education accomplishments, or other noteworthy experiences or circumstances.
- (6) not fewer than three years of acceptable full-time professional experience in an education-related area in a public or accredited private or parochial school. Appropriate experiences that may be substituted for up to one-half of this requirement include:
- (a) alternative school or similar type professional experience:
- (b) community college, trade-technical college, or other post-secondary professional experience;
 - (c) district-level administrative experience;
 - (d) headstart or preschool professional experience;
- (e) college of education or state education agency professional experience; or
- (f) professional experience in academic departments of colleges or universities if there has been sufficient involvement with public school programs and curriculum.
- (7) a recommendation from a Utah institution whose program of preparation has been accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC).
- B. In addition to R277-505-4A, above, an applicant for the Administrative license area of concentration shall successfully complete an administrative internship. The internship shall:
- (1) consist of a minimum of 450 hours of supervised clinical experiences, excluding additional hours required by a university for seminars or discussion sessions within the required hours.
- (2) include a minimum of 200 of the required hours in a school setting which offers the opportunity of working with a properly licensed principal, students, faculty, classified employees, parents and patrons.
- (3) include the remainder of the required internship hours in school district offices, the USOE or other USOE-approved and appropriate agencies or school settings.
- (4) include the majority of the school-level supervised experience during the regular school day in concentrated blocks of a minimum of three hours each when students are present.
- (5) presume interns' involvement in extracurricular activities.
- (6) include experiences at both elementary and secondary school levels.
- (7) have clinical experience in a different school than where the intern may be employed as a teacher.

- (8) provide opportunities for the intern to demonstrate application of knowledge and skills gained through the higher education experience in school settings, including the opportunity to:
 - (a) understand the school community;
- (b) understand the school culture and its importance to the student:
- (c) experience managing a safe, efficient learning environment;
 - (d) collaborate with families of diverse students;
 - (e) support ethics and fairness in the school setting; and
- (f) participate in the larger political, social, economic, legal and cultural school context.
- C. In the first year of employment as an administrator, an applicant for the Administrative license area of concentration shall complete a one school year mentoring experience established and supervised by the employing school district or charter school that includes criteria identified in R277-522-3A and B, as applied to administrators.
- D. Relicensure and professional development requirements for active and non-practicing administrators shall include:
- (1) for active administrators, at least 75 of the required 200 points shall focus on leadership issues to ensure that:
- (a) administrators have current and effective knowledge and skills;
- (b) administrators understand and can demonstrate employee corrective action directives;
- (c) administrators are working to improve student achievement, teacher effectiveness and teacher retention skills; and
- (d) administrators are using student data to assess student learning.
- (2) for non-practicing administrators, at least 100 points of the required 200 points shall be related to school administration.

R277-505-5. District-Specific and Charter School-Specific Administrator Standards.

- A. A local school board may request a district-specific educator license and Administrative license area of concentration permitting a person with outstanding professional qualifications to serve in a position for which that license or area of concentration is required, including all areas listed in R277-505-4.
- B. In order to receive an educator license in a districtspecific Administrative license area of concentration, a district shall make a request using a USOE-approved form.
 - C. The candidate shall:
- (1) hold a Bachelors degree from an accredited institution of higher education.
- (2) have a record of documented, demonstrated success in a managerial role.
- (3) take a USOE-approved school leadership test which shall be used to inform and guide continuing professional development; and
- (4) complete a one-year supervised administrative experience under the supervision of a licensed and trained administrative mentor assigned by the employing school district or charter school. The candidate shall be issued a letter of authorization by the USOE during the year of supervision.
- D. At the end of the supervised year, the employing district or charter school shall request that a district or charter school-specific Administrative license area of concentration be awarded by the USOE.
- E. The district-specific Administrative license area of concentration shall be valid only in the employing district/charter school for the duration of the individual's employment.
- F. The completed Administrative license area of concentration shall qualify the school district or charter school

to receive professional staff costs.

- G. The USOE may receive and investigate, or both, complaints about district-specific or charter school-specific administrators. Investigations shall be conducted by the Utah Professional Practices Advisory Commission and action may be taken consistent with Section 53A-6-405, Denial of license, and Section 53A-6-501, Disciplinary action against educator.
- H. Individuals who receive district-specific or charter school-specific administrative license areas of concentration shall be subject to professional development requirements established by local boards or charter schools.

R277-505-6. Reciprocity for Administrative Credentials.

- A. An applicant for a Utah administrative area of concentration shall submit documentation of successful completion of an administrative program that meets Utah administrative requirements of R277-505-4.
- B. The requirements of R277-505-4 may be satisfied, at the discretion of the USOE, by administrative experience in another state
- C. The USOE may require out-of-state applicants to pass a state-approved administrative test, if such a test is required of in-state applicants.

KEY: professional competency, teacher certification, accreditation

August 9, 2010 Art X Sec 3
Notice of Continuation August 14, 2012 53A-6-101(1)
53A-6-101(2)
53A-1-401(3)

R277-506. School Psychologists, School Social Workers, and School Counselors Licenses and Programs. R277-506-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Career information delivery systems" means the state approved computer software program which provides specific occupation and career planning information, scholarship information, and information about postsecondary institutions.
- C. "Consultation" means consulting with parents, teachers, other educators, and community agencies regarding strategies to help students.
- D. "Guidance curriculum planning" means structured, developmental experiences presented systematically through classroom and group activities which are organized in areas of self-knowledge, education and occupational exploration, and career planning directed toward meeting the Board approved student competencies.
- E. "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 Contract, to candidates who have also met all ancillary requirements established by law or rule.
- F. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license as well as any additional requirements established by law or rule relating to professional preparation or experience.
- G. "Practicum" means a practical, usually simulated, application of previously studied theory, monitored by a professional in the field. The experience shall include at least the following subject matter: student assessment and interpretation, guidance curriculum planning, individual and group counseling, individual education and occupational planning, and use of career information delivery systems.
- H. "Temporary license" means a designation that an applicant has met all requirements of Section 3A(1), below.
 - I. "USOE" means the Utah State Office of Education.

R277-506-2. Authority and Purpose.

- A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Sections 53A-1-402(1)(a) which requires the Board to make rules regarding the qualification and certification of educators and ancillary personnel who provide direct student services, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.
 - B. The purpose of this rule is to specify:
- (1) the standards for obtaining licenses issued by the Board for employment in the public schools as school psychologists, school social workers, and school counselors; and
- (2) the standards which shall be met by a post-secondary institution in order to receive Board approval of its program for school psychologists, school social workers, and school counselors.

R277-506-3. School Psychologist.

- A. An applicant for the Level 1 School Psychologist License area of concentration shall have:
- (1) completed at least an approved masters degree or equivalent certification program consisting of a minimum of 60 semester (90 quarter) hours in school psychology at an accredited institution;
 - (2) demonstrated competence in the following:
- (a) understanding the organization, administration, and operation of schools, the major roles of personnel employed in schools, and curriculum development;
- (b) directing psychological and psycho-educational assessments and intervention including all areas of

exceptionality;

- (c) individual and group intervention and remediation techniques, including consulting, behavioral methods, counseling, and primary prevention;
- (d) understanding the ethical and professional practice and legal issues related to the work of school psychologists;
- (e) social psychology, including interpersonal relations, communications and consultation with students, parents, and professional personnel;
- (f) coordinating and working with community-school relations and multicultural education programs and assessment;
- (g) using and evaluating tests and measurements, developmental psychology, affective and cognitive processes, social and biological bases of behavior, personality, and psychopathology;
- (3) completed a one school year internship or its equivalent with a minimum of 1200 clock hours in school psychology. At least 600 of the 1200 clock hours shall be in a school setting or a setting with an educational component; and
- (4) been recommended by an institution whose program of preparation for school psychologists has been approved by the Board.
- B. Current certification as a nationally certified school psychologist by the National School Psychology Certification Board shall be accepted in lieu of requirements for the Level 1 License.
- C. An applicant for the Level 2 School Psychologist License area of concentration shall:
- (1) satisfy requirements for the Level 1 school psychologist License;
- (2) have completed at least two years of successful experience as a school psychologist under a Level 1 School Psychologist License area of concentration or its equivalent; and
- (3) have been recommended by the employing school district with consultation from a teacher education institution.
- D. The school psychologist preparation program of an institution may be approved by the Board if it meets the standards prescribed in the Standards for State Approval of Teacher Education for school psychologists. These standards were developed by school psychologists in Utah schools and recommended to the Board by SACTE and are available from the USOE.

R277-506-4. School Social Workers.

- A. An applicant for the Level 1 School Social Worker License area of concentration shall have:
- (1) completed a Board approved program for the preparation of school social workers including a Master of Social Work degree from an accredited institution;
 - (2) demonstrated competence in the following:
- (a) articulating the role and function of the school social worker including relationships with other professional school and community personnel, organizations, and agencies;
- (b) understanding the organization, administration, and evaluation of a school social work program;
- (c) social work practice with individuals, families, and groups;
- (d) developing and interpreting a social history and psycho-social assessment of the individual and the family system;
- (e) analyzing family dynamics and experience in counseling and conflict management and resolution;
- (f) communication and consulting skills in working with the client, the family, the school staff, and community and social agencies;
 - (g) understanding the teaching/learning environment;
 - (h) analyzing school law and child welfare issues;
 - (i) using social work methods to facilitate the affective

domain of education and the learning process; and

- (j) understanding knowledge pertaining to the cause and effects of social forces, cultural changes, stress, disability, disease, deprivation, neglect, and abuse on learning and on human behavior and development, and the effect of these forces on minorities of race, ethnicity, and class.
- (3) completed an approved school social work internship in a school setting or in an agency which includes a substantial amount of experience with children and contact with schools; and
- (4) been recommended by an institution whose program of preparation for social workers has been approved by the Board.
- B. An applicant for the Level 2-Standard School Social Worker License area of concentration shall have:
- (1) completed at least three years of successful experience as a school social worker under a Level 1 School Social Worker License area of concentration or its equivalent; and
- (2) been recommended by the employing school district with consultation from a teacher education institution.
- C. The social worker program of an institution may be approved by the Board if it meets the standards prescribed in the Standards for State Approval of Teacher Education for school social workers, developed and available as provided in R277-506-3D.

R277-506-5. School Counselors.

There are three levels of licensure for a K-12 school counselor:

- A. School Counselor Professional Educator License Level 1 is a license issued:
- (1) upon completion of an accredited counselor education program; or
- (2) to persons applying for licensure under interstate agreements.
- (3) This license is issued to counselors who are beginning their professional careers who have completed an approved 600 hour field experience (400 hours if the applicant has completed two or more years of successful teaching experience as approved by USOE licensing).
- B. School Counselor Professional Educator License Level
- (1) a license issued after satisfaction of all requirements for a Level 1 license and 3 years of successful experience as a school counselor in an accredited school in Utah; and
 - (2) is valid for five years.
- C. Counseling Intern Temporary License is based on written recommendation from a USOE accredited program that a candidate:
 - (1) is currently enrolled in the program;
- (2) has completed 30 semester hours of course work, including successful completion of a practicum; and
- (3) has skills to work in a school as an intern with supervision from the school setting and from the counselor education program.
- (a) Letters from the accredited program recommending eligible candidates shall be submitted to USOE at the beginning of each school year.
- (b) The Counseling Intern Temporary License is valid for the current year only and is not renewable.

KEY: educational program evaluations, professional competency, educator licensing October 8, 2008 Art X Sec 3
Notice of Continuation August 14, 2012 53A-1-402(1)(a) 53A-6-103 53A-1-401(3)

R277-514. Board Procedures: Sanctions for Educator Misconduct.

R277-514-1. Definitions.

In addition to terms defined in Section 53A-6-103, the

- following definitions apply:

 A. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional, criminal, or incompetent conduct; is unfit for duty; has lost licensure in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of an allegation of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence.
 - B. "Board" means the Utah State Board of Education.
- C. "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in a unit of the public education system or an accredited private school.
- D. "Commission" means the Utah Professional Practices Advisory Commission.
- E. "Educator" means a person who currently holds a license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license.
 - "Party" means the complainant or the respondent.
- G. "Recommended disposition" means a recommendation for resolution of a complaint.
- H. "Serve" or "service," as used to refer to the provision of notice to a person, means delivery of a written document or its contents to the person or persons in question. Delivery may be made in person, by mail to the individual's last known address or by other means reasonably calculated, under all of the circumstances, to apprise the interested person or persons to the extent reasonably practical or practicable of the information contained in the document.
- I. "Superintendent" means the State Superintendent of Public Instruction.

R277-514-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public schools in the Board, Section 53A-6-405 relating to withdrawal or denial of licensure by the Board for cause, Section 53A-6-307 in which the Board retains the power to issue or revoke licenses, hold hearings or take other disciplinary action as warranted, and Subsection 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is to provide an appeals process for recommendations and decisions made by the Commission, including a review by the Superintendent; and to specify the procedures under which the Board may take action against an educator's license for misconduct.

R277-514-3. Administrative Review by Superintendent.

- A. If an administrative action is taken by the Commission which results in a recommendation to the Board for:
- (1) suspension of an educator's license for two years or more, or
 - (2) revocation of an educator's license,
- B. Either party may request review by the Superintendent within 15 days from the date that the Commission sends written notice to both parties that the Commission has made its administrative recommendation.
 - C. The request for review shall consist of the following:
 - (1) name, position, and address of appellant;
 - (2) issue(s) being appealed; and
 - (3) signature of appellant.
 - D. If the Superintendent finds:

(1) that procedural errors have occurred which may have violated fairness or due process issues, the Superintendent shall refer the case back to the Commission for reconsideration as to whether or not the findings, conclusions or decisions of the Commission are supported by a preponderance of the evidence, or direct the Executive Secretary for the Commission to take specific administrative action. After reconsideration is completed, the Superintendent shall notify all parties to the case, and refer the matter to the Board, if necessary, for final disposition consistent with this rule.

R277-514-4. Board Procedures.

- A. Except as provided under Subsection R277-514-4(E), if the Board receives an allegation of misconduct by an educator, the allegation shall be forwarded to the Executive Secretary for the Commission for action under R686-100.
- B. Following completion of procedures provided in R686-100, if the Commission recommends that an educator's license be suspended for any period of time or revoked, the recommendation shall be forwarded to the Board for action.
- C. Upon receiving a case from the Commission, the members of the Board shall review a summary of the case and mav:
 - (1) accept the recommendation of the Commission; or
- (2) review the case file, findings, conclusions, and recommended disposition of the case.
- (a) If the Board finds no serious procedural errors, that the findings and conclusions are reasonable and supported by a preponderance of the evidence, and that the recommended disposition presents a reasonable resolution of the case, then the Board shall approve the findings and recommended disposition.
- (b) If the Board finds serious procedural errors have violated the fundamental fairness of the process, then the Board shall refer the case back to the Commission to correct the errors.
- (c) If the Board determines that the findings or conclusions are not supported by a preponderance of the evidence, or that the recommended disposition does not present a reasonable resolution of the case, then the Board may refer the case back to the Commission for further action or may, in the alternative, prepare other findings, conclusions, or disposition.
- (d) If the Board finds that there is insufficient information in the case file to complete its work, the Board may direct the parties to appear and present additional evidence or clarification.
- (e) If the Board finds it advisable to do so, the Board may initiate investigations or hearings regarding the initial or continued licensure of an individual and take disciplinary action upon its own volition without referring a given case to the Commission.
- D. The Board shall issue a written order regarding its action which contains its conclusions and its disposition of the case, and direct the State Superintendent to serve a copy of the written order upon the parties.
- E. All documents used by the Board in reaching its decision, and a copy of the Board's final order, shall be made part of the permanent case file.
 - F. The decision of the Board is final.

R277-514-5. Notification Requirements and Procedures.

- A. An educator who has reasonable cause to believe that a student may have been physically or sexually abused by a school employee shall immediately report that belief to the school principal, district superintendent, or the Commission. A school administrator receiving such a report shall immediately submit the information to the Commission if the employee is licensed as an educator.
- B. A local superintendent shall notify the Commission if an educator is determined, pursuant to an administrative or judicial action, to have had disciplinary action taken for or to be

guilty of:

- (1) unprofessional conduct or professional incompetence which results in suspension for more than one week or termination, or which otherwise warrants Commission review;

(2) immoral behavior.C. Failure of an educator to comply with Subsection A or B may constitute unprofessional conduct.

D. The State Office of Education shall notify the educator's employer of any final action taken by the Board; and shall notify all Utah school districts and the NASDTEC Educator Information Clearinghouse whenever a license is revoked or suspended, or if an educator surrenders a license or allows it to lapse in the face of allegations of misconduct rather than accept an opportunity to defend against the allegations.

disciplinary actions, professional competency, educator licensure April 15, 2004 Art X Sec 3 **Notice of Continuation August 14, 2012** 53A-6-405 53A-6-307 53A-1-401(3)

R277-608. Prohibition of Corporal Punishment in Utah's Public Schools.

R277-608-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Corporal punishment" means the intentional infliction of physical pain upon the body of a minor child as a disciplinary measure.
- C. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and the Utah Schools for the Deaf and the Blind.
 - D. "USOE" means the Utah State Office of Education.

R277-608-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities and Sections 53A-11-801 through 53A-11-805 which provide guidelines for the use of reasonable and necessary physical restraint or force in educational settings.

B. The purpose of this rule is to direct LEAs to have policies in place that prohibit corporal punishment consistent with the law.

R277-608-3. Reporting Requirements.

- A. Each LEA shall incorporate in the LEA plan submitted to the USOE annually, the prohibition of corporal punishment consistent with the law.
- B. An LEA policy shall incorporate a prohibition of corporal punishment consistent with the law, appropriate sanctions and appeal procedures for LEA employees disciplined under this rule and the corresponding state statute.

R277-608-4. Special Education Exception(s) to this Rule.

LEAs shall have in place, as part of their LEA special education plans, procedures or manuals, criteria and procedures for using appropriate behavior reduction intervention in accordance with state and federal law.

KEY: students' rights, disciplinary problems, teachers January 10, 2012 Art X Sec 3 Notice of Continuation August 14, 2012 53A-1-401(3) 53A-11-801 through 805

R277-617. Smart School Technology Program. R277-617-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Independent Evaluating Committee" means the committee established under Section 53A-1-709(5).

Printed: October 11, 2012

- C. "Smart School Technology Program (Program)" means a three-year program developed by a selected technology provider for a customized whole-school technology deployment plan individualized for each school selected by the Board.
- D. "Technology," for purposes of this rule, means technology provided as examples under Section 53A-1-709(7) or other technology approved by the independent evaluating committee
 - E. "USOE" means the Utah State Office of Education.
- F. "Whole-school technology deployment plan" means a plan:
- (1) developed and implemented in a selected public school;
 - (2) that involves every student and every teacher;
- (3) that uses technology identified in the school's application; and
- (4) that will assist the school staff in improving student academic achievement during the period of the Program.

R277-617-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of public education in the Board, by Section 53A-1-401(3) which authorizes the Board to adopt rules in accordance with its responsibilities, and by Section 53A-1-709(8)(d) that directs the Board to make rules specifying procedures and criteria to be used for selecting schools that may participate in the Program.
- B. The purpose of this rule is to provide criteria and procedures for the Board to select schools to participate in the Smart School Technology Program.

R277-617-3. School Selection Criteria.

- A. The independent evaluating committee shall select a minimum of 3 schools and a maximum of 10 schools, based on number of applicants, cost of developing/implementing Program in the applicant schools, school needs, funds available and other relevant information.
- B. Public schools that include grade levels K-12 are eligible.
- C. The independent evaluating committee shall recommend and the Board shall select proposals from schools that represent, to the extent possible, geographic, economic and demographic diversity.

R277-617-4. Procedures.

- A. A Program application shall be available from the USOE by June $3,\,2012.$
- B. The application must be received by the USOE before June 29, 2012.
- C. All applications shall be evaluated by the independent evaluating committee and a joint recommendation provided to the Board by July 20, 2012.
- D. The Board shall make final school selections at the August, 2012 meeting of the Board.

R277-617-5. Evaluation.

The Program shall be evaluated and reports submitted by the Board consistent with Section 53A-1-709(9).

KEY: schools, technology July 23, 2012

Art X Sec 3 53A-1-401(3) 53A-1-709(8)(d)

R277-618. Educator Peer Assistance and Review Pilot Program (PAR Program). R277-618-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Consortium" means more than one school district or a regional service center, consistent with Section 53A-3-429, composed of school districts.
- C. "PAR joint panel" means the governing panel of a district's Peer Assistance and Review Pilot Program composed of an equal number of teacher representatives and district administrators or their designees.
- D. "School district" means a school district/ local board of education or a consortium of school districts, such as a Regional Service Center, authorized to participate in the PAR Program under Section 53A-10-202.
 - E. Other definitions provided in Section 53A-10-201.

R277-618-2. Authority and Purpose.

- A. This rule is authorization by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-10-202 which directs the Board to solicit proposals and award grants, establish criteria under Section 53A-10-202(4)(c) and specify procedures, criteria and reporting requirements under Section 53A-10-202(8), and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is to provide criteria and procedures for participation in the PAR Program as required by Section 53A-10-202(3).

R277-618-3. Board Responsibilities.

- A. Board Applications and Timelines
- (1) The Board shall solicit proposals and provide an application consistent with the purpose and criteria of Section 53a-10-202 through 2013 by June 15 annually.
- (2) The Board shall award grants to school districts or consortia on a competitive basis before July 1 annually.
- (3) In addition to R277-617-3A(2), the Board may give preference to school district/consortium applications that:
 - (a) provide for matching local funds or resources;
- (b) agree to develop a teacher mentoring and remediation program that meets the standards set by Section 53A-10-201 through 204;
- (c) has limited district personnel to operate a teacher assistance and mentoring program without grant assistance;
- (d) demonstrate the intent and potential resources to sustain the program over time based on pilot findings.
- B. The Board shall notify applicants that the funds come from a one-time appropriation, that, subject to funds available, the Legislature intends to appropriate funds for a five-year period to the Board for the PAR Program. The funds will not lapse annually.

R277-618-4. School District Responsibilities.

- A. School districts shall submit applications as directed by the Board.
- B. School district/consortium applications shall provide a budget for the use of funds consistent with Section 53A-10-202(4).
- C. School districts shall use program funds consistent with Section 53A-10-202 (6).
- D. School districts shall implement programs with minimum components outlined under Section 53A-10-203 (2), (3), (4) and (5) and this rule.
- E. School district plans shall include a PAR joint panel selected consistent with Section 53A-10-204.

R277-618-5. Reporting.

- A. School districts that receive program funds shall provide data and reports to the Utah State Office of Education as requested.
- B. The Board shall report to the Education Interim Committee as required under Section 53A-10-202(3).

KEY: peer assistance, grants August 8, 2012

Art X, Sec 3 53A-10-202 53A-10-202(4)(c) 53A-10-202(8) 53A-1-401(3)

R277-703. Centennial Scholarship for Early Graduation. R277-703-1. Definitions.

- A. "ATC" means Applied Technology Center.
- B. "Board" means the Utah State Board of Education.
- C. "Centennial Scholarship" means the amount awarded to an early graduating student designated in Section 53A-15-102.
 - D. "SEOP" means student education/occupational plan.

R277-703-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, Section 53A-1-402(1) which authorizes the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements, Section 53A-15-101(5) and (6) which direct the Board to provide an early graduation option to students and to develop, implement and evaluate the early graduation program, and Section 53A-1-401(3) which authorizes the Board to adopt rules in accordance with its responsibilities.
- B. This rule designates the Early Graduation Centennial Scholarship Certificate for use by public schools, allows for graduation to be flexible and appropriate to meet individual students' needs, and outlines the early graduation procedure. If a student graduates any time following the eleventh grade year and enters a Utah post-secondary institution, the school district/charter school shall receive a reimbursement designated for the public high school from which the student graduated early. The post-secondary institution shall receive an Early Graduation Centennial Scholarship Certificate signed by the high school principal/director entitling the early graduate to a partial tuition scholarship following the date of graduation according to the schedule established by this rule.

R277-703-3. Curriculum Options for Accelerating a Secondary School Student's Education Program.

- A. A student shall complete the courses of study and credit mandated by the Board and by the local board of education/local charter board.
- B. Options for earning additional credit may include but are not limited to:
 - (1) Courses:
 - (a) High school summer school;
- (b) High school or ATC early morning or after school classes;
- (c) Courses completed at the student's own rate based on performance (the local board of education/local charter board is responsible for assessment of mastery, R277-700-6);
- (d) College courses numbered 101 and above from fully accredited institutions (concurrent enrollment, extension division, or continuing education classes);
- (e) School district/charter school approved high school or college level correspondence courses;
- (f) Equivalency ratio of higher education hours to high school credits: five (5) quarter or three (3) semester hours equal one (1) unit of high school credit.
- (2) Demonstrated proficiency by assessment (amount of credit to be determined by the local board of education/local charter board, R277-700-6):
- (a) Advanced Placement Examination as approved by the local board of education/local charter board;
- (b) ACT or SAT scores that meet or exceed a level set by the local board of education/local charter board;
- (c) Utah state or school district/charter school secondary end-of-course tests:
- (d) Demonstrated proficiency in a subject, as assessed by the local board of education/local charter board;
 - (e) College Level Examination Program (CLEP) tests.
 - (3) Approved work experience, as assessed by the local

board of education/local charter board.

- (4) Demonstrated mastery in an experimental program that has received prior approval from the Board (local board of education/local charter board seeks approval from the Board);
- (5) Increased credit for courses that are combined into a time frame that ordinarily accommodates a lesser number of classes, as approved by the local board of education/local charter board:
- (6) Independent study: a student may be allowed credit for an independent research project or independent reading relevant to a course of study;
- (7) Credit for experience gained during travel relevant to a specific course. Prior approval shall be obtained from and credit awarded by the local board of education/local charter board

R277-703-4. Early Graduation Student Education Plan.

- A. In consultation with the student's parent or guardian and school advisor, each student shall indicate to the secondary principal/director the intent to complete early graduation at the beginning of the ninth grade year or as soon thereafter as the intent is known.
- B. To be eligible for early graduation, a student shall have a current SEOP on file at the student's high school under provisions of R277-700-8.

R277-703-5. Local Education Requirements.

- A. Requirements relating to semesters in membership are inapplicable to students who have been approved under Section R277-703-4 for graduation following the eleventh grade year.
- B. Local academic and citizenship credit requirements for graduation which exceed Board requirements shall include provisions that permit students to graduate early.

R277-703-6. Funding Provisions.

- A. A school district/charter school shall receive a payment designated for each high school from which students graduated before the end of the twelfth grade year.
 - B. Payment provisions:
- (1) School districts/charter schools shall receive payment for one-half of the designated Centennial Scholarship amount for each student reported as having graduated at the conclusion of the eleventh grade year on the S-3 report in the fiscal year following the student's graduation.
- (2) School districts/charter schools shall receive payment based on a percentage of the Centennial Scholarship amount for each student reported as graduating during the twelfth grade year. These students shall also be listed on the S-3 report and payment shall be made to the school district designated for the schools/charter school in the fiscal year following the students' graduation. School districts/charter schools shall receive payment for schools operating on the quarter or trimester system for each early graduating student according to the following schedule:
- (a) End of first quarter of 12th grade year: 75 percent of one-half of the Centennial Scholarship amount;
- (b) End of second quarter of 12th grade year: 50 percent of one-half of the Centennial Scholarship amount;
- (c) End of third quarter of 12th grade year: 25 percent of one-half of the Centennial Scholarship amount;
- (d) End of first trimester of 12th grade year: 67 percent of one-half of the Centennial Scholarship amount;
- (e) End of second trimester of 12th grade year: 33 percent of one-half of the Centennial Scholarship amount.
- C. A student who graduates from high school at the conclusion of the eleventh grade year or during the twelfth grade year shall be entitled to a partial tuition scholarship in the form of the Early Graduation Centennial Scholarship Certificate to be used at a Utah public college, university, community

college, applied technology center, or any other institution in Utah accredited by the Northwest Accreditation Commission that offers post-secondary courses. The post-secondary institution shall complete the Early Graduation Centennial Scholarship Certificate and submit it to the Utah State Office of Education. Upon receipt of the Early Graduation Centennial Scholarship Certificate, the Utah State Office of Education shall verify the information, and reimburse the institution an amount set forth in the following schedule in the fiscal year during which the student enrolls in a post-secondary institution. To be eligible for the scholarship, the student must enroll in an eligible post-secondary institution within one calendar year of graduation.

- (1) The student who graduates at the end of the eleventh grade year shall receive a full Centennial Scholarship.
- (2) The student who graduates at the end of the first quarter of the twelfth grade year shall receive 75 percent of the Centennial Scholarship amount.
- (3) The student who graduates at the end of the second quarter of the twelfth grade year shall receive 50 percent of the Centennial Scholarship amount.
- (4) The student who graduates at the end of the third quarter of the twelfth grade year shall receive 25 percent of the Centennial Scholarship amount.
- (5) The student who graduates at the end of the first trimester of the twelfth grade year shall receive 67 percent of the Centennial Scholarship amount.
- (6) The student who graduates at the end of the second trimester of the twelfth grade year shall receive 33 percent of the Centennial Scholarship amount.

KEY: graduation requirements, curricula February 7, 2012 Art X Sec 3 Notice of Continuation August 14, 2012 53A-1-402(1) 53A-1-401(3) 53A-15-101(5) and (6)

R277-713. Concurrent Enrollment of High School Students in College Courses.

- R277-713-1. Definitions.

 A. "Adjunct/Concurrent faculty" means instructors approved by the cooperating USHE institution and approved by school district or charter school receiving concurrent enrollment services from the instructor to teach concurrent enrollment classes on behalf of the USHE institution.
- B. "Annual Concurrent Enrollment Contract" means a written plan, negotiated by a school district and a USHE institution, to provide college level courses to high school
 - C. "Board" means the Utah State Board of Education.
- D. "Concurrent enrollment" for state funding and for the purposes of this rule means enrollment by public school students in one or more USHE institution course(s) under a contractual agreement between the USHE institution and a school district/public school. Students continue to be enrolled in public schools, counted in Average Daily Membership, and receive credit toward graduation. They also receive college credit for courses.
- E. "Fees" for purposes of concurrent enrollment and this rule mean expenses to students directly related to enrollment and tuition. Fees do not include reasonable lab costs, expenses for textbooks and consumable curriculum materials that are required only for USHE credit or grades.
 - F. "USHE" means the Utah System of Higher Education.
 - G. "USOE" means the Utah State Office of Education.

R277-713-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which provides for the State Board to have general supervision and control over public schools and by Section 53A-17a-120.5 which directs the Board to adopt rules providing that a school participating in the concurrent enrollment programs offered under Section 53A-15-101 shall receive an allocation from the monies as provided in Section 53A-15-101, Section 53A-1-402(1)(c) which directs the Board to adopt minimum standards for curriculum, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of concurrent enrollment is to provide a challenging college-level and productive secondary school experience, particularly in the senior year, and to provide transition courses that can be applied to post-secondary education.
- C. The purpose of this rule is to specify the standards and procedures for concurrent enrollment courses and criteria for funding appropriate concurrent enrollment expenditures.

R277-713-3. Student Eligibility.

- A. Schools and USHE institutions shall jointly establish student eligibility requirements which shall be sufficiently selective to predict a successful experience.
- B. Local schools have the primary responsibility for identifying students who are eligible to participate in concurrent enrollment classes.
- C. To ensure that a student is prepared for college level work, an appropriate assessment shall be administered to the student prior to participation in all concurrent mathematics and English courses, and to determine that the student meets perquisites previously established for the same campus-based course by the sponsoring USHE institutions.
- D. Each student participating in the concurrent enrollment program shall have a current student education/occupation plan (SEOP) on file at the participating school, as required under Section 53A-1a-106(2)(b).
 - E. Schools and USHE institutions shall jointly coordinate

advice and information provided to a prospective or current high school student who participates in the concurrent enrollment program consistent with Section 53A-15-101. Advising shall include providing information on general education requirements at higher education institutions and assisting students or parents to efficiently choose concurrent enrollment courses to avoid duplication and excess credit hours.

R277-713-4. Courses and Student Participation.

- A. The awarding of USHE institution credit for concurrent enrollment courses is the province of colleges and universities governed by USHE policies.
- B. Concurrent enrollment offerings shall be limited to courses in English, mathematics, fine arts, humanities, science, social science, world languages, and career technical programs to allow a focus of energy and resources on quality instruction in these courses. However, there may be a greater variety of courses in the career technical education area. Concurrent Enrollment courses should assist students toward postsecondary degrees.
- C. All concurrent enrollment courses shall be approved or orchestrated by the high school or the USOE and shall provide for waiver of fees to eligible students.
- D. Only courses taken from a master list maintained by the Curriculum Section at the USOE shall be reimbursed from state concurrent enrollment funds.
- E. The Board of Regents, after consultation with school districts/charter schools, shall provide the USOE with proposed new course offerings, including syllabi and curriculum materials by November 30 of the year preceding the school year in which courses shall be offered.
- F. Concurrent enrollment funding shall be provided only for 1000 or 2000 level courses unless a student's SEOP identifies a student's readiness and preparation for a higher level course. This exception shall be individually approved by the student's counselor and school district or charter school concurrent enrollment administrator. Concurrent enrollment funding is not intended for unilateral parent/student initiated college attendance or course-taking.
- G. Concurrent enrollment course offerings shall reflect the strengths and resources of the respective schools and USHE institutions and be based upon student needs. The number of courses selected shall be kept small enough to ensure coordinated statewide development and training activities for participating teachers.
- H. Course content, procedures, examinations, teaching materials, and program monitoring shall be the responsibility of the appropriate USHE institution, shall be consistent with Utah law, and shall ensure quality and comparability with courses offered on the college or university campus.
- I. Participation in concurrent enrollment generates higher education credit that becomes a part of a student's permanent college transcript.
- Schools and USHE institutions shall jointly align information technology systems with all individual student academic achievement so that student information will be tracked through both education systems in accordance with Section 53A-1-603.5.

R277-713-5. Program Delivery.

- Schools within the USHE that grant higher education/college credit may participate in the concurrent enrollment program, provided that such participation shall be consistent with the law and consistent with Board rules specific to the use of public education funds and rules for public education programs.
- B. Concurrent enrollment courses shall be offered at the most appropriate location using the most appropriate methods for the course content, the faculty, and the students involved.

- C. The delivery system and curriculum program shall be designed and implemented to take full advantage of the most current available educational technology.
- D. Courses taken by students who have received a diploma, whose class has graduated or who have participated in graduation exercises are not eligible for concurrent enrollment funding. Senior students shall complete reimbursable concurrent enrollment courses prior to their graduation or participation in graduation exercises.
- E. Concurrent enrollment is intended primarily for students in their last two years of high school.
- (1) Concurrent enrollment may not include high school courses that are typically offered in grades 9 or 10.
- (2) The Early College High School Program, specifically initiated to encourage students to earn college credit beginning in the ninth grade leading to a college diploma earned concurrently with a high school diploma, may enroll student Program participants in grades 9 and 10 in concurrent enrollment courses.
- F. State reimbursement to school districts for concurrent enrollment courses may not exceed 30 semester hours per student per year.
- G. Public schools/school districts shall use USOE designated 11-digit course codes for concurrent enrollment courses.

R277-713-6. Student Tuition, Fees and Credit for Concurrent Enrollment Programs.

- A. Tuition or fees may not be charged to high school students for participation in this program consistent with Section 53A-15-101(6)(b)(iii).
- B. Students may be assessed a one-time enrollment charge per institution.
- C. Concurrent enrollment program costs attributable only to USHE credit or enrollment are not fees and as such are not subject to fee waiver under R277-407.
- D. All students' costs related to concurrent enrollment classes, which may include consumables, lab fees, copying, and material costs, as well as textbooks required for the course, are subject to fee waiver consistent with R277-407.
- E. The school district/school shall be responsible for these waivers. The agreement between the USHE institution and the district may address the responsibility for fee waivers.
 - F. Credit:
- (1) A student shall receive high school credit for concurrent enrollment classes that is consistent with the district policies for awarding credit for graduation.
- (2) College level courses taught in the high school carry the same credit hour value as when taught on a college or university campus and apply toward college/university graduation on the same basis as courses taught at the USHE institution to which the credits are submitted.
- (3) Credit earned through the concurrent enrollment program shall be transferable from one USHE institution to another.
- (4) Concurrent enrollment course credit shall count toward high school graduation requirements as well as for college credit.

R277-713-7. Faculty Requirements.

- A. Nomination of adjunct faculty is the joint responsibility of the participating local school district(s) and the participating USHE institution. Public education teachers shall have secondary endorsements in the subject area(s) to be taught and meet highly qualified standards for their assignment(s) consistent with R277-510. Final approval of the adjunct faculty shall be determined by the appropriate USHE institution.
- B. USHE institution faculty beginning their USHE employment in the 2005-06 school year who are not K-12

- teachers and who have significant unsupervised access to K-12 students and instruct in the concurrent enrollment program defined under this rule shall complete a criminal background check consistent with Section 53A-3-410. The adjunct faculty employer shall have responsibility for determining the need for criminal background checks consistent with the law and for satisfying this requirement and shall maintain appropriate documentation.
 - C. Adjunct faculty status of high school teachers:
- (1) High school teachers who hold adjunct or part time faculty status with a USHE institution for the purpose of teaching concurrent enrollment courses shall be included as fully as possible in the academic life of the supervising academic department.
- (2) USHE institutions and secondary schools shall share expertise and professional development, as necessary, to adequately prepare teachers at all levels to teach concurrent enrollment students and content, including both federal and state laws specific to student privacy and student records.

R277-713-8. Concurrent Enrollment Funding and Use of Concurrent Enrollment Funds.

- A. Each district shall receive a pro-rated amount of the funds appropriated for concurrent enrollment according to the number of semester hours successfully completed by students registered through the district in the prior year compared to the state total of completed concurrent enrollment hours. Successfully completed means that a student received USHE credit for the course. Concurrent enrollment funds may not reimburse districts for repeated concurrent enrollment courses. Appropriate reimbursement may be verified at any reasonable time by USOE audit.
- B. The funds shall first be allocated proportionally, based upon student credit hours delivered.
- (1) Courses that are taught by public school educators: 60 percent of the funds shall be allocated to local school boards and charter schools, and 40 percent of the funds shall be allocated to the State Board of Regents.
- (2) Courses taught by college or university faculty: 60 percent of the funds shall be allocated to the State Board of Regents, and 40 percent of the funds shall be allocated to local school boards and charter schools.
- C. Each high school shall receive its proportional share of district concurrent enrollment monies allocated to the district pursuant to Section 53A-17a-120 based upon the hours of concurrent enrollment course work successfully completed by students on the high school campus as compared to the state total of completed concurrent enrollment hours.
- D. Funds allocated to school districts for concurrent enrollment shall not be used for any other program.
- E. District use of state funds for concurrent enrollment is limited to the following:
- (1) aid in staff development of adjunct faculty in cooperation with the participating USHE institution;
- (2) assistance with delivery costs for distance learning programs;
- (3) participation in the costs of district or school personnel who work with the program;
 - (4) student textbooks and other instructional materials; and
- (5) fee waivers for costs or expenses related to concurrent enrollment for fee waiver eligible students under R277-407.
- (6) districts/charter schools may purchase classroom equipment required to conduct concurrent enrollment courses.
- (7) other uses approved in writing by the USOE consistent with the law and purposes of this rule.
- F. School districts/charter schools shall provide the USOE with end-of-year expenditures reports itemized by the categories identified in R277-713-8D.

R277-713-9. Annual Contracts and Other Student Instruction Issues.

- A. Collaborating school districts/charter schools and USHE institutions shall negotiate annual contracts including:
 - (1) the courses offered;
 - (2) the location of the instruction;
 - (3) the teacher;
 - (4) student eligibility requirements;
 - (5) course outlines;
 - (6) texts, and other materials needed; and
- (7) the administrative and supervisory services, in-service education, and reporting mechanisms to be provided by each party to the contract.
- (a) each school district/charter school shall provide an annual report to the USOE regarding supervisory services and professional development provided by a USHE institution.
- (b) each school district/charter school shall provide an annual report to the USOE indicating that all concurrent enrollment instructors are in compliance with R277-713-7B and
- B. A school district/charter school shall provide a copy of the annual contract entered into between a school district/charter school and a USHE institution for the upcoming school year no later than May 30 annually.
- C. The annual concurrent enrollment agreement between a USHE institution and a school district/charter school who has responsibility shall:
- (1) provide for parental permission for students to participate in concurrent enrollment classes, which includes notice to parents that participation in concurrent enrollment courses count toward a student's college record/transcript,
- (2) provide for the entity responsible for parent notification about concurrent enrollment purpose(s) and student and family privacy protections; and
- (3) provide for discussion and training, as necessary, to all concurrent enrollment instructors about student information, student records laws, and student confidentiality.

KEY: students, curricula, higher education
July 11, 2011 Art X Sec 3
Notice of Continuation August 14, 2012 53A-17a-120.5
53A-1-402(1)(c)
53A-1-401(3)

R277. Education, Administration. R277-720. Child Nutrition Programs. R277-720-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "USOE" means the Utah State Office of Education.

R277-720-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, by Section 53A-1-402(1)(b) which directs the Board to make rules and minimum standards regarding access to programs, and by Section 53A-1-402(3) which authorizes the Board to administer funds made available through programs of the federal government.

B. The purpose of this rule is to specify the standards and procedures for child nutrition programs administered by the Board.

R277-720-3. Standards and Procedures for Child Nutrition.

- A. The Board adopts the following laws and regulations found at the Utah State Office of Education Child Nutrition Section and law libraries and hereby incorporates them by reference:
- (1) the Richard B. Russell National School Lunch Act, 42 USC 1751, et seq.;
- (2) the Child Nutrition Act of 1966, 42 USC 1771, et seq.; and
- (3) the Emergency Food Assistance Act, 7 USC, 7501, et seq.
- B. The Board shall act in accordance with the following publications available from the USOE Child Nutrition Section:
 - (1) Administrative Manual, NSLP/NSBP/SMP, 2010;
 - (2) Administrative Manual, CACFP (FDCH), 2012;
 - (3) Administrative Manual, Centers, 2012;
 - (4) Code of Federal Regulations, Chapter 7;
- (5) state plans and agreements which are required and submitted under applicable federal law; and
- (6) guidance and instructions issued by USDA regarding laws and regulations identified in R277-720-3.

R277-720-4. Programs.

The Board administers the following federal child nutrition programs:

- A. National School Lunch Program;
- B. School Breakfast Program;
- C. Special Milk Program;
- D. Child and Adult Care Food Program;
- E. Summer Food Service Program for Children;
- F. Food Distribution Program; and
- G. At Risk After School Snack Program.

KEY: school lunch program, nutrition May 8, 2012

Notice of Continuation August 14, 2012

Art X Sec 3 53A-1-401(3) 53A-1-402(1)(b) 53A-1-402(3)

R277. Education, Administration.

R277-750. Education Programs for Students with Disabilities.

R277-750-1. Definitions.

"Board" means the Utah State Board of Education.

R277-750-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1) which directs the Board to adopt rules regarding services for persons with disabilities, Section 53A-15-301 which directs the Board to set standards for state funds appropriated for students with disabilities and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for special education programs.

R277-750-3. Standards and Procedures.

- A. As its rules for programs for students with disabilities, the Board adopts and hereby incorporates by reference the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C., 1400.
 - B. The Board shall act in accordance with:
- (1) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. 794, incorporated by reference in R277-112;
 - (2) R277-750;
- (3) State Board of Education Special Education Rules, August 2007; and
- (4) The annual Utah State Federal Application under Part B of the Individuals with Disabilities Education Act as amended in 2004.
- C. Students with disabilities shall be entitled to dual enrollment consistent with Section 53A-11-102.5 and R277-438.

KEY: special education December 8, 2009

Notice of Continuation August 14, 2012

Art X Sec 3 53A-1-402(1) 53A-17a-111 53A-15-301 53A-1-401(3)

R277-911. Secondary Career and Technical Education. R277-911-1. Definitions.

- A. "Aggregate membership" means the sum of all days in membership during a school year for the student, program, school, LEA, or state.
- B. "Approved program" means a program approved by the Board that meets or exceeds the state program standards or outcomes for career and technical education programs.
 - C. "Board" means the Utah State Board of Education.
- D. "Bureau of Apprenticeship and Training" means a branch office for apprenticeship administered by the United States Department of Labor and located in Salt Lake City.
- E. "Career and technical education (CTE)" means organized educational programs which directly or indirectly prepare individuals for employment, or for additional preparation leading to employment, in occupations where entry requirements generally do not require a baccalaureate or advanced degree. These programs provide all students an undisrupted education system, driven by a student education occupation plan (SEOP), through competency-based instruction, culminating in essential life skills, certified occupational skills, and meaningful employment. Areas of study include agriculture; business; family and consumer sciences; health science and technology; information technology; marketing; skilled and technical sciences; and technology and engineering education.
- technical sciences; and technology and engineering education.

 F. "CTE pathway" means a planned CTE/academic continuum of courses within a CTE field beginning in the ninth grade and continuing with post secondary training which culminates in an associate degree, apprenticeship, certificate of completion, or baccalaureate degree.
- G. "CIP code" means the Classification of Instructional Programs, a federal curriculum listing.

 H. "Comprehensive counseling and guidance program"
- H. "Comprehensive counseling and guidance program" means the organization of resources to meet the priority needs of students through four delivery system components as outlined in R277-462.
- I. "Course" means an individual CTE class structured by state-approved standards and CIP code. An approved course may require one or two periods for up to one year. Courses may be completed by demonstrated competencies or by course completion.
- J. "Entry-level" means a set of tasks identified and validated by workers and employers in an occupation as those of a beginner in the field. Entry-level skills are a limited subset of the total set of tasks performed by an experienced worker in the occupation. Competent performance of entry-level tasks enhances employability and initial productivity.
- K. "Extended year program" means CTE programs no longer than 12 weeks in duration, offered during the summer recess, and supported by extended-year or other CTE funds.
- L. "Program" means a combination of CTE courses that provides the competencies for specific job placement or continued related training and is outlined in the SEOP using all available and appropriate high school courses.
- M. "Program completion" means the student completion of a sequence of approved courses, work-based learning experiences, and/or other prescribed learning experiences as determined by the student education occupation plan (SEOP).
- N. "Regional consortium" means the school districts, applied technology colleges, colleges and universities within the regions that approve CTE programs.
- O. "Registered apprenticeship" means a training program that includes on-the-job training in a specific occupation combined with related classroom training and has approval of the Bureau of Apprenticeship and Training.
- P. "Related training" means a course or program directly related to an occupation that is compatible with apprenticeship training and is taught in a classroom and approved by the

Bureau of Apprenticeship and Training.

- Q. "Scope and sequence" means the organization of all CTE courses and related academic courses into programs within the high school curriculum that lead to specific skill certification, job placement, continued education or training.
- R. "SEOP" means student education occupation plan. An SEOP shall include:
- (1) a student's education occupation plans (grades 7-12) including job placement when appropriate;
- (2) all Board, local board and local charter board graduation requirements;
- (3) evidence of parent, student, and school representative involvement annually;
- (4) attainment of approved workplace skill competencies; and
- (5) identification of post secondary goals and approved sequence of courses.
- S. "Skill certification" means a verification of competent task performance. Verification of the skills standard is provided by an approved state or national program certification process.
 - T. "USOE" means the Utah State Office of Education.
- U. "WPU" means weighted pupil unit. The basic unit used to calculate the amount of state funds for which a school district is eligible.
- V. "Work-based learning" means a program in which a student is trained by employment or other activity at a work site, either at place of business, a home, or a farm, supplemented by needed classroom instruction or teacher assistance.

R277-911-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public education system in the Board, by Section 53A-15-202 which allows the Board to establish minimum standards for CTE programs in the public education system, and Sections 53A-17a-113 and 114 which direct the Board to distribute specific amounts and percentages for specific CTE programs and facilitate administration of various programs.
- B. This rule establishes standards and procedures for school districts seeking to qualify for funds administered by the Board for CTE programs in the public education system.

R277-911-3. CTE Program Approval.

- A. Program Planning: CTE programs are based on verified training needs of the area and provide students with the competencies necessary for occupational opportunities. Programs are supported by a data base, including:
- (1) local, regional, state, and federal manpower projections;
 - (2) student occupational/interest surveys;
 - (3) regional job profile;
 - (4) advisory committee information; and
 - (5) follow-up evaluation and reports.
- B. Program Administration: School district CTE directors shall meet the requirements specified in Subsections 9(A), (B) and (C).
- C. Learning Resources: Within available resources, instructional materials, including textbooks, reference materials, and media, shall reflect current technology, processes, and information for the CTE programs.
- D. Student Services provided by school districts or consortia of school districts:
- (1) CTE guidance, counseling, and Board approved testing shall be provided for students enrolled in CTE programs.
- (2) A written plan for placement services shall be developed with the assistance of local advisory committees, business and industry and the Department of Workforce Services.
 - (3) An SEOP shall be developed for all students. The plan

shall include:

- (a) a student's education occupation plans (grades 7-12), including job placement when appropriate;
- (b) all Board, local board and local charter board graduation requirements;
- (c) evidence of parent, student, and school representative involvement annually;
 - (d) attainment of approved workplace skill competencies;
- (e) identification of a CTE post-secondary goal and an approved sequence of academic and CTE courses.
- E. Instruction: Curricula and instruction shall be directly related to business and industry validated competencies. Successful completion of competencies shall be verified by a valid skill certification process. Instruction in proper and safe use of any equipment required for skill certification shall be provided within the approved program.
- F. Equipment and Facilities: Equipment and facilities, consistent with the validated competencies identified in the instruction standard, shall be provided and maintained safely, consistent with applicable state and federal laws.
- G. Instructional Staff: Counselors and instructional staff shall hold valid Utah teaching licenses with endorsements appropriate for the programs they teach. These may be obtained through an institutional recommendation or through occupational and educational experience verified by the USOE licensure process. CTE program instructors shall keep technical and professional skills current through business/industry involvements in order to ensure that students are provided accurate state-of-the-art information.
- H. Equal Educational Opportunity: CTE programs shall be conducted consistent with the Board policies and state and federal laws and regulations on access that prohibit discrimination on the basis of race, creed, color, national origin, religion, age, sex, and disability.
- I.(1) CTE advisory council: An active advisory council shall be established to review all CTE programs annually. The council may serve several school districts or a region. The council reviews the program offerings, quality of programs, and equipment needs.
- (2) Program advisory committee: Each state-funded approved CTE program shall be supported at the school district/regional level by a program advisory committee made up of individuals who are working in the occupational area. Basic exploratory programs shall have an advisory committee.
- J. CTE student leadership organizations: School districts are encouraged to make this training available through nationally-chartered CTE student leadership organizations in each area of study.
- K. Program and instruction evaluation: Each school district, with oversight by local program advisory committee members, shall make an annual evaluation of its CTE programs.

R277-911-4. Disbursement and Expenditure of CTE Funds-General Standards.

- A. To be eligible for state CTE program funds, a school district shall first expend for CTE programs an amount equivalent to the regular WPU for students in approved CTE programs, grades nine through twelve, based on prior year aggregate membership, times the current year WPU value, less an amount for indirect costs as computed by the USOE.
- B. State CTE program funds may thereafter be expended only for approved CTE programs.

R277-911-5. Disbursement of Funds--Added Cost Funds.

A. Weighted pupil units shall be allocated for the added instructional costs of approved CTE programs operated or contracted by school districts. Programs and courses provided through applied technology colleges, and higher education institutions do not qualify for added cost funds except for

- specific contractual arrangements approved by the Board.
- B. Computerized or manually produced records for CTE programs shall be kept by teacher, class, and Classification of Instructional Program (CIP) code. These records shall show clearly and accurately the entry and exit date of each student and whether a student has been absent from a CTE class ten consecutive days.
 - C. Added cost funds shall not be generated:
 - (1) during bus travel;
- (2) until the student starts attending the approved CTE course:
- (3) when the student has been absent, without excuse, for the previous 10 days.
- D. All approved CTE programs shall receive funds determined by prior year hours of membership for approved programs.
- E. Allocations are computed using grades nine through twelve aggregate membership in approved programs for the previous year with a growth factor applied to school districts experiencing growth of one percent or greater in grades nine through twelve except as provided by R277-462 and R277-916.
- F. Added cost funds shall be used to cover the added CTE program instructional costs of school district programs.

R277-911-6. Disbursement of Funds--Equipment Set Aside Funds.

- A. Equipment set aside funds shall pay for CTE program equipment needs.
- B. Each school district is eligible for a minimum amount of equipment set aside funds.
- C. Applicants for funds may submit proposals as individual school districts or as regional groups. All proposals shall show evidence of coordination within a service delivery area. A regional group shall include recommended priorities for funding in its proposal.

R277-911-7. Disbursement of Funds--Skill Certification.

- A. School districts that demonstrate approved student skill certification may receive additional compensation.
- B. To be eligible for skill certification compensation, a school district shall show its student completer has demonstrated mastery of standards, as established by the Board. An authorized test administrator shall verify student mastery of the skill standards.
- C. Skill certification compensation shall be available only if an approved skill certification assessment is developed for the program.

R277-911-8. Disbursement of Funds--CTE Leadership Organization Funds.

- A. Participating school districts sponsoring CTE leadership organizations shall be eligible for a portion of the funds set aside for this purpose.
- B. Qualifying CTE leadership organizations shall be nationally chartered and include: SkillsUSA (an association of Skilled and Technical Sciences Education students), DECA (Distributive Education Clubs of America), FFA (Future Farmers of America), HOSA (Health Occupations Students of America), FBLA (Future Business Leaders of America), FCCLA (Family, Career and Community Leaders of America), and TSA (Technology Students Association).
- C. Up to one percent of the state CTE appropriation for school districts shall be allocated to eligible school districts based on documented prior year student membership in approved CTE leadership organizations.
- D. A portion of funds allocated to a school district for CTE leadership organizations shall be used to pay the school district's portion of statewide administrative and national competition costs. The remaining amount shall be available for

school district CTE leadership organization expenses.

R277-911-9. Disbursement of Funds--School District/Charter School WPUs.

- A. WPUs for costs of administration of CTE programs shall be allocated as follows:
- (1) Twenty (20) WPUs shall be allocated to each school district for costs associated with the administration of CTE. To qualify, school districts shall employ a minimum one-half time CTE director.
- (2) To encourage multidistrict CTE administrative services, 25 WPUs shall be allocated to each school district that consolidates CTE administrative services with one or more other school district. To qualify, the participating school districts must employ a full-time CTE director.
- (3) Twenty-five (25) WPUs shall be allocated to a single charter school acting as fiscal agent, to provide CTE administrative services to all charter schools offering CTE pathways, grades 9-12. If more than ten (10) charter schools offer CTE pathways an additional five (5) WPUs shall be allocated for each additional charter school over ten (10). To qualify, the charter school acting as fiscal agent must employ a full-time CTE director.
- (4) Ten (10) WPUs shall be allocated to a small school district consisting of only necessarily existent small high school(s), and where multi-district CTE administration is not feasible. To qualify, a small school district shall assign a CTE director to a minimum of part-time CTE administration.
- B. To qualify for 10, 20 or 25 CTE administrative WPUs as provided under R277-911-9A, a CTE director shall:
- (1) hold or be in the process of completing requirements for a current Utah Administrative/Supervisory License specified in R277-505; and
- (2)(a) have an endorsement in at least one career and technical area listed in R277-518, Career and Technical Education Licenses, and have four years of experience as a full-time career and technical educator; or
- (b) complete a prescribed professional development program provided by the USOE within a period of two years following board appointment as a school district/charter school CTE director.
- C. In addition to WPUs appropriated under R277-911-9A, each approved high school qualifies for funding according to the following criteria:
 - (1) Ten (10) WPUs are allocated to each high school that:
- (a) conducts approved programs in a minimum of two CTE areas e.g. agriculture; business; family and consumer sciences; health science and technology; information technology; marketing; skilled and technical sciences; and technology and engineering education;
- (b) conducts a minimum of six different state-approved CIP coded courses including at least one CTE pathway. Consolidated courses in small schools may count as more than one course as approved by the appropriate state CTE specialist(s);
- (c) has at least one approved career and technical student leadership organization.
- (2) Fifteen (15) WPUs shall be allocated to each high school that:
- (a) conducts approved programs in a minimum of three CTE areas;
- (b) conducts a minimum of nine different state-approved CIP coded courses including at least one CTE pathway. Consolidated courses in small schools may count as more than one course as approved by the appropriate state CTE specialist(s);
- (c) has at least one approved CTE student leadership organization.
 - (3) Twenty (20) WPUs shall be allocated to each high

school that:

- (a) conducts approved programs in a minimum of four CTE areas;
- (b) conducts a minimum of twelve different state-approved CIP coded courses including at least two CTE pathways. Consolidated courses in small schools may count more than one course as approved by the appropriate state CTE specialist(s);
- (c) has at least two approved CTE student leadership organizations.
- (4) Twenty-five (25) WPUs shall be allocated to each high school that:
- (a) conducts approved programs in a minimum of five CTE areas;
- (b) conducts a minimum of fifteen different state-approved CIP coded courses including at least two CTE pathways. Consolidated courses in small schools may count more than one course as approved by the appropriate state CTE specialist(s);
- (c) has at least three approved CTE student leadership organizations.
- D. Also, a maximum of one approved alternative high school, as outlined in R277-730, per school district may qualify. School districts sharing an alternative school shall receive a prorated share.
- E. Programs and courses provided through school district technical centers shall not receive funding under this section.

R277-911-10. Disbursement of Funds--School District Technical Centers.

- A. A maximum of forty WPUs may be computed for each school district operating an approved school district center. To qualify under the approved school district technical center provision, the school district shall:
- (1) provide at least one facility other than an existing high school as a designated school district technical center;
 - (2) employ a full-time CTE administrator for the center;
- (3) enroll a minimum of 400 students in the school district technical center;
- (4) prevent unwarranted duplication by the school district technical center of courses offered in existing high schools, applied technology colleges and higher education institutions;
- (5) centralize high-cost programs in the school district technical center;
- (6) conduct approved programs in a minimum of five CTE areas;
- (7) conduct a minimum of fifteen different state-approved CIP coded courses.

R277-911-11. Disbursement of Funds--Summer CTE Agriculture Programs.

- A. To receive state summer CTE agriculture program funds, a school district shall submit to the USOE, an application for approval of the school district's program. Applications shall be received prior to the annual due date specified each year. Notification of approval of the school district's program shall be made within ten calendar days of receiving the application.
 - B. A teacher of a summer CTE agriculture program shall:
- (1) hold a valid Utah teaching license, with an endorsement in agriculture, as outlined in R277-911-3G;
- (2) develop a calendar of activities which shall be approved by school district administration and reviewed by the state specialist for CTE agricultural education;
- (3) work a minimum of eight hours a day in the summer CTE agriculture program. Exceptions shall be reflected in the calendar of activities and be approved by the school district administration:
- (4) not engage in other employment, including selfemployment, which conflicts with the teacher's performance in the summer CTE agriculture program;
 - (5) develop and file a weekly schedule and a monthly

report outlining accomplishments related to the calendar of activities with the school principal, school district CTE director, and the state specialist for agricultural education; and

- (6) visit the participating students a minimum of two times during the summer program with a minimum average of four onsite visits to students.
- C. College interns may be approved to conduct summer CTE agriculture programs upon approval by the state specialist for CTE agricultural education.
- D. Students enrolled in the summer CTE agriculture program shall:
- (1) have on file in the teacher's and school district office a student education occupation plan (SEOP) goal related to agriculture;
- (2) in conjunction with the student's parent or employer and the teacher, develop an individual plan of activities, including a supervised occupational experience program;
 - (3) have completed the eighth grade; and
 - (4) have not have graduated from high school.
- E. The USOE CTE agricultural education specialist shall collect data from the program and staff of each school district to ensure compliance with approved standards. A final program report, on forms provided by the USOE, shall be submitted to the USOE on the annual due date specified.
- F. Summer CTE agricultural funding shall be allocated to each school district conducting an approved program for a minimum of 35 students lasting nine weeks. A school district may receive funding for no more than nine weeks or 35 students.
- G. School districts operating programs with fewer than 35 students per teacher or for fewer than nine weeks shall receive a prorated share of the summer CTE agricultural allocation.

R277-911-12. Disbursement of Funds - Comprehensive Counseling and Guidance; CTE Introduction, and Work-Based Learning Programs.

- A. The board shall distribute funds to school districts consistent with Section 53A-17a-113(2)(3)(4) and (6).
- B. School districts shall spend funds distributed for comprehensive guidance consistent with Section 53A-1a-106(2)(b) and R277-462 which explain the purpose and criteria for student education plans (SEP) and student education occupation plans (SEOP).
- C. School districts may spend funds allocated under this section to fund work-based learning programs consistent with Section 53A-17a-113(1)(c), other criteria of the Section, R277-915 and R277-916.
- D. School districts may spend funds allocated under this section to fund CTE Introduction programs consistent with Section 53A-17a-113 and R277-916.

KEY: career and technical education
January 7, 2009 Art X Sec 3
Notice of Continuation August 14, 2012 53A-15-202
53A-17a-113 through 115

R362. Governor, Energy Development (Office of). R362-2. Renewable Energy Systems Tax Credits. R362-2-1. Purpose.

- (A) This rule implements the responsibilities assigned to the Utah Governor's Office of Energy Development (OED) for the renewable energy systems tax credit programs established in Sections 59-7-614, 59-10-1014, and 59-10-1106.
- (B) This rule establishes requirements for eligibility for renewable energy system tax credits and the criteria for determining the amount of such tax credits by defining eligible systems, eligible system components, eligible costs, and other requirements intended to ensure the safety and reliability of systems supported by tax credits, and to ensure the appropriate use of the state's energy and economic resources.
- (C) This rule also establishes procedures for taxpayers to use when applying for OED certification of tax credit eligibility and tax credit amounts, and for OED to follow in reviewing such applications.
- (D) This rule applies to all renewable energy systems installed or entering commercial service after January 1, 2007.

R362-2-2. Authority.

Pursuant to Sections 59-7-614, 59-10-1014, and 59-10-1106, the OED and the Utah Tax Commission may each make rules that are necessary to implement renewable energy tax credits for corporate and individual income tax filers. In addition, the OED is required to certify that an energy system for which a tax credit is sought has been installed and is a viable system for saving or producing energy from renewable resources. For taxpayers claiming a tax credit based upon a percentage of the costs of a renewable energy system, the OED may also set standards for residential and commercial systems that cover the safety, reliability, efficiency, leasing, and technical feasibility of the systems to ensure that they use the state's renewable and non-renewable energy resources in an appropriate and economic manner. For such percentage-of-cost credits, the OED may also establish rules defining the reasonable costs of a system.

R362-2-3. Definitions.

- (A) The definitions below are in addition to or serve to clarify the definitions found in Sections 59-7-614, 59-10-1014, and 59-10-1106.
- (B) "Active solar thermal system" means a system of apparatus and equipment capable of intercepting and transferring incident solar thermal radiation to air or liquid by a separate apparatus to the point of storage or use. Transfer of energy to the point of storage or use must be accomplished using a mechanically powered device.
 - 1. Active solar thermal systems include systems that:
- a. Heat water for space heating, culinary water, recreational use (including swimming pools), and other industrial or commercial uses;
- b. Heat a liquid, contained within a closed loop system, whose transferred heat may be used for space heating, culinary water, recreational use (including swimming pools), and other industrial or commercial uses; and
- c. Heat air that is transferred to a building's conditioned space using mechanical systems such as fans or blowers either for heat or to induce air movement used for cooling.
- Active solar thermal systems do not include systems that use heat for evaporative cooling.
- (C) "Biomass system" means a system of apparatus and equipment for use in converting biomass material into fuel or electricity and transporting that energy by separate apparatus to the point of use or storage.
- 1. Materials that may be used to produce fuel or electricity are as follows:
 - a. material from a plant or tree; or

- b. other organic matter that is available on a renewable basis, including:
 - i. slash and brush from forests and woodlands;
 - ii. animal waste:
- iii. methane produced at landfills or as a byproduct of the treatment of wastewater residuals;
 - iv. aquatic plants; and
 - v. agricultural products.
 - 2. A biomass system does not include:
- a. A system that uses, black liquor, treated woods, or biomass from municipal solid waste other than methane produced at landfills or sewage treatment plants
- b. A system that combusts biomass for the primary purpose of producing and using heat or mechanical energy.
- 3. In order to be considered a biomass system, a fuel or electricity producing system must use biomass as its primary source of energy.
- (D) "Commercial energy system" means any active solar, passive solar, geothermal electricity, direct- use geothermal, geothermal heat-pump system, wind, hydroenergy, or biomass system used to supply energy to a commercial unit or as a commercial enterprise. In the case of systems generating electricity and involving multiple but interconnected energy generation systems, a commercial energy system includes all interconnected components that:
- 1. Were assembled or constructed at approximately the same time as part of a single project; and
- 2. Supply electricity to a common grid interconnection point.

This includes wind farms connecting to a single substation and biomass generating systems using multiple small generators. Such combinations of intertied generators are considered to be single energy systems for purposes of this rule.

- (E) "Commercial tax credit" means the credits defined in Subsection 59-7-614(2)(b) and Section 59-10- 1106 that provide tax credits worth 10% of the reasonable cost, up to \$50,000, of a commercial energy system.
- (F) "Commercial unit" means any building or structure that a business entity uses to transact its business. For purposes of the commercial investment tax credit, an agricultural water pump and a wind turbine are each considered to be single commercial units.
- (G) "Direct use geothermal system" means a system of apparatus and equipment enabling the direct use of thermal energy, generally between 100 and 300 degree Fahrenheit, that is contained in the earth to meet energy needs, including heating a building, an industrial process, or aquaculture. Such systems generally make use of hot water or steam derived from wells bored through the earth's crust to reach areas of thermal energy. They may include systems that make use of groundwater or those that inject water into the earth for the purpose of deriving heat. They can also include systems that pump a heat exchanging fluid through a sealed, close loop system below the ground to extract heat for use above the earth's surface.
- (H) "Eligible cost" means a cost that is reasonable as defined in this rule, that is incurred for the purchase or installation of a renewable energy system, and that may be used in computing the amount of either a commercial or residential investment tax credit.
- (I) "Geothermal electricity system" means a system that uses thermal energy that flows outward from the earth as the sole source of energy for producing electricity.
- (J) "Geothermal heat pump system" means a system of apparatus and equipment enabling use of the thermal properties contained in the earth well below 100 degrees Fahrenheit to help meet heating and cooling needs of a structure. For purposes of this rule, geothermal heat pump system means a system that is thermally coupled with the ground through a heat exchange medium or using mechanical heat exchange

equipment and that uses a "ground-source heat pump" technology described in the American Society of Heating, Refrigerating, and Air Conditioning Engineers' (ASHRAE) Applications Handbook, Chapter 32, or the Air Conditioning Heating and Refrigeration Institute (AHRI) Certified Product Directory, Page 4-8. This can include ground source heat pumps, water source heat pumps using ground water or surface water, and direct geoexchange heat pump systems.

- (K) "Grid connected" describes a system that generates electricity and is electrically connected to an electrical load that is also connected to and served by the local utility's electrical grid. To be considered grid connected, a system needs be able to serve an electrical load that is also served by the local utility.
- (L) "Heat transportation system" means all fans, vents, ducts, pipes and heat exchangers designed to move heat from a collection point to either the storage or heat use area.
- (M) "Investment tax credit" means a tax credit authorized in any of the Sections 59-7-614, 59-10-1014, and 59-10-1106 and that is not a production tax credit.
- (N) "Loaded structure" means a part of the building that provides support to that building.
- (O) "Placed in commercial service" means the earliest point in time at which a commercial energy system:
- 1. Produces or is capable of producing at its maximum potential output; and
- 2. Sells all or some portion of its energy output or uses some portion its energy output for commercial activities located at the same site.
- (P) "Passive solar system" means a direct thermal system that utilizes the structure of a building and its operable components to provide for collection, storage, and distribution of heating or cooling during the appropriate times of the year by utilizing the climate resources available at the site and includes those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy.
- (Q) "Production tax credit" means the credits defined in Subsections 59-7-614(2)(c) and 59-10-1106(2)(b) that provides 0.35 cents per kilowatt-hour of electricity produced for wind, geothermal, or biomass systems with production capacities of 660 kilowatts or greater.
- (R) "Production tax credit window" means the period during which a company is eligible to receive production tax credits for a specific commercial energy system. The window begins on the day that the system is placed in commercial service and ends 48 months after that date.
- (S) "Renewable energy system" means any of the following types of systems defined in Section 57-7-614, 57-10-1014, and 57-10-1106:
 - 1. Active solar including solar thermal and photovoltaics;
- Biomass except for systems combusting biomass for heat:
 - 3. Direct-use geothermal;
 - 4. Geothermal electricity
 - 5. Geothermal heat pump;
 - 6. Hydroenergy;
 - 7. Passive solar for heating or cooling;
 - 8. Wind.
- (T) "Residential investment tax credit" means the credits defined in Subsection 59-7-614(2)(a) and Section 59-10-1014 that provide tax credits worth 25% of the reasonable cost up to \$2,000 of a residential energy system.
- (U) "Residential unit" means any house, condominium, apartment, or similar dwelling for a person or persons, but it does not include any vehicles such as motor homes, recreational vehicles, or house boats.
- (V) "Solar PV energy system" means an active solar energy system that converts light to direct current electricity through the use of semiconducting materials and that is capable

of producing electricity for use in a building by the use of an inverter to produce alternating current electricity.

- (W) "Thermal storage mass" means a structure within the conditioned space consisting of a material with high thermal capacitance or mass to provide heat to the unit at times of low or no heat collection.
- (X) "Ton" means heating and/or air conditioning capacity equivalent to 12,000 British thermal units (Btus).
- (Y) "USEP" means that Utah State Energy Program, a subdivision of the Utah Governor's Office of Energy Development, which is responsible for certifying tax credits specified under this rule.
- (Z) "Wind energy system" means a system of apparatus and equipment capable of intercepting and converting wind energy into mechanical or electrical energy and transferring these forms of energy by a separate apparatus to the point of use, sale, or storage.
- (AA) "Solar surface" is a building wall which faces no more than 30 degrees away from true south measured in a horizontal plane.

R362-2-4. Investment Tax Credit Certification Process.

- (A) The Utah State Energy Program (USEP), a subdivision of the OED, is responsible for certifying renewable energy systems tax credits.
- (B) Applications for credits are to be made on forms developed by USEP to gather information necessary to implement this rule.
- (C) USEP will evaluate each application according to the definitions and criteria established by statute and by this rule. If the information contained within an application is inadequate to determine eligibility according to this rule, USEP reserves the right to request additional information from the applicant. If an applicant is unable or unwilling to provide adequate information, USEP may deny the application and no tax credit will be certified.
- (D) If, after evaluating an application, USEP finds that a renewable energy system is eligible for a residential or commercial tax credit, USEP will complete a Utah State Tax Commission Form TC-40E that will serve as the taxpayer's documentation of eligibility for a tax credit. Only USEP may issue a completed TC-40E and a tax credit may not be claimed without such documentation.
- (E) Upon the completion of USEP's evaluation of an application, USEP will provide to the applicant one of the following, as appropriate:
- 1. A completed TC-40E allowing the full amount of tax credit requested;
- 2. A completed TC-40E allowing a portion of the tax credit requested accompanied by a written explanation for the denial of the full requested amount; or
- 3. A letter informing the applicant that the request for a tax credit has been denied and providing an explanation for the denial.
- (F) If USEP denies, in whole or in part, an application for a tax credit, the taxpayer applicant may, consistent with Section 63G-4-301 (Administrative Procedures Act), request that the decision be reviewed by the USEP manager. If, after review by the manager, the taxpayer desires a further appeal, he or she may request reconsideration of the decision by the director of OED, consistent with Section 63G-4-302.
- (G) All applications for credits under this rule shall provide the following information:
- The true legal name of the person or persons seeking a tax credit;
- 2. The tax identification number or numbers of persons seeking a tax credit;
- 3. The physical address, plat number, or global positioning satellite (GPS) coordinates of the property where the system is

installed. Location information must be sufficient to permit USEP staff to locate the site for on-site verification of the information in the application.

- 4. A general description of the system, including technologies employed (e.g. wind, solar thermal), intended use, energy production capacity, cost, date of completed installation, and other information specified in this rule.
- (H). Applications for residential and commercial tax credits must provide, either within an application form or provided as supporting documentation, each of the following:
- 1. Detailed diagrams of the system installed such that USEP staff, evaluating each proposal, can distinguish all major system components, how the system operates, and which components are eligible costs for computing the tax credit.
- 2. Photographs or copies of photographs that show major system components, how and where the system is installed, electrical interconnections with the power grid or other components of the electrical system at the taxpayer's home or business, and any other components of the renewable energy system that demonstrate that individual components are eligible costs under this rule. Photographs or copies of photographs should also demonstrate that a system is constructed in a safe and reliable manner.
- 3. Clear documentation of costs incurred for all components of the renewable energy system. Original or reproduced copies of all receipts or invoices should be provided and all invoices from contractors or equipment dealers must show that the invoiced amounts were paid by the taxpayer; otherwise, copies of canceled checks should be provided. Documentation should also include an itemized listing of all components of an installed system, including manufacturer and model numbers for major equipment components, the costs of all major components, and costs for labor, installation, and/or design. The sum of documentation provided should be sufficient to allow OED to identify all eligible and ineligible costs and to determine whether such costs are reasonable. Applications that do not include a clear itemization of system costs will not be considered.

R362-2-5. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, General.

- (A) Taxpayers applying for commercial investment tax credits are entitled to credits equal to 10% of the eligible costs of a renewable energy system up to a maximum of \$50,000 for a commercial unit. This limit applies to the lifetime of the commercial unit. Taxpayers may apply for multiple credits for additional renewable energy systems or for expansions to the capacity of existing systems for the same commercial unit, however, the total of all credits awarded may not exceed \$50,000 for any single commercial unit.
- (B) Taxpayers applying for residential investment tax credits are entitled to credits equal to 25% of the eligible costs of a renewable energy system up to a maximum of \$2,000 for a residential unit. This limit applies to the lifetime of the residential unit. Taxpayers may apply for multiple credits for additional renewable energy systems or for expansions to the capacity of existing systems for the same commercial unit, however, the total of all credits awarded may not exceed \$2,000.
- (C) Eligible costs for equipment are generally limited to system components that are both:
- 1. Necessary for the renewable energy system to produce energy and to deliver that energy for end- use; and
- 2. Are not system components that would be used for a conventional energy system fulfilling a similar role in delivering energy for end-use.
- (D) Eligible costs for equipment are limited to new components only. Any component of the renewable energy system that has previously been used for any purpose is ineligible.

- (E) Costs for equipment and installation of components on existing renewable energy systems are eligible only to the extent that the additional equipment increases the energy production capacity of the existing system. Costs for repair or replacement of any component of an existing system are ineligible for a tax credit.
- (F) All major energy-producing, energy conversion, and energy storage components of a renewable energy system shall be commercially available and purpose-built or manufactured for the intended application. Major components built from equipment not manufactured or built primarily for the purpose of generating renewable energy are not eligible unless it can be demonstrated that the component is necessary to the system and that no commercially available, purpose-built or manufactured equivalent is available.
- (G) Energy storage devices, and equipment for regulating energy storage, for renewable energy systems that produce electricity are not considered to be eligible costs when used at a residential or commercial unit that is either:
 - 1. Connected to the electrical grid; or
- 2. Within the service territory of a retail electricity provider and is less than one-quarter mile from an electrical distribution line.
- (H) Costs for the installation of a renewable energy system are eligible. Labor costs for installation are eligible so long as the taxpayer has paid a qualified installer or other contractor for services. Costs that may be claimed for the estimated value of a taxpayer's own labor are not considered to be eligible.
- (I) Equipment and installation costs for backup energy production devices and any other energy production equipment that does not make use of a renewable energy source are not considered to be eligible costs.
- (J) Costs for the design of a renewable energy system are generally eligible. However, in instances where design costs of a renewable energy system are included within the costs of a larger project (e.g. the design of a complete building), only the component of design costs specifically attributable to the design of the renewable energy system are eligible. Claims for design costs that do not separate eligible from ineligible costs will be deemed ineligible.
- (K) Any portion of the cost of an eligible renewable energy system that is offset by a cash rebate from a manufacturer, vendor, installer, utility, or any other type of rebate shall be not be considered an eligible cost for the purpose of calculating residential or commercial tax credits. For purposes of this rule, utility rebates in the form of credits against bills are considered to be cash rebates and should be deducted from eligible costs. However, the amount of any federal tax credit received for an eligible system will not be deducted from the eligible cost when calculating the amount of Utah tax credits.
- (L) USEP may, at its discretion, conduct an on-site inspection of a system applying for a commercial or residential tax credit. Applications for renewable energy systems that are found not to be in compliance with this rule or that are a variance with information provided in a tax credit application may be denied or the amount of the tax credit altered.
- (M) Some renewable energy technologies have additional requirements for eligible costs that may be found in technology-specific sections of this rule, below.

R362-2-6. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Active Solar Thermal.

- (A) All eligible costs for active solar thermal energy systems must conform with Section R362-2-5, above. Active solar thermal energy systems must also meet the requirements in this Section.
- (B) For purposes of determining eligible costs, an active solar thermal system ends at the interface between it and the

conventional heating system. Eligible costs for a solar thermal system are limited to components that would not normally be associated with a conventional hot water heating system. Eligible equipment costs include:

- 1. Solar collectors that transfer solar heat to water, a heat transfer fluid, or air;
 - 2. Thermal storage devices such as tanks or heat sinks;
- 3. Ductwork, piping, fans, pumps and controls that move heat directly from solar collectors to storage or to the interface between the active solar thermal system and a building's conventional heating and cooling systems.
- (C) Hot water storage tanks that have dual heat exchange capabilities allowing for the heating of water by both the active solar thermal system and by a nonrenewable energy source such as natural gas or electricity are eligible for tax credits. However only one half of the costs of purchasing and installing such tanks are eligible costs for the purposes of calculating a commercial or residential tax credit.
- (D) In order to be eligible for residential or commercial tax credits, a solar collector that heats water must be certified and rated by the Solar Rating Certification Corporation (SRCC) according to SRCC Standard 100, "Test Methods and Minimum Standards for Certifying Solar Collectors."
- (E) In order to be eligible for residential or commercial tax credits, an active solar thermal system installed after December 31, 2008 and that heats water must be certified and rated by the Solar Rating Certification Corporation (SRCC) according to SRCC Document OG-300, "Operating Guidelines and Minimum Standards for Certifying Solar Water Heating Systems." The applicant can demonstrate to USEP that the solar thermal system meets standards that are equivalent to those of the SRCC Document OG-300 by providing:
- 1. Detailed engineering design and performance data that show system performance, or
- Certification from other recognized National or European solar thermal testing labs.
- (F) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a solar thermal energy system has been sited and installed appropriately in order to realize the maximum feasible energy efficiency for a given location. Specifically, the system should conform with the following:
- 1. Solar collectors shall be free of shade (vent pipes, trees, chimneys, etc.) and positioned accordingly so as to optimize the average annual solar ration values (kWh/M²/day). Guidance for siting may be found at the National Renewable Energy Laboratory's (NREL) National Solar Radiation Database, which can be found at:

http://rredc.nrel.gov/solar/pubs/redbook/PDFs/UT.PDF;

- 2. Fixed, non-glazed collectors shall be:
- a. Oriented within 45 degrees of true south if the fixed pitch is greater than 30 degrees from horizontal, or
- b. Oriented within 90 degrees of true south if the fixed pitch is 30 degrees or less from horizontal.
 - 3. Fixed, glazed collectors shall be:
- a. 165 degrees and 225 degrees if the fixed pitch is greater than 30 degrees from horizontal, or
- b. 165 degrees and 270 degrees if the fixed pitch is 30 degrees or less from horizontal.
- (G) In order to be eligible for a residential or commercial tax credit, all solar hot water thermal systems shall be installed by one of the following licensed contractors:
 - 1. A Utah licensed plumbing contractor (S210 license);
- 2. A Utah licensed solar hot water contractor (S215 license); or
- 3. A licensed contractor who has obtained written approval by the Utah Department of Occupational Licensing for the installation of solar hot water systems.
 - (H) In order to be eligible for a residential or commercial

tax credit, an active solar thermal system must be certified for safety by one of the following:

- 1. A Utah licensed plumbing contractor (S210 license);
- 2. A Utah licensed solar hot water contractor (S215 license); or
- 3. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required on the tax credit application.

(I) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a flat panel active solar thermal system is considered to be no higher than \$0.15 per Btu/day of heat output for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility). The determination of heat output shall be based upon the ratings of the Solar Rating Certification Corporation (SRCC) "Summary of SRCC Certified Solar Collectors and Water Heating System Ratings" that is found at:

http://www.solar-rating.org/ratings/ratings.htm.

1. For a residential tax credit application with total prerebate eligible costs exceeding \$0.15 per Btu/day of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = ((\$0.15 x rated output capacity in Btu/day) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$0.15 per Btu/day, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = ((\$0.15 x rated output capacity in Btu/day) - rebates) x 0.10

- 3. If the cost of a flat panel active solar thermal system exceeds \$0.15 per Btu/day of capacity due to unusual and/or unavoidable circumstances (such as a multi-story structure retrofit or difficult pipe chase and interconnection conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by USEP. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of USEP and OED after investigation as to the validity of the waiver claim.
- (J) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of an evacuated tube active solar thermal system is considered to be no higher than \$0.27 per Btu/day of heat output for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility). The determination of heat output shall be based upon the ratings of the Solar Rating Certification Corporation (SRCC) "Summary of SRCC Certified Solar Collectors and Water Heating System Ratings" that is found at:

http://www.solar-rating.org/ratings/ratings.htm.

1. For a residential tax credit application with total prerebate eligible costs exceeding \$0.27 per Btu/day of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = ((\$0.27~x rated output capacity in Btu/day) - rebates) x 0.25

- 2. For a commercial tax credit application with total eligible costs exceeding \$0.27 per Btu/day, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:
- Tax credit granted = ((\$0.27~x rated output capacity in Btu/day) rebates) x 0.10
- 3. If the cost of a flat panel solar thermal system exceeds \$0.27 per Btu/day of capacity due to unusual and/or unavoidable circumstances (such as multi-story structure retrofit or difficult pipe chase and interconnection conditions) the taxpayer applicant may request that the reasonable cost

limitation above be waived by USEP. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of USEP and OED after investigation as to the validity of the waiver claim.

R362-2-7. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Solar PV (Photovoltaic).

- (A) All eligible costs for solar PV energy systems must conform with Section R362-2-5, above. Solar PV energy systems must also meet the requirements in this Section.
- (B) The costs of the following solar PV energy system components are eligible for residential or commercial tax credits:
 - 1. Solar PV module(s);
 - 2. Inverter;
 - 3. Motors and other elements of a tracking array;
 - 4. Mounting hardware;
- 5. Wiring and disconnects from modules to the inverter and from the inverter to the point of interconnection with the AC panel;
 - 6. Lightning arrestors.
- (C) The costs of additional components of solar PV energy systems are eligible for residential or commercial tax credits if the solar PV system is not grid connected and it provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider. If these conditions are met, the following components are also eligible:
 - 1. Batteries;
 - 2. Battery wiring;
 - 3. Charge controllers; and
 - 4. Battery temperature sensors.
- (D) The costs of solar PV modules are eligible for Utah tax credits only if they are:
- 1. Listed as eligible modules under the California Solar Initiative Program. A list of eligible modules may be found at the following site:

 http://www.gosolarcalifornia.org/equipment/index.html; or
- 2. The applicant can demonstrate to USEP that the modules meet standards that are equivalent to those of the California Solar Initiative Program as of calendar year 2007.
- (E) For grid connected solar PV systems, the cost of inverters are eligible for Utah tax credits only if:
- 1. They are also listed as eligible inverters under the California Solar Initiative Program. A list of eligible inverters may be found at the following site:
 - http://www.gosolarcalifornia.org/equipment/index.html; or
- 2. The applicant can demonstrate to USEP that the inverter meets standards that are equivalent to those of the California Solar Initiative Program as of calendar year 2007.
- (F) Solar PV modules must be must be certified for safety by a Nationally Recognized Testing Laboratory and be warranted by the manufacturer to produce at least 80% of rated output after twenty years of operation.
- (G) Inverters and charge controllers must be certified for safety by a Nationally Recognized Testing Laboratory and be warranted by the manufacturer against failure due to materials and workmanship for at least five years.
- (F) All solar PV energy systems must be designed and installed consistent with the National Electric Code Article 690.
- (G) Grid connected systems must meet all interconnection standards of the local electrical utility and must include with an application for a residential or commercial tax credit a copy of an interconnection or net metering agreement with the local electrical utility.
 - (H) The costs of system performance monitoring hardware

- and software are not eligible for residential or commercial tax credits. Grid connected backup power and monitoring systems such as Grid Point back-up power systems are not eligible for the tax credit with the exception that the inverter within such systems will be considered to carry a cost of \$2,500 for the purpose of calculating the tax credit.
- (I) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a solar PV energy system has been sited and installed appropriately. Specifically, the system should be:
- 1. Located such that the solar modules are completely free of shade from trees and other plants, buildings, chimneys, vent pipes, utility poles, and other objects that would reduce system output for at least two-thirds of the daylight hours at the site;
- 2. Positioned so as to optimize the average annual solar radiation values (kWh/M²/day). Guidance for siting may be found at the National Renewable Energy Laboratory's (NREL) National Solar Radiation Database (found at:
 - http://rredc.nrel.gov/solar/pubs/redbook/PDFs/UT.PDF);
- 3. Positioned such that the fixed solar array azimuth shall be oriented within:
- a. 165 degrees and 225 degrees if the fixed pitch is greater than 30 degrees from horizontal, or
- b. 165 degrees and 270 degrees if the fixed pitch is 30 degrees or less from horizontal.
- (J) In order to be eligible for a residential or commercial tax credit, a solar PV energy system must be certified for safety by one of the following:
 - 1. A Utah licensed electrical contractor (S200);
 - 2. A Utah licensed solar photovoltaic contractor (S202);
- 3. A licensed contractor who has obtained written approval by the Utah Department of Occupational Licensing for the installation of solar PV systems; or
- 4. A county or municipal building inspector licensed by the State of Utah. Proof of this certification may be required on the tax credit application.
- (K) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a solar PV energy system that is grid connected or that provides electricity to a building or structure that is one quarter mile or less from a power distribution line operated by a retail electric utility provider is considered to be no higher than \$10 per watt of rated output capacity for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).
- 1. For a residential tax credit application with total prerebate eligible costs exceeding \$10 per watt of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = ((\$10 x rated output capacity in watts) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$10 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = ((\$10 x rated output capacity in watts) - rebates) x 0.10

- (L) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of solar PV energy system that is not grid connected and that provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider is considered to be no higher than \$13 per watt of rated output capacity for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).
- 1. For a residential tax credit application with total prerebate eligible costs exceeding \$13 per watt of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = ((\$13 x rated output capacity in watts) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$13 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = ((\$13 x rated output capacity in watts) - rebates) x 0.10

R362-2-8. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Passive Solar.

- (A) An eligible passive solar system must be purposefully designed to use the structure of a building to collect, store, and distribute heating or cooling to a building and to do so at the appropriate season and time of day. (For example providing heat in winter or at night but not during summer days.) All passive solar systems should contain the following in order to be eligible:
 - 1. A means to allow the solar energy to enter the system;
 - 2. A heat-absorbing surface;
- 3. A thermal storage mass located within the conditioned space;
 - 4. A heat transferral system or mechanism and;
- 5. Protection from summer overheating and excessive winter heat-loss.

A passive system must receive an average of at least four hours of sunlight per day during the winter months of December through March and shall be primarily south facing.

- (B) Eligible costs for a passive solar system include the costs of the following:
 - 1. Trombe wall;
 - 2. Water wall;
 - 3. Thermosyphon;
- 4. Equipment or building shell components providing direct heat gain; and
- 5. Any item that can be demonstrated to be a component of a purpose-built system to collect, store and transport heat from the sun. The cost of ventilation, fans, movable insulation, louvers, overhangs and other shading devices shall be eligible provided that they are designed to be used as an integral part of the passive solar system and not part of the conventional building design.
- (C) The cost of a solarium is also considered to be eligible if it provides heat to the living space of the house in conjunction with a thermal storage mass and a forced or natural convection heat transportation design. Solariums must also be designed to prevent heat loss at night by means of insulation devices. They must also be designed so as to prevent summer heating that would increase the load on the building's cooling system.
- (D) The cost of windows and other glazing devices are eligible only when they are part of a passive solar system that uses thermal mass storage and a passive or active heat transportation system to provide heating throughout the building. In addition, windows and other glazing devices are eligible only when they are oriented within 30 degrees of true south and when they are installed with shading devices or overhangs that prevent direct sun from entering the building in the summer while allowing direct sun in the winter. Windows and other glazing devices must also carry solar heat gain coefficient (SHGC) ratings of 0.50 or higher in order to allow sufficient amounts of heat into the building, but must carry a Ufactor rating of 0.35 or less in order to provide sufficient insulation to the building.
- (E) The cost of heat transportation systems shall be eligible provided they are part of the passive solar design and will not be used as part of a conventional heating system.

(F) Costs for the thermal storage mass of a passive solar

system are eligible subject to the following:

1. For a non-loaded structure, 100% of the cost may be eligible;

- 2. For a loaded structure, 50% of the cost may be eligible;
- 3. Nothwithstanding (1) and (2) above, the cost of thermal storage mass may not exceed 30% of the total system cost against which a tax credit is calculated.
- (G) No tax credit shall be given if USEP concludes that the passive solar system does not supply heating when needed or allows more heat loss than gain in the winter months or overheating in the summer months.

R362-2-9. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Wind.

- (A) All eligible costs for wind energy systems must conform with Section R362-2-5, above. Wind energy systems must also meet the requirements in this Section.
- (B) Wind systems of 50 kilowatts generating capacity or less must include a wind turbine that is either:
- 1. Listed as eligible under the California Emerging Renewables Program in order to be eligible for a Utah commercial or residential tax credit. This list may be found at the following site: http://www.consumerenergycenter.org/cgibin/eligible smallwind.cgi; or

2. The applicant can demonstrate to USEP that the turbine meets standards that are equivalent to those of the California Emerging Renewables Program as of calendar year 2007.

- (C) Inverters and charge controllers must by certified for safety by a Nationally Recognized Testing Laboratory as meeting Underwriters Laboratory Standard 1741.
- (D) All wind energy systems must be designed and installed consistent with the National Electric Code. Grid connected systems must also meet all interconnection standards of the local electrical utility. Applications for residential or commercial tax credits for grid-connected systems must include a copy of an interconnection or net metering agreement with the local electrical utility.
- (E) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a wind energy system has been sited and installed appropriately. Specifically, the system should be:
- 1. Installed such that the central tower or pole upon which the turbine is mounted is located a distance at least equal to one and one-half times the height of the tower or pole from any:
 - a. Buildings;
 - b. Utility poles or overhead utility lines;
- c. Fences, roads, or other structures outside of the boundaries of the taxpayer's property.
- 2. Installed such that wind flowing to the system is not obstructed or airflow diminished or turbulence created by nearby:
 - a. Trees or other vegetation;
 - b. Buildings and other structures;
 - c. Hills, cliffs, or other topographical obstructions.

The photographs included with a wind energy system should include views of the system from all angles such that SEP can verify appropriate siting. SEP also reserves the right to conduct a site visit to verify appropriate siting.

- (F). Wind turbines mounted on buildings are not eligible unless it can be demonstrated by a professional engineer that the building's soundness and structural integrity are not compromised by the wind energy system and that the attachments of the system to the building are sufficient to withstand the most extreme local weather conditions.
- (G) Wind energy systems must include lightning protection to be eligible for residential or commercial tax credits.
- (H) Wind turbines must be covered by a manufacturer's warranty that guarantees against defects in design, material, and workmanship for at least five years after installation under normal use in a wind energy system.
 - (I) In order to be eligible for a residential or commercial

tax credit, a wind energy system must comply with all local building or zoning ordinances. Copies of any required permits should be included with the tax credit application.

- (J) In order to be eligible for a residential or commercial tax credit, a wind energy system must be certified for electrical safety by either:
 - 1. A professional electrician licensed by the State of Utah;
- 2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

- (K) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a wind energy system is considered to be no higher than \$8 per watt of rated output capacity for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).
- 1. For a residential tax credit application with total prerebate eligible costs exceeding \$5 per watt of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = $((\$8 \text{ x rated output capacity in watts}) - \text{rebates}) \times 0.25$

2. For a commercial tax credit application with total eligible costs exceeding \$8 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = $((\$8 \text{ x rated output capacity in watts}) - \text{rebates}) \times 0.10$

R362-2-10. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Geothermal Heat Pumps.

(A) All eligible costs for geothermal heat pump systems must conform with Section R362-2-5, above. Geothermal heat pump systems must also meet the requirements in this Section.

- (B) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system employed to heat and/or cool a building must derive at least 75% of the heating and cooling from the ground. Systems that provide more than an insignificant amount of energy to the building using combustion, cooling towers, air-source heat pumps, or any other mechanism not involving thermal ground coupling are not eligible.
- (C) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must conform with the design and practice guidelines described in the American Society of Heating, Refrigerating, and Air Conditioning Engineers' (ASHRAE) Applications Handbook, Chapter 32, or Air Conditioning Heating and Refrigeration Institute (AHRI) Certified Product Directory, Page 4-8.
- (D) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been designed by either:
 - 1. A professional engineer licensed in Utah;
- 2. A person designated as a "Certified GeoExchange Designer" by the Association of Energy Engineers; or
- 3. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers; or
- 4. For geothermal heat pump systems installed in a residential unit only, a person designated as an "Accredited Installer" by the International Ground Source Heat Pump Association (IGSHPA).
- 5. For direct geoexchange systems, a person designated as a certified designer by an AHRI accredited direct geoexchange systems manufacturer.

Proof of designer qualification may be required on the tax credit application.

(E) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been installed

by a plumber licensed (S210) or HVAC contractor (S350) in the State of Utah or by an installer certified by the International Ground Source Heat Pump Association (IGSHPA). Proof of installer qualification may be required on the tax credit application.

(F) In the case of a system using a vertical bore (either ground source or water source), drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. Wells drilled for a vertical bore must also obtain a provisional well approval from the Utah Division of Water Rights, Department of Natural Resources. Proof of driller qualifications and well approval may be required on the tax credit application.

(G) Costs incurred for the drilling of wells or excavating trenches are eligible if actually used within the final system for the exchange of heat with the ground. The cost of exploratory wells or trenches that are not used within the final system are not slightly.

not eligible.

- (H) Design costs for a geothermal heat pump system are eligible but only for the components of the system that would not normally be associated with a conventional heating and air conditioning system. Tax credit applications should separate design costs for the geothermal and conventional components of the system.
- (I) For closed loop systems (both ground source and water source), the heat exchanging pipe loop shall be warranted by the installer against leakage or breakage for not less than three years from the date of installation.
- (J) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a geothermal heat pump system is considered to be no higher than \$4,000 per ton of output capacity for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).
- 1. For a residential tax credit application with total prerebate eligible costs exceeding \$4,000 per ton of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = $((\$4,000 \text{ x rated output capacity in tons}) - \text{rebates}) \times 0.25$

2. For a commercial tax credit application with total eligible costs exceeding \$4,000 per ton, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = $((\$4,000 \text{ x rated output capacity in tons}) - \text{rebates}) \times 0.10$

3. If the cost of a geothermal heat pump system exceeds \$4,000 per ton of capacity due to unusual and/or unavoidable circumstances (such as poor soil or drilling conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by USEP. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of USEP and OED after investigation as to the validity of the waiver claim.

R362-2-11. Investment Tax Credit, Eligible Costs for Commercial Systems and Residential Systems, Geothermal Electricity.

- (A) All eligible costs for geothermal electric systems must conform with Section R362-2-5, above. Geothermal electric systems must also meet the requirements in this Section.
- (B) Eligible equipment costs for a geothermal electrical system are limited to components up to the point of interconnection with AC service when powering a building, or up to the point of interconnection with the electrical grid for system intended solely for the sale of power. Eligible equipment costs include production and injection wells and well casings, wellhead pumps, and turbine generators. In addition,

flash tanks (flash steam systems), heat exchangers (binary cycle systems), condensers, cooling towers, associated wiring and disconnects, and associated pumps are eligible.

- (C) Design costs for a geothermal electrical system are eligible but only for the cost of integrating the eligible components of the system that are listed in (B) above. Tax credit applications should separate design costs for the geothermal and conventional components of the system.
- (D) Costs for studies to characterize a geothermal resource are eligible so long as a final system using the geothermal resource is build and placed into operation.
- (E) Costs incurred for the drilling of wells are eligible if such wells are actually used (whether for withdrawal or reinjection of water) within the final geothermal electrical system. The cost of exploratory wells that are not used within the final system are not eligible.
- (F) In the case of a system that includes any well greater than 30 feet in depth, any drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. All such wells, whether water is returned to the ground through a recharge well or used or discharged at the surface, require an approved water right certification issued by the Utah state engineer in the Division of Water Rights, Department of Natural Resources. Proof of driller qualifications and well right may be required on the tax credit application.
- (G) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been designed by either:
 - 1. A professional engineer licensed in Utah; or
- 2. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers.

Proof of designer qualification may be required on the tax credit application.

- (H) In order to be eligible for a residential or commercial tax credit, a geothermal electricity system must be certified for safety by either:
 - 1. A professional electrician licensed by the State of Utah;
- 2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R362-2-12. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Direct Use Geothermal.

- (A) All eligible costs for direct use geothermal systems must conform with Section R362-2-5, above. Direct use geothermal systems must also meet the requirements in this Section.
- (B) Eligible costs for a direct use geothermal system are limited to components that would not normally be associated with a conventional hot water heating system. Eligible equipment costs include wells and well casings, wellhead pumps, and heat exchangers where well water is not directly used within a building or a manufacturer's heating system. Equipment and components beyond the wellhead or, where applicable, a heat exchanger, are not eligible. However, water treatment equipment that would permit the direct use of well water within a heating system, is considered eligible.
- (C) Design costs for a direct use geothermal system are eligible but only for the components of the system that would not normally be associated with a conventional hot water heating system. Tax credit applications should separate design costs for the geothermal and conventional components of the system.
- (D) Costs for studies to characterize a geothermal resource are eligible so long as a final system using the geothermal resource is build and placed into operation.
 - (E) Costs incurred for the drilling of wells are eligible if

such wells are actually used (whether for withdrawal or reinjection of water) within the final direct use geothermal system. The cost of exploratory wells that are not used within the final system are not eligible.

(F) In the case of a system that includes any well greater than 30 feet in depth, any drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. All such wells, whether water is returned to the ground through a recharge well or used or discharged at the surface, require an approved water right certification issued by the Utah state engineer in the Division of Water Rights, Department of Natural Resources. Proof of driller qualifications and well right may be required on the tax credit application.

R362-2-13. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Hydroenergy.

- (A) All eligible costs for hydroenergy systems must conform with Section R362-2-5, above. Hydroenergy systems must also meet the requirements in this Section.
- (B) Eligible equipment costs for a hydroenergy system are limited to components up to the point of interconnection with AC service when powering a building, or up to the point of interconnection with the electrical grid for systems intended solely for the sale of power. The costs of the following hydroenergy system components are eligible for residential or commercial tax credits:
 - 1. Turbine;
 - 2. Generator;
 - 3. Rectifier;
 - 4. Inverter;
 - 5. Penstocks:
 - 6. Penstock ventilation;
 - 7. Buck and boost transformer;
 - 8. Valves;
 - 9. Drains;
- 10. Diversion structures (with the exception of storage dams, fish facilities, and canals);
 - 11. Screened intake device; and
- 12. Wiring and disconnects from generator to the inverter and from the inverter to the point of interconnection with the AC panel.
- (C) The costs of additional components of hydroenergy systems are eligible for residential or commercial tax credits if the hydroenergy system is not grid connected and it provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider. If these conditions are met, the following components are also eligible:
 - 1. Batteries and necessary wiring and disconnects;
 - 2. Battery temperature sensors;
 - 3. Charge controller and necessary wiring and disconnects;
- 4. Electric load governor and necessary wiring and disconnects
- (D) In order to be eligible for a residential or commercial tax credit, a hydroenergy system must be certified for safety by either:
 - 1. A professional electrician licensed by the State of Utah;
- 2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R362-2-14. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Biomass.

- (A) All eligible costs for biomass systems must conform with Section R362-2-5, above. Biomass systems must also meet the requirements in this Section.
- (B) Eligible costs for biomass systems do not include the cost of equipment or labor for the growing or harvesting of

biomass materials, nor the storage of biomass materials at a location separate from the facility at which electricity or fuel will be produced. It also does not include the cost of transporting biomass materials to the facility where electricity or fuel will be produced.

- (C) For biomass systems that produce fuels, eligible system costs include the costs of equipment to receive, handle, collect, condition, store, process, and convert biomass materials into fuels at the processing site.
- (D) For biomass systems that that use biomass as the sole fuel for producing electricity, the following are eligible equipment costs:
- 1. Systems for collecting and transporting methane from a digester or landfill;
- 2. On-site systems or facilities for collecting biomass that will be used in a digester or boiler;
- 3. Equipment necessary to prepare biomass for use as a fuel (e.g. driers, chippers);
 - 4. Engines or turbines used to power generators;
 - 5. Generators:
 - 6. Inverters;
- 7. Wiring and disconnects from the generator to the inverter and from the inverter to the point of interconnection with the AC panel.
- (F) Grid connected systems must meet all interconnection standards of the local electrical utility and must include with an application for a residential or commercial tax credit a copy of an interconnection or net metering agreement with the local electrical utility.
- (G) In order to be eligible for residential or commercial tax credits, a biomass system that produces electricity must have been designed by either:
 - 1. A professional engineer licensed in Utah; or
- 2. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers.

Proof of designer qualification may be required on the tax credit application.

- (H) In order to be eligible for a residential or commercial tax credit, a biomass system must be certified for safety by either:
- A professional electrician licensed by the State of Utah;
 A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R362-2-15. Certification of Production Tax Credit Eligibility.

- (A) Businesses seeking to claim production tax credits must first apply to USEP for certification that a commercial energy system has been installed, is a viable energy production system, and meets all other relevant requirements of Sections 59-7-614 and 59-10-1106. Such certification shall be sought within the first six months of the system being placed into commercial service.
- (B) Eligibility for production tax credits is limited to commercial energy systems that are also any of the following:
 - 1. Biomass systems;
 - 2. Wind energy systems; or
 - 3. Geothermal electricity systems.

In addition, the name plate capacity of any system seeking production tax credits must be 660 kilowatts or greater. Electricity produced by the system must either be used by the business seeking a production tax credit or sold in order to be eligible for credits.

- (C) Businesses may request certification by providing the following to USEP:
- 1. A written request for certification of a commercial energy system for eligibility to receive a production tax credit;

- 2. Information about the company seeking certification, including legal name, type of legal entity, address, telephone number, and the name and telephone number of a contact person regarding the request;
- 3. A description of the commercial energy system including the type of facility, total nameplate capacity, the methods to be used to produce fuel or electricity, and a list of major fuel or electricity producing components. Systems generating electricity should also provide the number, manufacturer, and model number of generating turbines to be used:
- 4. Information on the location of the commercial energy system sufficient to permit site inspection by USEP staff. For wind farms this should include a map of the turbine layout. For geothermal systems this should include a map showing production and injection wells along with the location of the generating turbine or turbines;
- 5. Photographs of key and/or representative components of the commercial energy system;
- Projected annual electricity production in kilowatt hours for the commercial energy system once it has entered commercial service;
- 7. The date on which the commercial energy system entered or is expected to enter commercial service.
- (D) A business requesting certification for production tax credits must also include with its request information on ownership of the commercial energy system. If the business seeking tax credit certification leases the commercial energy system, it must provide with its request evidence that the lessor of the system has irrevocably elected not to claim production tax credits for the system.
- (E) If a business plans to claim production tax credits for electricity that is used and not sold, it must install a separate metering system to measure the electricity production of the commercial energy system. Such metering should be unidirectional, tamperproof, and should measure only the electricity production attributable to the commercial energy system. The meter must also measure net electricity from the system (i.e. gross electricity from the generator minus any electricity used to operate the system itself).
- (F) Upon receipt of a request for certification, USEP staff will assess whether the commercial energy system applying for production tax credit certification is a viable system and whether the system has been completely installed. USEP may request that a field inspection take place to verify information in the certification request and to ensure that the system conforms with the requirements of Section 59-7-614 and with this rule.
- (G) USEP will respond to a request for certification of eligibility for production tax credits within sixty days of receipt. However, if incomplete information is received or permission for field inspection has not been granted after sixty days, USEP will have an additional 30 days after receipt of complete information and/or field inspection to respond positively or negatively to a certification request.
- (H) Consistent with Title 63G, Chapter 4 (Administrative Procedures Act), upon its decision to grant or deny a certification request, USEP will inform the requesting company in writing of its decision. A copy of the written decision will also be provided to the Utah State Tax Commission in order to document the company's eligibility to claim production tax credits on future tax returns.

R362-2-16. Granting of Production Tax Credits.

(A) In order for a company to be granted production tax credits on a return filed under Chapter 59, Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act, USEP must validate the amount of tax credits the company may claim for each commercial energy system. In order to claims to be validated, the company must submit to

USEP information regarding the following:

- 1. The date that the commercial energy system first entered commercial service;
- 2. The beginning and ending dates of the company's tax year;
- 3. The number of kilowatt hours produced by the system that were sold or used during the company's tax year and that were also used or sold within the system's production tax credit window.

All such information will be provided on a standard claim form created by USEP.

- (B) For purposes of validating the number of kilowatt hours sold, the company should also submit to USEP invoices or other information that documents that number of kilowatt hours of electricity sold.
- (C) For purposes of validating the number of kilowatt hours produced and used, the company should submit monthly readings from the meter used to measure the net output of the commercial energy system. USEP will retain the right to site inspect the system and meter to validate that the readings provided are true and accurate.
- (D) Once it has received a production tax credit claim from a company, USEP will make a determination as to:
- 1. Whether the information provided conforms with this rule and is complete;
- 2. Whether the number of kilowatt hours claimed appears to be feasible and accurate;
 - 3. The number of kilowatts deemed to be valid;
- 4. The amount of tax credit that the company may claim on its corporate income tax return. This amount will equal 0.35 cents per each validated kilowatt hour of electricity used or sold during the company's tax year and within the systems production tax credit window.
- (E) A company claiming a production tax credit must submit the information specified above to USEP on or before the date the tax return on which the credit is claimed is required to be filed with the State Tax Commission. Once USEP has received complete information necessary to validate a production tax credit claim, it will provide to the company a completed validation form (to be created by either USEP or the Utah State Tax Commission) within thirty days. The form will specify the validated number of kilowatt hours that are eligible for credit and the amount (in dollars) of production tax credits that the company may claim for the commercial energy system for that tax year.
- (F) If USEP denies, in whole or in part, an application for a tax credit, the taxpayer applicant may, consistent with Section 63G-4-301 (Administrative Procedures Act), request that the decision be reviewed by the USEP manager. If, after review by the manager, the taxpayer desires a further appeal, he or she may request reconsideration of the decision by the director of OED, consistent with Section 63G-4-302.
- (G) Information submitted by an applicant under this section for validating a production tax credit claim will be classified as protected information under UC 63G-2-305)(1) and/or UC 63G-2-305(2) when the applicant provides USEP with a written claim of confidentiality and a concise statement supporting the claim, consistent with UC 63G-2-309(1)(a)(i). USEP shall provide the opportunity to make such a claim on the standard form referenced in subsection (A) above.

KEY: energy, renewable, tax credits, solar April 6, 2009 Notice of Continuation August 30, 2012

59-7-614 59-10-1014 59-10-1106

R362. Governor, Energy Development (Office of). R362-3. Energy Efficiency Fund. R362-3-1. Purpose.

This rule is for the purposes of

A. Conducting the responsibilities assigned to the Utah Governor's Energy Advisor (Advisor), the Utah Governor's Office of Energy Development (OED) and the State Energy Program (SEP) in managing the Energy Efficiency Fund and implementing the associated loan program established in Utah Code Section 53A-20c-102; and

B. Establishing requirements for eligibility for loans from the Energy Efficiency Fund, procedures for accepting, evaluating, and prioritizing applications for loans, and the terms and conditions for loans.

R362-3-2. Authority.

Pursuant to Utah Code Section 53A-20c-102, the OED Advisor shall make rules establishing criteria, procedures, priorities, and conditions for the award of loans from the Energy Efficiency Fund.

R362-3-3. Definitions.

- A. "Advisor" means the Governor's Energy Advisor, who oversees the Utah Governor's Office of Energy Development.
- B. "Energy" means, for the purposes of this rule, electricity, natural gas or other methane, fuel oil, coal, or propane that is used by a school district to operate a building's electrical devices, lighting, heating and cooling systems, and other equipment necessary for the building's operation.
- other equipment necessary for the building's operation.

 C. "Energy cost payback" means the period of time, generally expressed in years, that is needed for the energy cost savings of an energy efficiency project to equal the cost of the energy efficiency project. It does not include the time-value of money and is sometimes referred to as simple payback.
- D. "Energy cost savings" means the monetary value to a school district of the energy that is saved or is not consumed as a result of an energy efficiency project and is generally stated on an annual cost savings basis. This value is measured based upon the current cost per unit of the energy source or sources used by the building at which an energy efficiency project is to take place.
 - E. "Energy efficiency project" means
- 1. For existing buildings, a retrofit to improve energy efficiency; or
- 2. For new buildings, an enhancement to improve energy efficiency beyond the minimum required by the energy code.
 - 3. It does not mean
 - a. The repair of existing buildings or equipment;
- b. Projects that save money through the switching of fuels, energy sources, or vendors;
- Projects or measures intended to save money by changing the time of day or year at which energy is consumed (i.e. thermal energy storage or other peak demand reduction systems); or
- d. Upgrades to non-fixed appliances or equipment within a building such as computers, copiers, and other systems.
- F. "Energy savings" means the combined value, in British thermal units (Btu's), of all energy sources saved or not consumed as a result of an energy efficiency project. For purposes of this rule, the following conversion factors are used in calculating the total energy savings:
 - 1. Electricity One kilowatt hour = 10,495 Btu's.
 - 2. Natural gas or methane One therm = 100,000 Btu's.
 - 3. Natural gas or methane One cubic foot = 1,030 Btu's.
 - 4. Fuel oil One gallon = 138,690 Btu's.
 - 5. Coal One pound = 11,580 Btu's.
 - 6. Propane One gallon = 91,333 Btu's.
- G. "Fund" means the Energy Efficiency Fund established by Utah Code Section 53A-20c-102.

- H. "Utah Energy Code" means the most-recent edition of the International Energy Conservation Code currently in effect within the State of Utah and as incorporated and amended by Utah Rule 156.56 (Utah Uniform Building Standard Act Rules).
- I. "Quarter" means a three month period beginning with one of the following dates: January 1, April 1, July 1, and October 1.
- J. "SEP" means the State Energy Program, a subdivision of the Utah Governor's Office of Energy Development, which is required by Utah Code 53A-20c-102 to serve as staff to the revolving loan program associated with the Energy Efficiency Fund.
- K. "OED" means the Utah Governor's Office of Energy Development.

R362-3-4. Eligibility of Projects for Loans.

- A. Eligibility for loans from the Fund is limited to school districts within the state of Utah.
- B. Loans may be used only by school districts to fully or partially finance energy efficiency projects within buildings owned and operated by the school district.
- C. For energy efficiency projects involving renovation, upgrade, or improvement of existing buildings, the following project measures are eligible for loan financing from the Fund:
- 1. Building exterior weatherization, air sealing, or thermal efficiency:
 - 2. Increase or improvement in building insulation;
 - 3. Door, window, or skylight upgrades;
- 4. Lighting technology upgrades, or reduction of the number of fixtures;
- 5. Heating, ventilation, and air conditioning (HVAC) replacements or upgrades;
 - 6. Improvements to energy control systems;
- 7. Other energy efficiency projects that a school district can demonstrate will result in a significant reduction in the consumption of energy within a building.
- D. An energy efficiency project can be eligible as part of a new building construction if the following conditions are met:
- 1. The building measure or system for which a loan is sought must surpass the minimum prescriptive requirements of the Utah Energy Code; and
- 2. The completed building must exceed the minimum energy performance standards of the Utah Energy Code for its building type by at least 10%.
- E. There is no limit to the total number of loans a single school district may receive from the Fund, however, no school district may receive a loan that would cause the sum of its outstanding loan balances to exceed \$500,000.
- F. An energy efficiency project is eligible for a loan only if the total amount of funds awarded to the project are repaid in a term of more than two and less than twelve years.

R362-3-5. Eligible Costs.

- A. This section defines the specific costs incurred by an energy efficiency project that are eligible for financing from the Fund.
- B. The following direct costs of an energy efficiency project may be eligible for financing, subject to the remaining conditions of this section:
 - 1. Building materials;
 - 2. Doors, windows, and skylights;
- 3. Mechanical systems and components including HVAC and hot water:
- Electrical systems and components including lighting and energy management systems.
- 5. Labor necessary for the construction or installation of the energy efficiency project;
 - 6. Design and planning of the energy efficiency project;
 - 7. Energy audits that identify measures that are included

in the energy efficiency project;

- 8. Commissioning, inspections or certifications necessary for implementing the energy efficiency project.
- C. The following costs are not eligible for financing from the Fund:
- 1. The costs of a construction or renovation project that are not directly related to energy efficiency measures;
- 2. Costs incurred for the acquisition of financing for the project;
- 3. Costs for equipment or systems that reduce energy costs without also resulting in reductions in the use of energy.
- D. In cases for which the school district receives a financial incentive or rebate from a utility or other third party for undertaking some or all of the measures in an energy efficiency project, such incentives or rebates are to be deducted from the costs that are eligible for financing from the Fund. No loans made from the Fund may exceed the final cost incurred by the school district for the project after third party financing.
- E. For an energy efficiency project undertaken as part of a new building construction, only the incremental cost of the project is eligible. For purposes of this section, incremental cost means the portion of the overall cost of a measure or system that exceeds the cost that would have been incurred by meeting the minimum prescriptive requirements of the Utah Energy Code.
- F. For an energy efficiency project undertaken as part of the renovation of an existing building, building components or systems that are covered by the prescriptive requirements of the Utah Energy Code must exceed the minimum Utah Energy Code requirements in order for their costs to be eligible for a loan from the Fund.

R362-3-6. Loan Application Process.

- A. The Advisor shall receive and evaluate applications for loans from the Fund on a rolling basis as complete proposals are developed in conjunction with SEP staff.
- B. School districts interested in applying for a loan should first contact SEP. SEP staff will consult or meet with school district staff to make an initial assessment of the strength or weakness of a proposed project. SEP staff may also choose to conduct a site visit of the proposed project location prior to an application. SEP staff shall engage with school districts in a pre-application process evaluating potential project measures and preparing applications. Final applications shall be checked for completeness and eligibility by SEP staff prior to submission to the Advisor.
- C. Applications for loans will be made using forms developed by SEP. Application forms shall require that the following information be provided by the school district:
- 1. Identification of school district personnel responsible for financial authority and project management;
- 2. Name and location of the building or buildings where the energy efficiency project will take place;
- 3. A description of the energy efficiency project to be undertaken, including existing conditions, specific measures to be undertaken, the cost or incremental cost of each measure, and the equipment or building materials to be installed;
- 4. Projected or estimated energy savings that result from each measure undertaken as part of the project;
- 5. Projected or estimated energy cost savings from each measure undertaken as part of the project;
- 6. Appendices providing supplemental information detailing the extent of school district commitment to the project (i.e. special needs, prior investments, existing audit/design documents) or descriptions of any additional community or environmental benefits that may result from the project.
- D. The Advisor shall establish a Review Committee to provide in-depth evaluation of loan applications. The Committee must consist of at least the following:
 - 1. The SEP Manager;

- An SEP technical specialist chosen by the SEP Manager;
 - 3. The OED Associate Director;
- 4. One member of the Governor's Energy Task Force selected by the Advisor for a two year renewable term;
- 5. A representative of the Utah Office of Education approved by the Advisor for a two year renewable term.

Other members may be designated at the discretion of the Advisor.

- E. When SEP has deemed that an application is complete and that the proposed project complies with this rule, the application will be forwarded to the Review Committee for its evaluation.
- F. The Review Committee will review and discuss the merits of each application in light of all materials submitted by the school district and technical analysis undertaken by SEP staff. After discussion of each application, Review Committee members will evaluate each according to the following criteria and scoring:
- 1. The feasibility and practicality of the project (maximum 30 points);
- 2. The projected energy cost payback period of the project (maximum 20 points);
- 3. The energy savings and energy cost savings attributable to the project (maximum 30 points);
- 4. Any supplemental information contained in the appendices or available to the Review Committee through the Utah State Office of Education (i.e. school district finances and enrollment) (maximum 20 points).

A separate score sheet will be completed by each Review Committee member for each application under consideration.

- G. The Review Committee will compile the scores of each of its members for each application. Based upon the compiled scores of all members, the Committee will make recommendations to the Advisor for the funding of energy efficiency projects. For applications that receive an average score of less than 70 points, the Review Committee shall recommend that the Advisor not provide a loan from the Fund. Applications receiving an average score over 70 will normally be recommended for funding. However, if the current balance of the fund does not permit for the funding of all projects with an average score over 70, the Review Committee will recommend, beginning with the highest scoring application and working downward in score, those applications that may be funded given the current balance of the Fund.
- H. The Review Committee provides advice and recommendations to the Advisor. It is not vested with the authority to make decisions regarding the public's business in connection with the Fund. The Advisor is the decision making authority with regard to the award of loans from the Fund.
- I. Based upon the Review Committee's evaluations and recommendations, SEP will prepare a memorandum for the Advisor that will
- 1. Provide a brief description of each project reviewed by the Review Committee;
- 2. List estimates of energy savings, energy cost savings and simple paybacks.
- Specify projects recommended for funding and those not recommended for funding;
- 4. Provide a brief explanation of the Review Committee's rationale for each application that is not recommended for funding.
- J. The Advisor can approve or deny loans through electronic correspondence. if a majority of the quorum is in favor.
- K. When considering Loan applications, the Advisor may modify the dollar amount or project scope for approved projects if the Advisor determines that individual measures included in a project do not meet the requirements of this rule, are not cost

effective, or that funds could better be used for funding of other projects.

R362-3-7. Loan Terms.

- A. The maximum amount that may be approved by the Advisor for any single energy efficiency project is \$250,000. The minimum amount that may be approved is \$5,000.
- B. No school district may receive a loan that would cause the sum of its outstanding loan balances to exceed \$500,000.
- C. The final value of any loan may vary from the Advisor-approved amount according to the actual incursion of costs by the school district. In cases where costs have exceeded those presented in the initial application, a school district may request that the Advisor increase its loan award, subject to the limitations of subsections (A) and (B) above.
- D. After approval of a loan application by the Advisor, a school district has one year in which to complete the energy efficiency project. If at the end of one year a school district is unable to meet this time limitation, it may request an extension from the Advisor of no more than six additional months.
- E. Loan amounts from the Fund will be encumbered in an escrow account for periodic disbursement at the discretion of the school district-appointed project manager (designated in loan application form, see R362-3-6.C1), with invoices of the expenditures documented in each quarterly progress report, and the final 10% withheld pending a determination of substantial completion by SEP.
- F. Once a project has been completed, the school district shall provide to SEP documentation of actual costs incurred, such as invoices from contractors, as well as information on any third party financial incentives received. SEP will use this information to determine the actual cost of the project measures approved by the Advisor.
- G. The final loan amount will be equal to actual costs incurred for the project minus the value of any third party incentives received unless
- 1. This amount exceeds \$250,000, in which case the amount of the loan will be set at \$250,000; or
- 2. This amount exceeds the amount approved by the Advisor, in which case the loan amount will be set at the amount originally approved by the Advisor; or
- 3. This amount exceeds the amount approved by the Advisor and the Advisor increases the loan award at the request of the school district.
- H. No interest will be charged to school districts receiving loans for energy efficiency projects from the Fund.
- I. An administrative fee may be charged to loan recipients to defray the cost of servicing loan accounts.
- J. Loan repayment periods will be set to any term desired by the applicant between two and twelve years. The loan repayment period for a specific energy efficiency project begins with the first day of the next quarter after all of the loan funds have been disbursed.
- K. Loan repayments will be due at the beginning of each quarter.
- L. Quarterly loan repayment amounts will be calculated as follows:

(Total loan amount + (annual administrative fee x loan repayment period) / loan repayment period) / 4.

M. School districts that are approved for a loan award will enter into a contract with SEP that specifies all terms applying to the loan, including the terms specified in this rule and standard contract terms for contracts and loans currently in effect for the State of Utah.

R362-3-8. Reporting and Site Visits.

A. In the period between Advisor approval and project completion, the school district shall complete and provide to SEP a report at the beginning of each quarter. The report shall

include information on the school district's progress in completing the energy efficiency project, its most-current estimate for the time of project completion, what proportion of the loan award has been disbursed in the quarter and total to date, and any notable problems or changes in the project since Advisor approval such as construction delays or cost overruns.

B. If a school district fails to submit the quarterly reports described in subsection (A) above, the Advisor may freeze the remainder of the loan award escrow account.

- C. After loan funds have been completely disbursed, the school district shall complete and provide to SEP annual reports due at the beginning of the calendar quarter in which the anniversary of the loan repayment period began. This report shall include the following:
- 1. A description of the performance of the building and of the performance of the measures included in the energy efficiency project;
- 2. A description of any notable problems that have occurred with the building or the project;
- 3. A description of any notable changes to the building or to its operations that would cause a significant change in its energy consumption;
- 4. Documentation of building energy consumption and cost in the prior year.

Annual reports shall be provided for either the first four years after project completion or for each year of the repayment period, whichever is longer.

- D. If a school district fails to submit the annual reports described in subsection (C) above, the Advisor may bar the school district from eligibility for future loans from the Fund
- E. Approximately one year after project completion, SEP staff will conduct a site visit to the location of the energy efficiency project to verify project completion and assess the success of the project. Additional site visits may also be conducted by SEP staff during the repayment period. Loan recipients will assist SEP with such site visits, including providing access to all components of the energy efficiency project.

KEY: energy, efficiency, schools, loans April 6, 2009 Notice of Continuation August 30, 2012

53A-20c-102

R382. Health, Health Care Financing, Coverage and Reimbursement Policy.

R382-2. Electronic Personal Medical Records for the Children's Health Insurance Program.

R382-2-1. Introduction and Authority.

This rule is promulgated under authority granted in Section 26-40-103, as last amended by Laws of Utah 2012, Chapters 28 and 369.

R382-2-2. Purpose.

This rule establishes requirements for enrolling Children's Health Insurance Program (CHIP) beneficiaries in the electronic exchange of clinical health information unless the beneficiary or the beneficiary's parent or legal guardian opts the beneficiary out

R382-2-3. Definitions.

These definitions apply to Rule R382-2:

- (1) "Technical Specifications" means the technical specifications document published by the Utah Health Information Network (UHIN) that describes the variables and formats of the data to be submitted as well as submission directions and guidelines.
- (2) "Program Website" means the Department of Health, Department of Workforce Services, Division of Medicaid and Health Financing, and the CHIP websites.

R382-2-4. Enrollment Notification.

- (1) Prior to the enrollment process in the Clinical Health Information Exchange (cHIE), the Department will provide Notice of Intent to enroll CHIP beneficiaries in cHIE and the right of beneficiaries to opt out.
- (2) The Department will provide additional education regarding the beneficiary's right to opt out on the program websites.

R382-2-5. Enrollment Process.

- (1) The Department will provide cHIE an enrollment file of all CHIP beneficiaries.
- (2) The enrollment file will contain the succeeding month's CHIP enrollment.
- (3) cHIE will enroll CHIP beneficiaries on the first day of the succeeding month.
- (4) Submission procedures and guidelines, including required data elements, will be described in detail in the technical specifications published by UHIN and will be included in the Department's Operating Agreement with cHIE.
- (5) The Department will use a secure format to transfer any enrollment files to cHIE.

R382-2-6. Exemptions.

(1) An individual's previous consent status in cHIE will be honored by cHIE and will not be overridden by the CHIP enrollment file.

KEY: CHIP, cHIE September 1, 2012

26-1-5 26-40-103

Health, Disease Control and Prevention, Epidemiology.

R386-702. Communicable Disease Rule.

R386-702-1. Purpose Statement.

- (1) The Communicable Disease Rule is adopted under authority of Sections 26-1-30, 26-6-3, and 26-23b.
- (2) This rule outlines a multidisciplinary approach to communicable and infectious disease control and emphasizes reporting, surveillance, isolation, treatment and epidemiological investigation to identify and control preventable causes of infectious diseases. Reporting requirements and authorizations are specified for communicable and infectious diseases, outbreaks, and unusual occurrence of any disease. Each section has been adopted with the intent of reducing disease morbidity and mortality through the rapid implementation of established practices and procedures.
- The successes of medicine and public health (3) dramatically reduced the risk of epidemics and early loss of life due to infectious agents during the twentieth century. However, the recent emergence of new diseases, such as Human Immunodeficiency Virus, Hantavirus, and Severe Acute Respiratory Syndrome, and the rapid spread of diseases to the United States from other parts of the world, such as West Nile virus, made possible by advances in transportation, trade, food production, and other factors highlight the continuing threat to health from infectious diseases. Continual attention to these threats and cooperation among all health care providers, government agencies and other entities that are partners in protecting the public's health are crucial to maintain and improve the health of the citizens of Utah.

R386-702-2. Definitions.

- (1) Terms in this rule are defined in Section 26-6-2 and 26-23b-102, except that for purposes of this rule, "Department" means the Utah Department of Health.
- (2) In addition:(a) "Outbreak" means an epidemic limited to a localized increase in incidence of disease.
- (b) "Case" means a person identified as having a disease, health disorder, or condition that is reportable under this rule or that is otherwise under public health investigation.
- (c) "Suspect" case means a person who a reporting entity, local health department, or Department believes might be a case, but for whom it has not been established that the criteria necessary to become a case have been met.

R386-702-3. Reportable Diseases, Emergency Illnesses, and **Health Conditions.**

- (1) The Utah Department of Health declares the following conditions to be of concern to the public health and reportable as required or authorized by Section 26-6-6 and Title 26, Chapter 23b of the Utah Health Code.
 - (a) Acquired Immunodeficiency Syndrome
 - (b) Adverse event resulting after smallpox vaccination
 - (c) Amebiasis
 - (d) Anthrax
- (e) Arbovirus infection, including Saint Louis encephalitis and West Nile virus infection
 - (f) Babesiosis

 - (g) Botulism (h) Brucellosis
 - (i) Campylobacteriosis
 - (j) Chancroid
 - (k) Chickenpox
 - (1) Chlamydia trachomatis infection
 - (m) Cholera
 - (n) Coccidioidomycosis
 - (o) Colorado tick fever
 - (p) Creutzfeldt-Jakob disease and other transmissible

- human spongiform encephalopathies
 - (q) Cryptosporidiosis
 - (r) Cyclospora infection
 - (s) Dengue fever
 - (t) Diphtheria
 - (u) Echinococcosis
- (v) Ehrlichiosis, human granulocytic, human monocytic, or unspecified
 - (w) Encephalitis
- (x) Shiga toxin-producing Escherichia coli (STEC) infection
 - (y) Giardiasis
- (z) Gonorrhea: sexually transmitted and ophthalmia neonatorum
 - (aa) Haemophilus influenzae, invasive disease
 - (bb) Hansen Disease (Leprosy)
 - (cc) Hantavirus pulmonary syndrome
 - (dd) Hemolytic Uremic Syndrome, postdiarrheal
 - (ee) Hepatitis A
 - (ff) Hepatitis B, cases and carriers
 - (gg) Hepatitis C, acute and chronic infection
 - (hh) Hepatitis, other viral
- (ii)(1)Human Immunodeficiency Virus Infection. Reporting requirements are listed in R388-803.
 - (ii)(2) Pregnancy in a HIV case
 - (jj) Influenza-associated hospitalization
- (kk) Influenza-associated death, in a person less than 18 years of age
 - (ll) Legionellosis
 - (mm) Listeriosis
 - (nn) Lyme Disease
 - (oo) Malaria
 - (pp) Measles
- (qq) Meningitis (aseptic, bacterial, fungal, parasitic, protozoan, and viral)
 - (rr) Meningococcal Disease
 - (ss) Mumps
- (tt) Norovirus, formerly called Norwalk-like virus, infection
 - (uu) Pertussis
 - (vv) Plague
 - (ww) Poliomyelitis, paralytic
 - (xx) Poliovirus infection, nonparalytic
 - (yy) Psittacosis
 - (zz) Q Fever
 - (aaa) Rabies, human and animal
 - (bbb) Relapsing fever, tick-borne and louse-borne
 - (ccc) Rubella
 - (ddd) Rubella, congenital syndrome
 - (eee) Salmonellosis
 - (fff) Severe Acute Respiratory Syndrome (SARS)
 - (ggg) Shigellosis
 - (hhh) Smallpox
- Spotted fever rickettsioses (including Rocky (iii) Mountain Spotted Fever)
- (jjj) Staphylococcus aureus with resistance or intermediate resistance to vancomycin isolated from any site
- (kkk) Streptococcal disease, invasive, including Streptococcus pneumoniae and Groups A, B, C, and G streptococci isolated from a normally sterile site
 - (III) Syphilis, all stages and congenital
 - (mmm) Tetanus
- (nnn) Toxic-Shock Syndrome, staphyloccal or streptococcal
 - (000) Trichinosis
- (ppp) Tuberculosis. Special Measures for the Control of Tuberculosis are listed in R388-804.
 - (qqq) Tularemia
 - (rrr) Typhoid, cases and carriers

- (sss) Vibriosis
- (ttt) Viral hemorrhagic fever
- (uuu) Yellow fever
- (vvv) Any unusual occurrence of infectious or communicable disease or any unusual or increased occurrence of any illness that may indicate a Bioterrorism event or public health hazard, including any single case or multiple cases of a newly recognized, emergent or re-emergent disease or disease-producing agent, including newly identified multi-drug resistant bacteria or a novel influenza strain such as a pandemic influenza strain.
- (www) Any outbreak, epidemic, or unusual or increased occurrence of any illness that may indicate an outbreak or epidemic. This includes suspected or confirmed outbreaks of foodborne disease, waterborne disease, disease caused by antimicrobial resistant organisms, any infection that may indicate a bioterrorism event, or of any infection that may indicate a public health hazard.
- (2) In addition to the reportable conditions set forth in R386-702-3(1) the Department declares the following reportable emergency illnesses or health conditions to be of concern to the public health and reporting is authorized by Title 26, Chapter 23b, Utah Code, unless made mandatory by the declaration of a public health emergency:
- (a) respiratory illness (including upper or lower respiratory tract infections, difficulty breathing and Adult Respiratory Distress Syndrome);
- (b) gastrointestinal illness (including vomiting, diarrhea, abdominal pain, or any other gastrointestinal distress);
 - (c) influenza-like constitutional symptoms and signs;
- (d) neurologic symptoms or signs indicating the possibility of meningitis, encephalitis, or unexplained acute encephalopathy or delirium;
 - (e) rash illness;
 - (f) hemorrhagic illness;
 - (g) botulism-like syndrome;
 - (h) lymphadenitis;
 - (i) sepsis or unexplained shock;
 - (j) febrile illness (illness with fever, chills or rigors);
 - (k) nontraumatic coma or sudden death; and
- (l) other criteria specified by the Department as indicative of disease outbreaks or injurious exposures of uncertain origin.

R386-702-4. Reporting.

- (1) Each reporting entity shall report each confirmed case and any case who the reporting entity believes in its professional judgment is likely to harbor an illness, infection, or condition reportable under R386-702-3(1), and each outbreak, epidemic, or unusual occurrence described in R386-702-3(1)(vvv) or (www) to the local health department or to the Bureau of Epidemiology, Utah Department of Health. Unless otherwise specified, the report of these diseases to the local health department or to the Bureau of Epidemiology, Utah Department of Health shall provide the following information: name, age, sex, address, date of onset, and all other information as prescribed by the Department. A standard report form has been adopted and is supplied to physicians and other reporting entities by the Department. Upon receipt of a report, the local health department shall promptly forward a written or electronic copy of the report to the Bureau of Epidemiology, Utah Department of Health.
- (2) Where immediate reporting is required, the reporting entity shall report as soon as possible, but not later than 24 hours after identification. Immediate reporting shall be made by telephone to the local health department or to the Bureau of Epidemiology, Utah Department of Health at 801-538-6191 or 888-EPI-UTAH (888-374-8824). All diseases not required to be reported immediately or by number of cases shall be reported within three working days from the time of identification.

Reporting entities shall send reports to the local health department by phone, secured fax, secured email, or mail; or the Bureau of Epidemiology by phone (801-538-6191), secured fax (801-538-9923), secured email (please contact the Bureau of Epidemiology at 801-538-6191 for information on this option), or by mail (288 North 1460 West, P. O. Box 142104, Salt Lake City, Utah 84114-2104). Laboratories may report case information electronically in a manner approved of by the Department if the laboratory has capacity to do so (please contact the Bureau of Epidemiology at 801-538-6191 for information on this option).

- (3) Entities Required to Report Communicable Diseases: Title 26, Chapter 6, Section 6 Utah Code lists those individuals and facilities required to report diseases known or suspected of being communicable.
- (a) Physicians, hospitals, health care facilities, home health agencies, health maintenance organizations, and other health care providers shall report details regarding each case.
- (b) Schools, child care centers, and citizens shall provide any relevant information.
- (c) Laboratories and other testing sites shall report laboratory evidence confirming any of the reportable diseases. Laboratories and other testing sites shall also report any test results that provide presumptive evidence of infection such as positive tests for HIV, syphilis, measles, and viral hepatitis.
- (d) Pharmacists shall report unusual prescriptions or patterns of prescribing as specified in section 26-23b-105.
- (4) Immediately Reportable Conditions: Cases and suspect cases of anthrax, botulism (except for infant botulism), cholera, diphtheria, Haemophilus influenzae (invasive disease), hepatitis A, measles, meningococcal disease, plague, poliomyelitis, rabies, rubella, Severe Acute Respiratory Syndrome (SARS), smallpox, Staphylococcus aureus with resistance (VRSA) or intermediate resistance (VISA) to vancomycin isolated from any site, tuberculosis, tularemia, typhoid, viral hemorrhagic fever, yellow fever, and any condition described in R386-702-3(1)(vvv) or (www) are to be made immediately as provided in R386-702-4(2).
- (5) Full reporting of all relevant patient information related to laboratory-confirmed influenza is authorized and may be required by local or state health department personnel for purposes of public health investigation of a documented threat to public health.
- (6) Reports of emergency illnesses or health conditions under R386-702-3(2) shall be made as soon as practicable using a process and schedule approved by the Department. Full reporting of all relevant patient information is authorized. The report shall include at least, if known:
 - (a) name of the facility;
 - (b) a patient identifier;
 - (c) date of visit;
 - (d) time of visit;
 - (e) patient's age;(f) patient's sex;
 - (g) zip code of patient's residence;
 - (h) the reportable condition suspected; and
 - (i) whether the patient was admitted to the hospital.
- (7) An entity reporting emergency illnesses or health conditions under R386-702-3(2) is authorized to report on other encounters during the same time period that do not meet definition for a reportable emergency illness or health condition. Submission of an isolate does not replace the requirement to report the case also to the local health department or Bureau of Epidemiology, Utah Department of Health. The report shall include the following information for each such encounter:
 - (a) facility name;
 - (b) date of visit;
 - (c) time of visit;
 - (d) patient's age;

- (e) patient's sex; and
- (f) patient's zip code for patient's residence.
- (8) Mandatory Submission of Isolates: Laboratories shall submit all isolates of the following organisms to the Utah Department of Health, public health laboratory. Laboratories should alert the Unified State Laboratories: Public Health (USLPH), via telephone during business hours (801) 965-2560 or after hours (888) EPI-UTAH, on all bioterrorism (BT) agents that are being submitted. BT agents are marked below (as (BT)) with other organisms mandated for submission:
 - (a) Bacillus anthracis (BT);
 - (b) Brucella species (BT);
 - (c) Campylobacter species;
 - (d) Clostridium botulinum (BT);
 - (e) Corynebacterium diphtheriae;
- (f) Shiga toxin-producing Escherichia coli (STEC) (including enrichment and/or MacConkey broths that tested positive by enzyme immunoassay for Shiga toxin);
 - (g) Francisella tularensis (BT);
 - (h) Haemophilus influenzae, from normally sterile sites;
 - (i) Influenza (hospitalized cases only), types A and B;
 - (j) Legionella species;
 - (k) Listeria monocytogenes;
 - (1) Mycobacterium tuberculosis complex;
 - (m) Neisseria gonorrhoeae;
 - (n) Neisseria meningitidis, from normally sterile sites;
 - (o) Salmonella species;
 - (p) Shigella species;
- (q) Staphylococcus aureus with resistance or intermediate resistance to vancomycin isolated from any site;
 - (r) Vibrio species;
 - (s) Yersinia species (Yersinia pestis, BT); and
- (t) any organism implicated in an outbreak when instructed by authorized local or state health department personnel.
- (9) Epidemiological Review: The Department or local health department may conduct an investigation, including review of the hospital and health care facility medical records and contacting the individual patient to protect the public's health.
- (10) Confidentiality of Reports: All reports required by this rule are confidential and are not open to public inspection. Nothing in this rule, however, precludes the discussion of case information with the attending physician or public health workers. All information collected pursuant to this rule may not be released or made public, except as provided by Section 26-6-27. Penalties for violation of confidentiality are prescribed in Section 26-6-29.
- (11) If public health conducts a retrospective surveillance project, such as to assess completeness of case finding or assess another measure of data quality, the department may, at its discretion, waive any penalties for participating facilities, medical providers, laboratories, or other reporters if cases are found that were not originally reported for whatever reason.

R386-702-5. General Measures for the Control of Communicable Diseases.

- (1) The local health department shall maintain all reportable disease records as needed to enforce Chapter 6 of the Health Code and this rule, or as requested by the Utah Department of Health.
 - (2) General Control Measures for Reportable Diseases.
- (a) The local health department shall, when an unusual or rare disease occurs in any part of the state or when any disease becomes so prevalent as to endanger the state as a whole, contact the Bureau of Epidemiology, Utah Department of Health for assistance, and shall cooperate with the representatives of the Utah Department of Health.
- (b) The local health department shall investigate and control the causes of epidemic, infectious, communicable, and

- other disease affecting the public health. The local health department shall also provide for the detection, reporting, prevention, and control of communicable, infectious, and acute diseases that are dangerous or important or that may affect the public health. The local health department may require physical examination and measures to be performed as necessary to protect the health of others.
- (c) If, in the opinion of the local health officer it is necessary or advisable to protect the public's health that any person shall be kept from contact with the public, the local health officer shall establish, maintain and enforce involuntary treatment, isolation and quarantine as provided by Section 26-64. Control measures shall be specific to the known or suspected disease agent. Guidance is available from the Bureau of Epidemiology, Utah Department of Health or official reference listed in R386-702-12.
 - (3) Prevention of the Spread of Disease From a Case.

The local health department shall take action and measures as may be necessary within the provisions of Section 26-6-4; Title 26, Chapter 6b; and this rule, to prevent the spread of any communicable disease, infectious agent, or any other condition which poses a public health hazard. Action shall be initiated upon discovery of a case or upon receipt of notification or report of any disease.

- (4) Prevention of the Spread of Disease or Other Public Health Hazard.
- A case, suspected case, carrier, contact, other person, or entity (e.g. facility, hotel, organization) shall, upon request of a public health authority, promptly cooperate during:
- (a) An investigation of the circumstances or cause of a case, suspected case, outbreak, or suspected outbreak.
- (b) The carrying out of measures for prevention, suppression, and control of a public health hazard, including, but not limited to, procedures of restriction, isolation, and quarantine.
 - (5) Public Food Handlers.

A person known to be infected with a communicable disease that can be transmitted by food or drink products, or who is suspected of being infected with such a disease, may not engage in the commercial handling of food or drink products, or be employed on any premises handling those types of products, unless those products are packaged off-site and remain in a closed container until purchased for consumption, until the person is determined by the local health department to be free of communicable disease, or incapable of transmitting the infection.

(6) Communicable Diseases in Places Where Food or Drink Products are Handled or Processed.

If a case, carrier, or suspected case of a disease that can be conveyed by food or drink products is found at any place where food or drink products are handled or offered for sale, or if a disease is found or suspected to have been transmitted by these food or drink products, the local health department may immediately prohibit the sale, or removal of drink and all other food products from the premises. Sale or distribution of food or drink products from the premises may be resumed when measures have been taken to eliminate the threat to health from the product and its processing as prescribed by R392-100.

(7) Request for State Assistance.

If a local health department finds it is not able to completely comply with this rule, the local health officer or his representative shall request the assistance of the Utah Department of Health. In such circumstances, the local health department shall provide all required information to the Bureau of Epidemiology. If the local health officer fails to comply with the provisions of this rule, the Utah Department of Health shall take action necessary to enforce this rule.

(8) Approved Laboratories.

Laboratory analyses that are necessary to identify the

causative agents of reportable diseases or to determine adequacy of treatment of patients with a disease shall be ordered by the physician or other health care provider to be performed in or referred to a laboratory holding a valid certificate under the Clinical Laboratory Improvement Amendments of 1988.

R386-702-6. Special Measures for Control of Rabies.

(1) Rationale of Treatment.

A physician must evaluate individually each exposure to possible rabies infection. The physician shall also consult with local or state public health officials if questions arise about the need for rabies prophylaxis.

(2) Management of Biting Animals.

- (a) A healthy dog, cat, or ferret that bites a person shall be confined and observed at least daily for ten days from the date of bite as specified by local animal control ordinances. It is recommended that rabies vaccine not be administered during the observation period. Such animals shall be evaluated by a veterinarian at the first sign of illness during confinement. A veterinarian or animal control officer shall immediately report any illness in the animal to the local health department. If signs suggestive of rabies develop, a veterinarian or animal control officer shall direct that the animal be euthanized, its head removed, and the head shipped under refrigeration, not frozen, for examination of the brain by a laboratory approved by the Utah Department of Health.
- (b) If the dog, cat, or ferret shows no signs of rabies or illness during the ten day period, the veterinarian or animal control officer shall direct that the unvaccinated animal be vaccinated against rabies at the owner's expense before release to the owner. If a veterinarian is not available, the animal may be released, but the owner shall have the animal vaccinated within 72 hours of release. If the dog, cat, or ferret was appropriately vaccinated against rabies before the incident, the animal may be released from confinement after the 10-day observation period with no further restrictions.
- (c) Any stray or unwanted dog, cat, or ferret that bites a person may be euthanized immediately by a veterinarian or animal control officer, if permitted by local ordinance, and the head submitted, as described in R386-702-6(2)(a), for rabies examination. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.
- (d) Wild animals include raccoons, skunks, coyotes, foxes, bats, the offspring of wild animals crossbred to domestic dogs and cats, and any carnivorous animal other than a domestic dog, cat, or ferret.
- (e) Signs of rabies in wild animals cannot be interpreted reliably. If a wild animal bites or scratches a person, the person or attending medical personnel shall notify an animal control or law enforcement officer. A veterinarian, animal control officer or representative of the Division of Wildlife Resources shall kill the animal at once, without unnecessary damage to the head, and submit the brain, as described in R386-702-6(2)(a), for examination for evidence of rabies. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.
- (f) Rabbits, opossums, squirrels, chipmunks, rats, and mice are rarely infected and their bites rarely, if ever, call for rabies prophylaxis or testing. Unusual exposures to any animal should be reported to the local health department or the Bureau of Epidemiology, Utah Department of Health.
- (g) When rare, valuable, captive wild animals maintained in zoological parks approved by the United States Department of Agriculture or research institutions, as defined by Section 26-26-1, bite or scratch a human, the Bureau of Epidemiology, Utah Department of Health shall be notified. The provisions of subsection R386-702-6(2)(e) may be waived by the Bureau of

Epidemiology, Utah Department of Health if zoological park operators or research institution managers can demonstrate that the following rabies control measures are established:

 Employees who work with the animal have received preexposure rabies immunization.

(ii) The person bitten by the animal voluntarily agrees to accept postexposure rabies immunization provided by the zoological park or research facility.

(iii) The director of the zoological park or research facility shall direct that the biting animal be held in complete quarantine for a minimum of 180 days. Quarantine requires that the animal be prohibited from direct contact with other animals or humans.

(h) Any animal bitten or scratched by a wild, carnivorous animal or a bat that is not available for testing shall be regarded as having been exposed to rabies.

- (i) For maximum protection of the public health, unvaccinated dogs, cats, and ferrets bitten or scratched by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer. If the owner is unwilling to have the animal euthanized, the local health officer shall order that the animal be held in strict isolation in a municipal or county animal shelter or a veterinary medical facility approved by the local health department, at the owner's expense, for at least six months and vaccinated one month before being released. If any illness suggestive of rabies develops in the animal, the veterinarian or animal control officer shall immediately report the illness to the local health department and the veterinarian or animal control officer shall direct that the animal be euthanized and the head shall be handled as described in subsection R386-702-6(2)(a).
- (j) Dogs, cats, and ferrets that are currently vaccinated and are bitten by rabid animals, shall be revaccinated immediately by a veterinarian and confined and observed by the animal's owner for 45 days. If any illness suggestive of rabies develops in the animal, the owner shall report immediately to the local health department and the animal shall be euthanized by a veterinarian or animal control officer and the head shall be handled as described in subsection R386-702-6(2)(a).
- (k) Livestock exposed to a rabid animal and currently vaccinated with a vaccine approved by the United States Department of Agriculture for that species shall be revaccinated immediately by a veterinarian and observed by the owner for 45 days. Unvaccinated livestock shall be slaughtered immediately. If the owner is unwilling to have the animal slaughtered, the animal shall be kept under close observation by the owner for six months.
- (l) Unvaccinated animals other than dogs, cats, ferrets, and livestock bitten by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer.
 - (3) Measures for Standardized Rabies Control Practices.
- (a) Humans requiring either pre- or post-exposure rabies prophylaxis shall be treated in accordance with the recommendations of the U.S. Public Health Service Immunization Practices Advisory Committee, as adopted and incorporated by reference in R386-702-11(2). A copy of the recommendations shall be made available to licensed medical personnel, upon request to the Bureau of Epidemiology, Utah Department of Health.
- (b) A physician or other health care provider that administers rabies vaccine shall immediately report all serious systemic neuroparalytic or anaphylactic reactions to rabies vaccine to the Bureau of Epidemiology, Utah Department of Health, using the process described in R386-702-4.
- (c) The Compendium of Animal Rabies Prevention and Control, as adopted and incorporated by reference in R386-702-11(3), is the reference document for animal vaccine use.
- (d) A county, city, town, or other political subdivision that requires licensure of animals shall also require rabies

vaccination as a prerequisite to obtaining a license.

- (e) Animal rabies vaccinations are valid only if performed by or under the direction of a licensed veterinarian in accordance with the Compendium of Animal Rabies Prevention and Control.
- (f) All agencies and veterinarians administering vaccine shall document each vaccination on the National Association of State Public Health Veterinarians (NASPHV) form number 51, Rabies Vaccination Certificate, which can be obtained from vaccine manufacturers. The agency or veterinarian shall provide a copy of the report to the animal's owner. Computer-generated forms containing the same information are also acceptable.
- (g) Animal rabies vaccines may be sold or otherwise provided only to licensed veterinarians or veterinary biologic supply firms. Animal rabies vaccine may be purchased by the Utah Department of Health and the Utah Department of Agriculture.
 - (4) Measures to Prevent or Control Rabies Outbreaks.
- (a) The most important single factor in preventing human rabies is the maintenance of high levels of immunity in the pet dog, cat, and ferret populations through vaccination.
- (i) All dogs, cats, and ferrets in Utah should be immunized against rabies by a licensed veterinarian; and
- (ii) Local governments should establish effective programs to ensure vaccination of all dogs, cats, and ferrets and to remove strays and unwanted animals.
- (b) If the Utah Department of Health determines that a rabies outbreak is present in an area of the state, the Utah Department of Health may require that:
- (i) all dogs, cats, and ferrets in that area and adjacent areas be vaccinated or revaccinated against rabies as appropriate for each animal's age;
- (ii) any such animal be kept under the control of its owner at all times until the Utah Department of Health declares the outbreak to be resolved;
- (iii) an owner who does not have an animal vaccinated or revaccinated surrender the animal for confinement and possible destruction; and
- (iv) such animals found at-large be confined and possibly destroyed.

R386-702-7. Special Measures for Control of Typhoid.

- (1) Because typhoid control measures depend largely on sanitary precautions and other health measures designed to protect the public, the local health department shall investigate each case of typhoid and strictly manage the infected individual according to the following outline:
- (2) Cases: Standard precautions are required during hospitalization. Use contact precautions for diapered or incontinent children under 6 years of age for the duration of illness. Hospital care is desirable during acute illness. Release of the patient from supervision by the local health department shall be based on three or more negative cultures of feces (and of urine in patients with schistosomiasis) taken at least 24 hours apart. Cultures must have been taken at least 48 hours after antibiotic therapy has ended and not earlier than one month after onset of illness as specified in R386-702-7(6). If any of these cultures is positive, repeat cultures at intervals of one month during the 12-month period following onset until at least three consecutive negative cultures are obtained as specified in R386-702-7(6). The patient shall be restricted from food handling, child care, and from providing patient care during the period of supervision by the local health department.
- (3) Contacts: Administration of typhoid vaccine is recommended for all household members of known typhoid carriers. Household and close contacts of a carrier shall be restricted from food handling, child care, and patient care until two consecutive negative stool specimens, taken at least 24 hours apart, are submitted, or when approval is granted by the

local health officer according to local jurisdiction.

- (4) Carriers: If a laboratory or physician identifies a carrier of typhoid, the attending physician shall immediately report the details of the case by telephone to the local health department or the Bureau of Epidemiology, Utah Department of Health using the process described in R386-702-4. Each infected individual shall submit to the supervision of the local health department. Carriers are prohibited from food handling, child care, and patient care until released in accordance with R386-702-7(4)(a) or R386-702-7(4)(b). All reports and orders of supervision shall be kept confidential and may be released only as allowed by Subsection 26-6-27(2)(c).
- (a) Convalescent Carriers: Any person who harbors typhoid bacilli for three but less than 12 months after onset is defined as a convalescent carrier. Release from occupational and food handling restrictions may be granted at any time from three to 12 months after onset, as specified in R386-702-7(6).
- (b) Chronic Carriers: Any person who continues to excrete typhoid bacilli for more than 12 months after onset of typhoid is a chronic carrier. Any person who gives no history of having had typhoid or who had the disease more than one year previously, and whose feces or urine are found to contain typhoid bacilli is also a chronic carrier.
- (c) Other Carriers: If typhoid bacilli are isolated from surgically removed tissues, organs, including the gallbladder or kidney, or from draining lesions such as osteomyelitis, the attending physician shall report the case to the local health department or the Bureau of Epidemiology, Utah Department of Health. If the person continues to excrete typhoid bacilli for more than 12 months, he is a chronic carrier and may be released after satisfying the criteria for chronic carriers in R386-702-7(6).
- (5) Carrier Restrictions and Supervision: The local health department shall report all typhoid carriers to the Bureau of Epidemiology, and shall:
 - (a) Require the necessary laboratory tests for release;
 - (b) Issue written instructions to the carrier;
 - (c) Supervise the carrier.
- (6) Requirements for Release of Convalescent and Chronic Carriers: The local health officer or his representative may release a convalescent or chronic carrier from occupational and food handling restrictions only if at least one of the following conditions is satisfied:
- (a) For carriers without schistosomiasis, three consecutive negative cultures obtained from fecal specimens authenticated by the attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped;
- (b) for carriers with schistosomiasis, three consecutive negative cultures obtained from both fecal and urine specimens authenticated by the attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped;
- (c) the local health officer or his representative determine that additional treatment such as cholecystectomy or nephrectomy has terminated the carrier state; or
- (d) the local health officer or his representative determines the carrier no longer presents a risk to public health according to the evaluation of other factors.

R386-702-8. Special Measures for the Control of Ophthalmia Neonatorum.

Every physician or midwife practicing obstetrics or midwifery shall, within three hours of the birth of a child, instill or cause to be instilled in each eye of such newborn one percent silver nitrate solution contained in wax ampules, or tetracycline ophthalmic preparations or erythromycin ophthalmic

preparations, as these are the only antibiotics of currently proven efficacy in preventing development of ophthalmia neonatorum. The value of irrigation of the eyes with normal saline or distilled water is unknown and not recommended.

R386-702-9. Special Measures to Prevent Perinatal and Person-to-Person Transmission of Hepatitis B Infection.

- (1) A licensed healthcare provider who provides prenatal care shall routinely test each pregnant woman for hepatitis B surface antigen (HBsAg) at an early prenatal care visit. The provisions of this section do not apply if the pregnant woman, after being informed of the possible consequences, objects to the test on the basis of religious or personal beliefs.
- (2) The licensed healthcare provider who provides prenatal care should repeat the HBsAg test during late pregnancy for those women who tested negative for HBsAg during early pregnancy, but who are at high risk based on:
 - (a) evidence of clinical hepatitis during pregnancy;
 - (b) injection drug use;
- (c) occurrence during pregnancy or a history of a sexually transmitted disease:
- (d) occurrence of hepatitis B in a household or close family contact; or
 - (e) the judgement of the healthcare provider.
- (3) In addition to other reporting required by this rule, each positive HBsAg result detected in a pregnant woman shall be reported to the local health department or the Utah Department of Health, as specified in Section 26-6-6. That report shall indicate that the woman was pregnant at time of testing if that information is available to the reporting entity.
- (4) A licensed healthcare provider who provides prenatal care shall document a woman's HBsAg test results, or the basis of the objection to the test, in the medical record for that patient.
- (5) Every hospital and birthing facility shall develop a policy to assure that:
- (a) when a pregnant woman is admitted for delivery, or for monitoring of pregnancy status, the result from a test for HBsAg performed on that woman during that pregnancy is available for review and documented in the hospital record;
- (b) when a pregnant woman is admitted for delivery if the woman's test result is not available to the hospital or birthing facility, the mother is tested for HBsAg as soon as possible, but before discharge from the hospital or birthing facility;
- (c) if a pregnant woman who has not had prenatal care during that pregnancy is admitted for monitoring of pregnancy status only, if the woman's test result is not available to the hospital or birthing facility, the mother is tested for HBsAg status before discharge from the hospital or birthing facility;
- (d) positive HBsAg results identified by testing performed or documented during the hospital stay are reported as specified in this rule;
- (e) infants born to HBsAg positive mothers receive hepatitis B immune globulin (HBIG) and hepatitis B vaccine, administered at separate injection sites, within 12 hours of birth;
- (f) infants born to mothers whose HBsAg status is unknown receive hepatitis B vaccine within 12 hours of birth, and if the infant is born preterm with birth weight less than 2,000 grams, that infant also receives HBIG within 12 hours; and
- (g) if at the time of birth the mother's HbsAg status is unknown and the HBsAg test result is later determined to be positive, that infant receives HBIG as soon as possible but within 7 days of birth.
- (6) Local health departments shall perform the following activities or assure that they are performed:
- (a) Infants born to HBsAg positive mothers complete the hepatitis B vaccine series as specified in Table 3.18, page 328 and Table 3.21, page 333 of the reference listed in subsection (9).

- (b) Children born to HBsAg positive mothers are tested for HBsAg and antibody against hepatitis B surface antigen (anti-HBs) at 9 to 15 months of age (3-9 months after the third dose of hepatitis B vaccine) to monitor the success of therapy and identify cases of perinatal hepatitis B infection.
- (i) Children who test negative for HBsAg and do not demonstrate serological evidence of immunity against hepatitis B when tested as described in (b) receive additional vaccine doses and are retested as specified on page 332 of the reference listed in subsection (9).
- (c) HBsAg positive mothers are advised regarding how to reduce their risk of transmitting hepatitis B to others.
- (d) Household members and sex partners of HBsAg positive mothers are evaluated to determine susceptibility to hepatitis B infection and if determined to be susceptible, are offered or advised to obtain vaccination against hepatitis B.
- (7) The provisions of subsections (5) and (6) do not apply if the pregnant woman or the child's guardian, after being informed of the possible consequences, objects to any of the required procedures on the basis of religious or moral beliefs. The hospital or birthing facility shall document the basis of the objection.
- (8) Prevention of transmission by individuals with chronic hepatitis B infection.
- (a) An individual with chronic hepatitis B infection is defined as an individual who is:
- (i) HBsAg positive, and total antibody against hepatitis B core antigen (anti-HBc) positive (if done) and IgM anti-HBc negative; or
- (ii) HBsAg positive on two tests performed on serum samples obtained at least 6 months apart.
- (b) An individual with chronic hepatitis B infection should be advised regarding how to reduce the risk that the individual will transmit hepatitis B to others.
- (c) Household members and sex partners of individuals with chronic hepatitis B infection should be evaluated to determine susceptibility to hepatitis B infection and if determined to be susceptible, should be offered or advised to obtain vaccination against Hepatitis B.
- (9) The Red Book Plus: 2009 Report of the Committee on Infectious Diseases, as referenced in R386-702-12(4) is the reference source for details regarding implementation of the requirements of this section.

R386-702-10. Public Health Emergency.

- (1) Declaration of Emergency: With the Governor's and Executive Director's or in the absence of the Executive Director, his designee's, concurrence, the Department or a local health department may declare a public health emergency by issuing an order mandating reporting emergency illnesses or health conditions specified in sections R386-702-3 for a reasonable time.
- (2) For purposes of an order issued under this section and for the duration of the public health emergency, the following definitions apply.
 - (a) "emergency center" means:
- (i) a health care facility licensed under the provisions of Title 26, Chapter 21, Utah Code, that operates an emergency department; or
- (ii) a clinic that provides emergency or urgent health care to an average of 20 or more persons daily.
- (b) "encounter" means an instance of an individual presenting at the emergency center who satisfies the criteria in section R386-702-3(2); and
- (c) "diagnostic information" means an emergency center's records of individuals who present for emergency or urgent treatment, including the reason for the visit, chief complaint, results of diagnostic tests, presenting diagnosis, and final diagnosis, including diagnostic codes.

- (3) Reporting Encounters: The Department shall designate the fewest number of emergency centers as is practicable to obtain the necessary data to respond to the emergency.
- (a) Designated emergency centers shall report using the process described in R386-702-4.
- (b) An emergency center designated by the Department shall report the encounters to the Department by:
- (i) allowing Department representatives or agents, including local health department representatives, to review its diagnostic information to identify encounters during the previous day; or
- (ii) reviewing its diagnostic information on encounters during the previous day and reporting all encounters by 9:00 a.m. the following day, or
- (iii) identifying encounters and submitting that information electronically to the Department, using a computerized analysis method, and reporting mechanism and schedule approved by the Department; or
 - (iv) by other arrangement approved by the Department.
- For purposes of epidemiological and statistical analysis, the emergency center shall report on encounters during the public health emergency that do not meet the definition for a reportable emergency illness or health condition. The report shall be made using the process described in R386-702-4(6) and shall include the following information for each such encounter:
 - (a) facility name;
 - (b) date of visit;
 - (c) time of visit;
 - (d) patient's age;
 - (e) patient's sex;
 - (f) patient's zip code for patient's residence.
- (5) If either the Department or a local health department collects identifying health information on an individual who is the subject of a report made mandatory under this section, it shall destroy that identifying information upon the earlier of its determination that the information is no longer necessary to carry out an investigation under this section or 180 days after the information was collected. However, the Department and local health departments shall retain identifiable information gathered under other sections of this rule or other legal authority.
- (6) Reporting on encounters during the public health emergency does not relieve a reporting entity of its responsibility to report under other sections of this rule or other legal authority.

R386-702-11. Penalties.

Any person who violates any provision of R386-702 may be assessed a penalty as provided in Section 26-23-6.

R386-702-12. Official References.

All treatment and management of individuals and animals who have or are suspected of having a communicable or infectious disease that must be reported pursuant to this rule shall comply with the following documents, which are adopted and incorporated by reference:

- (1) American Public Health Association. "Control of Communicable Diseases Manual". 19th ed., Heymann, David L., editor, 2008.
- Centers for Disease Control and Prevention. Recommendation of the Immunization Practices Advisory Committee (ACIP): Human rabies Prevention - United States, 1999. "Morbidity and Mortality Weekly Report." 1999; 48: RR-1, 1-21.
- (3) The National Association of State Public Health Veterinarians, Inc., "Compendium of Animal Rabies Prevention and Control, 2008.
- (4) American Academy of Pediatrics. "Red Book Plus: 2009 Report of the Committee on Infectious Diseases" 28th

Edition. Elk Grove Village, IL, American Academy of Pediatrics; 2009.

KEY: communicable diseases, quarantine, rabies, rules and

procedures August 8, 2012

26-6-3

Notice of Continuation October 12, 2011

26-23b

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-1. Utah Medicaid Program. R414-1-1. Introduction and Authority.

- (1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.
- (2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

- (1) "Act" means the federal Social Security Act.
- (2) "Applicant" means any person who requests assistance
- under the medical programs available through the Division.

 (3) "Categorically needy" means aged, blind or disabled individuals or families and children:
 - (a) who are otherwise eligible for Medicaid; and
- (i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or
- (ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients;
- (iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or
- (iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or
- (v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or
- (vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or
- (vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or
- (viii) who is a child for whom an adoption assistance agreement with the state is in effect.
 - (b) whose categorical eligibility is protected by statute.
- (4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.
- "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.
- (6) "CMS" means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the State Children's Health Insurance Program.
 - (7) "Department" means the Department of Health.
 - (8) "Director" means the director of the Division.
- "Division" means the Division of Health Care (9) Financing within the Department.
- (10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:
 - (a) placing the patient's health in serious jeopardy;
 - (b) serious impairment to bodily functions;
 - (c) serious dysfunction of any bodily organ or part; or
 - (d) death.
- (11) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of

diagnosis.

- (12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.
- (13) "Executive Director" means the executive director of the Department.
- "InterQual" means the McKesson Criteria for (14)Inpatient Reviews, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.
 - (15) "Medicaid agency" means the Department of Health.
- (16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18.
- (17) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.
 - (18) "Medically necessary service" means that:
- (a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and
- (b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.
- (19) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.
- (20) "Medical standards," as applied in this rule, means that an individual may receive reasonable and necessary medical services up until the time a physician makes an official determination of death.
- (21) "Prior authorization" means the required approval for provision of a service that the provider must obtain from the Department before providing the service. Details for obtaining prior authorization are found in Section I of the Utah Medicaid Provider Manual.
- (22)"Provider" means any person, individual or corporation, institution or organization that provides medical, behavioral or dental care services under the Medicaid program and who has entered into a written contract with the Medicaid program.
- (23) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.
- (24) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.
- (25) "Utilization review" means the Department provides for review and evaluation of the utilization of inpatient Medicaid services provided in acute care general hospitals to patients entitled to benefits under the Medicaid plan.
- (26) "Utilization Control" means the Department has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services, safeguards against excess payments, and assesses the quality of services available under the plan. The program meets the requirements of 42 CFR, Part 456.

R414-1-3. Single State Agency.

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

R414-1-5. Incorporations by Reference.

The Department incorporates the July 1, 2012 versions of the following by reference:

- (1) the Utah State Plan, including any approved amendments, under Title XIX of the Social Security Act Medical Assistance Program.
- (2) the Medical Supplies Manual and List described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies, with its referenced attachment, Medical Supplies List, as applied in Rule R414-70;
- (3) the Hospital Services Provider Manual with its attachments;
- (4) both the definitions and the attachment for the Private Duty Nursing Acuity Grid found in the Home Health Agencies Provider Manual:
 - (5) the Speech-Language Services Provider Manual;
 - (6) the Audiology Services Provider Manual;
 - (7) the Hospice Care Provider Manual;
- (8) the Long Term Care Services in Nursing Facilities Provider Manual with its attachments;
- (9) the Personal Care Provider Manual with its attachments;
- (10) the Utah Home and Community-Based Waiver Services for Individuals 65 or Older Provider Manual;
- (11) the Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Provider Manual;
- (12) the Utah Home and Community-Based Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Provider Manual;
- (13) the Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Provider Manual;
- (14) the Utah Home and Community-Based Waiver Services New Choices Waiver Provider Manual;
- (15) the Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Provider Manual;
- (16) the Office of Inspector General Administrative Hearings Procedures Manual; and
- (17) the Pharmacy Services Provider Manual with its attachments.

R414-1-6. Services Available.

- (1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).
- (2) The following services provided in the State Plan are available to both the categorically needy and medically needy:
- (a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;
- (b) outpatient hospital services and rural health clinic services;
 - (c) other laboratory and x-ray services;
- (d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older:
- (e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;
- (f) family planning services and supplies for individuals of child-bearing age;

- (g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere:
 - (h) podiatrist's services:
 - (i) optometrist's services;
 - (j) psychologist's services;
 - (k) interpreter's services;
 - (l) home health services:
- (i) intermittent or part-time nursing services provided by a home health agency;
- (ii) home health aide services by a home health agency;
- (iii) medical supplies, equipment, and appliances suitable for use in the home:
- (m) private duty nursing services for children under age 21;
 - (n) clinic services;
 - (o) dental services;
 - (p) physical therapy and related services;
- (q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;
- (r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;
- (s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;
- (t) services for individuals age 65 or older in institutions for mental diseases:
- (i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;
- (ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and
- (iii) intermediate care facility services for individuals age65 or older in institutions for mental diseases;
- (u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions:
- (v) inpatient psychiatric facility services for individuals under 22 years of age;
 - (w) nurse-midwife services;
 - (x) family or pediatric nurse practitioner services;
- (y) hospice care in accordance with section 1905(o) of the Social Security Act;
- (z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;
- (aa) extended services to pregnant women, pregnancyrelated services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;
- (bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and
- (cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:
- (i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;
 - (ii) transportation services;
- (iii) skilled nursing facility services for patients under 21 years of age;

- (iv) emergency hospital services; and
- (v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.
- (dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:
- (i) it is medically necessary and more appropriate than any Medicaid covered service; and
- (ii) it is more cost effective than any Medicaid covered service.

R414-1-7. Aliens.

- (1) Certain qualified aliens described in Title IV of Pub. L. No. 104 193, 110 Stat. 2105, may be eligible for the Medicaid program. All other aliens are prohibited from receiving non-emergency services as described in Section 1903(v) of the Social Security Act.
- (2) An alien who is prohibited from receiving nonemergency services will have "Emergency Services Only Program" printed on his Medical Identification Card, as noted in Rule R414-3A.

R414-1-8. Statewide Basis.

The medical assistance program is state-administered and operates on a statewide basis in accordance with 42 CFR 431.50.

R414-1-9. Medical Care Advisory Committee.

There is a Medical Care Advisory Committee that advises the Medicaid agency director on health and medical care services. The committee is established in accordance with 42 CFR 431.12.

R414-1-10. Discrimination Prohibited.

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 45 CFR Parts 80 and 84, the Medicaid agency assures that no individual shall be subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

R414-1-11. Administrative Hearings.

The Department has a system of administrative hearings for medical providers and dissatisfied applicants, clients, and recipients that meets all the requirements of 42 CFR, Part 431, Subpart E.

R414-1-12. Utilization Review.

- (1) The Department conducts hospital utilization review as outlined in the Superior System Waiver in effect at the time service was rendered.
- (2) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Criteria, published by McKesson Corporation.
- (3) The standards in the InterQual Criteria shall not apply to services in which a determination has been made to utilize criteria customized by the Department or that are:
 - (a) excluded as a Medicaid benefit by rule or contract;
- (b) provided in an intensive physical rehabilitation center as described in Rule R414-2B; or
- (c) organ transplant services as described in Rule R414-10A.

In these exceptions, or where InterQual is silent, the Department shall approve or deny services based upon appropriate administrative rules or its own criteria as incorporated in the Medicaid provider manuals.

R414-1-13. Provider and Client Agreements.

- (1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Utah Medicaid Program.
- (2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters
- (3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

R414-1-14. Utilization Control.

- (1) In order to control utilization, and in accordance with 42 CFR 440, Subpart B, services, equipment, or supplies not specifically identified by the Department as covered services under the Medicaid program are not a covered benefit. In addition, the Department will also use prior authorization for utilization control. All necessary and appropriate medical record documentation for prior approvals must be submitted with the request. If the provider has not obtained prior authorization for a service as outlined in the Medicaid provider manual, the Department shall deny coverage of the service.
- (2) The Department may request records that support provider claims for payment under programs funded through the Department. These requests must be in writing and identify the records to be reviewed. Responses to requests must be returned within 30 days of the date of the request. Responses must include the complete record of all services for which reimbursement is claimed and all supporting services. If there is no response within the 30 day period, the Department will close the record and will evaluate the payment based on the records available.
- (3)(a) If the Department pays for a service which is later determined not to be a benefit of the Utah Medicaid program or does not comply with state or federal policies and regulations, the provider shall refund the payment upon written request from the Department.
- (b) If services cannot be properly verified or when a provider refuses to provide or grant access to records, the provider shall refund to the Department all funds for services rendered. Otherwise, the Department may deduct an equal amount from future reimbursements.
- (c) Unless appealed, the refund must be made to Medicaid within 30 days of written notification. An appeal of this determination must be filed within 30 days of written notification as specified in Rule R410-14.
- (d) A provider shall reimburse the Department for all overpayments regardless of the reason for the overpayment.
- (e) Provider appeals of action for recovery or withholding of money initiated by the Office of Inspector General of Medicaid Services (OIG) shall be governed by the OIG Administrative Hearings Procedures Manual incorporated by reference in Section R414-1-5.

R414-1-15. Medicaid Fraud.

The Department has established and will maintain methods, criteria, and procedures that meet all requirements of 42 CFR 455.13 through 455.21 for prevention and control of program fraud and abuse.

R414-1-16. Confidentiality.

State statute, Title 63G, Chapter 2, and Section 26-1-17.5, impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning applicants, clients, and recipients to purposes directly connected with the administration of the plan.

Printed: October 11, 2012

All other requirements of 42 CFR Part 431, Subpart F are met.

R414-1-17. Eligibility Determinations.

Determinations of eligibility for Medicaid under the plan are made by the Division of Health Care Financing, the Utah Department of Workforce Services, and the Utah Department of Human Services. There is a written agreement among the Utah Department of Health, the Utah Department of Workforce Services, and the Utah Department of Human Services. The agreement defines the relationships and respective responsibilities of the agencies.

R414-1-18. Professional Standards Review Organization.

All other provisions of the State Plan shall be administered by the Medicaid agency or its agents according to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

R414-1-19. Timeliness in Eligibility Determinations.

The Medicaid agency shall adhere to all timeliness requirements of 42 CFR 435.911, for processing applications, determining eligibility, and approving Medicaid requests. If these requirements are not completed within the defined time limits, clients may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

R414-1-20. Residency.

Medicaid is furnished to eligible individuals who are residents of the State under 42 CFR 435.403.

R414-1-21. Out-of-state Services.

Medicaid services shall be made available to eligible residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

R414-1-22. Retroactive Coverage.

Individuals are entitled to Medicaid services under the plan during the 90 days preceding the month of application if they were, or would have been, eligible at that time.

R414-1-23. Freedom of Choice of Provider.

Unless an exception under 42 CFR 431.55 applies, any individual eligible under the plan may obtain Medicaid services from any institution, pharmacy, person, or organization that is qualified to perform the services and has entered into a Medicaid provider contract, including an organization that provides these services or arranges for their availability on a prepayment basis.

R414-1-24. Availability of Program Manuals and Policy Issuances.

In accordance with 42 CFR 431.18, the state office, local offices, and all district offices of the Department maintain program manuals and other policy issuances that affect recipients, providers, and the public. These offices also maintain the Medicaid agency's rules governing eligibility, need, amount of assistance, recipient rights and responsibilities, and services. These manuals, policy issuances, and rules are available for examination and, upon request, are available to individuals for review, study, or reproduction.

R414-1-25. Billing Codes.

In submitting claims to the Department, every provider shall use billing codes compliant with Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements as found in 45 CFR Part 162.

R414-1-26. General Rule Format.

The following format is used generally throughout the rules of the Division. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

- (1) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.
- (2) Definitions. Definitions that have special meaning to the particular rule.
- (3) Client Eligibility. Categories of Medicaid clients eligible for the service covered by the rule: Categorically Needy or Medically Needy or both. Conditions precedent to the client's obtaining coverage such as age limitations or otherwise.
- (4) Program Access Requirements. Conditions precedent external to the client's obtaining service, such as type of certification needed from attending physician, whether available only in an inpatient setting or otherwise.
- (5) Service Coverage. Detail of specific services available under the rule, including limitations, such as number of procedures in a given period of time or otherwise.
- (6) Prior Authorization. As necessary, a description of the procedures for obtaining prior authorization for services available under the particular rule. However, prior authorization must not be used as a substitute for regulatory practice that should be in rule.
- (7) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (5).

R414-1-27. Determination of Death.

- (1) In accordance with the provisions of Section 26-34-2, the fiduciary responsibility for medically necessary care on behalf of the client ceases upon the determination of death.
- (2) Reimbursement for the determination of death by acceptable medical standards must be in accordance with Medicaid coverage and billing policies that are in place on the date the physician renders services.

R414-1-28. Cost Sharing.

- (1) An enrollee is responsible to pay the:
- (a) hospital a \$220 coinsurance per year;
- (b) hospital a \$6 copayment for each non-emergency use of hospital emergency services;
- (c) provider a \$3 copayment for outpatient office visits for physician and physician-related mental health services except that no copayment is due for preventive services, immunizations, health education, family planning, and related pharmacy costs; and
- (d) pharmacy a \$3 copayment per prescription up to a maximum of \$15 per month;
- (2) The out-of-pocket maximum payment for copayments for physician and outpatient services is \$100 per year.
- (3) The provider shall collect the copayment amount from the Medicaid client. Medicaid shall deduct that amount from the reimbursement it pays to the provider.
- (4) Medicaid clients in the following categories are exempt from copayment and coinsurance requirements;
 - (a) children;
 - (b) pregnant women;
 - (c) institutionalized individuals;
 - (d) American Indians; and
- (e) individuals whose total gross income, before exclusions and deductions, is below the temporary assistance to needy families (TANF) standard payment allowance. These

individuals must indicate their income status to their eligibility caseworker on a monthly basis to maintain their exemption from the copayment requirements.

R414-1-29. Provider-Preventable Conditions.

- (1) In accordance with 42 CFR 447.26, October 1, 2011 ed., which is incorporated by reference, Medicaid will not reimburse providers or contractors for provider-preventable conditions as noted therein. Please see Utah Medicaid State Plan Attachments 4.19-A and 4.19-B for detail.
- (2) Medicaid providers who treat Medicaid eligible patients must report all provider-preventable conditions whether or not reimbursement for the services is sought. Medicaid providers shall meet this requirement by complying with existing state reporting requirements (rules and legislation) of these events that include:
 - (a) Rule R380-200;
 - (b) Rule R380-210;
 - (c) Rule R386-705;
 - (d) Rule R428-10; and
 - (e) Section 26-6-31.
- (3) Utilizing the reporting mechanism from one of the rules noted above shall not impact confidentiality and privacy protections for reporting entities as noted in Title 26, Chapter 25, Confidential Information Release.

KEY: Medicaid August 10, 2012 26-1-5 Notice of Continuation March 2, 2012 26-18-3 26-34-2 R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-8. Electronic Personal Medical Records for the Medicaid Program.

R414-8-1. Introduction and Authority.

This rule is promulgated under authority granted in Section 26-18-3, as last amended by Laws of Utah 2012, Chapters 28 and 242.

R414-8-2. Purpose.

This rule establishes requirements for enrolling Medicaid beneficiaries in the electronic exchange of clinical health information unless the individual opts out.

R414-8-3. Definitions.

These definitions apply to Rule R414-8:

- (1) "Medicaid beneficiaries" mean individuals who receive assistance through the following programs:
 - (a) Medicaid;
 - (b) Primary Care Network;
 - (c) Utah's Premium Partnership for Health Insurance;
 - (d) Baby Your Baby;
- (e) Cost sharing programs that include Qualified Medicare Beneficiary (QMB), Specified Low-Income Medicare Beneficiary (SLMB), and Qualified Individual (QI).
- (2) "Technical Specifications" means the technical specifications document published by the Utah Health Information Network (UHIN) that describes the variables and formats of the data to be submitted as well as submission directions and guidelines.
- (3) "Program Website" means the Department of Health, Department of Workforce Services, Division of Medicaid and Health Financing, Utah's Premium Partnership for Health Insurance, and Primary Care Network websites.

R414-8-4. Enrollment Notification.

- (1) Prior to the enrollment process in the Clinical Health Information Exchange (cHIE), the Department will provide Notice of Intent to Medicaid beneficiaries in cHIE and the right of individuals to opt out.
- (2) The Department will provide additional education regarding the individual's right to opt out on the program websites.

R414-8-5. Enrollment Process.

- (1) The Department will provide cHIE an enrollment file of all Medicaid beneficiaries.
- (2) The enrollment file will contain the succeeding month's Medicaid enrollment.
- (3) cHIE will enroll Medicaid beneficiaries on the first day of the succeeding month.
- (4) Submission procedures and guidelines, including required data elements, will be described in detail in the technical specifications published by UHIN and will be included in the Department's Operating Agreement with cHIE.
- (5) The Department will use a secure format to transfer any enrollment files to cHIE.

R414-8-6. Exemptions.

(1) An individual's previous consent status in cHIE will be honored by cHIE and will not be overridden by the Medicaid enrollment file.

KEY: Medicaid, cHIE September 1, 2012

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-15. Residents Personal Needs Fund. R414-15-1. Introduction and Authority.

- (1) This policy ensures proper administration of the personal funds of a Medicaid client who is a resident in a long term care facility. The administrative payee is responsible for using the beneficiary's benefits in his best interest. Flat rate reimbursement shall not be charged to personal funds. The flat rate shall cover the services specified in Attachment 4.19-D, Section 400 of the State Plan.
- (2) This rule is authorized by Section 26-1-5 and 42 CFR 442 and 447.

R414-15-2. Definitions.

The definitions in R414-1 apply to this rule.

R414-15-3. Facility Responsibilities.

- (1) For residents who are Medicaid clients, the administration and management of a long term care facility (the facility) must provide the resident, next of kin, or legal guardian:
 - (a) a written statement at the time of admission explaining:
 - (i) the resident's rights regarding personal funds; and
 - (ii) a list of services included in the basic per diem rate;
- (b) access to a written record of all financial transactions involving the individual resident funds;
- (c) a written itemized statement quarterly of all financial transactions involving the individual resident funds upon written request; and
- (d) all funds that were given to the facility for safekeeping, including interest, within 30 days of the resident's discharge.
- (2) The facility must notify the Social Security Administration office to have a representative payee appointed for residents who do not have a legal guardian, representative payee, or other authorized individual to manage their personal needs funds.
- (3) The facility must serve as a temporary representative payee for the resident until the representative payee is appointed.
- (4) The facility must allow the resident to access his funds for at least one hour during business hours.
- (5) Upon request, the facility must return funds to the resident from an outside interest-bearing account within one business day.
 - (6) The facility shall deposit all funds in excess of \$50.00:
 - (a) within 15 calendar days of receipt of the money;
- (b) in an interest-bearing account that clearly indicates that the facility's interest is only fiduciary; and
 - (c) in a federally insured savings institution.
- (7) The facility may deposit the resident's Social Security check into the facility's bank account if the personal need portion of the resident's check is transferred to the resident's account on the same day.
- (8) The facility must distribute monthly the interest from the resident's interest-bearing accounts by either:
- (a) maintaining separate savings accounts for each resident; or
- (b) prorating the amount individually if funds are combined in one account for all residents.
- (9) The facility may keep up to \$50.00 of the resident's money in a non-interest-bearing account that is readily accessible to the resident.
- (10) The facility must give any benefits to the resident either personally or through the resident's personal need fund unless there is a written authorization from the resident or legal guardian to do otherwise. This includes resident entitlements from Social Security Supplemental Income, government and private pensions, Veterans Administration, and other similar entitlement programs.

- (11) The facility must provide the estate executor or administrator of a deceased resident with a written accounting of the resident's personal funds within 30 days of the resident's death. If the resident has not had an executor or administrator appointed, the facility must provide the accounting to:
- (a) the resident's next of kin, legal guardian, representative payee, or other person the resident designated to manage his personal financial affairs while he was living; and
- (b) the District Court in the county where the resident died.
 - (12) If the facility sells or leases the business, it must:
- (a) provide the buyer or lessee with a written statement of all of the residents' monies and properties being transferred;
- (b) obtain a signed receipt from the new owner or lessee before the sale or lease is final; and
- (c) provide each resident's legal guardian, representative payee, or other person the resident authorized to manage his personal funds, a written accounting of all funds held by the facility before any transfer of ownership. The new owner or lessee shall assume full liability for all residents' personal needs accounts.
- (13) For medical or supplemental security income recipients, the facility must provide written notification to the resident and the Department ten days before the resident's funds are about to exceed the amount that would jeopardize his Medicaid eligibility.
- (14) The facility must maintain the resident's personal funds for safekeeping if requested according to R414-15-4.

R414-15-4. Resident Personal Funds for Safekeeping.

The resident shall not be required to give his personal funds to the facility for safekeeping. If the resident (or legal guardian) requests this service of the facility, the request must be a written authorization.

KEY: medicaid January 13, 1998 26-1-5 Notice of Continuation August 20, 2012

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-49. Dental Services.

R414-49-1. Introduction and Authority.

- (1) The Medicaid Dental Program provides a scope of dental services to meet the basic dental needs of Medicaid recipients.
- (2) Dental services are authorized by 42 CFR, October 1995 ed., Sections 440.100, 440.120, 483.460, which are adopted and incorporated by reference.

R414-49-2. Definitions.

In addition to the definitions in R414-1-1, the following definitions apply to this rule:

- (1) "Adult" means a person who has attained the age of 21.
 (2) "Child" means a person under age 21 who is eligible for the EPSDT (CHEC) program.
- (3) "Child Health Evaluation and Care" (CHEC) is the Utah-specific term for the federally mandated program of early and periodic screening, diagnosis, and treatment (EPSDT) for children under the age of 21.
- (4) "Dental services" means diagnostic, preventive, or corrective procedures provided by, or under the supervision of, a dentist in the practice of his profession.
- "Emergency services" means treatment of an unforeseen, sudden, and acute onset of symptoms or injuries requiring immediate treatment, where delay in treatment would jeopardize or cause permanent damage to a person's dental health.

R414-49-3. Client Eligibility Requirements.

Dental services are available to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. Dental services to non-pregnant clients and to non-EPSDT clients are limited to emergency services only as defined in the Utah Medicaid State Plan Attachment 3.1-A, Attachment #10 and Attachment 3.1-B, Attachment #10.

R414-49-4. Program Access Requirements.

Dental services are available only from a dentist who meets all of the requirements necessary to participate in the Utah Medicaid Program, and who has signed a provider agreement.

R414-49-5. Service Coverage.

Specific services are identified for pregnant women and for children eligible for the EPSDT (CHEC) program, since program covered services may differ. Specific program covered services for residents of ICFs/MR are detailed in this section.

- (1) Diagnostic services are covered as follows:
- (a) Each provider may perform a comprehensive oral evaluation one time only.
 - (b) A limited problem-focused oral evaluation.
- (c) Each provider may perform either two periodic oral evaluations, or a comprehensive and a periodic oral evaluation per calendar year.
- (d) A choice of panoramic film, a complete series of intraoral radiographs, or a bitewing series of radiographs of diagnostic quality.
 - (e) Study models or diagnostic casts for children.
 - (2) Preventive services are covered as follows:
 - (a) Child:
- (i) Two prophylaxis treatments in a calendar year by a provider, with or without fluoride.
- (ii) Occlusal sealants are a benefit on the permanent molars of children under age 18.
 - (iii) Space maintainers.
- (b) Pregnant Women: Two prophylaxis treatments in a calendar year by a provider.

- (3) Restorative services are covered as follows:
- (a) Amalgam restorations, composite restorations on anterior teeth, stainless steel crowns, crown build-up, prefabricated post and core, crown repair, and resin or porcelain crowns on permanent anterior teeth for children.
- (b) Amalgam restorations, and composite restorations on anterior teeth for pregnant women.
 - (4) Endodontics services are covered as follows:
 - (a) Therapeutic pulpotomy for primary teeth.
- (b) Root canals, except for permanent third molars or primary teeth.
 - (c) Apicoectomies.
 - (5) Periodontics services are covered as follows:
 - (a) Root planing or periodontal treatment for children.
- (b) Gingivectomies for patients who use anticonvulsant medication, as verified by their physician.
 - (6) Oral Surgery services are covered as follows:
 - (a) Extractions.
 - (b) Surgery for emergency treatment of traumatic injury.
- (c) Emergency oral and maxillofacial services provided by dentists or oral and maxillofacial surgeons.
 - (7) Prosthodontics services are covered as follows:

Initial placement of dentures, including the relining to assure the desired fit.

- (a) Full Dentures
- (i) Child: Complete dentures.
- (ii) Pregnant Women: "Initial" dentures.
- (b) Partial dentures may be provided if the denture replaces an anterior tooth or is required to restore mastication ability where there is no mastication ability present on either side.
- (c) Relining, rebasing, or repairing of existing full or partial dentures.
- (8) Medicaid covered dental services are available to residents of an ICF/MR on a fee-for-service basis, except for the annual exam, which is part of the per diem paid to the ICF/MR.
- (9) Patients who receive total parenteral or enteral nutrition may not receive dentures.
- (10) The provider must mark all new placements of full or partial dentures with the patient's name to prevent lost or stolen dentures in facilities licensed under Title 26, Chapter 21.
- (11) General anesthesia and I.V. sedation are covered services.
- (12)Fixed bridges, osseo-implants, sub-periosteal implants, ridge augmentation, transplants or replants are not covered services.
- (13) pontic services, vestibuloplasty, occlusal appliances, or osteotomies are not covered services.
- (14) Consultations or second opinions not requested by Medicaid are not covered services.
- (15) Treatment for temporomandibular joint syndrome, its prevention or sequela, subluxation, therapy, arthrotomy, meniscectomy, condylectomy are not covered services.
- (16) Prior authorization is required for gingivectomies, full mouth debridements, dentures, partial dentures, porcelain to metal crowns and general anesthesia procedures.

R414-49-6. Reimbursement.

- (1) Reimbursement for Dental Services is through select ADA dental codes which are based on an established fee schedule unless a lower amount is billed. The Department pays the lower of the amount billed and the rate on the schedule.
- (2) The amount billed cannot exceed usual and customary charges for private pay patients. Fee schedules were initially established after consultation with provider representatives. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.
- (3) Providers in urban counties (Utah, Salt Lake, Davis, and Weber counties) who sign the Dental Incentive Agreement

Printed: October 11, 2012

and providers in rural counties shall receive a 20% increase in the allowable fees paid for Medicaid dental services.

KEY: Medicaid August 10, 2012 Notice of Continuation November 2, 2009 26-1-5 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-50. Dental, Oral and Maxillofacial Surgeons. R414-50-1. Introduction and Authority.

- (1) The Medicaid Oral and Maxillofacial Surgery Program provides a scope of oral and maxillofacial surgery services to meet the basic needs of Medicaid clients. This includes services by both oral and maxillofacial surgeons and general dentists if surgery is performed by a general dentist in an emergency situation and an oral and maxillofacial surgeon is not available.
- (2) Oral and maxillofacial surgery services are authorized by 42 USC 1396d(a)(5).

R414-50-2. Definitions.

Definitions for this rule are found in R414-1-1. In addition:

- (1) "Oral and Maxillofacial Surgeons" means those individuals who have completed a post-graduate curriculum from an accredited institution of higher learning and are board-certified or board-eligible in oral and maxillofacial surgery.
- (2) "Oral and maxillofacial surgery" means that part of dental practice which deals with the diagnosis and surgical and adjunctive treatment of diseases, injuries, and defects of the oral and maxillofacial regions.

R414-50-3. Client Eligibility Requirements.

- (1) Oral and maxillofacial surgery services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. Nevertheless, physician, medical and surgical services performed by an oral surgeon are available to all categorically and medically needy clients.
- (2) Dental services are available to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. Dental services to non-pregnant clients and to non-EPSDT clients are limited to emergency services only as defined in the Utah Medicaid State Plan Attachment 3.1-A, Attachment #10 and Attachment 3.1-B, Attachment #10.

R414-50-4. Program Access Requirements.

Oral and maxillofacial surgery services are available only from an oral and maxillofacial surgeon who is a Medicaid provider. These services are available from a dentist provider if an oral and maxillofacial surgeon is unavailable.

R414-50-5. Service Coverage.

Emergency services outlined in this section are covered services for clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. Services to non-pregnant clients and to non-EPSDT clients are noted in the Utah Medicaid State Plan Attachment 3.1-A, Attachment #10 and Attachment 3.1-B, Attachment #10.

- (1) Emergency services provided by a dentist in areas where an oral and maxillofacial surgeon is unavailable are covered services.
- (2) Appropriate general anesthesia necessary for optimal management of the emergency is a covered service.
- (3) Hospitalization of patients for dental surgery may be a covered service if a patient's physician, at the time of the proposed hospitalization, verifies that the patient's general health status dictates that hospitalization is necessary for the health and welfare of the patient.
- (4) Treatment of temporomandibular joint fractures is a covered service. All other temporomandibular joint treatments are not covered services.
- (5) For procedures requiring prior approval, Medicaid shall deny payment if the services are rendered before prior

approval is obtained. Exceptions may be made for emergency services, or for recipients who obtain retroactive eligibility. The provider must apply for approval as soon as is practicable after the service is provided.

(6) Extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth, is not a covered service.

R414-50-6. Reimbursement.

- (1) Fees for services for which the Department will pay dentists are established from the physician's fees for CPT codes as described in the State Plan, Attachment 4.19-B, Section D Physicians. Fee schedules were initially established after consultation with provider representatives. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.
- (2) The Department pays the lower of the amount billed and the rate on the schedule. 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 August 10, 2012 26-1-4.1 Notice of Continuation October 21, 2009 26-1-5 26-18-3

R430. Health, Family Health and Preparedness, Child Care Licensing.

R430-6. Background Screening.

R430-6-1. Authority and Purpose.

This rule is promulgated pursuant to Title 26, Chapter 39. It establishes requirements for background screenings for child care programs.

R430-6-2. Definitions.

Terms used in this rule are defined in Title 26, Chapter 39. In addition:

- (1) "Applicant" means a person who has applied for a new child care license or residential certificate from the Department, or a currently licensed or certified child care provider who is applying for a renewal of their child care license or certificate.
- (2) "Background finding" means a determination by the Department that an individual:
- (a) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.
- (b) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor.
 - (3) "Covered individual" means:
 - (a) owners;
 - (b) directors;
 - (c) members of the governing body;
 - (d) employees;
- (e) providers of care, including children residing in a home where child care is provided;
- (f) volunteers, excluding parents of children enrolled in the
- (g) all individuals age 12 and older residing in a residence where child care is provided; and
- (h) anyone who has unsupervised contact with a child in care.
 - (4) "Department" means the Utah Department of Health.
- (5) "Involved with child care" means to provide child care, volunteer, own, operate, direct, be employed in, or function as a member of the governing body of a child care program with a license or certificate issued by the Department.
- (6) "Supported finding" means an individual is listed on the Licensing Information System child abuse and neglect database maintained by the Utah Department of Human Services.
- (7) "Unsupervised Contact" means contact with children that provides the person opportunity for personal communication or touch when not under the direct supervision of a child care provider or employee who has passed a background screening.
- (8) "Volunteer" means an individual who receives no form of direct or indirect compensation for providing care.

R430-6-3. Submission of Background Screening Information.

- (1) Each applicant requesting a new or renewal child care license or residential certificate must submit to the Department the name and other required identifying information on all covered individuals.
- (a) Unless an exception is granted under Subsection (4) below, the applicant shall ensure that the identifying information submitted for all individuals age 18 and older includes a fingerprint card and fee.
- (b) The fingerprint card must be prepared either by a local law enforcement agency or an agency approved by local law enforcement.
- (2) The applicant shall state in writing, based upon the applicant's information and belief, whether each covered individual:

- (a) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.
- (b) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor;
- (c) has ever had a supported finding by the Department of Human Services, or a substantiated finding from a juvenile court, of abuse or neglect of a child.
- (3) Within five days of a new covered individual beginning work at a child care facility or moving into a licensed or certified home, the licensee or certificate holder must submit to the Department the name and other required identifying information for that individual.
- (a) Unless an exception is granted under Subsection (4) below, the licensee or certificate holder shall ensure that the identifying information submitted for all individuals age 18 and older includes a fingerprint card and fee.
- (b) The fingerprint card must be prepared either by a local law enforcement agency or an agency approved by local law enforcement.
 - (4) Fingerprint cards are not required if:
- (a) the covered individual has resided in Utah continuously for the past five years;
- (b) the covered individual is less than 23 years of age, and has resided in Utah continuously since the individual's 18th birthday; or
- (c) the covered individual has previously submitted fingerprints under this section for a national criminal history record check and has resided in Utah continuously since that time.

R430-6-4. Criminal Background Screening.

- (1) Regardless of any exception under R430-6-4(4), if an in-state criminal background screening indicates that a covered individual age 18 or older has a background finding, the Department may require that individual to submit a fingerprint card and fee from which the Department may conduct a national criminal background screening on that individual.
- (2) Except for the offenses listed under Subsection (3), if a covered individual has a background finding, that individual may not be involved with child care. If such a covered individual resides in a home where child care is provided, the Department shall revoke an existing license or certificate or refuse to issue a new license or certificate.
- (3) A background finding for any of the following offenses does not prohibit a covered individual from being involved with child care:
- (a) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;
- (b) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for an offense under section 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, that is punishable as a Class A misdemeanor under subsection 41-6a-503(1)(b);
- (c) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;
- (d) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- (e) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

- (f) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for:
 - (i) 76-4-401, Enticing a Minor;
- (g) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 6, Offenses Against Property;
- (h) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 6a, Pyramid Scheme Act;
- (i) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication:
- (j) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 8, Offenses Against the Administration of Government;
- (k) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 9, Offenses Against Public Order and Decency, except for:
 - (i) 76-9-301, Cruelty to Animals;
 - (ii) 76-9-301.1, Dog Fighting;
 - (iii) 76-9-301.8, Bestiality;
 - (iv) 76-9-702, Lewdness;
 - (v) 76-9-702.5, Lewdness Involving Child; and
 - (vi) 76-9-702.7, Voyeurism; and
- (l) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 10, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:
 - (i) 76-10-509.5, Providing Certain Weapons to a Minor;
- (ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;
- (iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;
- (iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;
 - (v) 76-10-1301 to 1314, Prostitution; and
- (vi) 76-10-2301, Contributing to the Delinquency of a Minor
- (4) A covered individual with a Class A misdemeanor background finding may be involved with child care if either of the following conditions is met:
- (a) if the Class A misdemeanor background finding is for any of the excluded misdemeanor offenses in Subsection (3), and:
- (i) ten or more years have passed since the Class A misdemeanor offense; and
- (ii) there is no other background finding for the individual in the past ten years; or
- (b) if the Class A misdemeanor background finding is for any of the excluded misdemeanor offenses in Subsection (3) and five or more years have passed, but ten years have not passed since the Class A misdemeanor offense, and there is no other background finding since the Class A misdemeanor offense, then the individual may be involved with child care as an employee of an existing licensed or certified child care program for up to six months if:
- (i) the individual provides documentation for an active petition for expungement of the disqualifying offense within 30 days of the notice of the disqualifying background finding; and
- (ii) the licensee or certificate holder ensures that another employee who has passed the background screening is always present in the same room as the individual, and ensures that the individual has no unsupervised contact with any child in care.
- (5) If the court denies a petition for expungement from an individual who has petitioned for expungement and continues to

- be involved with child care as an employee under Subsection (4)(b), that individual may no longer be employed in an existing licensed or certified child care program, even if six months have not passed since the notice of the disqualifying background finding.
- (6) The Department may rely on the criminal background screening as conclusive evidence of the arrest warrant, arrest, charge, or conviction, and the Department may revoke or deny a license, certificate, or employment based on that evidence.
- (7) If a covered individual is denied a license, certificate or employment based upon the criminal background screening and the covered individual disagrees with the information provided by the Department of Public Safety, the covered individual may challenge the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.
- (8) If the Department takes an action adverse to any covered individual based upon the criminal background screening, the Department shall send a written decision to the licensee or certificate holder and the covered individual explaining the action and the right of appeal.
- (9) All licensees, certificate holders, and covered individuals must report to the Department any felony or misdemeanor arrest, charge, or conviction of a covered individual within 48 hours of becoming aware of the arrest warrant, arrest, charge, or conviction. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license or certificate.

R430-6-5. Covered Individuals with Arrests or Pending Criminal Charges.

- (1) If a covered individual has an outstanding arrest warrant for, or has been arrested or charged with a felony or a misdemeanor that would not be excluded under R430-6-4(3), the Department may revoke or suspend any license or certificate of a provider, or deny employment, if necessary to protect the health and safety of children in care.
- (2) If the Department denies or revokes a license or certificate or denies employment based upon the arrest warrant, arrest, or charge, the Department shall send a written decision to the licensee or certificate holder and the covered individual notifying them that a hearing with the Department may be requested.
- (3) The Department may hold the license, certificate, or employment denial in abeyance until the arrest warrant, arrest, or felony or misdemeanor charge is resolved.

R430-6-6. Child Abuse and Neglect Background Screening.

- (1) If the Department finds that a covered individual has a supported finding on the Department of Human Services Licensing Information System, that individual may not be involved with child care.
- (a) If such a covered individual resides in a home where child care is provided the Department shall revoke the license or certificate for the child care provided in that home.
- (b) If such a covered individual resides in a home for which an application for a new license or certificate has been made, the Department shall refuse to issue a new license or certificate.
- (2) If the Department denies or revokes a license, certificate, or employment based upon the Licensing Information System maintained by the Utah Department of Human Services, the Department shall send a written decision to the licensee or certificate holder and the covered individual.
- (3) If the covered individual disagrees with the supported finding on the Licensing Information System, the individual cannot appeal the supported finding to the Department of Health but must direct the appeal to the Department of Human Services and follow the process established by the Department of Human Services.

(4) All licensees, certificate holders, and covered individuals must report to the Department any supported finding on the Department of Human Services Licensing Information System concerning a covered individual within 48 hours of becoming aware of the supported finding. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license or certificate.

R430-6-7. Emergency Providers.

- (1) In an emergency, not anticipated in the licensee or certificate holder's emergency plan, a licensee or certificate holder may assign a person who has not had a criminal background screening to provide emergency care for and have unsupervised contact with children for no more than 24 hours per emergency incident.
- (a) Before the licensee or certificate holder may leave the children in the care of the emergency provider, the licensee or certificate holder must first obtain a signed, written declaration from the emergency provider that the emergency provider has not been convicted of, pleaded no contest to, and is not currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, and does not have a supported finding from the Department of Human Services.
- (b) During the term of the emergency, the emergency provider may be counted as a provider of care for purposes of maintaining the required care provider to child ratios.
- (c) The licensee or certificate holder shall make reasonable efforts to minimize the time that the emergency provider has unsupervised contact with children.

R430-6-8. Restrictions on Volunteers.

A parent volunteer who has not passed a background screening may not have unsupervised contact with any child in care, except the parent's own child.

R430-6-9. Statutory Penalties.

- (1) A violation of any rule is punishable by an administrative civil money penalty of up to \$5,000 per day as provided in Utah Code Section 26-39-601.
- (2) Assessment of any civil money penalty does not preclude the Department from also taking action to deny, place on conditional status, revoke, immediately close, or refuse to renew a license or certificate.
- (3) Assessment of any administrative civil money penalty under this section does not preclude injunctive or other equitable remedies.

KEY: child care facilities May 1, 2012 Notice of Continuation August 3, 2012

26-39

R430. Health, Family Health and Preparedness, Child Care Licensing.

R430-100. Child Care Centers.

R430-100-1. Authority and Purpose.

This rule is promulgated pursuant to Title 26, Chapter 39. It establishes standards for the operation and maintenance of child care centers and requirements to protect the health and safety of children in child care centers.

R430-100-2. Definitions.

- (1) "Accredited College" means a college accredited by an agency recognized by the United States Department of Education as a valid accrediting agency.
- (2) "ASTM" means American Society for Testing and
- "Body fluids" means blood, urine, feces, vomit, (3) mucous, and saliva.
- (4) "Caregiver" means an employee or volunteer who
- provides direct care to children.
 (5) "CPSC" means the Consumer Product Safety Commission.
- (6) "Department" means the Utah Department of Health.(7) "Designated Play Surface" means a flat surface on a piece of stationary play equipment that a child could stand, walk, sit, or climb on, and is at least 2" by 2" in size.
- "Direct Supervision" for infants, toddlers, and preschoolers means the caregiver can see and hear all of the children in his or her assigned group, and is near enough to intervene when necessary. "Direct Supervision" for school age children means the caregiver must be able to hear school age children and must be near enough to intervene when necessary.
- (9) "Emotional Abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.
- (10) "Group" means the children assigned to one or two caregivers, occupying an individual classroom or an area defined by furniture or another partition within a room.
- (11) "Health Care Provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.
- (12) "Inaccessible to Children" means either locked, such as in a locked room, cupboard or drawer, or with a child safety lock, or in a location that a child can not get to.
- (13) "Infant" means a child aged birth through 11 months of age.
- (14) "Infectious Disease" means an illness that is capable of being spread from one person to another.
- (15) "Licensee" means the legally responsible person or persons holding a valid Department of Health child care license.
- (16) "Over-the-Counter Medication" means medication that can be purchased without a written prescription from a health care provider. This includes herbal remedies and vitamin and mineral supplements.
- (17) "Parent" means the parent or legal guardian of a child in care.
 - (18) "Person" means an individual or a business entity.
- (19) "Physical Abuse" means causing nonaccidental physical harm to a child.
- (20) "Play Equipment Platform" means a flat surface on a piece of stationary play equipment intended for more than one user to stand on, and upon which the users can move freely.
- (21) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.
- (22) "Protective Barrier" means an enclosing structure such as bars, lattice, or a solid panel, around an elevated play equipment platform that is intended to prevent a child from either accidently or deliberately passing through the barrier.

- (23) "Protective cushioning" means cushioning material that has been tested to and meets American Society for Testing and Materials Specification F 1292, such as unitary surfaces, wood chips, engineered wood fiber, and shredded rubber mulch. Protective cushioning may also include pea gravel or sand as allowed by the Consumer Product Safety Commission (CPSC).
- (24) "Provider" means the licensee or a staff member to whom the licensee has delegated a duty under this rule.
- (25) "Sanitize" means to remove soil and small amounts of certain bacteria from a surface or object with a chemical agent.
- (26)"School Age" means kindergarten and older age children.
- "Sexual Abuse" means abuse as defined in Utah (27)Code, Section 76-5-404.1.(1)(2).
- (28) "Sexually Explicit Material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).
- (29)"Sleeping Equipment" means a cot, mat, crib, bassinet, porta-crib, or play pen.
- (30) "Stationary Play Equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when children use it. Stationary play equipment does not include:
 - (a) a sandbox;
 - (b) a stationary circular tricycle;
 - (c) a sensory table; or
- (d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.
- (31) "Toddler" means a child aged 12 months but less than 24 months.
- (32) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.
- (33) "Volunteer" means a person who provides care to a child but does not receive direct or indirect compensation for doing so.

R430-100-3. License Required.

- A person or persons must be licensed as a child care center under this rule if:
 - (1) they provide care in the absence of the child's parent;
- (2) they provide care in a place other than the provider's home or the child's home;
- (3) they provide care for five or more children, for four or more hours per day;
- (4) they provide care for each individual child for less than 24 hours per day;
- (5) the program is open to children on an ongoing basis for four or more weeks in a year; and
 - (6) they provide care for direct or indirect compensation.

R430-100-4. Facility.

- (1) The licensee shall ensure that any building or playground structure constructed prior to 1978 which has peeling, flaking, chalking, or failing paint is tested for lead based paint. If lead based paint is found, the licensee shall contact the local health department and follow all required procedures for the remediation of the lead based paint.
- (2) For preschoolers and toddlers who are toilet trained, there shall be one working toilet and one working sink for every fifteen children in the center, excluding diapered children. For school age children, there shall be one working toilet and one working sink for every 25 children in the center.
- (3) School age children shall have privacy when using the bathroom.
 - (4) For buildings constructed after 1 July 1997 there shall

be a working hand washing sink in each classroom.

- (5) Each area where infants or toddlers are cared for shall meet one of the following criteria:
- (a) There shall be two working sinks in the room. One sink shall be used exclusively for the preparation of food and bottles and hand washing prior to food preparation, and the other sink shall be used exclusively for hand washing after diapering and non-food activities.
- (b) There shall be one working sink in the room which is used exclusively for hand washing, and all bottle and food preparation shall be done in the kitchen and brought to the infant and toddler area by a non-diapering staff member.
- (6) Infant and toddler areas shall not be used as access to other areas or rooms.
- (7) All rooms and occupied areas in the building shall be ventilated by windows that open and have screens or by mechanical ventilation.
- (8) The provider shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.
- (9) The provider shall maintain adequate light intensity for the safety of children and the type of activity being conducted by keeping lighting equipment in good working condition.
- (10) Windows, glass doors, and glass mirrors within 36 inches from the floor or ground shall be made of safety glass, or have a protective guard.
- (11) There shall be at least 35 square feet of indoor space for each child, including the licensee's and employees' children who are not counted in the caregiver to child ratios.
- (12) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:
 - (a) by children;
 - (b) for the care of children; or
 - (c) to store classroom materials.
- (13) Bathrooms, closets, staff lockers, hallways, corridors, lobbies, kitchens, or staff offices are not included when calculating indoor space for children's use.

R430-100-5. Cleaning and Maintenance.

- (1) The provider shall maintain a clean and sanitary environment.
- (2) The provider shall clean and sanitize bathroom surfaces daily, including toilets, sinks, faucets, and counters.
- (3) The provider shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other vermin.
- (4) The provider shall maintain ceilings, walls, floor coverings, draperies, blinds, furniture, fixtures, and equipment in good repair to prevent injury to children.
- (5) The provider shall maintain entrances, exits, steps and outside walkways in a safe condition, and free of ice, snow, and other hazards.

R430-100-6. Outdoor Environment.

- (1) There shall be an outdoor play area for children that is safely accessible to children.
- (2) The outdoor play area shall have at least 40 square feet of space for each child using the playground at the same time as other children.
- (3) The outdoor play area shall accommodate at least 33 percent of the licensed capacity at one time or shall be at least 1600 square feet.
- (4) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high. When children play outdoors, they must play in the enclosed play area except during off-site activities described in Section R430-100-20(5).
- (5) There shall be no gaps in fences greater than 5 inches at any point, nor shall gaps between the bottom of the fence and

the ground be more than 5 inches.

- (6) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter anywhere in the outdoor play area where children's feet cannot touch the ground.
- (7) When in use, the outdoor play area shall be free of animal excrement, harmful plants, objects, or substances, and standing water.
- (8) The outdoor play area shall have a shaded area to protect children from excessive sun and heat.
- (9) An outdoor source of drinking water, such as a drinking fountain, individually labeled water bottles, or a pitcher of water and individual cups that are taken outside, shall be available to children whenever the outside temperature is 75 degrees or higher.
- (10) All outdoor play equipment and areas shall comply with the following safety standards:
- (a) All stationary play equipment used by infants and toddlers shall meet the following requirements:
- (i) There shall be no designated play surface that exceeds 3 feet in height.
- (ii) If the height of a designated play surface or climbing bar on a piece of equipment, excluding swings, is greater than 18 inches, it shall have use zones that meet the following criteria:
- (A) The use zone shall extend a minimum of 3 feet in all directions from the perimeter of each piece of equipment.
- (B) Use zones may overlap if two pieces of equipment are positioned adjacent to one another, with a minimum of 3 feet between the perimeters of the two pieces of equipment.
- (C) The use zone in front of a slide may not overlap the use zone of any other piece of equipment.
- (iii) The use zone in the front and rear of all swings shall extend a minimum distance of twice the height from the swing seat to the pivot point of the swing, and shall not overlap the use zone of any other piece of equipment.
- (iv) The use zone for the sides of a single-axis swing shall extend a minimum of 3 feet from the perimeter of the structure, and may overlap the use zone of a separate adjacent piece of equipment.
- (v) The use zone of a multi-axis swing shall extend a minimum distance of 3 feet plus the length of the suspending members, and shall never overlap the use zone of another piece of equipment.
- (vi) The use zone for merry-go-rounds shall never overlap the use zone of another piece of equipment.
- (vii) The use zone for spring rockers shall extend a minimum of 3 feet from the at-rest perimeter of the equipment. (viii) Swings shall have enclosed seats.
- (b) All stationary play equipment used by preschoolers or school age children shall meet the following requirements for use zones:
- (i) If the height of a designated play surface or climbing bar on a piece of equipment, excluding swings, is greater than 20 inches, it shall have use zones that meet the following criteria:
- (A) The use zone shall extend a minimum of 6 feet in all directions from the perimeter of each piece of equipment.
- (B) The use zones of two pieces of equipment that are positioned adjacent to one another may overlap if the designated play surfaces of each structure are no more than 30 inches above the protective surfacing underneath the equipment. In such cases, there shall be a minimum of 6 feet between the adjacent pieces of equipment.
- (C) There shall be a minimum use zone of 9 feet between adjacent pieces of equipment if the designated play surface of one or both pieces of equipment is more than 30 inches above the protective surfacing underneath the equipment.
- (ii) The use zone in the front and rear of a single-axis swing shall extend a minimum distance of twice the height of

the pivot point of the swing, and may not overlap the use zone of any other piece of equipment.

- (iii) The use zone for the sides of a single-axis swing shall extend a minimum of 6 feet from the perimeter of the structure, and may overlap the use zone of a separate piece of equipment.
- (iv) The use zone of a multi-axis swing shall extend a minimum distance of 6 feet plus the length of the suspending members, and shall never overlap the use zone of another piece of equipment.
- (v) The use zone for merry-go-rounds shall never overlap the use zone of another piece of equipment.
- (vi) The use zone for spring rockers shall extend a minimum of 6 feet from the at-rest perimeter of the equipment.
- (c) Two-year-olds may play on infant and toddler play equipment.
 - (d) Protective cushioning is required in all use zones.
- (e) If sand, gravel, or shredded tires are used as protective cushioning, the depth of the material shall meet the CPSC guidelines in Table 1. The provider shall ensure that the material is periodically checked for compaction, and if compacted, shall loosen the material to the depth listed in Table 1. If the material cannot be loosened due to extreme weather conditions, the provider shall not allow children to play on the equipment until the material can be loosened to the required depth.

TABLE 1

Depths of Protective Cushioning Required for Sand, Gravel, and Shredded Tires

Highest Designated					
Play Surface,					
Climbing Bar, or					
Swing Pivot Point	Fine (Coarse	Fine M	edium	Shredded
	Sand	Sand	Gravel	Gravel	Tires
4' high or less	6"	6"	6"	6"	6"
Over 4' up to 5'	6"	6"	6"	6"	6"
Over 5' up to 6'	12"	12"	6"	12"	6 "
Over 6' up to 7'	12"	not	9"	not	6 "
		allowed		allowed	
Over 7' up to 8'	12"	not	12"	not	6 "
		allowed		allowed	
Over 8' up to 9'	12"	not	12"	not	6 "
		allowed		allowed	
Over 9' up to 10'	not	not	12"	not	6"
	allowed	allowed		allowed	
Over 10' up to 11'	not	not	not	not	6 "
	allowed	allowed	allowed	allowed	
Over 11' up to 12'	not	not	not	not	6 "
	allowed	allowed	allowed	allowed	

(f) If shredded wood products are used as protective cushioning, the depth of the shredded wood shall meet the CPSC guidelines in Table 2.

TABLE 2

Depths of Protective Cushioning Required for Shredded Wood Products

Highest Designated Play Surface, Climbing Bar, or			
Swing Pivot Point	Engineered	Wood	Double Shredded
	Wood Fibers	Chips	Bark Mulch
4' high or less	6 "	6 "	6 "
Over 4' up to 5'	6"	6"	6 "
Over 5' up to 6'	6 "	6 "	6 "
Over 6' up to 7'	9"	6 "	9"
Over 7' up to 8'	12"	9"	9"
Over 8' up to 9'	12"	9"	9"
Over 9' up to 10'	12"	9"	9"
Over 10' up to 11'	12"	12"	12"
Over 11'	12"	not	not
		allowed	allowed

- (g) If wood products are used as cushioning material:
- (i) the providers shall maintain documentation from the manufacturer verifying that the material meets ASTM

Specification F 1292, which is adopted by reference; and

- (ii) there shall be adequate drainage under the material.
- (h) If a unitary cushioning material, such as rubber mats or poured rubber-like material is used as protective cushioning:
- (i) the licensee shall ensure that the material meets the standard established in ASTM Specification F 1292. The provider shall maintain documentation from the manufacturer that the material meets these specifications.
- (ii) the licensee shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.
- (i) Stationary play equipment that has a designated play surface less than the height specified in Table 3, and that does not have moving parts children sit or stand on, may be placed on grass, but shall not be placed on concrete, asphalt, dirt, or any other hard surface.

TABLE 3

Heights of Designated Play Surfaces That May Be Placed on Grass

INFANTS and TODDLERS PRESCHOOLERS SCHOOL AGE
Less than 18" Less than 20" Less than 30"

- (j) On stationary play equipment used by infants and toddlers, protective barriers shall be provided on all play equipment platforms that are over 18 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 24 inches above the surface of the platform.
- (k) On stationary play equipment used by preschoolers, protective barriers shall be provided on all play equipment platforms that are over 30 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 29 inches above the surface of the platform.
- (1) On stationary play equipment used by school age children, protective barriers shall be provided on all play equipment platforms that are over 48 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 38 inches above the surface of the platform.
- (m) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment, or within or adjacent to the use zone of any piece of stationary play equipment.
- (n) There shall be no strangulation hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.
- (o) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.
- (p) There shall be no tripping hazards, such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.
- (11) The provider shall maintain playgrounds and playground equipment to protect children's safety.

R430-100-7. Personnel.

- (1) The center must have a director who is at least 21 years of age and who has one of the following educational credentials:
- (a) an associates, bachelors, or graduate degree from an accredited college and successful completion of at least 12

semester credit hours of early childhood development courses;

- (b) valid proof of a level 8, 9, or 10 Utah Early Childhood Career Ladder certification issued by the Utah Office of Child Care or the Utah Child Care Professional Development Institute;
- (c) a currently valid national certification such as a Certified Childcare Professional (CCP) issued by the National Child Care Association, a Child Development Associate (CDA) issued by the Council for Early Childhood Professional Recognition, or other credential that the licensee demonstrates as equivalent to the Department; or
- (d) a currently valid National Administrator Credential (NAC) issued by the National Child Care Association, plus one of the following:
- (i) valid proof of successful completion of 12 semester credit hours of early childhood development courses from an accredited college; or
- (ii) valid proof of completion of the following six Utah Early Childhood Career Ladder courses offered through Child Care Resource and Referral: Child Development Ages and Stages, Learning in the Early Years, A Great Place for Kids, Strong and Smart, Learning to Get Along, and Advanced Child Development.
- (e) Center directors who used only the National Administrator Credential (NAC) to meet the director qualifications prior to 1 July 2006 have until 30 June 2011 to obtain the required additional training in early childhood development.
 - (2) All caregivers shall be at least 18 years of age.
- (3) All assistant caregivers shall be at least 16 years of age, and shall work under the immediate supervision of a caregiver who is at least 18 years of age.
- (4) Assistant caregivers may be included in caregiver to child ratios, but shall not be left unsupervised with any child in care
- (5) Assistant caregivers shall meet all of the caregiver requirements under this rule, except the caregiver age requirement of 18 years.
- (6) A volunteer may be included in the provider to child ratio only if the volunteer meets all of the caregiver requirements of this rule.
- (7) Whenever there are more than 8 children at the center, there shall be at least two caregivers present who can demonstrate the English literacy skills needed to care for children and respond to emergencies. If there is only one caregiver present because there are 8 or fewer children at the center, that caregiver must be able to demonstrate the English literacy skills needed to care for children and respond to emergencies.
- (8) Each new director, assistant director, caregiver, assistant caregiver, and volunteer shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented in the caregiver's file and shall include the following topics:
 - (a) job description and duties;
 - (b) the center's written policies and procedures;
 - (c) the center's emergency and disaster plan;
- (d) the current child care licensing rules found in Sections R430-100-11 through 24;
- (e) introduction and orientation to the children assigned to the caregiver;
- (f) a review of the information in the health assessment for each child in their assigned group;
- (g) procedure for releasing children to authorized individuals only;
 - (h) proper clean up of body fluids;
- (i) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;
 - (j) obtaining assistance in emergencies, as specified in the

center's emergency and disaster plan.

- (k) If the center provides infant or toddler care, new caregiver orientation training topics shall also include:
- (i) preventing shaken baby syndrome and coping with crying babies; and
 - (ii) preventing sudden infant death syndrome.
- (9) The following individuals shall complete a minimum of 20 hours of child care training each year, based on the center's license date:
 - (a) the director;
 - (b) the assistant director, if the center has one;
 - (c) all caregivers;
- (d) all substitutes who work an average of 10 hours a week or more, as averaged over any three month period; and
- (e) all volunteers that the provider includes in the provider to child ratio.
- (10) Documentation of annual training shall be kept in each caregiver's file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.
- (11) Caregivers who begin employment partway through the license year shall complete a proportionate number of training hours based on the number of months worked prior to the center's relicense date.
- (12) Annual training hours shall include the following topics:
- (a) the current child care licensing rules found in Sections R430-100-11 through 24;
- (b) a review of the center's written policies and procedures and emergency and disaster plans, including any updates;
- (c) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;
- (d) principles of child growth and development, including development of the brain; and
 - (e) positive guidance.
- (13) If the center provides infant or toddler care, annual training topics for the center director and all infant and toddler caregivers shall also include:
- (a) preventing shaken baby syndrome and coping with crying babies; and
 - (b) preventing sudden infant death syndrome.
- (14) A minimum of 10 hours of the required annual inservice training shall be face-to-face instruction.

R430-100-8. Administration.

- (1) The licensee is responsible for all aspects of the operation and management of the center.
- (2) The licensee shall comply with all federal, state, and local laws and rules pertaining to the operation of a child care center
- (3) The provider shall not engage in or allow conduct that is adverse to the public health, morals, welfare, and safety of the children in care.
- (4) The provider shall take all reasonable measures to protect the safety of children in care. The licensee shall not engage in activity or allow conduct that unreasonably endangers children in care.
- (5) Either the center director or a designee with authority to act on behalf of the center director shall be present at the facility whenever the center is open for care.
- (6) Director designees shall be at least 21 years of age, and shall have completed their orientation training.
- (7) The center director shall be on-site at the center for at least 20 hours per week during operating hours in order to fulfill the duties specified in this rule, and to ensure compliance with this rule.
- (8) The center director must have sufficient freedom from other responsibilities to manage the center and respond to

emergencies.

- (9) There shall be a working telephone at the facility, and the center director shall inform a parent and the Department of any changes to the center's telephone number within 48 hours of the change.
- (10) The provider shall call the Department within 24 hours to report any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless an emergency medical transport was part of a child's medical treatment plan identified by the parent. The provider shall also mail or fax a written report to the Department within five days of the incident.
- (11) The duties and responsibilities of the center director include the following:
- (a) appoint one or more individuals who meet the background screening and training requirements of this rule to be a director designee, with authority to act on behalf of the center director in his or her absence;
 - (b) train and supervise staff to:
 - (i) ensure their compliance with this rule;
- (ii) ensure they meet the needs of the children in care as specified in this rule; and
- (iii) ensure that children are not subjected to emotional, physical, or sexual abuse while in care.
- (12) The provider shall establish and follow written policies and procedures for the health and safety of the children in care. The written policies and procedures shall address at least the following areas:
- (a) direct supervision and protection of children at all times, including when they are sleeping, using the bathroom, in a mixed group activity, on the playground, and during off-site activities:
- (b) maintaining required caregiver to child ratios when the center has more than the expected number of children, or fewer than the scheduled number of caregivers;
- (c) procedures to account for each child's attendance and whereabouts;
- (d) procedures to ensure that the center releases children to authorized individuals only;
 - (e) confidentiality and release of information;
- (f) the use of movies and video or computer games, including what industry ratings the center allows;
- (g) recognizing early signs of illness and determining when there is a need for exclusion from the center;
- (h) ensuring that food preparation and diapering handwashing are not done in the same sink in infant and toddler areas:
- (i) discipline of children, including behavioral expectations of children and discipline methods used;
- (j) transportation to and from off-site activities, or to and from home, if the center offers these services; and
- (k) if the program offers transportation to or from school, policies addressing:
- (i) how long children will be unattended before and after school;
- (ii) what steps will be taken if children fail to meet the vehicle;
- (iii) how and when parents will be notified of delays or problems with transportation to and from school; and
 - (iv) the use of size-appropriate safety restraints.
- (13) The provider shall ensure that the written policies and procedures are available for review by parents, staff, and the Department during business hours.

R430-100-9. Records.

- (1) The provider shall maintain the following general records on-site for review by the Department:
- (a) documentation of the previous 12 months of fire and disaster drills as specified in R430-10(11)(12)(13)(14);

- (b) current animal vaccination records as required in R430-100-22(3);
- (c) a six week record of child attendance, including sign-in and sign-out records;
 - (e) a current local health department inspection;
 - (f) a current local fire department inspection;
- (g) if the licensee has been licensed for one year or longer, the most recent "Request for Annual Renewal of CBS/LIS Criminal History Information for Child Care" listing the licensee and all current providers, caregivers, volunteers, directors, owners, and members of the governing body; and
- (h) if the licensee has been licensed for one year or longer, the most recent criminal background "Disclosure and Consent Statement" listing the licensee and all current providers, caregivers, volunteers, directors, owners, and members of the governing body.
- (2) The provider shall maintain the following records for each currently enrolled child on-site for review by the Department:
- (a) an admission form containing the following information for each child:
 - (i) name;
 - (ii) date of birth;
- (iii) the parent's name, address, and phone number, including a daytime phone number;
- (iv) the names of people authorized by the parent to pick up the child;
- (v) the name, address and phone number of a person to be contacted in the event of an emergency if the provider is unable to contact the parent;
- (vi) if available, the name, address, and phone number of an out of area/state emergency contact person for the child; and
- (vii) current emergency medical treatment and emergency medical transportation releases with the parent's signature;
- (b) a current annual health assessment form as required in R430-100-14(5);
- (c) for each infant, toddler, and preschooler, current immunization records or documentation of a legally valid exemption, as specified in R430-100-14(4);
- (d) a transportation permission form, if the center provides transportation services;
- (e) a six week record of medication permission forms, and a six week record of medications actually administered; and
- (f) a six week record of incident, accident, and injury reports; and
- (g) a six week record of eating, sleeping, and diaper changes as required in R430-100-23(12) R430-100-24(15).
- (3) The provider shall ensure that information in children's files is not released without written parental permission.
- (4) The provider shall maintain the following records for each staff member on-site for review by the Department:
 - (a) date of initial employment;
- (b) approved initial "CBS/LIS Consent and Release of Liability for Child Care" form;
- (c) a six week record of days worked, and the times worked each day;
- (d) orientation training documentation for caregivers, and for volunteers who work at the center at least once each month;
- (e) annual training documentation for all providers and substitutes who work an average of 10 hours or more a week, as averaged over any three month period; and
- (f) current first aid and CPR certification, if applicable as required in R430-100-10(2), R430-100-20(5)(d), and R430-100-21(2).

R430-100-10. Emergency Preparedness.

(1) The provider shall post the center's street address and emergency numbers, including ambulance, fire, police, and poison control, near each telephone in the center.

- (2) At least one person at the facility at all times when children are in care shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing.
- (3) The licensee shall maintain first-aid supplies in the center, including at least antiseptic, band-aids, and tweezers.
- (4) The provider shall have a written emergency and disaster plan which shall include at least the following:
- (a) procedures for responding to medical emergencies and serious injuries that require treatment by a health care provider;
- (b) procedures for responding to fire, earthquake, flood, power failure, and water failure;
- (c) the location of and procedure for emergency shut off of gas, electricity, and water;
- (d) an emergency relocation site where children may be housed if the center is uninhabitable;
- (e) a means of posting the relocation site address in a conspicuous location that can be seen even if the center is closed:
- (f) the transportation route and means of getting staff and children to the emergency relocation site;
- (g) a means of accounting for each child's presence in route to and at the relocation site;
- (h) a means of accessing children's emergency contact information and emergency releases; including contact information for an out of area/state emergency contact person for the child, if available;
- (i) provisions for emergency supplies, including at least food, water, a first aid kit, diapers if the center cares for diapered children, and a cell phone;
- (j) procedures for ensuring adequate supervision of children during emergency situations, including while at the center's emergency relocation site; and
- (k) staff assignments for specific tasks during an emergency.
- (5) The provider shall ensure that the emergency and disaster plan is followed in the event of an emergency.
- (6) The provider shall review the emergency and disaster plan annually, and update it as needed. The provider shall note the date of reviews and updates to the plan on the plan.
- (7) The emergency and disaster plan shall be available for immediate review by staff, parents, and the Department during business hours.
- (8) The provider shall conduct fire evacuation drills monthly. Drills shall include complete exit of all children and staff from the building.
 - (9) The provider shall document all fire drills, including:
 - (a) the date and time of the drill;
 - (b) the number of children participating;
 - (c) the name of the person supervising the drill;
 - (d) the total time to complete the evacuation; and
 - (e) any problems encountered.
- (10) The provider shall conduct drills for disasters other than fires at least once every six months.
- (11) The provider shall document all disaster drills, including:
- (a) the type of disaster, such as earthquake, flood, prolonged power outage, tornado;
 - (b) the date and time of the drill;
 - (c) the number of children participating;
 - (d) the name of the person supervising the drill; and
 - (e) any problems encountered.
- (12) The center shall vary the days and times on which fire and other disaster drills are held.

R430-100-11. Supervision and Ratios.

(1) The provider shall ensure that caregivers provide and maintain direct supervision of all children at all times.

- (2) Caregivers shall actively supervise children on the playground to minimize the risk of injury to a child.
- (3) There shall be at least two caregivers with the children at all times when there are more than 8 children or more than 2 infants present.
- (4) The licensee shall maintain the minimum caregiver to child ratios and group sizes in Table 5 for single age groups of children

 $\label{eq:table 4} \mbox{Minimum Caregiver to Child Ratios and Group Sizes}$

	# of	# of	Maximum
Ages of Children	Caregivers	Children	Group Size
birth - 23 months	1	4	8
2 years old	1	7	14
3 years old	1	12	24
4 years old	1	15	30
5 years old	1	20	40
and school age			

- (5) A center constructed prior to 1 January 2004 which has been licensed and operated as a child care center continuously since 1 January 2004 is exempt from maximum group size requirements, if the required caregiver to child ratios are maintained, and the required square footage for each classroom is maintained.
- (6) Mixed age groups shall meet the ratios and group sizes specified in Tables 5-15.

TABLE 5 Two-year-olds and Three-year-olds

# Caregivers Required	Age	# Children Present
1	2	1 - 6
	3	1-9
	Total cl	hildren: up to 10
2	2	1-13
	3	1-19
	Total cl	hildren: un to 20

TABLE 6

Two-year-olds and Four-year-olds

# Caregivers Require	d Age	# Children Present
1	2	1-6
	4	1-10
	Total child	ren: up to 11
2	2	1-13
	4	1-21
	Total child	ren: up to 22

TABLE 7

Two-year-olds and Five-twelve Year-olds

#	Caregivers	Required	Age	# Children Present	t
	1		2	1-6	
			5-12	1-13	
			Total chi	ldren: up to 14	
	2		2	1-13	
			5-12	1-27	
			Total chi	ldren: up to 28	

TABLE 8

Three-year-olds and Four-year-olds

#	Caregivers	Required	Age	# C	hildre	n Present
	1		3		1-11	
			4		1-13	
			Total	children:	up to	14
	2		3		1-23	
			4		1-27	
			Total	children:	up to	28

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Three-year-olds and Five-twelve Year-olds

#	Caregivers	Required	Age	#	Childre	n Present
	1	•	ž		1-11	
			5-12		1-15	
			Total	children	n: up to	16
	2		3		1-23	
			5-12		1-31	
			Total	children	n: up to	32

TABLE 10

Four-vear-olds and Five-twelve Year-olds

# Caregivers Required	Age #	Children Present
1	4	1-14
	5-12	1-17
	Total childre	n: up to 18
2	4	1-29
	5-12	1-35
	Total childre	n: up to 36

TABLE 11

Two-vear-olds, Three-vear-olds, and Four-vear-olds

#	Caregivers	Required	Age	#	Children	Present
	1		2		1-6	
			3		1-9	
			4		1-9	
			Total	children	: up to	11
	2		2		1-13	
			3		1-20	
			4		1-20	
			Total	children	: up to	22

TABLE 12

Two-year-olds, Three-year-olds, and Five-twelve Year Olds

#	Caregivers	Required	Age	# Children Present	t
	1		2	1-6	
			3	1-11	
			5-12	1-11	
			Total chil	dren: up to 13	
	2		2	1-13	
			3	1-24	
			5-12	1-24	
			Total child	dren: up to 26	

TABLE 13

Two-year-olds, Four-year-olds, and Five-twelve Year-olds

#	Caregivers	Required	Age	# Children Prese	nt
	1	•	2	1 - 6	
			4	1-12	
			5-12	1-12	
			Total: up	to 14	
	2		2	1-13	
			4	1-26	
			5-12	1-26	
			Total chi	ldren: up to 28	

TABLE 14

Three-year-olds, Four-year-olds, and Five-twelve Year-olds

# Caregivers Required	Age	# Children Present
1	3	1-11
	4	1 - 14
	5-12	1-14
	Total: up	to 16
2	3	1-23
	4	1-30
	5-12	1-30
	Total chi	1dren: up to 32

TABLE 15

Two-year-olds, Three-year-olds, Four-year-olds, and Five-11-year-olds

# Caregivers	Required	Age	# Children Present
1		2	1 - 6
		3	1-11
		4	1-11
		5-12	1-11
		Total chi	ldren: up to 14
2		2	1-13
		3	1-25
		4	1-25
		5-12	1-25
		Total chi	ldren: up to 28

- (7) Infants and toddlers may be included in mixed age groups only when 8 or fewer children are present in the group.
- (8) If more than 2 infants or toddlers are included in a mixed age group, there shall be at least 2 caregivers with the group.
- (9) During nap time the caregiver to child ratio may double for not more than two hours for children age 18 months and older, if the children are in a restful or non-active state, and if a means of communication is maintained with another caregiver who is on-site. The caregiver supervising the napping children must be able to contact the other on-site caregiver without having to leave children unattended in the napping area.
- (10) The children of the licensee or any employee, age four or older, are not counted in the caregiver to child ratios when the parent of the child is working at the center, but are counted in the maximum group size.

R430-100-12. Injury Prevention.

- (1) The provider shall ensure that the building, grounds, toys, and equipment are maintained and used in a safe manner to prevent injury to children.
- (2) The provider shall ensure that walkways are free of tripping hazards such as unsecured flooring or cords.
- (3) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that children could pull down on themselves.
 - (4) The following items shall be inaccessible to children:
- (a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a cabinet or area that is locked with a key or combination lock, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;
- (b) tobacco, alcohol, illegal substances, and sexually explicit material;
- (c) when in use, portable space heaters, fireplaces, and wood burning stoves;
- (d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;
 - (e) poisonous plants;
 - (f) matches or cigarette lighters;
 - (g) open flames;
- (h) sharp objects, edges, corners, or points which could cut or puncture skin;
- (i) for children age 4 and under, ropes, cords, wires and chains long enough to encircle a child's neck, such as those found on window blinds or drapery cords;
- (j) for children age 4 and under, plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and
- (k) for children age 2 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.
- (5) The provider shall store all toxic or hazardous chemicals in a container labeled with its contents.
- (6) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

- (7) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.
- (8) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.
- (9) Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children under age 3 shall not have a designated play surface that exceeds 3 feet in height.
- (a) If such equipment has an elevated designated play surface less than 18 inches in height, it shall not be placed on a hard surface, such as wood, tile, linoleum, or concrete, and shall have a three foot use zone.
- (b) If such equipment has an elevated designated play surface that is 18 inches to 3 feet in height, it shall be surrounded by mats at least 2 inches thick, or cushioning that meets ASTM Standard F1292, in a three foot use zone.
- (10) Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children age 3 and older shall not have a designated play surface that exceeds 5-1/2 feet in height.
- (a) If such equipment has an elevated designated play surface less than 3 feet in height, it shall be surrounded by protective cushioning material, such as mats at least 1 inch thick, in a six foot use zone.
- (b) If such equipment has an elevated designated play surface that is 3 feet to 5-1/2 feet in height, it shall be surrounded by cushioning that meets ASTM Standard F1292, in a six foot use zone.
- (11) There shall be no trampolines on the premises that are accessible to any child in care.
- (12) If there is a swimming pool on the premises that is not emptied after each use:
- (a) the provider shall ensure that the pool is enclosed within a fence or other solid barrier at least six feet high that is kept locked whenever the pool is not in use;
 - (b) the provider shall maintain the pool in a safe manner;
- (c) the provider shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool; and
- (d) If the pool is over four feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time children have access to the pool.
 - (13) If wading pools are used:
- (a) a caregiver must be at the pool supervising children whenever there is water in the pool;
- (b) diapered children must wear swim diapers and rubber pants while in the pool; and
- (c) the pool shall be emptied and sanitized after each use by a separate group of children.

R430-100-13. Parent Notification and Child Security.

- (1) The provider shall post a copy of the Department's child care guide in the center for parents' review during business hours.
- (2) Parents shall have access to the center and their child's classroom at all times their child is in care.
- (3) The provider shall ensure the following procedures are followed when children arrive at the center or leave the center:
- (a) Each child must be signed in and out of the center, including the date and time the child arrives or leaves.
- (b) Persons signing children into the center shall use identifiers, such as a signature, initials, or electronic code.
- (c) Persons signing children out of the center shall use identifiers, such as a signature, initials, or electronic code, and shall have photo identification if they are unknown to the provider.
- (d) Only parents or persons with written authorization from the parent may take any child from the center. In an

- emergency, the provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.
- (e) School age children may sign themselves in and out of the center with written permission from their parent.
- (4) The provider shall give parents a written report of every incident, accident, or injury involving their child on the day of occurrence. The caregivers involved, the center director, and the person picking the child up shall sign the report on the day of occurrence. If a school age child signs himself or herself out of the center, a copy of the report shall be mailed to the parent on the day following the occurrence.
- (5) If a child is injured and the injury appears serious but not life threatening, the provider shall contact the parent immediately, in addition to giving the parent a written report of the injury.
- (6) In the case of a life threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb, the provider shall contact emergency personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, the provider shall attempt to contact the child's emergency contact person.

R430-100-14. Child Health.

- (1) The licensee shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.
- (2) All staff shall follow the reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation found in Utah Code, Section 62A-4a-403 and 62A-4a-411.
- (3) The use of tobacco, alcohol, illegal substances, or sexually explicit material on the premises or in center vehicles is prohibited any time that children are in care.
- (4) The provider shall not admit any infant, toddler, or preschooler to the center without documentation of:
- (a) proof of current immunizations, as required by Utah law;
- (b) proof of receiving at least one dose of each required vaccine prior to enrollment, and a written schedule to receive all subsequent required vaccinations; or
- (c) written documentation of an immunization exemption due to personal, medical or religious reasons.
- (5) The provider shall not admit any child to the center without a signed health assessment completed by the parent which shall include:
 - (a) allergies;
 - (b) food sensitivities;
 - (c) acute and chronic medical conditions;
- (d) instructions for special or non-routine daily health care:
 - (e) current medications; and,
 - (f) any other special health instructions for the caregiver.
- (6) The provider shall ensure that each child's health assessment is reviewed, updated, and signed or initialed by the parent at least annually.

R430-100-15. Child Nutrition.

- (1) If food service is provided:
- (a) The provider shall ensure that the center's meal service complies with local health department food service regulations.
- (b) Foods served by centers not currently participating and in good standing with the USDA Child and Adult Care Food Program (CACFP) shall comply with the nutritional requirements of the CACFP. The licensee shall either use standard Department-approved menus, menus provided by the CACFP, or menus approved by a registered dietician. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years.
- (c) Centers not currently participating and in good standing with the CACFP shall keep a six week record of foods

served at each meal or snack.

- (d) The provider shall post the current week's menu for parent review.
- (2) The provider shall offer meals or snacks at least once every three hours.
- (3) The provider shall serve children's food on dishes, napkins, or sanitary high chair trays, except for individual serving size items, such as crackers, if they are placed directly in the children's hands. The provider shall not place food on a bare table.
- (4) The provider shall ensure that caregivers who serve food to children are aware of food allergies and sensitivities for the children in their assigned group, and that children are not served the food or drink they have an allergy or sensitivity to.
- (5) The provider shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's name, and refrigerated if needed, and shall ensure that the food or drink is only consumed by that child.

R430-100-16. Infection Control.

- (1) Staff shall wash their hands thoroughly with liquid soap and warm running water at the following times:
 - (a) before handling or preparing food or bottles;
- (b) before and after eating meals and snacks or feeding children;
 - (c) before and after diapering a child;
 - (d) after using the toilet or helping a child use the toilet;
 - (e) before administering medication;
- (f) after coming into contact with body fluids, including breast milk;
 - (g) after playing with or handling animals;
 - (h) when coming in from outdoors; and
 - (i) after cleaning or taking out garbage.
- (2) The provider shall ensure that children wash their hands thoroughly with liquid soap and warm running water at the following times:
 - (a) before and after eating meals and snacks;
 - (b) after using the toilet;
 - (c) after coming into contact with body fluids;
 - (d) after playing with animals; and
 - (e) when coming in from outdoors.
- (3) Only single use towels from a covered dispenser or an electric hand-drying device may be used to dry hands.
- (4) The provider shall ensure that toilet paper is accessible to children, and that it is kept on a dispenser.
- (5) The provider shall post handwashing procedures that are readily visible from each handwashing sink, and they shall be followed
- (6) Caregivers shall teach children proper hand washing techniques and shall oversee hand washing whenever possible.
- (7) Personal hygiene items such as toothbrushes, or combs and hair accessories that are not sanitized between each use, shall not be shared by children or used by staff on more than one child, and shall be stored so that they do not touch each other.
- (8) The provider shall clean and sanitize all washable toys and materials weekly, or more often if necessary.
- (9) Stuffed animals, cloth dolls, and dress-up clothes must be machine washable. Pillows must be machine washable, or have removable covers that are machine washable. The provider shall wash stuffed animals, cloth dolls, dress-up clothes, and pillows or covers weekly.
- (10) If water play tables or tubs are used, they shall be washed and sanitized daily, and children shall wash their hands prior to engaging in the activity.
- (11) Persons with contagious TB shall not work or volunteer in the center.
- (12) Children's clothing shall be changed promptly if they have a toileting accident.
 - (13) Children's clothing which is wet or soiled from body

fluids:

- (a) shall not be rinsed or washed at the center; and
- (b) shall be placed in a leakproof container, labeled with the child's name, and returned to the parent.
- (14) If the center uses a potty chair, the provider shall clean and sanitize the chair after each use.
- (15) Staff who prepare food in the kitchen shall not change diapers or assist in toileting children.
- (16) The center shall have a portable body fluid clean up kit
- (a) All staff shall know the location of the kit and how to use it.
- (b) The provider shall use the kit to clean up spills of body fluids.
 - (c) The provider shall restock the kit as needed.
- (17) The center shall not care for children who are ill with an infectious disease, except when a child shows signs of illness after arriving at the center.
- (18) The provider shall separate children who develop signs of an infectious disease after arriving at the center from the other children in a safe, supervised location.
- (19) The provider shall contact the parents of children who are ill with an infectious disease and ask them to immediately pick up their child. If the provider cannot reach the parent, the provider shall contact the individuals listed as emergency contacts for the child and ask them to pick up the child.
- (20) The provider shall notify the local health department, on the day of discovery, of any reportable infectious diseases among children or caregivers, or any sudden or extraordinary occurrence of a serious or unusual illness, as required by the local health department.
- (21) The provider shall post a parent notice at the center when any staff or child has an infectious disease or parasite.
- (a) The provider shall post the notice in a conspicuous location where it can be seen by all parents.
- (b) The provider shall post and date the notice the same day the disease or parasite is discovered, and the notice shall remain posted for at least 5 days.

R430-100-17. Medications.

- (1) If medications are given, they shall be administered to children only by a provider trained in the administration of medications as specified in this rule.
- (2) All over-the-counter medications provided by parents and all prescription medications shall:
 - (a) be labeled with the child's full name;
 - (b) be kept in the original or pharmacy container;
 - (c) have the original label; and,
 - (d) have child-safety caps.
- (3) All non-refrigerated medications shall be inaccessible to children and stored in a container or area that is locked, such as a locked room, cupboard, drawer, or a lockbox. The provider shall store all refrigerated medications in a leakproof container.
- (4) The provider shall have a written medication permission form completed and signed by the parent prior to administering any over-the-counter or prescription medication to a child. The permission form must include:
 - (a) the name of the child;
 - (b) the name of the medication;
 - (c) written instructions for administration; including:
 - (i) the dosage:
 - (ii) the method of administration;
 - (iii) the times and dates to be administered; and
 - (iv) the disease or condition being treated; and
 - (d) the parent signature and the date signed.
- (5) If the provider keeps over-the-counter medication at the center that is not brought in by a parent for their child's use, the medication shall not be administered to any child without prior parental consent for each instance it is given. The consent

must be either:

- (a) prior written consent; or
- (b) oral consent for which a provider documents in writing the date and time of the consent, and which the parent or person picking up the child signs upon picking up the child.
- (6) If the provider chooses not to administer medication as instructed by the parent, the provider shall notify the parent of their refusal to administer the medication prior to the time the medication needs to be given.
- (7) When administering medication, the provider administering the medication shall:
 - (a) wash their hands;
 - (b) check the medication label to confirm the child's name;
- (c) compare the instructions on the parent release form with the directions on the prescription label or product package to ensure that a child is not given a dosage larger than that recommended by the health care provider or the manufacturer;
 - (d) administer the medication; and
 - (e) immediately record the following information:
 - (i) the date, time, and dosage of the medication given;
- (ii) the signature or initials of the provider who administered the medication; and,
 - (iii) any errors in administration or adverse reactions.
- (8) The provider shall report any adverse reaction to a medication or error in administration to the parent immediately upon recognizing the error or reaction, or after notifying emergency personnel if the reaction is life threatening.

R430-100-18. Napping.

- (1) The center shall provide children with a daily opportunity for rest or sleep in an environment that provides subdued lighting, a low noise level, and freedom from distractions.
 - (2) Scheduled nap times shall not exceed two hours daily.
- (3) A separate crib, cot, mat, or other sleeping equipment shall be used for each child during nap times.
- (4) Mats and mattresses used for napping shall have a smooth, waterproof surface.
- (5) The provider shall maintain sleeping equipment in good repair.
- (6) If sleeping equipment is clearly assigned to and used by an individual child, the provider must clean and sanitize it as needed, but at least weekly.
- (7) If sleeping equipment is not clearly assigned to and used by an individual child, the provider must clean and sanitize it prior to each use.
- (8) The provider must either store sleeping equipment so that the surfaces children sleep on do not touch each other, or else clean and sanitize sleeping equipment prior to each use.
- (9) A sheet and blanket or acceptable alternative shall be used by each child during nap time. These items shall be:
 - (a) clearly assigned to one child;
- (b) stored separately from other children's when not in use; and.
- (c) laundered as needed, but at least once a week, and prior to use by another child.
- (10) The provider shall space cribs, cots, and mats a minimum of 2 feet apart when in use, to allow for adequate ventilation, easy access, and ease of exiting.
 - (11) Cots and mats may not block exits.

R430-100-19. Child Discipline.

- The provider shall inform caregivers, parents, and children of the center's behavioral expectations for children.
- (2) The provider may discipline children using positive reinforcement, redirection, and by setting clear limits that promote children's ability to become self-disciplined.
- (3) Caregivers may use gentle, passive restraint with children only when it is needed to stop children from injuring

themselves or others or from destroying property.

- (4) Discipline measures shall not include any of the following:
- (a) any form of corporal punishment such as hitting, spanking, shaking, biting, pinching, or any other measure that produces physical pain or discomfort;
- (b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds that specified in Subsection (3) above.
 - (c) shouting at children;
 - (d) any form of emotional abuse;
 - (e) forcing or withholding of food, rest, or toileting; and,
- (f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

R430-100-20. Activities.

- (1) The provider shall post a daily schedule for preschool and school-age groups. The daily schedule shall include, at a minimum, meal, snack, nap/rest, and outdoor play times.
- (2) Daily activities shall include outdoor play if weather permits.
- (3) The provider shall offer activities to support each child's healthy physical, social-emotional, and cognitive-language development. The provider shall post a current activity plan for parent review listing these activities in preschool and school age groups.
- (4) The provider shall make the toys and equipment needed to carry out the activity plan accessible to children.
 - (5) If off-site activities are offered:
- (a) the provider shall obtain written parental consent for each activity in advance;
- (b) caregivers shall take written emergency information and releases with them for each child in the group, which shall include:
 - (i) the child's name;
 - (ii) the parent's name and phone number;
- (iii) the name and phone number of a person to notify in the event of an emergency if the parent cannot be contacted;
- (iv) the names of people authorized by the parents to pick up the child; and
- (v) current emergency medical treatment and emergency medical transportation releases;
- (c) the provider shall maintain required caregiver to child ratios and direct supervision during the activity;
- (d) at least one caregiver present shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification;
 - (e) caregivers shall take a first aid kit with them;
- (f) children shall wear or carry with them the name and phone number of the center, but children's names shall not be used on name tags, t-shirts, or other identifiers; and
- (g) caregivers shall provide a way for children to wash their hands as specified in R430-100-16(2). If there is no source of running water, caregivers and children may clean their hands with wet wipes and hand sanitizer.
- (6) If swimming activities are offered, caregivers shall remain with the children during the activity, and lifeguards and pool personnel shall not count toward the caregiver to child ratio.

R430-100-21. Transportation.

- (1) Any vehicle used for transporting children shall:
- (a) be enclosed;
- (b) be equipped with individual, size appropriate safety restraints, properly installed and in working order, for each child being transported;
- (c) have a current vehicle registration and safety inspection;
 - (d) be maintained in a safe and clean condition;

- (e) maintain temperatures between 60-90 degrees Fahrenheit when in use;
 - (f) contain a first aid kit; and
 - (g) contain a body fluid clean up kit.
- (2) At least one adult in each vehicle transporting children shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification.
 - (3) The adult transporting children shall:
- (a) have and carry with them a current valid Utah driver's license, for the type of vehicle being driven, whenever they are transporting children;
- (b) have with them written emergency contact information for all of the children being transported;
- (c) ensure that each child being transported is wearing an appropriate individual safety restraint;
- (d) ensure that no child is left unattended by an adult in the vehicle;
- (e) ensure that all children remain seated while the vehicle is in motion;
- (f) ensure that keys are never left in the ignition when the driver is not in the driver's seat; and.
 - (g) ensure that the vehicle is locked during transport.

R430-100-22. Animals.

- (1) The provider shall inform parents of the types of animals permitted at the facility.
- (2) All animals at the facility shall be clean and free of obvious disease or health problems that could adversely affect children.
- (3) All animals at the facility shall have current immunizations for all vaccine preventable diseases that are transmissible to humans. The center shall have documentation of the vaccinations.
- (4) There shall be no animal on the premises that has a history of dangerous, attacking, or aggressive behavior, or a history of biting even one person.
- (5) Infants, toddlers, and preschoolers shall not assist with the cleaning of animals or animal cages, pens, or equipment.
- (6) If a school age child assists in the cleaning of animals or animal equipment, the child shall wash his or her hands immediately after cleaning the animal or equipment.
- (7) There shall be no animals or animal equipment in food preparation or eating areas.
 - (8) Children shall not handle reptiles or amphibians.

R430-100-23. Diapering.

- If the center diapers children, the following applies:
- (1) Caregivers shall change children's diapers at a diaper changing station. Diapers shall not be changed on surfaces used for any other purpose.
- (2) Each diapering station shall be equipped with railings to prevent a child from falling when being diapered.
- (3) Caregivers shall not leave children unattended on the diapering surface.
- (4) The diapering surface shall be smooth, waterproof, and in good repair.
- (5) The provider shall post diapering procedures at each diapering station and ensure that they are followed.
- (6) Caregivers shall clean and sanitize the diapering surface after each diaper change.
- (7) Caregivers shall wash their hands before and after each diaper change.
- (8) Caregivers shall place soiled disposable diapers in a container that has a plastic lining and a tightly fitting lid.
- (9) The provider shall daily clean and sanitize containers where wet and soiled diapers are placed.
 - (10) If cloth diapers are used:
 - (a) they shall not be rinsed at the center; and
 - (b) after a diaper change, the caregiver shall place the cloth

- diaper directly into a leakproof container that is inaccessible to children and labeled with the child's name, or a leakproof diapering service container.
- (11) Caregivers shall change children's diapers promptly when they are wet or soiled, and shall check diapers at least once every two hours.
- (12) Caregivers shall keep a written record daily for each infant and toddler documenting their diaper changes. The record shall be completed within an hour of each diaper change, and shall include the child's name, the time of the diaper change, and whether the diaper was dry, wet, soiled, or both.
- (13) Care givers whose designated responsibility includes the care of diapered children shall not prepare food for children or staff outside of the classroom area used by the diapered children.

R430-100-24. Infant and Toddler Care.

- If the center cares for infants or toddlers, the following applies:
- (1) The provider shall not mix infants and toddlers with older children, unless there are 8 or fewer children present in the group.
- (2) Infants and toddlers shall not use outdoor play areas at the same time as older children unless there are 8 or fewer children present in the group.
- (3) If an infant is not able to sit upright and hold their own bottle, a caregiver shall hold the infant during bottle feeding. Bottles shall not be propped.
- (4) The provider shall clean and sanitize high chair trays prior to each use.
- (5) The provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. The provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.
- (6) Baby food, formula, and breast milk that is brought from home for an individual child's use must be:
 - (a) labeled with the child's name;
- (b) labeled with the date and time of preparation or opening of the container, such as a jar of baby food;
 - (c) kept refrigerated if needed; and
- (d) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.
- (7) Formula and milk, including breast milk, shall be discarded after feeding, or within two hours of initiating a feeding.
- (8) To prevent burns, heated bottles shall be shaken and tested for temperature before being fed to children.
- (9) Pacifiers, bottles, and non-disposable drinking cups shall be labeled with each child's name, and shall not be shared.
- (10) Only one infant or toddler shall occupy any one piece of equipment at any time, unless the equipment has individual seats for more than one child.
- (11) Infants shall sleep in equipment designed for sleep such as a crib, bassinet, porta-crib or play pen. Infants shall not be placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment.
 - (12) Cribs must:
 - (a) have tight fitting mattresses;
 - (b) have slats spaced no more than 2-3/8 inches apart;
- (c) have at least 20 inches from the top of the mattress to the top of the crib rail; and
- (d) not have strings, cords, ropes, or other entanglement hazards strung across the crib rails.
- (13) Infants shall not be placed on their stomachs for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.
- (14) Each infant and toddler shall follow their own pattern of sleeping and eating.

- (15) Caregivers shall keep a written record daily for each infant documenting their eating and sleeping patterns. The record shall be completed within an hour of each feeding or nap, and shall include the child's name, the food and beverages eaten, and the times the child slept.
 - (16) Walkers with wheels are prohibited.
- (17) Infants and toddlers shall not have access to objects made of styrofoam.
- (18) Caregivers shall respond as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.
- (19) Awake infants and toddlers shall receive positive physical stimulation and positive verbal interaction with a caregiver at least once every 20 minutes.
- (20) Awake infants and toddlers shall not be confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.
- (21) Mobile infants and toddlers shall have freedom of movement in a safe area.
- (22) To stimulate their healthy development, there shall be safe toys accessible to infants and toddlers. There shall be enough toys for each child in the group to be engaged in play with toys.
- (23) All toys used by infants and toddlers shall be cleaned and sanitized:
 - (a) weekly;
- (b) after being put in a child's mouth before another child plays with it; and
 - (c) after being contaminated by body fluids.

R430-100-25. Penalty.

The Department may impose civil money penalties in accordance with Title 63, Chapter 46b, Administrative Procedures Act, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter.

KEY: child care facilities, child care, child care centers May 1, 2012 26-39 Notice of Continuation August 3, 2012

R495. Human Services, Administration.

R495-884. Kinship Locate.

R495-884-1. Authority and Purpose.

(1) The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules as necessary by U.C.A. 62A-11-107

Printed: October 11, 2012

(2) The purpose of this rule is to provide information about kinship locate services including, who is authorized to request kinship locate services, what information is required to make a request, and what information may be provided from ORS

R495-884-2. Authorized Persons.

- (1) 42 USC 653 (2008) defines "authorized persons" and is incorporated by reference.
- (2) ORS provides locate information to authorized persons who request location information about the parents, putative father and/or non-parental relatives of children in the custody of the Department of Child and Family Services (DCFS).
- (3) An authorized person for kinship locate purposes is a State agency that administers a program under Title IV-B (Child and Family Services) or Title IV-E (Foster Care and Adoption Assistance).

R495-884-3. Requesting Kinship Locate Services.

- (1) A request from an authorized person must include the following information:
 - (a) the child's name;
 - (b) the child's date of birth or social security number;
 - (c) the individual's name;
 - (d) the individual's relationship to the child; and,
 - (e) the individual's date of birth or social security number.

R495-884-4. Information Provided for Kinship Locate.

- (1) ORS will only provide locate information found using the Federal Parent Locator Service (Federal PLS) and the State Parent Locator Services (State PLS).
- (2) ORS will provide the following kinship locate information, if known, about a parent, alleged father or non-parent relative.
 - (a) the individual's name;
 - (b) the individual's social security number;
 - (c) the individual's most recent address; and,
- (d) the individual's employer name, employer identification number (EIN), address.
- (3) If a safeguard determination has been made for an individual on an ORS case, the individual's information will not be released in accordance with 45 CFR 303.21.

KEY: child support, foster care, kinship locate

August 15, 2012

45 CFR 302.35 45 CFR 303.21 45 CFR 303.70 42 USC 653 62A-11-107

R527. Human Services, Recovery Services. R527-300. Income Withholding. R527-300-1. Authority and Purpose.

- 1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Sections 62A-1-111 and 62A-11-107.
- 2. The purpose of this rule is to specify the responsibilities and procedures for the Office of Recovery Services/Child Support Services for income withholding.

R527-300-2. Income Withholding.

- 1. Income withholding is defined as withholding child support from an obligor's income. The payor of income forwards the amount withheld to the Office of Recovery Services/Child Support Services (ORS/CSS).
- 2. Income withholding may be initiated in a IV-D case, with concurrent notice to the obligor:
- a. in a case which has an order issued prior to October 13, 1990, which has not been modified since October 13, 1990, even though the obligor is not delinquent as defined in Section 62A-11-401(6) or R527-300-3, if the obligor and the obligee have signed a subsequent agreement which the obligor has failed to meet; for example, while the order does not require payment by a specific date, there is a written agreement that payment will be made on the first day of each month, or
- b. in a case which has an order issued or modified after October 13, 1990, which found a demonstration of good cause or entered a written agreement that immediate income withholding is not required, if the obligor and the obligee have signed a subsequent agreement which the obligor has failed to meet; for example, while the order does not require payment by a specific date, there is a written agreement that payment will be made on the first day of each month.

R527-300-3. Determining Delinquency.

- 1. If current support has been ordered but is not presently in effect; for example, the children are 18 years old, the children have been adopted, custody has changed, or the obligor is paying current support to the obligee; delinquency has occurred when the obligor has accrued a debt in an amount equal to or greater than the previously ordered current support for one month.
- 2. If there was not a previous current support order but there is a judgment for arrears, delinquency has occurred when the obligor fails to pay as agreed, provided the judgment was for at least one month's current support amount used to compute the judgment for arrears. If the judgment was by default and the judgment amount was for at least one month's current support amount used to compute the judgment, income withholding may begin immediately upon entry of the judgment.
- 3. A delinquency could be the result of an underpayment for several months that totals at least one month's current support.
- 4. A delinquency can occur prior to the end of the month if the obligor was ordered to pay on specific days of the month and failed to do so.

R527-300-4. Affidavit of Delinquency.

The Non-IV-A applicant prepares a month-by-month computation of the support debt, which is referred to as a statement of arrears. The statement of arrears is part of the application packet. As part of the statement of arrears, the applicant attests that the statement is true and accurate to the best knowledge and belief of the applicant. This signed statement shall satisfy the verified statement requirement of Section 62A-11-405.

R527-300-5. Administrative Review.

1. Section 62A-11-405(2)(b)(ii)(B) requires the obligor to

file a written request for review with the office within 15 days to contest withholding. This written request for review shall state the obligor's basis for contesting the withholding.

2. If an administrative review is conducted pursuant to Section 62A-11-405(3), the notice of decision required may be mailed or delivered to the obligor in the ordinary course of business

R527-300-6. Income Subject To Withholding.

Section 62A-11-406 limits the total amount of the income withheld for child support to the maximum permitted under Section 303(b) of the Consumer Credit Protection Act as cited in 15 U.S.C. Section 1673(b). In general, income withholding will be limited to withholding 50% of the obligor's disposable income. However, if 50% does not result in withholding enough to cover the current support obligation, the office may review an obligor's circumstances under the provisions of the Consumer Credit Protection Act to determine whether a higher percentage is permitted.

R527-300-7. Arrears Payments.

If the obligor owes back child support, ORS/CSS will work with the obligor in an effort to encourage timely payment of the debt by the obligor. If the obligor is unable to pay the debt in full, the office may accept monthly payments towards the back child support debt. The minimum arrears payment will be based on 10% of the current support obligation. Exceptions to the minimum arrears payment will be determined by the ORS or CSS Director.

R527-300-8. Modification of Withholding Amounts.

- 1. Once a Notice to Withhold Income for Child Support has been sent to the obligor's payor of income, any changes to the withholding amount will be made by sending the payor a modified Notice to Withhold Income for Child Support. The obligor will be provided concurrent notice of any changes.
- 2. If the obligor changes from one payor of income to another payor of income, a new Notice to Withhold Income for Child Support must be sent to the new payor in accordance with ORS/CSS assessment procedures.

R527-300-9. Income Withholding Termination.

- 1. Income withholding should be terminated if:
- a. the obligor no longer has an obligation for current child support, and no longer has a debt to Utah or another state on whose behalf Utah is acting or to a Non-IV-A obligee on whose behalf Utah is acting;
- b. the Non-IV-A obligee terminates the ORS/CSS case, income withholding was administratively implemented and the obligor no longer owes child support to Utah or other state on whose behalf Utah is acting, and the obligee does not want withholding to continue;
- c. the obligor successfully contests the withholding which is currently in effect through the court or administrative review process. If income withholding was terminated based on a court or administrative order and the obligor later becomes delinquent, income withholding will be reinstated.

R527-300-10. Contesting an Income Withholding Order Issued by Another State.

The Obligor may contest the validity or enforcement of an income-withholding order issued by another state in this state by registering and filing a contest to that order in the appropriate Utah court.

KEY: child support, income, wages	
June 30, 2009	62A-11-401
Notice of Continuation August 21, 2012	62A-11-404
9 ,	62 A 11 405

62A-11-406 62A-11-413 62A-11-414 78B-14-506

R527. Human Services, Recovery Services.
R527-378. Withholding of Social Security Benefits.
R527-378-1. Withholding of Social Security Benefits.
If social security is the obligor's sole means of support and the case is an arrears only case, the notice to the Social Security Administration to withhold income shall be limited to 25 percent of the social security benefit amount.

KEY: child support, social security January 15, 1999 Notice of Continuation August 21, 2012

62A-11-107

R527. Human Services, Recovery Services. R527-412. Intercept of Unemployment Compensation. R527-412-1. Authority and Purpose.

- 1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111. The Office of Recovery Services is authorized to create rules necessary to fulfill its duties by Section 62A-11-107.
- 2. The purpose of this rule is to define the conditions under which the Office of Recovery Services may collect child support from unemployment compensation and the legal limitations on those amounts.

R527-412-2. Intercept of Unemployment Compensation.

- 1. Unemployment compensation shall be subject to income withholding if the case meets the criteria in R527-300. If for any reason the unemployment compensation is not subject to income withholding, the unemployment compensation may be subject to garnishment.
- 2. The obligor may volunteer but shall not be required to pay more than 50% of his gross Unemployment Compensation benefit, or the maximum amount permitted under Section 303(b), Consumer Credit Protection Act, 15 USC 1673(b). If the obligor volunteers to pay more than 50% of the Unemployment Compensation benefit or more than the maximum amount permitted under Section 303(d), Consumer Credit Protection Act, 15 USC 1673(b), that agreement shall be in writing.

KEY: child support, unemployment compensation

February 9, 2010 35A-4-103(5) Notice of Continuation August 21, 2012 62A-1-111 62A-11-107 62A-11-401

R527. Human Services, Recovery Services.

R527-601. Establishing or Modifying an Administrative Award for Child Support.

R527-601-1. Authority and Purpose.

- 1. The Department of Human Services is authorized to create rules necessary for the provision of social services by section 62A-1-111. 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 information as to when ORS will use best available income, what is considered best evidence available, and the procedures that must be taken for best evidence available to be used when establishing or modifying an administrative order.

R527-601-2. Documentation of Income.

When complete documentation of current income as required by Section 78B-12-203 is not available for both parents in an administrative default, participation, or stipulation proceeding, the office shall use the best evidence available to determine the appropriate child support award, in accordance with Section 78B-12-201.

R527-601-3. Definition.

Best evidence available shall include the following: an affidavit from a cooperating parent concerning the income of a parent who is not cooperating in providing documentation of his/her income; historical records including old tax returns, pay stubs, employer statements, or Department of Workforce Services records; market rate earned by persons with the same occupation as reported by the Department of Workforce Services; or the federal minimum wage.

R527-601-4. Procedures.

Prior to using the best evidence available to establish or modify an administrative order, the office shall mail a copy of an affidavit describing the evidence to the last known address of the uncooperative parent against whom the evidence is being used.

KEY: child support

June 15, 2009 62A-1-111 Notice of Continuation August 21, 2012 62A-11-107 78B-12-201

78B-12-203

R527. Human Services, Recovery Services.

R527-928. Lost Checks.

R527-928-1. Authority and Purpose.

- 1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107.
- 2. The purpose of this rule is to specify the responsibility and procedures for the Office of Recovery Services/Child Support Services for issuing a new check that has been lost or stolen.

R527-928-2. Responsibility for Collection and Investigation.

ORS shall be responsible for the collection and investigation of lost or stolen Department of Human Services checks. The term check and warrant are used interchangeably.

R527-928-3. Cashing Department of Human Services Issued Checks.

The Department of Human Services has specific policy concerning the replacement of department issued checks which have been reported as lost or stolen and on which a stop payment has been placed or where the check has been returned as a forged check to the financial institution or store.

The Department will only replace a department issued check for any bank or store if all of the following conditions have been met:

- 1. An employee of the cashing establishment personally observed the payee endorse the check. This includes the original payee and any third party to whom the payee may have made the check payable.
- 2. An employee of the cashing establishment examined a picture bearing governmental issued media presented by the payee and was satisfied that the person presenting the check is in fact the payee. Examples of acceptable identification are, a Utah Motor Vehicle Operator's License or a Utah Identification card. Identification must be obtained for all payees endorsing the check. The employee must note the source of the identification and the identification number on the check.
- 3. The employee who approved the cashing of the check must have made an identifying mark, such as initials, which will identify the employee in the event legal action is initiated at a later date.
- 4. The replacement check to the cashing establishment must be requested within 120 days of the date of notification of the stop payment.

KEY: public assistance programs, banks and banking, fraud April 7, 2008 70A-3

Notice of Continuation August 21, 2012

35A-3-601 35A-3-603 62A-11-104 62A-11-107

Printed: October 11, 2012

R590. Insurance, Administration.

R590-96. Rule to Recognize New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities. R590-96-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to Sections 31A-2-201, and 31A-17-505.

R590-96-2. Purpose.

The purpose of this rule is to recognize the following mortality tables for use in determining the minimum standard of valuation for annuity and pure endowment contracts: the 1983 Table "a", the 1983 Group Annuity Mortality (1983 GAM) Table, the Annuity 2000 Mortality Table, and the 1994 Group Annuity Reserving (1994 GAR) Table.

R590-96-3. Definitions.

- A. As used in this rule 1983 Table "a" means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June 1982 by the National Association of Insurance Commissioners.
- B. As used in this rule "1983 GAM Table" means that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December 1983 by the National Association of Insurance Commissioners.
- C. As used in this rule "1994 GAR Table" means that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force and shown on pages 866-867 of Volume XLVII of the Transactions of the Society of Actuaries, 1995, and adopted as a recognized mortality table for annuities in December 1996 by the National Association of Insurance Commissioners.
- D. As used in this rule "Annuity 2000 Mortality Table" means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research and shown on page 240 of Volume XLVII of the Transactions of the Society of Actuaries (1995) and adopted as a recognized mortality table for annuities in December 1996 by the National Association of Insurance Commissioners.
- E. The tables identified in R590-96-3.C. and D., are hereby incorporated by reference within this rule and are available for public inspection at the Insurance Department during normal business hours.

R590-96-4. Individual Annuity or Pure Endowment Contracts.

- A. Except as provided in Subsections B. and C. of this section, the 1983 Table "a" is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after April 2, 1980.
- B. Except as provided in Subsection C. of this section, either the 1983 Table "a" or the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1985.
- C. Except as provided in Subsection D of this section, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1999.
- D. The 1983 Table "a" without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after July 1, 1999, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:

- (1) Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;
- Settlements involving similar actions such as worker's compensation claims; or
- (3) Settlements of long term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.

R590-96-5. Group Annuity or Pure Endowment Contracts.

- A. Except as provided in Subsections B. and C. of this section, the 1983 GAM Table, the 1983 Table "a" and the 1994 GAR Table are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, any one of these tables may be used for purposes of valuation for an annuity or pure endowment purchased on or after April 2, 1980 under a group annuity or pure endowment contract.
- B. Except as provided in Subsection C of this section, either the 1983 GAM Table or the 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after July 1, 1985 under a group annuity or pure endowment contract.
- C. The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after July 1, 1999 under a group annuity or pure endowment contract.

R590-96-6. Application of the 1994 GAR Table.

In using the 1994 GAR Table, the mortality rate for a person age x in year (1994 + n) is calculated as follows: $q_x^{1994} = q_x^{1994} (1 - AA_x)^n$; where the q_x^{1994} and AA_x s are as specified in the 1994 GAR Table.

R590-96-7. Separability.

If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances may not be affected by it.

KEY: insurance law
March 16, 1999 31A-2-201
Notice of Continuation August 22, 2012 31A-17-505

R590. Insurance, Administration.

R590-197. Treatment of Guaranty Association Assessments as Qualified Assets.

R590-197-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to the general authority to adopt a rule granted under 31A-2-201(3). Specific rulemaking authority in Subsection 31A-17-201(2)(a) allows the department to authorize other assets than those specified in the insurance code, as qualified assets in the determination of an insurers financial condition. Pursuant to Subsection 31A-28-109(8) the insurance commissioner is authorized to approve the amounts and time periods for which contributions are treated as assets.

R590-197-2. Purpose.

This rule is issued in order to establish the standards by which assessments paid by insurers to insurance guaranty associations may be treated as "qualified assets" as that term is defined in 31A-17-201(2).

R590-197-3. Extent to Which Paid Assessments Are Qualified Assets.

- A. The term "qualified assets" in 31A-17-201 includes guaranty fund or guaranty association assessments paid in any state, but only to the extent it is probable the company will be able to offset those assessments against present or future premium taxes or income taxes paid in the state in which the assessments were paid.
- B. The amount of the assessments allowed as qualified assets shall not exceed two and one half times the amount of premium or income taxes paid for the previous calendar year.
- C. The insurance commissioner may disallow any such assessment as a qualified asset to the extent the commissioner determines a company is unlikely to realize a present or future premium tax or income tax offset as a result of the assessment.
- D. For purposes of subsection (A) above, a company is deemed to have paid income or premium taxes where it actually reduces its gross premium tax liability by use of a credit or other legally allowable deduction.

R590-197-4. Severability.

If any provision or portion of this rule or the application of it to any company, person or circumstance is for any reason held to be invalid, such invalidity does not affect the remainder of the rule and the application of the provision to other companies, persons or circumstances.

KEY: insurance law January 25, 2000 31A-2-201 Notice of Continuation December 24, 2009 31A-17-201

R590. Insurance, Administration. R590-210. Privacy of Consumer Information Exemption for Manufacturer Warranties and Service Contracts. R590-210-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-202(1), 31A-2-201(2) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce Title 31A, to perform duties imposed by Title 31A and to make administrative rules to implement the provisions of Title 31A. Furthermore, Title V, Section 505 (15 United States Code (U.S.C.) 6805)) empowers the Utah Insurance Commissioner to enforce Subtitle A of Title V of the Gramm-Leach-Bliley Act of 1999 (15 U.S.C. 6801 through 6820). The commissioner is also authorized under Subsection 31A-23a-417(3) to adopt rules implementing the requirements of Title V, Sections 501 to 505 of the federal act (15 U.S.C 6801 through 6807).

R590-210-2. Purpose.

The purpose of this rule is to exempt any person that is licensed or registered by the department that sells or provides the following from the requirements of the department's rule, R590-206:

- (1) manufacturer warranties;
- (2) manufacturer service contracts paid for with consideration that is in addition to the consideration paid for the product; and
- (3) service contracts paid for with consideration in addition to the consideration paid for the product and the service contract is for the repair or maintenance of goods, including motor vehicles.

R590-210-3. Applicability and Scope.

This rule applies only to persons licensed or registered by the department that sell or provide manufacturer warranties, manufacturer service contracts paid for with consideration that is in addition to the consideration paid for the product, and service contracts paid for with consideration in addition to the consideration paid for the product and the service contract is for the repair or maintenance of goods, including motor vehicles.

R590-210-4. Enforcement.

Persons licensed or registered by the department that sell or provide manufacturer warranties, manufacturer service contracts paid for with consideration that is in addition to the consideration paid for the product, and service contracts paid for with consideration in addition to the consideration paid for the product and the service contract is for the repair or maintenance of goods, including motor vehicles are hereby exempted from the requirements of the department's rule, R590-206.

R590-210-5. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such validity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance law privacy
October 12, 2001 31A-2-201
Notice of Continuation September 1, 2011 31A-2-202
31A-23a-417
15 U.S.C. 6801-6807

R590. Insurance, Administration.

R590-215. Permissible Arbitration Provisions for Individual and Group Health Insurance. R590-215-1. Authority.

This rule is promulgated by the commissioner of Insurance under the general authority granted under Subsection 31A-2-201(3) and incorporates by reference the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1, effective July 1, 2002, and excluding 2560.503-1(a). This federal regulation may be obtained from the Utah Insurance Department.

R590-215-2. Purpose.

This rule recognizes arbitration as an acceptable method of alternative dispute resolution with regards to health benefit plans. This rule is not intended to create procedural guidelines for the administration of arbitration proceedings once commenced. This rule is intended to:

- (1) define the term "permissible arbitration provision" as set forth in Subsections 31A-21-313(3)(c) and 31A-21-314(2); and
- (2) provide guidelines upon which disclosure of a contract arbitration provision is to be made.

R590-215-3. Applicability and Scope.

- (1) This rule applies to the following individual and group policies issued or renewed on or after July 1, 2002:
 - (a) income replacement policies; and
 - (b) health benefit plans.
- (2) Long Term Care and Medicare supplement policies are not considered health benefit plans.

R590-215-4. Definitions.

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Sections 31A-1-301, 78B-11-102, 29 CFR 2560.503-1(m), and the following:

- (1) "Adverse benefit determination" means any of the following: a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for, a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on a determination of a participant's or beneficiary's eligibility to participate in a plan. With respect to individual or group health benefit plans, a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for, a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate.
- (2) "Compulsory binding arbitration" means a contract provision requiring arbitration as an automatic and exclusive remedy for any dispute involving a contract of insurance to the exclusion of any otherwise available judicial remedy, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.
- (3) "Compulsory non-binding arbitration" means a contract provision requiring an insured to exhaust a procedure of extrajudicial arbitration as a condition precedent to the pursuit of an otherwise available judicial remedy.
- (4) "Voluntary binding arbitration" means a contract provision that, at the election of the insured, requires an insurer to submit to arbitration as set forth in such contract, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

- (1) Compulsory binding arbitration is not a permissible arbitration provision.
- (2) Compulsory non-binding arbitration is a permissible arbitration provision when utilized as an internal review of an adverse benefit determination under 29 CFR Subsection 2560.503-1(c)(4).
- (3) Voluntary binding arbitration, at the election of an insured party, is a permissible arbitration provision, and may only be used as a voluntary level of review under 29 CFR Subsection 2560.503-1(c)(3)(iii).
- (4) Policy forms containing compulsory binding or voluntary binding arbitration provisions for the exclusive election of an insurer will be disapproved under Subsection 31A-21-201(3)(a)(iv). Such provisions in previously approved forms are declared not enforceable. They will be construed and applied as if in compliance with the Insurance Code, as permitted under Section 31A-21-107.
- (5) Each application pertaining to an individual or group health benefit plan, and income replacement policy, which contains a voluntary arbitration provision, must include or have attached a prominent statement substantially as follows:

ANY MATTER IN DISPUTE BETWEEN YOU AND THE COMPANY MAY BE SUBJECT TO ARBITRATION AS AN ALTERNATIVE TO COURT ACTION PURSUANT TO THE RULES OF, THE AMERICAN ARBITRATION ASSOCIATION OR OTHER RECOGNIZED ARBITRATOR, A COPY OF WHICH IS AVAILABLE ON REQUEST FROM THE COMPANY. THE COMPANY SHALL BEAR THE COSTS OF ARBITRATION, FILING FEES, ADMINISTRATIVE FEES AND ARBITRATOR FEES. OTHER EXPENSES OF ARBITRATION, INCLUDING, BUT NOT LIMITED TO: ATTORNEY FEES, EXPENSES OF DISCOVERY, WITNESSES, STENOGRAPHER, TRANSLATORS, AND SIMILAR EXPENSES, WILL BE BORNE BY THE PARTY INCURRING THOSE EXPENSES. ANY DECISION REACHED BY ARBITRATION SHALL BE BINDING UPON BOTH YOU AND THE COMPANY. THE ARBITRATION AWARD MAY INCLUDE ATTORNEY'S FEES, IF ALLOWED BY STATE LAW, AND MAY BE ENTERED AS A JUDGMENT IN ANY COURT OF PROPER JURISDICTION.

Such statement must be disclosed prior to the execution of the insurance contract between the insurer and the policyholder and, shall be contained in the certificate of insurance or other disclosure of benefits.

- (6) A voluntary binding arbitration provision may not preclude a dispute from being resolved through any small claims court having jurisdiction.
- (7) All arbitration provisions contained in insurance policies shall be in compliance with the "Utah Arbitration Act," Title 78B, Chapter 11.
- (8) Any such agreement for arbitration shall not obligate an insured to pay for the arbitration in accordance with 29 CFR 2560.503-1(c)(3)(v).
- (9) No arbitration provision may require that arbitration be held at a place further from the residence of the insured than the nearest location of a State Court of General Jurisdiction.

R590-215-6. Severability.

If any provision of this rule or its application to any person or situation is held invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

R590-215-7. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule when they take effect.

KEY: health insurance arbitration May 20, 2003 31A-2-201 Notice of Continuation December 24, 20**27** CFR 2560.503-1

R590. Insurance, Administration.

R590-216. Standards for Safeguarding Customer Information.

R590-216-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-202(1), 31A-2-201(2) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce Title 31A, to perform duties imposed by Title 31A and to make administrative rules to implement the provisions of Title 31A. Furthermore, Title V, Section 505 (15 United States Code (U.S.C.) 6805)) empowers the Utah Insurance Commissioner to enforce Subtitle A of Title V of the Gramm-Leach-Bliley Act of 1999(15 U.S.C. 6801 through 6820). Title V, Section 505 (15 U.S.C. 6805(b)(2)) authorizes the commissioner to issue rules to implement the requirements of Title V, Section 501(b)of the federal act. The commissioner is also authorized under Subsection 31A-23a-417(3) to adopt rules implementing the requirements of Title V, Section 501(b) of the federal act.

R590-216-2. Purpose and Scope.

- (1) This rule establishes standards applicable to the department's licensees to assist them in developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of customer information, pursuant to Sections 501, 505(b), and 507 of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, 6805(b) and 6807.
- (2) Section 501(a) provides that it is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information. Section 501(b) requires the state insurance regulatory authorities to establish appropriate standards relating to administrative, technical and physical safeguards:
- (a) to ensure the security and confidentiality of customer records and information;
- (b) to protect against any anticipated threats or hazards to the security or integrity of such records; and
- (c) to protect against unauthorized access to or use of records or information that could result in substantial harm or inconvenience to a customer.
- (3) Under Section 505(b)(2) state insurance regulatory authorities are to implement the standards prescribed under Section 501(b) by rule with respect to persons engaged in providing insurance.
- (4) Section 507 provides, among other things, that a state rule may afford persons greater privacy protections than those provided by Subtitle A of Title V of the Gramm-Leach-Bliley Act. This rule requires that the safeguards established pursuant to the rule shall apply to nonpublic personal information, including nonpublic personal financial information and nonpublic personal health information that licensees of the department obtain from their customers.

R590-216-3. Definitions.

For purposes of this rule, the following definitions apply:

- (1) "Customer" means a customer of the licensee as the term customer is defined in Rule R590-206, Privacy of Consumer Financial and Health Information Rule, Subsection 4(9)
- (2) "Customer information" means nonpublic personal information as defined in Subsection R59-206-4(19) about a customer, whether in paper, electronic or other form, that is maintained by or on behalf of the licensee.
- (3) "Customer information systems" means the electronic or physical methods used to access, collect, store, use, transmit, protect or dispose of customer information.
 - (4) "Licensee" means a licensee as that term is defined in

Subsection R590-206-4(17)(a), except that "licensee" shall not include: a purchasing group; manufacturer or seller warranty provider and manufacturer or seller service contract provider exempted by R590-210, Privacy of Consumer Information Exemption for Manufacturer Warranties and Service Contract; or an unauthorized insurer in regard to the excess line business conducted pursuant to Section 31A-15-103.

(5) "Service provider" means a person that maintains, processes or otherwise is permitted access to customer information through its provision of services directly to the licensee.

R590-216-4. Information Security Program.

Each licensee shall implement a comprehensive written information security program that includes administrative, technical and physical safeguards for the protection of customer information. The administrative, technical and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

R590-216-5. Objectives of Information Security Program.

A licensee's information security program shall be designed to:

- (1) Ensure the security and confidentiality of customer information:
- (2) Protect against any anticipated threats or hazards to the security or integrity of the information; and
- (3) Protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any customer.

R590-216-6. Examples of Methods of Development and Implementation.

The actions and procedures described in this section are examples of methods of implementation of the requirements of Sections 4 and 5 of this rule. These examples are non-exclusive illustrations of actions and procedures that licensees may adopt to implement Sections 4 and 5 of this rule.

- (1) For risk assessment, the licensee may:
- (a) identify reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration or destruction of customer information or customer information systems;
- (b) assess the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information; and
- (c) assess the sufficiency of policies, procedures, customer information systems and other safeguards in place to control risks.
 - (2) For risk management and control, the licensee may:
- (a) design its information security program to control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities;
- (b) train staff, as appropriate, to implement the licensee's information security program; and
- (c) regularly test or otherwise regularly monitor the key controls, systems and procedures of the information security program. The frequency and nature of these tests or other monitoring practices are determined by the licensee's risk assessment.
- (3) For service provider arrangement oversight, the licensee may:
- (a) exercise appropriate due diligence in selecting its service providers; and
- (b) require its service providers to implement appropriate measures designed to meet the objectives of this rule, and, where indicated by the licensee's risk assessment, takes

appropriate steps to confirm that its service providers have satisfied these obligations.

(4) For program adjustment, the licensee may monitor, evaluate and adjust, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements and changes to customer information systems.

R590-216-7. Determined Violation.

Violation of any provision of the rule will result in appropriate enforcement action by the department, which may include forfeiture, penalties, and revocation of license as provided in Section 31A-2-308.

R590-216-8. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 120 days from the effective date of the rule.

KEY: insurance September 26, 2002

Notice of Continuation August 23, 2012

31A-2-202 31A-23a-417 15 U.S.C. 6801 15 U.S.C. 6805 15 U.S.C. 6807

31A-2-201

R653. Natural Resources, Water Resources.

R653-2. Financial Assistance from the Board of Water Resources.

R653-2-1. Purpose.

The purpose of this rule is to provide the standards and procedures for providing technical and financial assistance to water users to achieve the highest beneficial use of water resources within the state.

R653-2-2. Description of Funding Program.

- (1)(a) The Board of Water Resources (Board) administers three revolving construction funds: the Revolving Construction Fund, the Cities Water Loan Fund, and the Conservation and Development Fund. Funding is available for projects that conserve, protect, or more efficiently use present water supplies, develop new water, or provide flood control. Project facilities may be constructed in another state if project water is to be used within the state of Utah.
- (b) The Board will fund projects based on the following prioritization system:
- (i) Projects which involve public health problems, safety problems, or emergencies.
- (ii) Municipal water projects that are required to meet an existing or impending need.
- (iii) Agricultural water projects that provide a significant economic benefit for the local area.
- (iv) Projects which will receive a large portion of their funding from other sources.
- (v) Projects not included in items 1-4, but which have been authorized by the Board, are funded on a first come first served basis.
- (2) The Board will not fund the following types of projects:
- (a) Projects that are, in the opinion of the Board, routine or regularly occurring system operation and maintenance.
- (b) Domestic water systems where less than 20% of the residents live in the project area year-round.
 - (c) Projects sponsored by developers.
- (3) General guidelines of each of the Board's funding programs are:
 - (a) Revolving Construction Fund (RCF)
- (i) In the RCF, the Board will accept applications from incorporated groups such as mutual irrigation and water companies.
- (ii) The RCF advances financial assistance to the following types of projects:
 - (A) Irrigation projects costing less than \$500,000.
- (B) Rural culinary projects costing less than \$250,000 that involve mutual irrigation and water companies.
 - (C) Dam Safety Studies
- (iii) The staff will recommend repayment terms in the feasibility report it will prepare. Interest will not be charged.
 - (b) Cities Water Loan Fund (CWLF)
- (i) Through the CWLF, the Board may finance the construction of municipal water facilities for political subdivisions of the state such as cities, towns, and districts.
- (ii) The staff will recommend repayment terms and interest rates in the feasibility report.
 - (c) Conservation and Development Fund (CDF)
- (i) Through the CDF, the Board may finance the construction of water projects sponsored by incorporated groups, political subdivisions of the state, the federal government, or Indian tribes.
- (ii) The staff will recommend repayment terms and interest rates in the feasibility report.

R653-2-3. Application Procedure.

(1) Applicants shall submit a completed application form directly to the member of the Board residing in the river district

- in which the project is located. If the Board member determines the application meets general Board guidelines, the Board member will sign the application and forward it to the Division for action.
- (2) Additional information not specifically requested on the application form should also be furnished when such information would be helpful in appraising the merits of the project.
- (3) An application form can be obtained from the Division, a Board member, or the Division's website.

R653-2-4. Project Funding Process.

- (1) After the application for assistance has been completed by the sponsor/applicant, signed by the Board member, and forwarded to the Division, a three-step process will be followed to determine those projects which will be funded by the Board.
 - (2) The three steps of the funding process are:
 - (a) Approval for Staff Investigation
- (i) The Board member considers the proposed project to fall within the Board's general statutory authority.
- (ii) Division staff will prepare a feasibility report covering the general scope of the proposed project but focusing on technical, financial, legal, and environmental aspects, water needs and rights, and water users' support.
 - (b) Authorization
- (i) The feasibility report will be presented to the Board, which will consider the project for authorization on the basis of its merits and overall feasibility and the contribution the project will make to the general economy of the area and the state.
- (ii) As part of its decision-making process, the Board considers it important to discuss the merits of the project with the sponsor. Therefore, representatives of the project sponsor must attend the Board meeting when the project is considered for authorization.
- (iii) If the project is AUTHORIZED by the Board, a letter outlining the engineering and legal requirements for the project, and other conditions of the financial assistance will be sent to the sponsor. For example, some of the more common conditions of these projects are:
- (A) Preparation of a Water Management and Conservation Plan for the sponsor's service area.
- (B) Adoption of an ordinance prohibiting municipal irrigation of landscapes between the hours of 10:00 a.m. and 6:00 p.m.; the Division has prepared a Model Ordinance which is available for the sponsors of municipal projects.
- (C) Adoption of a progressive water rate schedule (municipal projects). Division staff will assist sponsors in establishing such schedules to fit local conditions and circumstances.
- (D) Submittal of a letter noting completion and acceptance of a Water Conveyance Facilities Management Plan as described in and within the time frame required by Utah Code 73-10-33 (2010 First Substitute House Bill 60); and
- (E) Compliance with Utah Code 17-27a-211 (2010 House Bill 298) which requires a canal company or canal operator to provide stated information to the county.
 - (c) Committal of Funds
- (i) After the sponsor has complied with the Board requirements and conditions, the project will be presented for final review. If the Board finds the project to be in order and ready for construction, and IF FUNDS ARE AVAILABLE, the Board will commit funds and direct its officers to enter into the necessary agreements to secure project financing.
- (ii) The project sponsor will not normally be required to attend the Board meeting at which funds are to be committed for the project. If the project scope or cost estimate has changed substantially, the sponsor may be asked to attend the meeting to discuss the changes with the Board.

R653-2-5. Dam Safety Grants and Loans.

- (1) After the application for assistance has been completed and signed by the Board member the application will be submitted to the Division for review. The Division staff will review the application for compliance with the Dam Safety Act and requirements, if any, placed on the sponsor by the State Engineer.
- (2) A report will be prepared by the Division presenting its findings and recommending the amount of the grant and repayment terms for loans.
- (3) Grants will be considered when money is appropriated by the legislature and will be restricted by limitations placed on the funding by the legislature and Board.
- (4) The amount of each grant will be based on conditions determined by the legislature on the money appropriated, and/or by analysis of such items as the number of acres irrigated, the number of water users, the size of the reservoir, the use of the waters, and cost of the proposed improvements.

R653-2-6. Financial Arrangements.

- (1) Project Cost Sharing
- (a) The Board desires to optimize available funding for the overall water development programs of the state and therefore requires sponsors to share in the cost of projects.
- (b) The sponsor's financial ability to cost share will be determined in the project investigation. On the basis of the investigation, the Division will recommend to the Board the portion of the project cost to be furnished by the sponsoring organization. The sponsor will generally be expected to provide 15% 25% of the project cost.
- (c) If additional funds become available to the sponsor after the project is authorized, and if project costs do not increase, the additional funds will be used to reduce the Board's financial participation.
 - (2) Alternate Financing
- The Board will consider alternative project funding methods such as letters of credit, bond insurance, and various methods of interest buydown, instead of directly funding construction of project features.
 - (3) Repayment of Financial Assistance
- (a) The repayment period will generally be less than 25 years.
- (b) The minimum annual cost of water for municipal projects will be 1.17% of the region or project area's annual median adjusted gross income. The percentage will increase with income.
- (c) When annual payments are to be made with revenues from the sale or use of project water, the Board may allow the sponsor one year's use of the project before the first payment is due.
 - (4) Security Arrangements
- (a) Depending upon the type of organization sponsoring the project and the Board fund involved, financial assistance may be secured either by a purchase agreement or bond issue.
- (i) Projects financed through the Revolving Construction Fund must be secured by a purchase agreement.
- (ii) Projects financed through the Cities Water Loan Fund or the Conservation and Development Fund will be secured either by a purchase agreement or by the sale of a bond.
- (b) If project financing is secured by a purchase agreement, the following conditions apply:
- (i) The Board must take title to the project including water rights, easements, deeded land for project facilities, and other assets subject to security interest.
- (ii) An opinion from the sponsor's attorney must be submitted stating the sponsor has complied with its articles and bylaws, state law, and the Board's contractual requirements.
- (iii) Title to the project shall be returned to the sponsor upon successful completion of the purchase agreement.

- (c) If project financing is secured by the sale of a bond, the following conditions apply:
- (i) The procedures for bond approval will be substantially the same as required by the Utah Municipal Bond Act.
- (ii) If the sponsor desires to issue a non-voted revenue bond, the sponsor will be required to:
- (A) Hold a public meeting to describe the project and its need, cost, and effect on water rates.
- (B) Give written notice describing the proposed project to all water users in the sponsor's service area. The notice shall include a solicitation of response to the proposed project. A copy of all written responses received by the sponsor shall be forwarded to the Division. If the area Board member determines there is substantial opposition to the project, the Board may require the sponsor to hold a bond election before funds will be made available.

R653-2-7. Project Engineering and Construction.

- (1) Engineering
- To expedite projects and facilitate the coordination of project development, sponsors are encouraged to select a design engineer prior to making application to the Board.
 - (2) Staff and Legal Costs
- (a) Costs incurred by the Division for investigation, administration, engineering, and construction inspection will be paid to the Board according to the terms set by the Board.
- (b) Costs incurred by the Division during project investigation will not become a charge to the sponsor if the project is found infeasible, denied by the Board, or if the sponsor withdraws the application.
- (c) Legal fees incurred in the review of a sponsor's bonding documents will be billed directly to the sponsor by the legal firm doing the review for the Board.
 - (3) Design Standards and Approval
- (a) All projects funded by the Board shall be designed according to appropriate technical standards and shall be stamped and signed by a Utah registered professional engineer responsible for the work.
- (b) Prior to soliciting construction bids, plans and specifications must be approved by the Division and all other state and federal agencies which have regulatory or funding involvement in the project.
 - (4) Project Bidding and Construction
- (a) The Board desires that all project construction be awarded to qualified contractors based on competitive bids. The Board may waive this requirement and allow a sponsor to act as its own contractor on small projects. However, in all cases the sponsor must comply with the laws governing its operation as well as the statutory requirements placed on the Board and Division.
- (b) The design engineer shall coordinate the project bidding process.
- (c) Construction inspection will be performed under the direction of the registered professional engineer having responsible charge of project construction.

R653-2-8. Qualifications to Guidelines.

The foregoing guideline statements are meant as a guide for the Board, staff, and sponsor to provide an orderly and effective procedure for preparing projects for construction. The Board reserves the right to consider each project on its own merits and may consider and authorize a project that does not meet all requirements of the guidelines.

KEY: water funding August 22, 2012

R657. Natural Resources, Wildlife Resources. R657-16. Aquaculture and Fish Stocking.

R657-16-1. Purpose and Authority.

- (1) Under the authority of Sections 23-15-9 and 23-15-10 of the Utah Code, this rule provides the standards and procedures for:
 - (a) institutional aquaculture;
 - (b) short-term fishing events;
 - (c) private fish stocking; and
- (d) displaying aquaculture products or aquatic wildlife in aquaria.
- (2) This rule does not cover private fish ponds as provided in R657-59, or fee fishing and commercial aquaculture as provided in Title 4, Chapter 37, Parts 2 and 3; and the Department of Agriculture Rule R58-17.
- (3) A person engaging in any activity provided in Subsection (1) must also comply with the provisions set forth in Rule R657-3 and the Department of Agriculture Rule R58-17.
- (4) Any violation of, or failure to comply with, any provision of this rule or any specific requirement contained in a certificate of registration issued pursuant to this rule may be grounds for revocation or suspension of the certificate of registration or denial of future certificates of registration, as determined by a division hearing officer.

R657-16-2. Definitions.

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
- (a) "Aquaculture" means the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions.
- (b) "Aquaculture facility" means any facility used for propagating, rearing, or producing aquatic wildlife or aquaculture products. Facilities that are separated by more than 1/2 mile, or facilities that drain to, or are modified to drain to, different drainages are considered to be separate aquaculture facilities, regardless of ownership.
- (c)(i) "Aquaculture product" means privately purchased aquatic wildlife or their gametes.
- (ii) "Aquaculture product" does not include aquatic wildlife obtained from the wild.
- (d) "Aquarium" means any container located in an indoor facility that is used to hold fish from which no water is discharged, except during periodic cleaning, and which discharged water is passed through a filtering system capable of removing all fish and fish eggs and is disposed of only in a septic tank approved by the county or in a municipal wastewater treatment system approved by either the state or local health department.
- (e) "Display" means to hold live aquaculture products or aquatic wildlife in an aquarium for the purpose of viewing for commercial or noncommercial purposes.
- (f) "FEMA" means Federal Emergency Management Administration.
- (g) "Institutional aquaculture" means aquaculture engaged in by any institution of higher learning, school, or other educational program, or public agency.
- (h) (a) "Ornamental aquatic animal species" means any species of fish, molluck, or crustacean that is commonly cultured and sold in the United States' aquarium industry for display.
 - (b) "Ornamental aquatic animal species" does not include:(i) fresh water:
- (Å) sport fish aquatic animal species commonly angled or harvested for recreation or sport;
- (B) baitfish aquatic animal species authorized for us as bait in R657-13-12, and any other species commonly used by anglers as bait in sport fishing;
 - (C) food fish aquatic animal species commonly cultured

or harvested from the wild for human consumption; or

(D) native species; or

(ii) aquatic animal species prohibited for importation or possession by any state, federal, or local law; or

- (iii) aquatic animal species listed as prohibited or controlled in Sections R657-3-22 and R657-3-23. (i) "Private fish pond" means a pond, reservoir, or other body of water, or any fish culture system which is contained on privately owned land and used for holding or rearing fish for a private, noncommercial purpose.
- (j) "Private stocking" means noncommercial stocking of live aquaculture products in waters of the state not eligible as a private fish pond under R657-59 or other private fish facility.
- (k) "Purchase" means to buy, or otherwise acquire or obtain through barter, exchange, or trade for pecuniary consideration or advantage.
- (l) "Short-term fishing event" means any event where privately acquired fish are held or confined for a period not to exceed seven days for the purpose of providing fishing or recreational opportunity and where no fee is charged as a requirement to fish.

R657-16-3. Certificate of Registration Required.

- (1) A certificate of registration is required before any person may engage in any of the following activities:
- (a) produce, propagate, rear, or culture any aquatic wildlife or aquaculture product;

(b) privately stock fish;

- (c) acquire aquaculture products for a short-term fishing event; or
- (d) display aquaculture products in an aquarium, except a certificate of registration is not required for ornamental fish held in an aquarium.
- (2) Only species approved by the division and listed on the certificate of registration may be possessed and used in conjunction with the activities covered by this rule.
- (3) No aquaculture facility shall be developed on natural lakes or natural flowing streams, or reservoirs constructed on natural stream channels as provided in Section 23-15-10. Other waters, including canals, off-stream reservoirs or ponds, and excavated ponds or raceways, may be considered for an aquacultural use.

R657-16-4. Application for Certificates of Registration.

- (1) An application for a certificate of registration must be submitted to the Wildlife Registration Office, Utah Division of Wildlife Resources, 1594 West North Temple, Salt Lake City, Utah 84114.
- (2) The application may require up to 45 days for processing, except for a short-term fishing event, which may require up to 10 days for processing.
- (3) Application forms are available at all division offices and at the division's Internet address.
- (4) Applications that are incomplete, filled out incorrectly, or submitted without the appropriate fee may be returned to the applicant.

R657-16-5. Renewal of Certificates of Registration.

- (1) Certificates of registration are valid for the dates identified on the certificate of registration.
- (2) Certificates of registration are renewable on or before the expiration date as identified on the certificate of registration.

R657-16-6. Failure to Renew Certificates of Registration Annually.

(1) If an operator of an aquaculture facility, fails to renew the certificate of registration annually, or the hearing officer suspends the certificate of registration, all live aquatic wildlife or aquaculture products permitted under the certificate of registration shall be disposed of as follows:

- (a) Unless the Wildlife Board orders otherwise, all aquatic wildlife or aquaculture products must be removed within 30 days of revocation or the expiration date of the certificate of registration, or within 30 days after ice-free conditions on the water; or
- (b) At the discretion of the division, aquatic wildlife or aquaculture products may remain in the waters at the facility, but shall only be taken as prescribed within Rule R657-13 for Taking Fish and Crayfish.
- (2) Aquatic wildlife or aquaculture products from a facility not health approved under Section 4-37-501 may not be moved alive
- (3) Aquatic wildlife or aquaculture products from an aquatic facility infected with any of the pathogens specified in the Department of Agriculture Rule R58-17 must be disposed of as directed by the division to prevent further spread of such diseases.

R657-16-7. Importation.

- (1)(a) To import live aquatic wildlife or aquaculture products into Utah, a certificate of registration is required.
- (b) Species of aquatic wildlife or aquaculture products that may be imported are provided in Rule R657-3-34.
- (2)(a) To import live grass carp (Ctenopharyngodon idella), each fish must be verified as being triploid by the U.S. Fish and Wildlife Service.
- (b) The form verifying triploidy must be obtained from the supplier and be on file with the Wildlife Registration Office of the division in Salt Lake City prior to importation.
- (c) A copy of this form must also accompany the fish during transport.
- (3) Applications to import aquatic wildlife or aquaculture products are available from all division offices and must be submitted to the division's Wildlife Registration Office in Salt Lake City. Applications may require up to 45 days for action.

R657-16-8. Acquiring and Transferring Aquaculture Products.

- (1) Live aquatic wildlife or aquaculture products, other than ornamental fish, may be:
- (a) purchased or acquired only from sources that have a valid certificate of registration from the Utah Department of Agriculture and Food to sell such products or from a person located outside Utah if both the species and the source are approved on a certificate of registration for importation or by the Utah Department of Agriculture and Food; and
- (b) acquired, purchased or transferred only from sources which have been health approved by the Utah Department of Agriculture and Food and assigned a fish health approval number as provided in Section 4-37-501. This also applies to separate facilities owned by the same individual, because each facility is treated separately, regardless of ownership.
- (2)(a) Any person who has been issued a valid certificate of registration may transport live aquatic wildlife or aquaculture products as specified on the certificate of registration to the facility or approved stocking site.
- (b) Except as provided in Subsection (3), all transfers or shipments of live aquatic wildlife or aquaculture products must be accompanied by documentation of the source and destination of the fish, including:
- (i) name, address, certificate of registration number, and fish health approval number of the source;
 - (ii) number and weight being shipped, by species; and
- (iii) name, address, and certificate of registration number of the destination, if the destination is a fish hatchery or private water; or
- (iv) name, address, county, and division water identification number if the destination is a public water.

- (3)(a) Live aquatic wildlife or aquaculture products may be shipped through Utah without a certificate of registration provided that:
- (i) the aquatic wildlife or aquaculture products are not sold or transferred;
- (ii) the aquatic wildlife or aquaculture products remain in the original container;
 - (iii) the water is not exchanged or discharged; and
 - (iv) the shipment is in Utah no longer than 72 hours.
- (b) Proof of legal ownership and destination must accompany the shipment.

R657-16-9. Inspection of Records and Facilities.

- (1) The following records and information must be maintained for a period of two years and must be available for inspection by a division representative during reasonable hours:
- (a) records of purchase, acquisition, distribution, and production histories of aquatic wildlife or aquaculture products;
 - (b) certificates of registration; and
 - (c) valid identification of stocks.
- (2) Division representatives may conduct pathological, fish culture, or physical investigations at any facility, pond, or holding facility during reasonable hours.

R657-16-10. Private Fish Ponds.

Private fish ponds are regulated under the provisions in R657-59.

R657-16-11. Short-Term Fishing Events.

- (1) A person sponsoring a short-term fishing event must obtain a certificate of registration prior to holding the event, except the division may conduct short-term fishing events for educational purposes without a certificate of registration.
- (2)(a) A certificate of registration for a short-term fishing event may be obtained by applying to the Wildlife Registration Office at the division's Salt Lake City office a minimum of 10 days prior to the event.
 - (b) Application forms are available at all division offices.
- (c) After review and confirmation by the division that the event poses no identifiable adverse threats to other fish or wildlife species, a certificate of registration may be issued.
- (d) The certificate of registration may cover multiple events, which must be requested on the application form.
- (3) A fishing license and bag limit is not required of participants in a short-term fishing event unless stated otherwise on the certificate of registration.
- (4) For short-term fishing events where fishing licenses and bag limits under Rule R657-13 do not apply, a receipt must be given to participants transporting dead aquaculture products or aquatic wildlife away from the event. Such receipt must include the following information:
 - (a) name of event sponsor;
 - (b) date caught;
 - (c) certificate of registration number; and
- (d) species and number of dead aquaculture products or aquatic wildlife being transported.
- (5) Live fish remaining at the end of the event may not be transported alive, released, or stocked.
- (6) A certificate of registration for a short-term fishing event may be obtained by submitting an application and paying a fee in the amount established by the Wildlife Board.

R657-16-12. Private Stocking.

- (1) An individual wishing to stock fish for private, noncommercial purposes in a body of water not eligible as a private fish pond under R657-59 must first obtain a certificate of registration for private stocking.
- (2) Fish released in a state water not eligible as a private fish pond under R657-59 are considered wild aquatic wildlife

and may be taken only as provided in Rule R657-13 and the fishing proclamation.

- (3) A water that does not qualify as a private fish pond may not be screened to contain fish stocked (pursuant to a certificate of registration for private stocking), except that a water stocked with grass carp to control aquatic weeds must be adequately screened to prevent the grass carp from escaping.
- (4)(a) Private stocking is limited only to those species approved on the certificate of registration.
- (b) Species approval will be based on the biological suitability of the requested species compared to the needs of the fish and other wildlife in the drainage.
- (c) An amendment to the certificate of registration is required each time fish are stocked, except the division may allow a person to stock fish more than once if the request is made on the application, and is approved by the division.
- (d) Fish may be acquired only from a source that has a valid fish health approval number assigned by the Department of Agriculture.
- (5)(a) An application for a certificate of registration for private stocking to stock fish other than grass carp may be approved only if:
 - (i) on privately owned land;
- (ii) the body of water is a reservoir, the reservoir is wholly contained on the land owned by the applicant; and
- (iii) the body of water is not stocked or otherwise actively managed by the division.
- (b) An application for a certificate of registration for private stocking of fish other than grass carp shall not be approved if:
 - (i) the fish to be stocked are for a commercial purpose; or
- (ii) in the opinion of the division, stocking would cause harm to other species of fish or wildlife.
- (6) An application for a certificate of registration for private stocking of triploid grass carp for control of aquatic weeds will be evaluated based upon:
 - (a) the severity of the weed problem;
 - (b) availability of other suitable means of weed control;
 - (c) adequacy of screening to contain the grass carp; and
- (d) potential for conflict or detrimental interactions with other species of fish or wildlife.
- (7) A certificate of registration for private stocking may be issued after review of the appropriateness of the requested species and inspection of the water to be stocked by a division representative to ensure compliance with the stipulations of this rule and the absence of any threat to other fish or wildlife species.
- (8) A certificate of registration for private stocking may be obtained by submitting an application and paying a fee in the amount established by the Wildlife Board.

R657-16-13. Institutional Aquaculture.

- (1) A certificate of registration is required for any public agency, institution of higher learning, school, or educational program to engage in aquaculture.
- (2) Aquatic wildlife or aquaculture products produced by institutional aquaculture may not be:
 - (a) sold;
 - (b) stocked; or
- (c) transferred into waters of the state unless specifically authorized by the certificate of registration.
- (3) The fish health approval requirements of Section 4-37-501 apply.
- (4)(a) A certificate of registration for institutional aquaculture may be obtained by submitting an application to the division.
- (b) A certificate of registration may be renewed on or before July 31 each year by submitting an application and the records described in Subsection (5).

- (5)(a) A person possessing a valid certificate of registration for institutional aquaculture must submit to the division a report of each acquisition, distribution, transfer, or stocking of live aquatic wildlife or aquaculture products.
- (b) This report must be sent to the division no later than June 30, and must be received before the certificate of registration may be renewed.
- (c) Documentation of source, quantity, species, health approval status, and destination of all live aquatic wildlife or aquaculture products must accompany all shipments or transfers.

R657-16-14. Display.

- (1)(a) A certificate of registration is required to hold live aquatic wildlife or aquaculture products in an aquarium for the purpose of viewing or displaying for commercial or noncommercial purposes, except the division may hold live aquatic wildlife or aquaculture products in an aquarium for educational viewing or display without a certificate of registration. A certificate of registration is not required to display ornamental fish.
- (b) Live aquatic wildlife or aquaculture products that are displayed must meet the health approval standards described in Section 4-37-501.
- (2)(a) Aquatic wildlife taken from the wild may not be displayed or held in an aquarium.
- (b) The division may take aquatic wildlife from the wild for placement in an aquarium for purposes of display or education.
- (3) Live aquaculture products held in an aquarium for display may not be transferred, sold alive, released, or stocked. They may be sold as long as they are first killed and prepared for consumption.
- (4)(a) A certificate of registration for display of live aquaculture products in an aquarium may be obtained by submitting an application and paying a fee in the amount established by the Wildlife Board.
- (b) The certificate of registration is renewable every five years on or before the renewal date as specified on the certificate of registration by submitting an application, paying a fee in the amount established by the Wildlife Board, and submitting the records described in Subsection (5).
- (5)(a) A person possessing a certificate of registration for display must submit to the division an annual report of each purchase or acquisition of live aquaculture products. This report must include the following information:
- (i) name, address, certificate of registration number, and health approval number of the source; and
 - (ii) number and weight acquired, by species.
- (b) This record must be submitted to the division no later than January 30 each year, and must be received before the certificate of registration can be renewed.

KEY: wildlife, aquaculture, fish August 21, 2012 23-15-9 Notice of Continuation October 9, 2007 23-15-10

R657. Natural Resources, Wildlife Resources. R657-28. Use of Division Lands.

R657-28-1. Purpose and Authority.

- (1) Pursuant to Utah Code Section 23-14-8 and Section 23-21-2.1, this rule defines:
 - (a) lawful uses and activities on division lands; and
- (b) the application procedures and administration on division lands for rights-of-way; grazing permits; agricultural leases; leases; special use permits; seed harvesting; wood products removal; water uses; and sand, gravel, and cinder extraction.
- (2) The division may approve a land use only if, in the opinion of the division, such use does not unreasonably conflict with the intended use of the land or is not detrimental to wildlife or wildlife habitat; and the impacts can be avoided, minimized, rectified, or compensated.
- (3) The division may not authorize a land use under this rule without first obtaining the approval of the persons or entities, if any, holding contractual or proprietary interests in the subject property.
- (4) Nothing in this rule shall prevent the division from closing division lands to public-use or activity if the division determines that the disturbance from the use or activity is detrimental to wildlife or wildlife habitat.
- (5) The division's habitat section is primarily responsible for the management responsibilities of division lands and waters, including the processing of all contracts, permits, and other agreements.

R657-28-2. Definitions.

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
- (a) "Agricultural lease" means any lease given for purposes of cultivating crops of any kind.
- (b) "Christmas tree" means any pinyon or juniper tree; or other species that the division may so designate on a subject property; or any part thereof cut and removed from the place where it was grown, without the foliage being removed.
- (c) "Commercial gain" means compensation in money, services, or other valuable consideration as part of a scheme or effort to generate income or financial advantage.
- (d) "Compensatory Mitigation" means the replacement or substitution of resources or environments cumulatively impacted by a proposed action or cumulative proposed actions.
- (e) "Cord" means a unit of cut firewood equal to a stack 4x4x8 feet or 128 cubic feet.
- (f) "Division lands" means all land and waters owned by the division, or managed by the division under written agreement. When lands or waters owned by other parties are managed by the division under written agreement, and the terms of the agreement conflict with this Rule, the agreement shall govern.
- (g) "Firewood" means any portion of a dead and fallen tree not included in any other definition of this section.
- (h) "Grassbank" means forage reserved on a particular division property to be used as in-kind trade for conservation actions on public or private lands, emergency forage for division grazing permittees, or any other purpose designated by the division
- (i) "In-Kind Compensation" means anything paid or given in goods, commodities, or services in lieu of money, that is done on, affixed to, invested in, or beneficial to division property for the purpose of wildlife habitat maintenance or improvement, or other wildlife-related projects.
- (j) "Lease" means an agreement that authorizes use of division land for a specified term, purpose, and for a specified fee or in-kind compensation, or a combination thereof.
- (k) "Livestock Operator" means any individual or entity that owns or manages domestic livestock.

- (l) "Organized Event" means any event in which registration fees are collected, commercial gain may occur, prizes are awarded for competition, an enrollment or participation list is created, or a group is assembled as part of a club or organizational activity.
- (m) "Ornamental" means any coniferous or deciduous tree that is less than 20 feet in height and has a trunk of no more than 6 inches in diameter at breast height, which is removed from a natural setting, generally with roots attached, for transplant to a different location.
- (n) "Post" means a portion of a tree or tree stem, generally a Utah juniper, which is less than 10 feet in length and 6 inches in tip diameter.
- (o) "Right-of-way Lease" means a lease for an easement or right-of-way for a specific use of division land including, but not limited to, utilities, telecommunications structures, transmission lines, canals, ditches, pipelines, tunnels, fences, roads, and trails.
- (p) "Sand, Gravel, Cinders, and Ornamental Rock" means common varieties of sand, gravel, volcanic cinder, or ornamental rock separate and distinct from the mineral estate on division lands.
- (q) "Seed Harvesting" means the gathering of any seed on division property for any purpose.
- (r) "Special use permit" means a temporary authorization for a specific, non-depleting land use, including seismic or land surveys, research sites, organized activity, or physical access on division lands.
- (s) "Wood product" means any tree, or portion of a tree, including Christmas trees, posts, ornamentals, and firewood.

R657-28-3. Management of Division Lands.

The division manages division lands and water rights to directly or indirectly protect and improve wildlife habitats and watersheds; increase fish and game populations to meet wildlife management plan objectives and expand fishing and hunting opportunities; conserve, protect, and recover sensitive wildlife species and their habitats; and provide wildlife-related recreational opportunities.

R657-28-4. Unlawful Uses and Activities on Division Lands.

- (1) Except as authorized by statute, rule, contractual agreement, special use permit, certificates of registration, or public notice, a person, on division land, may not:
- (a) remove, extract, use, consume or destroy any improvement or cultural or historic resource;
- (b) remove, extract, use, consume, or destroy any sand, gravel, cinder, ornamental rock, or other common mineral resource, or vegetation resource;
 - (c) allow livestock to graze, except as allowed by permit;
- (d) remove any plant or portion thereof for purposes of commercial gain;
- (e) enter, use, or occupy division land when posted against such entry, use, or occupancy;
- (f) enter, use, or occupy division land in group sizes greater than twenty-five (25) people;
- (g) enter, use, or occupy division land while engaged in an organized event;
- (h) use, occupy, destroy, move, or construct any structure including fences, water control devices, roads, surveys and section markers, or signs;
- (i) prohibit, prevent, or obstruct public entry on division lands when such public entry is authorized by the division;
- (j) attempt to manage or control division lands in a manner inconsistent with division management plans, rules, or policies.
- (k) solicit, promote, negotiate, barter, sell or trade any product or service on, or obtained from, division lands for commercial gain;
 - (l) park a motor vehicle or trailer or camp for more than 14

consecutive days unless posted for a different duration;

- (m) light a fire without adequate provision to prevent spreading or leave a fire unattended;
- (n) use fireworks, explosives, poisons, herbicides, insecticides, or pesticides;
- (o) use motorized vehicles of any kind except as authorized by declaration, management plan, or posting; or
- (p) use division lands for any purpose that otherwise violates applicable land use restrictions imposed in statute, rule, or by the division.
- (2) A person or entity which unlawfully uses division lands is liable for damages in the amount of:
- (a) the value of the resource removed, destroyed, or extracted;
 - (b) the amount of damage committed;
- (c) the value of any losses suffered as a result of interference with authorized activities; and
- (d) the consideration which would have been charged by the division for use of the land during the period of trespass, whichever is greater.
- (3) The division's law enforcement section shall be primarily responsible for the investigation of any unlawful use of, or activity on, division lands.
- (4) The division's law enforcement section shall be primarily responsible for the investigation of facts pertinent to filing for judicial remedy related to any unlawful use of, or activity on, division lands.
- (5) The provisions of this Section do not apply to division employees or division volunteers while in the performance of their duties.
- (6) Except as otherwise provided by statute, the criminal penalty for a violation of any provision of this Section is prescribed in Section 23-13-11.

R657-28-5. Domestic Livestock Grazing on Division Lands.

- (1) The division may use domestic livestock grazing to manage vegetation on division lands if the division determines domestic livestock prescribed grazing is necessary for the maintenance or improvement of wildlife habitat on particular division properties.
- (2) Domestic livestock grazing on division lands shall occur only under the permission, provisions, and authority given in a grazing permit issued by the division.
- (3) Grazing permits may be issued by the division through a proposal solicitation process in accordance with R657-28-20 to achieve the division's vegetation or wildlife management goals.
- (4) In the event an unanticipated prescribed grazing treatment is necessary for a division property, the division reserves the right to enter into contract with any livestock operator the division determines can provide the prescribed grazing treatment in a timely manner without soliciting competitive proposals; however, grazing permits issued under this paragraph shall not contain an option to renew and shall be limited to the current grazing season in duration.
 - (5) Grazing permits issued by the division shall include:
- (a) The name, and a map, of the subject property to be grazed;
- (b) A description of the desired vegetation community structure sought through the use of domestic livestock grazing;
- (c) Identification of the type of domestic livestock needed to achieve the desired vegetation community structure;
- (d) Identification of the key forage species for which utilization is to be measured;
- (e) A description of the timing and intensity of utilization sought on key forage species that will achieve the desired vegetation community structure;
- (f) The division's best estimate of the stocking density, period of grazing, and authorized forage harvesting stated in

- animal unit months that will achieve its vegetation management goals;
- (g) A statement that the division may unilaterally suspend the grazing period if utilization goals for key forage species are met or exceeded prior to the end of the grazing period stated in the permit; or if events such as drought or fire make suspension necessary in order to prevent harm to the vegetation or wildlife resources.
- (h) Identification of a reserved grass bank, if any, that the division may at its option offer as emergency forage for a permittee if the period of grazing set forth in the permit is suspended by the division.
- (i) Identification of the type of compensation required by the division. Description of the compensation required shall be sufficiently specific as to be clearly understood by the permittee and the division.
- (j) Requirement that all applications to appropriate water on division land be filed only with the permission of the division, filed in the name of the division, and that express written consent from the division is needed prior to the conveyance of water off division land.
- (k) A statement assuring public access to division property by the permittee.
- (1) A statement that the permittee is solely responsible for fence maintenance and control of permittee's livestock during the period of the permit.
- (6) The division may at its option suspend domestic livestock grazing authorized under any permit prior to expiration of the permit's grazing period if the division determines the desired degree of utilization on the key forage species has been achieved.
- (a) The division shall attempt to verbally notify the livestock operator and send written notification that utilization goals have been achieved and that domestic livestock grazing is suspended.
- (b) The livestock operator shall remove its domestic animals within seven (7) days of the postmark date on the written notification of suspension.
- (c) Animals remaining on division lands after the seven (7) day period will be considered in trespass.
- (7) Compensation received by the division for grazing permits may be in-kind or monetary, or a combination of both, as specified by the division.
- (8) The permittee is obligated to satisfy its compensation obligations regardless of whether the permittee uses the grazing permit or whether the provisions of the permit have been changed by the division.
- (9) Compensation due from the permittee shall be prorated in cases where the division suspends the period of grazing or animal unit months set forth in the permit.
- (10) The division may require compensation to be paid prior to livestock being placed on division land each year.

R657-28-6. Grazing of Domestic Livestock on Division Lands -- Grazing Permits -- Termination of Grazing Permit.

- (1) The division may unilaterally terminate a grazing permit at any time if the permittee has managed permittee's livestock in a manner that breaches the provisions of the grazing permit.
- (a) If the livestock management of a permittee is sufficiently egregious as to defeat the vegetation management goals of a grazing permit, that livestock operator may be disqualified from applying in the future for grazing permits on division property.
- (b) The division shall notify in writing any livestock operator disqualified from obtaining grazing permits.
- (2) The division shall determine the degree to which a permittee has complied with the provisions of the grazing permit, and shall report to the permittee whether compliance

was satisfactory or unsatisfactory.

R657-28-7. Grazing of Domestic Livestock on Division Lands -- Grazing Permits -- Option to Renew.

- Permits shall be issued for a term no greater than one year.
- (2) Permittees who receive a satisfactory review for the previous year may have the option to renew the permit for the coming year provided the division determines continued livestock grazing is necessary to maintain or improve wildlife habitat; except the division may at its discretion:
- (a) Alter the provisions of the permit contract describing key forage species, timing, intensity, location, and duration of domestic livestock grazing if the division determines that such alteration will better achieve its vegetation management goals;
- (b) Identify a different in-kind compensation on division property that is reasonably comparable in value to the in-kind compensation of the original grazing permit.
- (i) the division may negotiate the terms of the new in-kind compensation, and total compensation due the division without opening the permit to competitive bidding.
- (c) Withdraw the subject property from domestic livestock grazing for any reason whatsoever.
- (3) Should the terms of the original grazing permit be changed by the division, the permittee shall have the option to renew the permit.
- (4) A permittee may hold a grazing permit on a subject division property for a maximum period of ten years through the exercising of an option to renew; except the division may put the permit out to competitive proposal solicitation at the conclusion of the fifth year;
- (5) The permittee having the grazing permit for the preceding ten years on a subject division property is entitled to submit a proposal for grazing the same division property if the permittee has not been disqualified from consideration as a permittee on division lands.
- (6) The division reserves the right to issue grazing permits without options to renew, or with options to renew for a shorter aggregate term.

R657-28-8. Grazing of Domestic Livestock on Division Lands -- Grazing Permits -- Legal Effect.

- (1) Grazing permits transfer no right, title, or interest in any lands or resources held by the division, nor any exclusive right of possession, and grant only the authorized utilization of forage.
 - (2) Permittees have no property rights in a grazing permit.

R657-28-9. Grazing of Domestic Livestock on Division Lands -- Grazing Permits -- Range Improvement Projects.

- (1) No range improvement project, including, but not limited to, the building of fences or corrals; structures used to impound, divert, or convey water claimed solely under a division water right; prescribed burning; seeding; chaining; harrowing; irrigation; etc., shall be conducted on division lands without the express written consent of the division.
- (2) Range improvements, including fences, corrals, water works, etc., constructed on division property by permittee and which are affixed to the property shall be property of the division.
- (3) Permittee shall not be compensated for such improvements unless previously agreed upon in writing between the division and the permittee.
- (4) All permittees are prohibited from filing an application to appropriate water on division lands unless the application is approved by the division in writing and is filed in the name of the State of Utah, Utah Division of Wildlife Resources.

R657-28-10. Grazing of Domestic Livestock on Division

Lands -- Trespass.

- (1) Unauthorized livestock management activities on division land shall be considered trespass. These activities include, but are not limited to:
- (a) The use of forage at times and at places not authorized in a permit.
- (b) The placement of numbers of livestock on division land which, if left on the division land for the length of time allowed in the permit, would result in forage utilization in excess of that authorized by the permit.
- (c) Grazing, staging, or trailing livestock on or across division land without a valid permit or publicly-recorded right-of-entry.
- (d) The dumping of garbage or any other material on the division land.
- (2) The permittee shall cooperate with the division in seeking judicial remedy against owners of trespass livestock on division lands for lost forage or other values.

R657-28-11. Grazing of Domestic Livestock on Division Lands -- Trailing and Staging Livestock Across or On Division Lands.

- (1) Unless a party has a recorded right-of-way to trail livestock across division lands, prior written approval must be obtained from the division for trailing livestock across division lands.
- (2) The authorization to trail livestock across division land shall restrict and limit the route, the number and type of animals, and the time and duration, (not to exceed two consecutive days).
- (3) Staging of livestock on division lands is prohibited without the prior written consent of the division

R657-28-12. Grazing of Domestic Livestock on Division Lands -- Grassbanks.

- (1) The division may designate specific properties as grassbanks for purposes of:
- (a) Trading forage for habitat conservation actions on private or public lands;
- (b) Providing emergency forage for a division grazing permittee when goals of domestic livestock impacts to vegetation have been achieved prior to the expiration of a permit's grazing period; or
 - (c) Any other purpose the division may identify.
- (2) Provisions required for a grazing permit under R657-28-5(5) shall be defined for grassbank properties prior to their forage reserves being used.
- (3) Nothing herein shall be construed to obligate the division to provide a grassbank or forage reserve when a grazing permittee is required by the division to suspend grazing prior to the expiration of the grazing period described in the permit, nor shall the division be required to utilize forage reserves under any other circumstance unless previously agreed to in writing by the division.

R657-28-13. Wood Products -- General Restrictions.

- (1) A person may not cut or remove any wood product from division lands without obtaining the proper permit, tag, or contract and having the permit, tag, or contract in possession.
- (2) A wood products collection contract or permit may be issued for a designated area and a specified period of time for:
 - (a) Removing trees;
 - (b) Harvesting Christmas trees; or
 - (c) Collecting firewood, posts, or ornamentals.
- (3) A person may not cut or remove wood products during any period of time, or on any area not specified on the permit.
 - (4) Permits are nontransferable and nonrefundable.
- (5) Permittees must accompany wood products from the cutting site.

- (6) Permits are available at the Salt Lake and regional offices.
- (7) The division may set a maximum number of permits to harvest wood products on division lands.

R657-28-14. Wood Products -- Firewood Permits.

- (1) A person may purchase one permit per year to collect firewood on division lands.
- (2) A firewood permit allows a person to collect up to 2 cords of wood under the following conditions:
- (a) Firewood collection is limited to felled trees on chained areas, except in designated live tree removal areas.
- (b) A living or dead tree containing a nesting cavity may not be felled or collected.
- (3) Firewood may be collected from May 1 through November 30 or as otherwise specified in the permit.
- (4) The fee for a firewood permit is that which is set by the Utah Legislature yearly.

R657-28-15. Wood Products -- Christmas Tree Permits.

- (1) A person may purchase one permit per year to cut a Christmas tree on division lands.
 - (2) A tag will be issued with each Christmas tree permit.
- (3) Only pinyon pine, Rocky Mountain juniper, or Utah juniper, or other species designated by the division on a specific property may be cut and removed.
- (4) The tag must be visibly attached to the tree before it is transported from the cutting site.
- (5) The fee for a Christmas tree permit is that which is set by the Utah Legislature yearly.
- (6) The Christmas tree permit fee may be waived for any person who possesses a current Utah hunting or fishing license.
- (7) Division lands are closed from December 1 through April 30 or as otherwise specified in the permit.

R657-28-16. Wood Products -- Ornamentals and Posts.

- (1) A person may purchase one permit per year to remove ornamentals or cut posts on division lands.
- (2) A person may harvest ornamentals up to an aggregate value of \$60 per permit.
- (3) A person may harvest posts up to an aggregate value of \$50 per permit.
- (4) The value of ornamentals and posts are those values determined yearly by the Utah Legislature; compensation received by the division may be monetary, in-kind, or both.

R657-28-17. Wood Products -- Contract Agreements.

- (1) Contracts may be issued by the division for removing quantities of wood products in excess of those specified in this rule.
- (2) Contracts shall be awarded through the competitive proposal solicitation process described in R657-28-20.
- (3) Compensation may be either in-kind, monetary, or both.

R657-28-18. Seed Harvesting.

- (1) The division may issue seed harvesting permits that grant a permittee exclusive rights to harvest all seeds for a specified species for a single growing season on the division property specified in the permit.

 (2) Seed harvesting permits may be issued under a
- competitive bid process or on a first-come, first-served basis.
- (a) The division may solicit competitive bids for seed harvesting permits for locations the division determines may provide opportunities for seed harvesting if such determination is made at least three weeks in advance of the anticipated onset
- (i) The division shall notify all parties by mail or electronic mail who have provided contact information and who have

- previously indicated their desire to be contacted regarding seed harvesting opportunities on division lands.
- (ii) The bid award and seed harvesting permit shall be issued at least two weeks in advance of the anticipated onset of harvest.
- (b) The division may issue seed harvesting permits on a first-come, first-served basis for locations the division determines may provide opportunities for seed harvesting if such determination is made after three weeks prior to the anticipated onset of harvest.
- (i) Negotiated compensation shall reflect a fair market value of the opportunity provided.
- (ii) In order to determine a fair market value of the seed harvesting opportunity, the division may rely upon, but not be limited to, one or more of the following:
- (A) results of competitive bids for seed harvesting permits on other division properties;
- (B) market information obtained from other landowners, including other state agencies;
- (C) market information provided by a seed harvester's competitors; or
- (D) market information provided by seed wholesalers or retailers; etc.
- (3) Compensation received by the division may be either a percentage of the seeds harvested or other in-kind compensation, monetary compensation, or a combination thereof.
- (a) All seed delivered to the division as compensation shall meet standards set forth in the Federal Seed Act (Title 7, Ch. 37), the Utah Seed Act (Utah Code Title 4 Chapter 16), and Utah Seed Law (Utah Administrative Rule R68-8), and shall also meet minimum germination and purity standards determined by the division.
- (4) Permittees shall compensate the division in whole regardless of whether seeds are harvested, unless harvest was precluded by circumstances beyond the permittee's control.
- (5) If the permittee breaches the provisions of the permit, the permit may be terminated and the permittee disqualified from bidding on future seed harvesting permits. The division shall notify the permittee in writing of any breach of the terms of the permit.
- (6) Methods of harvest that in the judgment of the division may kill or seriously injure source plants are expressly prohibited.
- (7) The permittee may post the specified division property as prohibited against unauthorized seed harvesting provided the posting prohibits harvesting of only those seed species which the permittee is granted exclusive right to harvest. Permittee must remove signs after harvest of seed.

R657-28-19. Agricultural Leases.

- (1) The division may lease lands or water rights for purposes of cultivated crop production only when the division determines that such a lease would provide a net benefit for wildlife or would facilitate wildlife management activities that would provide a net benefit for wildlife.
- (2) Leases may be issued for a term no greater than one year, with an option to renew in accordance with Subsection (10).
- (3) Compensation received by the division for agricultural leases may be either a fixed rate per acre or in-kind or a combination of both as specified by the division, providing that the value received is customary and reasonable.
- (4) The lessee is obligated to satisfy its compensation obligations regardless of whether the lessee uses the lease.
- (5) The division may require the lessee to acquire crop insurance if the division is to receive a share of the harvested crop.
 - (6) At the time of initial lease payment, the lessee may be

required to post with the division a bond in the form and amount as may be determined by the division to assure compliance with all terms and conditions of the lease.

- (7) Agricultural leases may be issued by the division through a competitive proposal solicitation process set forth in R657-28-20.
- (8) Agricultural Leases issued by the division shall include:
- (a) The name, and a map, of the subject property to be leased;
- (b) A description of the vegetation management goals to be achieved, including type of crop to be grown and a description of crop residue, if any, to be left after harvest to benefit wildlife; or any other vegetation parameter desired for the subject lease property;
 - (c) A description of the benefit expected for wildlife;
- (d) A description of the rights of the lessee and the division;
- (e) The type and amount of compensation to be delivered to the division, and the date compensation is due;
- (f) A provision for adjusting the base rental fee, if any, over the life of the lease to reflect changes in the market value of the lease;
- (g) A statement describing how reporting is to be made of the quantity of crop harvested if a crop share is identified as inkind compensation:
- (h) A statement that the division may unilaterally terminate the lease if lessee breaches the terms of the lease contract;
- (i) Identification of the type of compensation required by the division. Description of the compensation required shall be sufficiently specific as to be clearly understood by the lessee and the division:
- (j) Requirement that all applications to appropriate water on division land be filed only with the permission of the division, filed in the name of the division, and that express written consent from the division is needed prior to the conveyance of water off division land;
- (k) A statement assuring non-motorized public access to division property by the lessee;
- A statement that the lessee is solely responsible for fence maintenance of the leased property;
- (m) A statement that the division is held harmless and indemnified for acts of God or any and all losses due to domestic livestock or public or wildlife use of the subject property during the period of the lease;
- (n) A statement indemnifying the state from all actions of the lessee;
- (o) Lessee's consent to suit or arbitration arising under terms of the lease or as a result of operations carried on under the lease:
- (9) The division shall determine the degree to which a lessee has complied with the provisions of the lease, and shall report to the lessee whether compliance was satisfactory or unsatisfactory.
- (10) Lessees who receive a satisfactory review for the previous year may have the option to renew the lease for the coming year provided the division determines the lease continues to provide a net benefit for wildlife or facilitates wildlife management activities that provide a net benefit for wildlife; except the division may at its discretion;
- (a) Withdraw the subject property from lease if the division determines the lease has failed to benefit wildlife or facilitate wildlife management goals;
- (b) Alter the non-compensatory provisions of the lease if the division determines that such alteration will better achieve its wildlife management goals;
- (c) Identify a different in-kind compensation on division property that is reasonably comparable in value to the market-adjusted in-kind compensation of the original lease;

- (i) the division may negotiate the terms of the new in-kind compensation, and total compensation due the division without opening the lease to competitive proposal solicitation.
- (d) Should the terms of the original lease agreement be changed by the division, the lessee shall have the option to renew the lease.
- (i) A lessee may hold a lease on a subject division property for a maximum period of ten years through the exercising of an option to renew; except the division may put the lease out to competitive proposal solicitation at the conclusion of the fifth year:
- (ii) The lessee having the lease for the preceding ten years on a subject division property is entitled to submit a competitive proposal on the same division property if the lessee has not been disqualified from consideration as a lessee on division lands.
- (e) The division reserves the right to issue leases without options to renew, or with options to renew for a shorter aggregate term.
- (11) No improvement, including the building of fences, corrals, and water structures used to impound, divert, or convey water claimed solely under a division water right; or management practice, including prescribed burning, seeding, chaining, harrowing, irrigation, etc.; shall be constructed or conducted on division lands without the express written consent of the division.
- (12) All improvements, including fences, corrals, water structures, etc., constructed on division property by lessee and which are affixed to the property shall be property of the division.
- (a) Lessee shall not be compensated for such improvements unless previously agreed upon in writing between the division and the lessee.
- (13) All lessees are prohibited from filing an application to appropriate water on division lands unless the application is approved by the division in writing and is filed in the name of the State of Utah, Utah Division of Wildlife Resources.

R657-28-20. Competitive Proposal Solicitation Process.

- (1) Grazing permits, leases, or wood harvesting contracts may be issued by the division through a competitive proposal solicitation process to achieve the division's vegetation or wildlife management goals. The division may use the process described herein for the removal of other natural resources from division lands for commercial gain by any party.
- (2) Proposals for grazing permits, leases, or wood harvesting contracts will be solicited through publication at least once a week for two consecutive weeks in one or more newspapers of general circulation in the county in which the permit or lease is offered at least 30 days or more in advance of the deadline for proposal submittals. At least 30 days prior to the deadline for proposal submittals, notification will be sent to landowners adjoining the subject division property, and to livestock operators having federal permits to graze a federal allotment adjacent to division property.
- (a) Notification and advertising shall include a general description of the parcel including township, range, and section, and any other information which may create interest in the subject permit, lease, or wood harvesting contract. The division shall also identify the desired form of compensation, whether monetary, in-kind, or both.
- (b) The division shall make available at an applicant's request additional information, including information describing the division's management objectives for the subject property to be achieved through a grazing permit, lease, or wood harvesting contract, that would assist an applicant in making a reasonably informed proposal.
- (3) At the conclusion of the advertising process, the division shall review and select the preferred applicant using either of the following processes. The division shall have full

discretion to select which process to use:

- (a) The division shall allow all applicants at least 20 days from the date of mailing of notice to submit a sealed proposal. Applicants not submitting a proposal within the prescribed time period shall have their proposals rejected. Competing proposals are evaluated using the following criteria where applicable:
- (i) Resources available to applicant that can be used to control livestock movement on the subject division property;
- (ii) Applicant's ability to meet lease or prescribed management objectives;
- (iii) Benefits to wildlife and wildlife habitat that could be expected from applicant's proposal;
- (iv) Applicant's demonstrated sound range and agricultural management practices on applicant's property or other property used by applicant;
- (v) Applicant's knowledge of principles of range science, range management, or agriculture;
- (vi) Applicant's prior history of satisfactory or unsatisfactory use of division lands;
- (vii) Applicant's right to the use of adjoining or nearby properties with which management of a division property may be coordinated;
- (viii) Proximity of applicant's property to division property;
- (ix) Functionality of subject division property's perimeter fences in controlling livestock movement on or off the subject property;
- (x) The size of area upon which the applicant can achieve the division's wildlife or vegetation management goals, thereby reducing the division's grazing permit, lease, or wood harvesting contract administrative costs;
- (xi) Amount or value of the compensation offered to the division, including the satisfaction of a minimum quantity or quality of compensation, whether monetary, in-kind, or both, if minimum standards are required by the division.
- (b) The division may invite each qualified applicant to meet privately with the division and present its proposal for the subject property's grazing permit, lease, or wood harvesting contract. The division may request parties other than those responding to the initial solicitation to meet with the division. The division shall have full authority to:
 - (i) Offer counter-proposals;
- (ii) Negotiate with any or all of the applicants to create a proposal which best satisfies the vegetation or wildlife management objectives of the division;
 - (iii) Terminate the negotiation process entirely; or
- (iv) Require the respondents to proceed through the process described in Subsection (3)(a).
- (v) The division may select the preferred applicant based on criteria delineated in Subsection (3)(a)(i) through (xi), or may withdraw the property from consideration for grazing, leasing, or wood harvesting.
- (4) Any party in default on a previous obligation to the division may be disqualified from obtaining a grazing permit, special use permit, lease, or wood harvesting contract from the division.

R657-28-21. Applications to Appropriate Water on Division Lands

No party possessing a right-of-way lease, grazing permit, agricultural lease, non-agricultural lease, special use permit, contract or other form of authorization issued by the division to use division lands shall apply to appropriate water from the surface or subsurface of division lands without first obtaining written permission from the division, and the application is filed in the name of the State of Utah, Division of Wildlife Resources. All water structures, including impoundment, diversion and conveyance structures or works, used to impound, divert or convey water claimed solely under a division water right shall

be the property of the division.

R657-28-22. Extraction of Sand, Gravel, Cinders, and Ornamental Rock on Division Lands.

- (1) The division shall not sell, lease, or otherwise permit the excavation or extraction of any sand, gravel, cinders, ornamental rock, or other common mineral resource on division lands by any private or public entity except when the division determines that such sale, lease, excavation or extraction is consistent with the purposes for which the land was acquired and provides a net-benefit to wildlife.
- (2) The division shall receive fair market value for all sand, gravel, cinders, ornamental rock, or other common mineral resources removed from division property.
- (3) Following the completion of excavations, the division shall require reclamation measures to stabilize and restore natural surface conditions. Reclamation measures will generally consist of, but not necessarily be limited to, sloping and stabilization of highwalls, contouring of slopes at a ratio not greater than three feet horizontal for each one foot vertical or as otherwise specified by the division, stabilization, closure, or removal of access roads as determined by the division, replacement of natural topsoils, revegetation using a seed mixture and rate of application as specified by the division, removal of all trash and debris, and the prompt removal of all equipment, buildings, and structures owned by the permittee or permittee's agents.
- (4) Bonding in an amount equal to two-times the estimated cost of reclamation shall be required by the division prior to authorizing the sale, lease, excavation or extraction of any sand, gravel, cinders, ornamental rock, or other common mineral resource on division lands.
- (5) Nothing herein shall be construed as superceding the division's legal obligations to obtain approval from the U.S. Fish and Wildlife Service or any other party possessing a legal interest in the property prior to authorizing the extraction or excavation of sand, gravel, cinders, ornamental rock, or other common mineral resource on division property.

R657-28-23. Rights-of-Way Leases, Non-Agricultural Leases of Division Lands, Special Use Permits -- Application Procedures -- Required Information -- Conditional Approval.

- (1) To apply for a right-of-way lease, special use permit, or non-agricultural lease of division lands, a person shall:
- (a) complete and submit an application provided by the division to the regional supervisor in the appropriate division regional office;
 - (b) pay a nonrefundable application fee;
- (c) submit the application and application fee at least 120 days prior to the proposed construction or occupancy date; and
 - (d) include the following information with the application:
- (i) A 7.5-minute topographic map or aerial photo showing the proposed project area. Map scale may be larger but must identify township and range sections, UTM coordinates, and give appropriate scale.
- (ii) Evidence of an ownership or leasehold interest in the mineral estate where development of that estate is the purpose for applicant's seeking a right-of-way lease, special use permit, or lease.
 - (iii) A project plan that includes:
- (A) project alternatives, including alternatives which do not affect the division;
- (B) a description of the activity to occur, or infrastructure to be constructed, including site location, construction footprint, above and below ground construction, infrastructure's functional relationship to existing or future infrastructure, etc. The description should be sufficiently detailed as to provide an accurate and complete representation of the proposed action;
 - (C) identification of adverse impacts to wildlife and

wildlife habitat associated with the proposed use and how they will be avoided, minimized, or mitigated; and

- (D) project alternatives that do not affect division land which were considered but rejected, and the specific reasons those alternatives were rejected.
- (2) Upon receiving the application, application fee, and the information required in Subsection (1)(d) the division director or the director's designee may either deny the application or grant a conditional approval within 60 days.
- (3) If the application is denied, the director shall provide a written notice to the applicant.
- (4) Before final approval is granted the division may require the applicant to provide the following additional information:
- (a) A certified copy of a survey of the area affected by the proposed project prepared by a licensed surveyor. A centerline survey describing the proposed right-of-way lease and its width is adequate for a pipeline, road, power line, or similar use.
- (b) An electronic file depicting the lease that is compatible with, and requires no editing for, accurate downloading into geographic systems information software used by the division.
- (c) Evidence that the applicant has given the State Historic Preservation Officer a reasonable opportunity to review and comment on the proposed project as required by Utah Code Section 9-8-404.
- (d) A biological assessment, including an analysis of the potential direct, indirect, and cumulative effects the proposed project may have on wildlife, wildlife habitat, and public recreational use opportunities.
- (e) A survey of threatened, endangered and candidate plant and animal species, Utah wildlife sensitive species, and Utah species of special concern conducted on and adjacent to the proposed project.
- (f) Proof that the applicant has secured all the permits and authorizations required for the project under State, Federal, and local laws.
- (g) Proof that the applicant has complied with the provisions of the National Environmental Policy Act, where applicable, including preparation of all environmental assessments, environmental impact statements, or other reports required by the administering federal agency.

R657-28-24. Rights-of-Way Leases, Leases of Division Lands, Special Use Permits -- Final Determination -- Project Review -- Contract Provisions.

- (1) Within 60 days of receiving the application fee and information required in Section R657-28-23, or 60 days of granting conditional approval, whichever is greater, the division director or the director's designee shall make a final determination to affirm or modify the conditional approval or deny the application.
- (2) The director or the director's designee shall deny an application if:
- (a) the application does not include the information requested by the division;
- (b) the potential impact to wildlife, wildlife habitat, public recreation, or cultural or historic resources is unacceptable;
- (c) the applicant has not, in the opinion of the division, adequately considered ways to avoid or minimize impacts or proposed adequate compensatory mitigation plans for unavoidable impacts, including cumulative impacts;
- (d) there are, in the opinion of the division, alternative locations reasonably available on lands not owned by the division for the requested use, including organized events that may harm wildlife or wildlife habitat, utilities, telecommunications structures, transmission lines, canals, ditches, pipelines, tunnels, fences, roads, and trails; or
- (e) if the applicant's project affects property in which a third party has contractual or legal oversight rights and the

project is rejected by that party.

- (f) the applicant is in default on any previous obligation to the division.
- (3) If the application is denied, the division shall provide a written notice to the applicant.
- (4) A right-of-way lease or other form of lease may include provisions requiring the applicant to:
- (a) Restore all structures including fences, roads, and existing facilities, and regrade as nearly as practical to the preproject grade and contour, and revegetate the impacted area to division specifications;
- (b) Adhere to the terms of the applicant's approved project plan prescribed in Subsection R657-28-23(1)(d)(iii); and
- (c) Pay for surveys, environmental assessments, environmental impact statements, appraisals, restoration, revegetation, compensatory mitigation, and all other expenses associated with the project.
- (5) A special use permit shall include any applicable provision prescribed in Subsection (4).
- (6) A right-of-way lease or division land lease may be granted for a maximum of 30 years from the date of signing; however, the division explicitly reserves the right to grant leases for shorter periods.
- (7) The termination date for a lease will be determined by the division after assessing the activity applied for and the needs of the lessee.
- (8) A special use permit may only be granted for a maximum period of one year from the date of signing.

R657-28-25. Right-of-Way Leases, Division Land Leases, Special Use Permits -- Compensation.

- (1) The division shall receive compensation for all rightof-way leases, division land leases, and special use permits consistent with the following requirements:
 - (a) Compensation may be based on:
- (i) the cost incurred to the division in evaluating and preparing the right-of-way lease, division land lease, or special use permit;
- (ii) the cost incurred by the division in administering the right-of-way lease, division land lease, or special use permit;
 - (iii) the appraised value of the affected property;
 - (iv) the fair market value of the use;
 - (v) fee schedule set forth by the Utah Legislature;
 - (vi) impacts to wildlife and wildlife habitat;
 - (vii) impacts to public access; and
- (viii) impacts to public opportunities to engage in wildlife related activities.
- (b) In lieu of monetary compensation, the division may accept in-kind compensation in the form of, but not limited to, land enhancements, habitat maintenance or improvements, land exchange, public access for wildlife related activities, or other forms of compensation that are beneficial to wildlife management and the division's statutory responsibilities.
- (2) Every right-of-way lease, division land lease, and special use permit shall be documented in writing and contain the following information:
- (a) the names of the parties and other persons involved in the transaction;
- (b) the signature of the parties and other persons involved in the transaction. The individual signing on behalf of the applicant must provide evidence he/she is authorized to sign on the applicant's behalf;
- (c) a detailed description of the compensation, including compensatory mitigation;
- (d) a detailed description of the location, terms, and conditions of the right-of-way lease, division land lease, or special use permit;
- (e) a statement that the parties and signatories to the transaction enter therein voluntarily and mutually agree to its

terms and conditions;

(f) the commencement and termination date of the right-ofway lease, division land lease, or special use permit.

R657-28-26. Termination of Right-of-Way Leases, Division Land and Water Leases, Grazing Permits, and Special Use Permits.

- (1) Unless specified elsewhere in this Rule, the provisions of this section set forth the process for the termination of grazing permits, special use permits, and leases. If provisions of this section are in conflict with provisions in other sections of this Rule, those other sections shall govern.
- (2) A person may request termination of their grazing permit or lease by submitting a written request to the division at least 60 days prior to the requested date of termination.
- (3) A person may request termination of their special use permit by submitting a written request to the division at least 10 days prior to the beginning date of the special use permit.
- (4) The division is under no obligation to grant a requested termination of a grazing permit, special use permit, or lease, and retains the right to pursue specific performance of any contract into which it has entered.
- (5) The division may not grant a grazing permit, special use permit, or lease termination request until the required reclamation and any compensatory mitigation for impacts incurred by the project are completed.
- (6) The division may unilaterally terminate any grazing permit, special use permit, or lease and require full reclamation of disturbed areas where the holder violates any of the conditions of the grazing permit, special use permit, or lease.
- (7) Before terminating a grazing permit, special use permit, or lease the division shall:
- (a) Give written notice of the intended division action to the holder of the permit or lease by certified mail;
 - (b) Document noncompliance; and
- (c) Allow the holder of the lease or permit 30 days to remedy the violation and comply with the terms set therein.
- (8) Any party breaching an agreement or contract with the division, or being in default on an obligation to the division, may be disqualified from securing a grazing permit, special use permit, or lease from the division or otherwise applying for the ability to remove any natural resource from division lands in the future. The division shall notify the party in writing of the party's disqualification.

R657-28-27. Renewal of Right-of-Way Leases and Non-Agricultural Division Land Leases.

- (1) A person may apply to renew a right-of-way lease or division land lease by:
 - (a) submitting a written request to the division;
 - (b) updating the original application; and
 - (c) paying a renewal fee.
- (2) A renewal may be requested no earlier than 120 days and no later than 60 days prior to the expiration date of the right-of-way lease or division land lease.
- (3) A renewal shall be granted under the division's laws, rules, and policies in effect at the time of renewal.
- (4) A request for a change in the size or use of an area or for an additional area or use shall be applied for as a new right-of-way lease or division land lease.
- (5) The division may deny renewal of a right-of-way lease or division land lease for any of the following reasons:
- (a) Unacceptable impacts to wildlife, wildlife habitat, public recreation, or cultural or historic resources;
- (b) Continuation of the right-of-way lease or division land lease is, in the opinion of the division, incompatible with the intended uses of the land;
- (c) The person has not complied with terms and conditions of the lease contract; or

- (d) The management goals for the area have changed to the extent that the right-of-way lease or division land lease is no longer compatible.
- (6) The division shall provide a written notice to the applicant stating the reason for denial.
- (7) Nothing herein shall be construed as limiting the division in seeking agreement from the U.S. Fish and Wildlife Service, or any other party with a contractual or property interest in the division's property.

R657-28-28. Sublease, Conveyance, or Assignment of Grazing Permits; Special Use Permits; Seed Harvesting Permits; Wood Products Harvesting Permits; Right-of-Way, Agricultural, and Division Land Leases; and Contracts for the Removal of Natural Resource.

- (1) Leases, grazing permits, special use permits, seed harvesting permits, any form of wood products harvesting permit, or contracted rights to remove natural resources of any kind may not be assigned, partially assigned, subpermitted, leased, subleased, mortgaged, pledged or otherwise transferred, disposed, or encumbered in any fashion without the prior written consent of the division.
- (2) A sublease, conveyance, or assignment may be made only to a person, firm, association, or corporation qualified to do business in the state of Utah, and which is not in default under the laws of the state of Utah relative to qualification to do business within the state, and is not in default on any previous obligation to the division.
- (3) A sublease, conveyance, or assignment may not be approved without reimbursement for the division's administrative costs associated with said sublease, conveyance, or assignment; and payment of:
- (a) the difference between what was originally paid for the permit, lease, or contract and what the division would charge for the permit, lease, or contract at the time the application for sublease, conveyance, or assignment is submitted; or
- (b) an alternate fee established by, and at the discretion of, the division.
- (4) A sublease, conveyance, or assignment shall take effect the date of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.
- (5) A sublease, conveyance, or assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the permit or lease contract number, land involved, and the name and address of the assignee and shall include any agreement which transfers control of the lease to a third party. A copy of the documents subleasing, conveying, or assigning the interest shall be given to the division.
- (6) A sublease, conveyance, or assignment shall be executed according to division procedures.
- (7) A sublease, conveyance, or assignment is not effective until approval is given by the division. Any sublease, conveyance, or assignment made without such approval is void.

R657-28-29. Abandonment of Right-of-Way Leases.

(1) If within 365 days of the date of execution of right-of-way lease a lessee fails to construct and install the infrastructure which necessitated lessee's acquisition of a right-of-way lease, or the lessee otherwise fails to use all or any portion of a right-of-way, that portion of the right-of-way so unused shall be deemed to be abandoned and the lessee's leasehold interest in said portion of the right-of-way shall be terminated with no compensation due from the division. (2) If proof of lessee's use of all or a portion of a right-of-way lease cannot be provided for any contiguous three-year period, that portion of the right-of-

way for which proof of use cannot be provided shall be deemed to be abandoned and the lessee's leasehold interest in said portion of the right-of-way shall be terminated with no compensation due from the division.

(2) In order to facilitate the determination of an abandonment of right-of-way leases, the lessee shall pay an administrative charge every three years during the term of the lease unless otherwise stated in the lease contract.

R657-28-30. Bonding.

- (1) Prior to approval and issuance of a right-of-way lease, division land lease, or special use permit, the division may require the applicant to post a surety bond in an amount determined by the division.
- (2) Only bonds issued by insurers listed in U.S. Treasury Department Circular 570, or with a financial rating assigned by the A.M. Best Company Insurance Guide of A or higher with respect to property and casualty sureties, shall be accepted by the division.
- (3) The division may use the surety bond to pay for reclamation, compensatory mitigation, payment of any money owed the division, or any other unpaid obligation of right-of-way lessee, division land lessee, or special use permit holder according to the terms and conditions set therein. Should the amount of bond fail to cover the cost of reclamation, mitigation, or other contractual obligations, the party shall remain liable for any additional costs over and above the bonded amount.
- (4) The division may require a reasonable increase from time-to-time in the amount of the bond after providing right-of-way lessee, division land lessee, or special use permit holder 30 days written notice.
- (5) The bond shall be in effect even if the lessee or permittee has conveyed all or part of the leasehold interest to a sublessee, assignee, or subsequent operator until the lessee fully satisfies the lease obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.
- (6) Following termination of a right-of-way lease, division land lease or special use permit; and satisfaction of the contractual obligations of the holder; the division shall release any unused bonds back to the lessee or permit holder within six months.

KEY: wildlife, right-of-way, leases, land use, wood August 7, 2007 23-13-8 Notice of Continuation August 13, 2012

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; and
 - (b) sportsman permits.
- (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 the species for which the permit is 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 wildlife conservation 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.
- (h) "Sportsman Permit" means a permit which allows a permittee to hunt during the applicable season dates specified in Subsection (j), 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.
- (i) "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.
- (j) "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; and
- (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 Permit.

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 it's 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;
- $\mbox{ (d) previous performance of the conservation organization;} \mbox{ and} \label{eq:conservation}$
- (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
- (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
- (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 multiyear 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-
 - (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 redesignated 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.
- (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 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;
 - (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 Conservation Permit.

- (1) If the Wildlife Board authorizes a hunt for bighorn sheep or mule deer on Antelope Island State Park, one permit for each species will be made available as a Special Antelope Island State Park Conservation Permit.
- (2) Special Antelope Island State Park Conservation Permits will be issued for one year.
- (3) 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.
- (4) Special Antelope Island State Park Conservation Permits will be provided to the conservation group awarded the wildlife convention permit series as provided in R657-55 for marketing at the wildlife convention where the wildlife convention permits are awarded.
- (5) The division and conservation organization receiving Special Antelope Island State Park Conservation Permits shall enter into a contract
- (6) The conservation organization receiving Special Antelope Island State Park Conservation Permits must insure that the permits are marketed and distributed by lawful means.
 - (7) The conservation organization must:
- (a) obtain the name of the proposed permit recipient at the event where the permit recipient is selected; and
- (b) notify the division of the proposed permit recipient within 10 days of the recipient selection or the permit may be forfeited.
- (8) 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.
- (9) 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:
- (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 redesignated permit, pursuant to the requirements provided below:
- (i) 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
- (ii) the permit has not been issued by the division to the first designated person.
- (10) Except as otherwise provided under Subsections (8) and (9), 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.

- (11) 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.
- (12) 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.
- (13) Within 30 days of the convention, but no later than May 1 annually, the conservation organization must submit to the division:
- (a) a final report on the distribution of the Special Antelope Island State Park Conservation Permits;
 - (b) the total funds raised on each permit; and
 - (c) the funds due to the division.
- (14)(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 R657-41-9(5)(a).
- (15)(a) 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.
- (b) 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.
- (16) A conservation organization may retain 10% of the revenue generated by the permits for administrative expenses.
- (17) Upon receipt of the permit revenue from the conservation organization, the division will transfer the revenue in its entirety to the Division of Parks and Recreation as provided in a cooperative agreement between the two divisions.

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

 August 21, 2012
 23-14-18

 Notice of Continuation November 1, 2010
 23-14-19

R657. Natural Resources, Wildlife Resources.

R657-57. Division Variance Rule.

R657-57-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 this rule is established to provide authority, standards and procedures for granting remedial relief to persons precluded from obtaining or using a wildlife document because of an event or condition beyond their control.

R657-57-2. Definitions.

- (1) The terms used in this rule are defined in Section 23-13-2.
 - (2) In addition:
- (a) "CWMU" means cooperative wildlife management unit, as defined in Section 23-23-2;
- (b) "Event or condition" means a circumstance in a person's life beyond their control that precludes or substantially limits their ability to obtain or use a wildlife document;
- (c) "Harvesting" means, for purposes of this rule, killing an animal:
- (d) "Hunt day" means spending any time in the field hunting the permitted animal species in a single day, during lawful hunting hours, and within the prescribed season;
- (e) "Immediate family member" means a person's spouse, child, stepchild, grandchild, brother, sister, parent, stepparent, grandparent, mother-in-law, or father-in-law;
- (f)(i) "Limited entry hunt" means any hunt identified in the proclamations and guidebooks of the Wildlife Board as:
 - (A) a premium limited entry or limited entry hunt; and
- (B) that awards a bonus point to unsuccessful permit applicants pursuant to R657-62-8.
- (ii) "Limited entry hunt" further includes antlerless moose hunts and CWMU hunts available to the public through a Division administered drawing.
- (g) "Once-in-a-lifetime hunt" means any hunt for which a wildlife document is issued to take a bull moose, bighorn sheep, bison, or mountain goat.
- (h) "Substantially precluded" means participating in no more than one hunt day during the prescribed hunting season because of a qualifying event or condition set forth in R657-57-6
- (i) "Variance" means remedial relief granted by the Division or Wildlife Board to restore a person's opportunity to obtain or use a wildlife document which is completely lost or substantially impaired because of an intervening event or condition; and
- (j) "Wildlife document" means any license, permit, tag, certificate of registration, or wildlife permit voucher issued by the Division.

R657-57-3. Division Variance Authority.

(1) The Division may issue variances to qualified individuals, subject to the standards, limitations, requirements, and procedures in this rule.

R657-57-4. Division Variance Authority Scope.

- (1)(a) The Division may grant a season extension variance extending the hunting season on an applicant's wildlife document to the same or substantially similar hunt in the following year, provided:
 - (i) the variance request involves a wildlife document for a:
 - (A) once-in-a-lifetime hunt under R657-5;
 - (B) conservation permit hunt under R657-41;
 - (C) limited entry landowner permit hunt under R657-43;
 - (D) poaching-reported reward permit hunt under R657-5;
- (E) CWMU hunt obtained through the operator or landowner under R657-37-9.
 - (ii) the applicant was substantially precluded during the

- prescribed hunting season from using a wildlife document because of a qualifying event or condition set forth in R657-57-6; and
- (A) the qualifying event or condition was not the result of the applicant's willful misconduct or gross negligent acts or omissions; and
- (B) the applicant was unsuccessful in harvesting an animal for which the wildlife document was issued; and
- (iii) the season extension occurs the following year and is restricted to the same species, gender, unit, weapon type, and season as the original wildlife document;
- (iv) any changes in unit descriptions and season dates in the extension year are applied; and
- (v) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.
- (b) Any waiting period associated with a wildlife document for which a season extension variance is granted begins on the date the original wildlife document is obtained.
- (2)(a) The Division may grant a variance by restoring forfeited bonus points and waiving an incurred waiting period, provided:
- (i) the variance request involves a wildlife document for a:
 - (A) limited entry hunt or once-in-a-lifetime hunt; or
- (B) any other hunt that triggers a waiting period to participate in a Division administered drawing;
- (ii) the applicant was substantially precluded during the prescribed hunting season from using a wildlife document because of a qualifying event or condition set forth in R657-57-6; and
- (A) the qualifying event or condition was not the result of the applicant's willful misconduct or gross negligent acts or omissions; and
- (B) the applicant was unsuccessful in harvesting an animal for which the wildlife document was issued; and
- (iii) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.
- (b) The Division may not restore a bonus point on a wildlife document that did not cause a bonus point forfeiture.
- (3)(a) The Division may grant a variance by restoring forfeited preference points, provided:
- (i) the variance request involves a wildlife document obtained through a Division administered drawing and for which preference points are awarded to unsuccessful applicants and forfeited by successful applicants;
- (ii) the applicant was substantially precluded during the prescribed hunting season from using a wildlife document because of a qualifying event or condition set forth in R657-57-6; and
- (A) the qualifying event or condition was not the result of the applicant's willful misconduct or gross negligent acts or omissions; and
- (B) the applicant was unsuccessful in harvesting an animal for which the wildlife document was issued; and
- (iii) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.
- (4)(a) The Division may grant a variance by awarding a bonus or preference point to a person who filed an untimely wildlife document application in a Division administered drawing, provided:
- (i) the variance request involves a wildlife document for any hunt identified in Subsections (2)(a)(i) or (3)(a)(i);
- (ii) the applicant was significantly impaired from filing a timely application in a Division administered drawing because of a qualifying event or condition set forth in R657-57-6;
 - (iii) the untimely application was rejected and a bonus or

preference point was not awarded for the selected species;

- (iv) the applicant would have been eligible to receive the bonus or preference point had the application been timely filed;and
- (v) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.
- (5) A Division administered drawing for purposes of subsection (2) does not include a drawing conducted at a wildlife convention pursuant to R657-55.
- (6) The Division may not refund wildlife document fees, except as authorized in Sections 23-19-38, 23-19-38.2 and R657-42-5.

R657-57-5. Group Applications.

- (1) Except as provided in Subsection (2), all members of a group successful in obtaining a wildlife document pursuant to R657-62-7 are eligible to receive the same variance relief granted by the Division to any single member of the group under R657-57-4(2) or (3).
- (2) Group members are not eligible to receive a refund of the wildlife document fee unless otherwise authorized by Sections 23-19-38, 23-19-38.2, and R657-42-5.

R657-57-6. Qualifying Events and Conditions.

- (1) The Division's authority to grant a variance consistent with the requirements of this rule is limited to persons that are completely or substantially precluded during the prescribed season from participating in the hunting activity authorized by an eligible wildlife document, or precluded or substantially impaired from filing a timely wildlife document application in a Division administered drawing because of:
 - (a) personal illness or injury;
- (b) the death, or significant injury or illness of an immediate family member; or
- (c) mobilization or deployment under orders of the United States Armed forces, a public health organization, or public safety organization in the interest of national defense or a national emergency.

R657-57-7. Variance Application.

- (1) A person may request a variance pursuant to the requirements of this rule by filing an application with the Division within 120 days of the:
- (a) last day of the hunting season for which a season extension variance is requested; or
- (b) drawing application deadline for which a bonus or preference point variance is sought.
- (2) The Division may not grant a variance under this rule when the application is received beyond the 120 days limitation period set forth in Subsection (1).
- (3) An application for a season extension variance under R657-57-4(1), a bonus point restoration and waiting period waiver variance under R657-57-4(2), or a preference point restoration variance under R657-57-4(3) shall contain the following information and documentation:
 - (a) name, address and telephone number of the applicant;
 - (b) a brief statement of the variance relief sought;
- (c) the original wildlife document for which a season extension variance is sought with an undetached and unnotched tag:
- (d) a statement verifying the applicant was substantially precluded from participating in a qualified hunt because of:
 - (i) personal illness or injury;
- (ii) the death, or significant injury or illness of an immediate family member; or
- (iii) mobilization or deployment under orders of the United States Armed Forces, or a public health or public safety organization in the interest of national defense or a national

emergency.

- (e) corroborating documentation of the qualifying event or condition listed in Subsection (2)(d), in the form of:
- (i) a physician's written statement describing and confirming the qualifying injury or illness of the applicant or an immediate family member;
- (ii) a photocopy of the deceased immediate family member's certified death certificate; or
- (iii) a photocopy of the military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:
- (A) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which the applicant is deployed or mobilized; and
- (B) the nature and length of duty while deployed or mobilized.
- (4) An application for a bonus or preference point variance under R657-57-4(4) shall contain the following information and documentation:
 - (a) name, address and telephone number of the applicant;
 - (b) a brief statement of the variance relief sought;
- (c) a description of the wildlife document application and permit type for which a bonus or preference point variance is sought, including the wildlife species and sex, season dates, and weapon type;
- (d) a statement verifying the applicant was precluded or substantially impaired from submitting a wildlife document application because of:
 - (i) personal illness or injury;
- (ii) the death, or significant injury or illness of an immediate family member; or
- (iii) mobilization or deployment under orders of the United States Armed Forces, or a public health or public safety organization in the interest of national defense or a national emergency.
- (e) corroborating documentation of the qualifying event or condition listed in Subsection (3)(d), in the form of:
- (i) a physician's written statement describing and confirming the qualifying injury or illness of the applicant or an immediate family member;
- (ii) a photocopy of the deceased immediate family member's certified death certificate; or
- (iii) a photocopy of the military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:
- (A) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which the applicant is deployed or mobilized;
- (B) the nature and length of their duty while deployed or mobilized.
- (5) The Division may reject an application that is incomplete or that contains false or misleading information.
- (6) The Division may require the applicant to provide additional information, documentation, or clarification in conjunction with an application to determine eligibility for a variance.
- (7) The Division should make its written decision within 30 days of receiving an application for variance and mail a copy of the decision to the applicant.

R657-57-8. Division Variance Committee.

- (1) The Division shall establish a variance committee consisting of the Wildlife Chief, Administrative Services Chief, Licensing Coordinator, and Rules Coordinator, or their designees, which shall:
- (a) review variance applications submitted to the Division pursuant to this rule;

- (b) determine facts relative to variance requests;
- (c) apply the provisions of this rule to relevant facts; and
- (d) grant or deny variance requests in accordance with this rule.
- Any variance request granted or denied shall be reviewed and approved by the Division director/designee before notice of decision is provided to the variance request applicant.

R657-57-9. Variance Denial.

- (1) The variance committee and Division director shall deny a variance request where the applicant:
 - (a) fails to satisfy the variance criteria set forth in this rule;
- (b) is under a judicial or administrative order suspending his/her Utah hunting privileges for the species at the time:
- (i) the variance request is filed or at any time during a extension season; or
- (ii) the wildlife document application period expired for a bonus or preference point variance;
- (c) was legally ineligible to receive or use the wildlife document for which a season extension variance is sought;
- (d) is legally ineligible to hunt during the extension
- (e) is legally ineligible to use the weapon type authorized by the wildlife document during the original hunting season or the extension season;
- (f) provides false or misleading information on a material fact in the variance request application; or
- (g) provides false or misleading information on a material fact in a previous variance request application.
- (2) The Division may deny a variance request when it is contrary to sound public policy, wildlife management objectives, Division policies and interests, or the interests sought to be served by this rule.

R657-57-10. Wildlife Board Appeals.

- (1) A person may appeal the Division's decision on a variance application to the Wildlife Board pursuant to the requirements of this rule. The appeal request must be in writing and received by the Division within 30 calendar days of the issuance date on the Division's decision.
- (2) The appeal shall contain the following information and documentation:
 - (a) name, address and telephone number of the petitioner;
- a statement of the variance relief sought and justification for the relief;
- (c) a description of the wildlife document application for which the variance is sought, including the document number, species and sex, season dates, and weapon type;
- (d) the original wildlife document for which the variance is sought:
- (e) a statement describing the degree of lost opportunity because of an event or condition; and
- (f) corroborating documentation of the event or condition listed in R657-57-7(3)(d) and (4)(d), which may include:
 - (i) a physician's written statement;
 - (ii) a certified death certificate photocopy;
 - (iii) a photocopy of the military orders;
- (iv) a letter from an employment supervisor on official letterhead; or
- (v) court documentation.(3) The Wildlife Board may reject a variance appeal that is incomplete or that contains false or misleading information.
- (4) The Wildlife Board may require the petitioner to provide additional information, documentation, or clarification in conjunction with the variance appeal.
- (5) The Wildlife Board may set a time and date for a hearing on the variance appeal where the petitioner may be given an opportunity to address the Wildlife Board concerning the appeal.

- (a) The Wildlife Board will provide the petitioner notice of the date, time, and location of the hearing.
- (b) Failure to participate in the hearing may result in dismissal of the variance appeal.
- (6) The Wildlife Board may sustain, overturn, or modify the Division's order which is the subject of the variance appeal, provided the relief granted is consistent with the standards, limitations, requirements, and procedures in R657-57-11 through R657-57-13.
- (7) The Wildlife Board will prepare a written decision on the variance appeal and mail a copy to the petitioner.

R657-57-11. Wildlife Board Variance Authority.

- (1) Except as provided otherwise in this rule, the Wildlife Board may grant a variance to any regulation promulgated in Title R657 of the Administrative Code or in proclamation concerning the acquisition or use of a wildlife document, provided the event or condition justifying the variance:
- (a) is not the result of the applicant's willful misconduct or gross negligent acts or omissions;
- (b) substantially precludes the applicant from participating in the activity authorized by the wildlife document; or
- (c) completely or significantly impairs the applicant from filing a timely application in a Division administered drawing;
- (d) is of a nature that it deprives opportunity from the applicant in a substantially more severe manner than other similarly situated individuals.
- (2) The Wildlife Board is limited to considering only those variance applications on which the Division has issued a letter indicating the variance relief sought is beyond its legal authority to grant.
- The Wildlife Board shall consider the Division's (3) recommendation on a variance request.
- (4) The Wildlife Board may grant a variance that extends a wildlife document season no more than one year into the
- (5) The Wildlife Board may award a bonus or preference point pursuant to a variance request only when the applicant would have received such a point had the event or condition not intervened.
 - (6) The Wildlife Board may not grant a variance:
- (a) where the request is filed with the Division beyond the 120 day deadline established in R657-57-7(1);
- (b) where the applicant is not substantially precluded from participating in the prescribed wildlife activity;
- (c) for a season extension on any hunt not identified in R657-57-4(1)(a)(i) as eligible for a season extension;
- (d) where the applicant was successful in harvesting an animal for which the wildlife document was issued; or
- (e) in direct conflict with any provision of the Wildlife Code or elsewhere in statute.
- (7) The Wildlife Board may not refund wildlife document fees, except as authorized in Sections 23-19-38 and 23-19-38.2.

R657-57-12. Variance Guidelines.

- (1) The Wildlife Board may use the following guidelines in considering and deciding variance appeals and requests submitted pursuant to this rule:
 - (a) monetary cost of the wildlife document;
- (b) degree of difficulty in obtaining the original wildlife document;
- (c) future opportunity to obtain the same or similar wildlife document;
 - (d) extent of lost opportunity;
- (e) time actually engaged in the activity authorized by the wildlife document relative to the overall season length;
- (f) time available to engage in the activity authorized by the wildlife document prior to the event or condition precluding

further activity;

- (g) impact on wildlife management objectives;
- (h) degree of difficulty in tracking and monitoring season extensions into the future;
- (i) applicant's fault or contribution in failing to mitigate the degree of lost opportunity;
- (j) nature of the event or condition contrasted against the advisability of attempting to insure optimal opportunity;
- (k) objective of a variance is to restore lost opportunity, not provide increased opportunity; and
 - (l) consistency with previous variance request decisions.
- (2) Nothing herein shall be construed as limiting or prohibiting the Wildlife Board from considering additional factors in its discussions and deliberations concerning variance appeals and requests.

R657-57-13. Wildlife Board Variance Denial.

- (1) The Wildlife Board shall deny a variance appeal or request where the applicant:
 - (a) fails to satisfy the variance criteria set forth in this rule;
- (b) is under a judicial or administrative order suspending his/her wildlife document privileges at the time the variance request is filed or at any time while the variance would be in effect;
- (c) was legally ineligible to apply for, obtain, or use the original wildlife document for which a variance is sought;
- (d) is legally ineligible to engage in the activity proposed for authorization in a variance;
- (e) is legally ineligible to use the weapon type or implement authorized by a wildlife document during the original season or the proposed substitute season;
- (f) provides false or misleading information on a material fact in the variance request application or the appeal; or
- (g) provides false or misleading information on a material fact in a previous variance request application or appeal.
- (2) The Wildlife Board may deny a variance appeal or request when it is contrary to sound public policy, wildlife management objectives, Division policies and interests, or the interests sought to be served by this rule.

R657-57-14. Fraud, Deceit, or Misrepresentation.

Any variance obtained under this rule by fraud, deceit or misrepresentation is void.

R657-57-15. Finality of Decision.

- (1) The decision of the Wildlife Board on any variance appeal or request under this rule constitutes final agency action and is not subject to:
 - (a) further administrative review; or
- (b) judicial review under Title 63G, Chapter 4 of the Utah Code, Utah Administrative Procedures Act.
- (2) The variance relief authorized in this rule is discretionary and neither a right nor entitlement in form or substance. The Division and Wildlife Board shall exercise sole discretion in determining whether relief will be granted and to what extent.

KEY: wildlife, permits August 21, 2012

23-14-18

23-14-19

R657. Natural Resources, Wildlife Resources. R657-59. Private Fish Ponds.

R657-59-1. Purpose and Authority.

- (1) Under the authority of Sections 23-15-9 and 23-15-10 of the Utah Code, this rule provides the standards and procedures for private fish ponds.
- (2) This rule does not regulate fee fishing or private aquaculture as provided in Title 4, Chapter 37 of the Utah Code, and Department of Agriculture Rule R58-17.
- (3) Any violation of, or failure to comply with, any provision of Title 23 of the Utah Code, this rule, or any specific requirement contained in a certificate of registration or exemption certificate issued pursuant to this rule may be grounds for suspension of the certificate or denial of future certificates, as determined by the division.

R657-59-2. Definitions.

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
- (a) "Aquaculture" means the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions.
- (b) "Aquaculture facility" means any facility used for propagating, rearing, or producing aquatic wildlife or aquaculture products. Facilities that are separated by more than 1/2 mile, or facilities that drain to, or are modified to drain to, different drainages are considered to be separate aquaculture facilities, regardless of ownership.
- (c)(i) "Aquaculture product" means privately purchased aquatic wildlife, or their eggs or gametes.
- (ii) "Aquaculture product" does not include aquatic wildlife obtained from the wild.
- (d) "Certified sterile salmonid" means any salmonid fish or gamete that originates from a health certified source and is incapable of reproduction due to triploidy or hybridization.
- (i) Triploid salmonids accepted as sterile under this subsection shall originate from a source that is certified as incapable of reproduction using the following protocols:
- (A) fish samples shall be collected, prepared, and submitted to a certified laboratory by an independent veterinarian, certified fish health professional, or other professional approved by the division;
- (B) certified laboratories shall be limited to independent, professional laboratories capable of reliably testing fish sterility and approved by the division; and
- (C) sterility shall be determined by sampling and testing 60 fish from each egg lot with procedures generally accepted in the scientific community as reliable for verifying tripoidy with a 95% or greater success rate.
- (ii) An aquaculture facility that receives certified sterile salmonid aquaculture product is not required to conduct additional sterility testing prior to stocking the aquaculture product in a private fish pond, provided the sterile salmonids are kept segregated from other fertile salmonids.
- (iii) Hybrid salmonid fish species accepted as sterile under this subsection are limited to splake trout (lake trout/brook trout cross) and tiger trout (brown trout/brook trout cross).
- (e) "Exemption certificate" means a document issued by the division pursuant to R657-59-7 that exempts a designated private fish pond from the requirement of obtaining a certificate of registration to stock aquaculture product in the pond.
- (f)(i) "HUC" or "Hyrologic Unit Code" means a cataloging system developed by the US Geological Survey and the Natural Resource Conservation Service to identify watersheds in the United States. HUCs are typically reported at the large river basin (6-digit HUC) or smaller watershed (11-digit and 14-digit HUC) scale.
- (ii) HUC maps and other associated information are available at http://water.usgs.gov/wsc/sub/1602.html.

- (g)(a) "Ornamental aquatic animal species" means any species of fish, molluck, or crustacean that is commonly cultured and sold in the United States' aquarium industry for display.
 - (b) "Ornamental aquatic animal species" does not include:
 - (i) fresh water:
- (Å) sport fish aquatic animal species commonly angled or harvested for recreation or sport;
- (B) baitfish aquatic animal species authorized for us as bait in R657-13-12, and any other species commonly used by anglers as bait in sport fishing;
- (C) food fish aquatic animal species commonly cultured or harvested from the wild for human consumption; or
 - (D) native species; or
- (ii) aquatic animal species prohibited for importation or possession by any state, federal, or local law; or
- (iii) aquatic animal species listed as prohibited or controlled in Sections R657-3-22 and R657-3-23. (i) "Private fish pond" means a pond, reservoir, or other body of water, or any fish culture system which is contained on privately owned land and used for holding or rearing fish for a private, noncommercial purpose.
- (h) "Private fish pond" means a pond, reservoir, or other body of water, or any fish culture system which is contained on privately owned land and used for holding or rearing fish for a private, noncommercial purpose.
- (i) "Purchase" means to buy, or otherwise acquire or obtain through barter, exchange, or trade for pecuniary consideration or advantage.
- (j) "Salmonid" means any fish belonging to the trout/salmon family.

R657-59-3. Certificate of Registration Not Required.

- (1) A certificate of registration is not required to receive and stock an aquaculture product in a private fish pond, provided the following conditions are satisfied:
- (a) the pond is not located on a natural lake, natural flowing stream, or reservoir constructed on a natural stream channel;
- (b) the pond is properly screened consistent with the requirements in R657-59-15 to prevent the movement of aquatic wildlife into the pond or the movement of any aquaculture product out of the pond;
- (c) the aquaculture product is delivered to the pond by a licensed aquaculture facility as defined in Section 4-37-103;
- (d) the owner, lessee, or operator of the pond obtains from the aquaculture facility delivering the aquaculture product a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Section 4-37-501 authorizing the aquaculture facility to culture and transport the species of aquaculture product received at the pond;
- (e) the species, strain, and reproductive capability of the aquaculture product received is authorized for stocking in the area where the pond is located consistent with the requirements in R657-59-16;
- (f) the aquaculture product received is of sufficient size to be incapable of escaping the pond through or around the screen;
- (g) the owner or operator of the private fish pond provides the aquaculture facility a signed written statement that the pond and aquaculture product received are in compliance with this section; and
- (h) the owner, lessee, or operator of a private fish pond or an invitee has not previously been found in violation of any provision of Title 4, Chapter 37 or Title 23 of the Utah Code, or this rule.

R657-59-4. Aquaculture Facility Reporting Requirements.

 A person who owns or operates an aquaculture facility shall file an annual report with the division documenting each sale or transfer of live aquaculture product made pursuant to R657-59-3 and R657-59-7 to a private fish pond owner, lessee, or operator.

- (2) The report shall contain:
- (a) the name, address, and Utah health approval number of the person;
- (b) the name, address, and phone number of the private fish pond's owner, lessee, or operator;
 - (c) the number and weight of aquaculture product by:
 - (i) species;
 - (ii) strain; and
 - (iii) reproductive capability;
 - (d) date of sale or transfer;
- (e) description of the private fish pond location, including UTM coordinates; and
- (f) written verification for each live sale or transfer that the private fish pond was inspected and is in compliance with the requirements of Sections 23-15-10(2) and (3) (c) and this rule.
- (3) The report required in this Subsection shall be submitted to and received by the division no later than December 31.

R657-59-5. Certificate of Registration Required.

- (1) A certificate of registration must be obtained from the division to receive, stock, or possess an aquaculture product in a private fish pond where:
- (a) the aquaculture product is classified under R657-59-16 as an unauthorized species, strain, or reproductive capability for the area where the pond is located;
- (b) the aquaculture facility does not deliver the aquaculture product directly to the private fish pond; or
- (c) the owner, lessee, or operator of a private fish pond or an invitee is found in violation of any provision of Title 4, Chapter 37 or Title 23 of the Utah Code, or this rule.
- (2) A separate certificate of registration is required for each private fish pond as defined under "aquaculture facility" in R657-59-2.

R657-59-6. Application for a Certificate of Registration.

- (1) A person may apply to receive a certificate of registration for a private fish pond by submitting an application with the required handling and inspection fee to the Wildlife Registration Office, Utah Division of Wildlife Resources, 1594 West North Temple, Salt Lake City, Utah 84114.
- (a) Application forms are available at all division offices and at the division's internet address.
- (2) A certificate of registration may be issued after a division representative inspects the private fish pond and confirms that the pond and the aquaculture products requested for stocking in the pond meet all requirements in this rule and Title 23 of the Utah Code.
- (3) The application may require up to 30 days for processing.
- (4) The division may deny a private fish pond application where:
- (a) the application is incomplete, filled out incorrectly, or submitted without the appropriate fee;
- (b) the pond is located on a natural lake, natural flowing stream, or a reservoir constructed on a natural stream channel;
- (c) the pond is not screened consistent with the requirements in R657-59-15;
- (d) the source of the aquaculture product is not an authorized aquaculture facility with a health approval number issued pursuant to Section 4-37-501;
- (e) the applicant or its agents or invitees have previously violated of any provision of Title 4, Chapter 37 of the Utah Code, Title 23 of the Utah Code, or this rule;
- (f) receiving or stocking the aquaculture product in the pond may:

- (i) violate any federal, state or local law or any agreement between the state and another party;
- (ii) negatively impact native wildlife species listed by the division as sensitive or by the federal government as threatened or endangered;
- (iii) pose an identifiable adverse threat to other wildlife species or their habitat; or
- (iv) pose an identifiable adverse impact to the division's game fish stocking regimes or wildlife management objectives;
- (g) the aquaculture product received is sufficiently small to be capable of escaping the pond through or around the screen: or
- (h) non-salmonid aquaculture product will be stocked in a pond within the 100 year flood plain (below 6500 feet in elevation) in the Green River and Colorado River drainages and the pond does not meet FEMA standards on construction and screening.
- (5) An application for private fish pond certificate of registration may not be denied without the review and consent of the division director or a designee.
- (6) A private fish pond certificate of registration shall remain effective for 5 years from the date of issuance, unless:
- (a) amended by the division at the request of private fish pond owner, lessee, or operator;
- (b) terminated or modified by the division pursuant to R657-59-17; or
- (c) suspended by the division or a court pursuant to Section 23-19-9.
- (7) Certificates of registration are renewable on or before the expiration date identified on the certificate of registration and upon payment of the prescribed handling, and inspection fees

R657-59-7. Exemption Certificate.

- (1) Upon application for a private fish pond certificate of registration and a risk assessment of the pond by the division under R657-59-6, the Division may issue an exemption certificate in lieu of a certificate of registration where the following conditions exist:
- (a) The pond is eligible to receive a certificate of registration under the requirements of this chapter;
- (b) The pond and species, strain and reproductive capability of aquaculture product requested present no risk to native aquatic wildlife species because:
- (i) the location and configuration of the pond physically eliminate the possibility of aquaculture product escaping into the surface waters of the state;
- (ii) the pond has no inflow or outflow connection with the surface waters of the state;
- (iii) the pond is located in an area where escapement of aquaculture product will cause no ecological damage to native aquatic wildlife species; or
- (iv) the pond is located in an area where no Tier I or II aquatic wildlife species on the division's sensitive species list or threatened or endangered species listed under the Endangered Species Act will be threatened by the risk of escapement; and
- (c) the aquaculture product is delivered directly to the pond by the aquaculture facility.
- (2) The exemption certificate shall have the legal effect of a certificate of registration for purposes of stocking the pond with the species, strain and reproductive capability of aquaculture product authorized in the exemption certificate.
- (3) Aquaculture facilities supplying aquaculture product to private fish ponds operating under an exemption certificate shall comply with:
 - (a) the written terms of the exemption certificate; and
 - (b) the inspection and reporting requirements in R657-59-
 - (4) The exemption certificate will:

- (a) designate the species, strain and reproductive capability of aquaculture product that may be stocked in the pond;
- (b) identify any restrictions or conditions relative to stocking and maintaining aquaculture product in the pond;
- (c) identify the owner, lessee, or operator of the private fish pond; and
- (d) describe the private fish pond's location, including UTM coordinates.
- (5) The private fish pond exemption certificate shall remain effective, without the requirement of renewal, for the useful life of the pond, provided:
 - (a) the ownership of the pond does not change;
- (b) the pond, screen, and inflow and outflow structures remain in the same state that existed when inspected;
- (c) the species, strain, and reproductive capability of aquaculture product stocked and maintained in the pond remains consistent with the that authorized in the exemption certificate; and
- (d) the exemption certificate is not modified, terminated, or suspended by the division pursuant to Section 23-19-9, R657-59-1(3), or R657-59-17 or a court of competent jurisdiction.
- (6) Any private fish pond operating under authority of an exemption certificate which is modified, terminated, or suspended pursuant to Section 23-19-9, R657-59-1(3), or R657-59-17 shall be subject to the aquaculture product depopulation requirements in R657-59-8.

R657-59-8. Failure to Renew Certificates of Registration.

- (1) If an owner, lessee, or operator of a private fish pond fails to renew the certificate of registration upon expiration, or the division suspends or terminates the certificate of registration, all live aquaculture products permitted under the certificate of registration shall be disposed of as follows:
- (a) Unless the Wildlife Board orders otherwise, all aquaculture products must be removed within 30 days of suspension or the expiration date of the certificate of registration, or within 30 days after ice-free conditions on the water; or
- (b) At the discretion of the division, aquaculture products may remain in the waters at the facility, but shall only be taken as prescribed within Rule R657-13 for Taking Fish and Crayfish
- (2) Aquaculture products in a private fish pond may not be moved alive unless the pond has received disease testing and is issued a health approval number from the Department of Agriculture and Food pursuant to Section 4-37-501.
- (3) Aquaculture products from a private fish pond infected with any pathogen specified in the Department of Agriculture Rule R58-17 must be disposed of as directed by the division to prevent further spread of such pathogen.

R657-59-9. Reporting Requirements for Private Fish Ponds Authorized by Certificate of Registration.

- (1) Any person that possesses a certificate of registration for a private fish pond must submit to the division an annual report of all live aquaculture products purchased or acquired during the year. This report must contain the following information:
- (a) the name, address, and phone number of the private fish pond's owner, lessee, or operator;
- (b) name, address, and certificate of registration number of the seller or supplier;
 - (c) the number and weight of aquaculture product by:
 - (i) species;
 - (ii) strain; and
 - (iii) reproductive capability;
 - (d) date of sale or transfer;
 - (2) A form for this information is provided by the division.
 - (3) The annual report must be received by the division no

later than January 30.

R657-59-10. Importation.

- (1)(a) The species, strains, and reproductive capabilities of live aquaculture products that may be imported and stocked in a private fish pond without a certificate of registration are provided in R657-59-16;
- (b) A certificate of registration or exemption certificate is required to import and stock all species, strains and reproductive capabilities of live aquaculture products not specifically exempted from licensure in R657-59-16.
- (2) Applications to import aquaculture products are available from all division offices and must be submitted to the division's Wildlife Registration Office in Salt Lake City. Applications may require up to 30 days for action.

R657-59-11. Acquiring and Transferring Aquaculture Products.

- (1) Live aquaculture products, other than ornamental fish, may be:
- (a) purchased or acquired only from sources that have a valid certificate of registration from the Utah Department of Agriculture and Food to sell such products or from a person located outside Utah if that person is approved by the Utah Department of Agriculture and Food to import the particular aquaculture product; and
- (b) acquired, purchased or transferred only from sources which have been health approved by the Utah Department of Agriculture and Food and assigned a fish health approval number as provided in Section 4-37-501. This also applies to separate facilities owned by the same entity since each facility is treated separately, regardless of ownership.
- (2)(a) Any person who has been issued a valid certificate of registration may transport live aquaculture products as specified on the certificate of registration to the private fish pond.
- (b) All transfers or shipments of live aquaculture products must be accompanied by documentation of the source and destination of the product, including:
- (i) name, address, certificate of registration number, and fish health approval number of the source;
 - (ii) number and weight being shipped, by species; and
- (iii) name, address, and certificate of registration number, if applicable, of the destination.

R657-59-12. Inspection of Records and Facilities.

- (1) The following records and information must be maintained for a period of two years and must be available for inspection by a division representative during reasonable hours:
- (a) records of purchase and acquisition of aquaculture products, including records maintained in connection with the reporting requirements in R657-59-9;
 - (b) certificates of registration; and
 - (c) valid identification of stocks.
- (2) The division and its authorized representatives may inspect a private fish pond at any time to verify compliance with the requirements of Title 23 of the Utah Code and this rule, and to conduct pathological testing.

R657-59-13. Prohibited Activities.

- (1) A private fish pond may not be developed on a natural lake; natural flowing stream; or reservoir constructed on a natural stream channel.
- (2) Live aquatic wildlife may not be collected from the wild and placed in a private fish pond.
- (3) Any aquaculture product received or held in a private fish pond may not be released from the pond or transported live to another location.
 - (4) A private fish pond owner, lessee, or operator may not

sell, donate, or transfer from the pond live aquaculture product, including gametes and eggs.

R657-59-14. Fishing License and Transportation of Dead **Aquaculture Product.**

- (1) A fishing license is not required to take fish from a legally recognized private fish pond.
- (2) A fishing license is not required to transport dead aquaculture product from a private fish pond, provided the person possesses a receipt with the following information:
 - (a) species and number of fish;
 - (b) date caught;
- (c) certificate of registration number or exemption certificate number of the private fish pond, where applicable;
- (d) name, address, and telephone number of the owner, lessee, or operator of the private fish pond.
- (3) Any person that has a valid fishing license may transport up to a legal limit of dead aquaculture product from a private fish pond without further documentation.

R657-59-15. Screen Requirements.

- (1) All inlets and outlets of a private fish pond must be screened as follows to prevent the movement of aquatic wildlife into the pond or the escapement of any aquaculture product from the pond:
- (a) the screen shall be constructed of durable materials that are capable of maintaining integrity in a water and air environment for an extended period of time;
- (b) the screen shall have no openings, seams or mesh width greater than the width of the fish being stocked;
- (c) screen construction and placement shall eliminate any movement of aquaculture product into or out of the pond;
- (d) screen dimensions shall be based on precluding escapement of the size of the fish being stocked;
- (e) all water entering or leaving the pond, including run off and other high water events, shall flow through a screen consistent with the requirements of this subsection; and
- (f) the screen shall be maintained and in place at all times while any aquaculture product remains in the pond.
- (2) Ponds with no inlet or outlet to the surface waters of the state are not required to have a screen or device to restrict movement of aquaculture product.

R657-59-16. Species, Strains, and Reproductive Capabilities of Aquaculture Product Authorized by Area for Stocking in Private Fish Ponds Without a Certificate of Registration or **Exemption Certificate.**

- (1) A certificate of registration or exemption certificate must be obtained from the division pursuant to R657-59-6 and R657-59-7 prior to stocking in any private fish pond:
 - (a) non-salmonid aquaculture product; or
- (b) any other species or reproductive capability of aquaculture product not specifically authorized in this Section.
- (2)(a) The following subsections designate areas closed to stocking aquaculture product in private fish ponds using a general area identifier such canyon, creek, spring, or location and then followed by a specific area identifier in the form of hydrologic unit code (HUC) or township and range.
- (b) The general area identifier is included for purposes of reference only and may include all or part of the associated
- The HUC or township and range designations (c) constitute the legal descriptions of the actual closed areas.
- (3) Certified sterile salmonid aquaculture product may be stocked without a certificate of registration or exemption certificate in any private fish pond within the state consistent with R657-59-3, except for ponds located within the following

- (a) Washington County stocking is prohibited in the following areas:
 - (i) Ash Creek HUC 150100080405;
 - (ii) Beaver Dam Wash HUC 15010010;
 - (iii) Laverkin Creek HUC 150100080302;
 - (iv) Leeds Creek HUC 150100080906;
- (v) Baker Dam Reservoir/Santa Clara River HUC 150100080704;
 - (vi) Tobin Wash HUC 150100080802;
 - (vii) Sand Cove Wash HUC 150100080801;
- Manganese Wash/Santa Clara River HUC (viii) 150100080804;
- Wittwer Canyon/Santa Clara River HUC (ix) 150100080808:
 - (x) Cove Wash/Santa Clara River HUC 150100080809;

 - (xi) Moody Wash HUC 150100080603; (xii) Upper Moody Wash HUC 150100080602;
 - (xiii) Magotsu Creek HUC 150100080704;
 - (xiv) South Ash Creek HUC 150100080405);
 - (xv) Water Canyon HUC 150100080701);
- Chinatown Wash/Virgin River - HUC (xvi) 150100080508;
 - (xvii) Lower Gould Wash HUC 150100080508;
- Grapevine Wash/Virgin River HUC (xviii) 150100080903;
- (xix) Cottonwood Wash/Virgin River - HUC 150100080909;
 - (xx) Middleton Wash/Virgin River HUC 150100080910;
 - (xxi) Lower Fort Pierce Wash HUC 150100080605;
 - (xxii) Atkinville Wash HUC 150100080303;
 - (xxiii) Lizard Wash HUC 150100080302;
 - (xxiv) Val Wash/Virgin River HUC 150100080307;
 - (xxv) Bulldog Canyon HUC 150100080310; and
 - (xxvi) Fort Pierce Wash HUC 15010009.
- () Fertile rainbow trout may be stocked without a certificate of registration or exemption certificate in any private fish pond within the state consistent with R657-59-3, except for ponds located within the following areas and elevations:
 - Beaver County stocking is prohibited in the following: (i) North Creek - HUCs 160300070203, 160300070208;
 - (ii) Pine Creek (near Sulphurdale) HUC 160300070501.
- (b) Box Elder County stocking is prohibited in the following:
 - (i) Morison Creek HUC 16020308;
 - (ii) Bettridge Creek HUC 16020308;
 - (iii) Death Creek HUC 16020308;
 - (iv) Camp Creek HUC 16020308;
 - (v) Goose Creek HUC 17040211;
 - (vi) Raft River HUC 17040210;
- (vii) Fat Whorled Pond Snail Springs Township 10 North, Ranges 4 and 5 West; and
 - (viii) Mantua Reservoir HUC 16010204.
 - (c) Cache County stocking is prohibited in the following:
 - (i) Logan River HUC 16010203;
 - (ii) Blacksmith Fork HUC 16010203;
 - (iii) East Fork Little Bear River HUC 16010203; and
 - (iv) Little Bear River HUC 16010203.
- (d) Carbon County stocking is prohibited in any private fish pond above 7000 feet in elevation.
- (e) Daggett County stocking is prohibited in any private fish pond above 7000 feet in elevation.
- (f) Davis County no areas closed to stocking fertile rainbow trout.
- (g) Duchesne County stocking is prohibited in any private fish pond above 7000 feet in elevation.
- (h) Emery County stocking is prohibited in any private fish pond above 7000 feet in elevation.
 - (i) Garfield County stocking is prohibited in the

following areas:

- (i) Birch Creek/Main Canyon HUC 140700050102;
- (ii) Center Creek (tributary to East Fork Sevier R) HUC 160300020412:
 - (iii) Cottonwood Creek HUC 160300020406;
- (iv) East Fork of Boulder Creek/ West Fork Boulder Creek - HUC 140700050206; and
- (v) Ranch Creek (East Fork Sevier River drainage) HUC 160300020405.
- (j) Grand County stocking is prohibited in any private fish pond above 7000 feet in elevation.
- (k) Iron County no areas closed to stocking fertile rainbow trout.
- (l) Juab County stocking is prohibited in the following areas:
 - (i) Sulphur Wash HUC 160203011303;
 - (ii) Middle Pleasant Valley Draw HUC 160203011402;
 - (iii) Lower Pleasant Valley Draw HUC 160203011403;
 - (iv) Cookscomb Ridge HUC 160203011501;
 - (v) Outlet Salt Marsh Lake HUC 160203011502;
 - (vi) Deep Creek Range HUC 160203011503:
 - (vii) Snake Valley HUC 160203011504;
 - (viii) Little Red Cedar Wash HUC 160203011505;
 - (ix) Trout Creek HUC 160203060101;
 - (x) Smelter Knolls HUC 160203060104;
 - (xi) Toms Creek HUC 160203060201;
 - (xii) Goshute Canyon HUC 160203060202;

 - (xiii) Indian Farm Creek HUC 160203060204;
 - (xiv) Spring Creek HUC 160203060803;
 - (xv) Fifteenmile Creek HUC 160203060804;
 - (xvi) East Creek/East Deep Creek HUC 160203060805;
 - (xvii) East Creek/East Deep Creek HUC 160203060806;
 - (xviii) West Deep Creek HUC 160203060808; (xix) Horse Valley HUC 160203060304;

 - (xx) Starvation Canyon HUC 160203060305;
 - (xxi) Cane Springs HUC 160203060307;
 - (xxii) Fish Springs Range HUC 160203060308;
 - (xxiii) Middle Fish Springs Wash HUC 160203060309;
 - (xxiv) Lower Fish Springs Wash HUC 160203060403; (xxv) Fish Springs HUC 160203060405;

 - (xxvi) Wilson Health Springs HUC 160203060407;
 - (xxvii) Vernon Creek HUC 160203040102;
 - (xxviii) Outlet Chicken Creek HUC 160300050206;
 - (xxix) Little Valley/Sevier River HUC 160300050403;
 - (xxx) Pole Creek/Salt Creek HUC 160202010104; and
- (xxxi) West Creek/Current Creek HUC160202010107.
- (m) Kane County no areas closed to stocking fertile rainbow trout.
- (n) Millard County stocking is prohibited in the following areas:
 - (i) Outlet Salt Marsh Lake HUC 160203011502;
 - (ii) Sulphur Wash HUC160203011303;
 - (iii) Cockscomb Ridge HUC 160203011501;
 - (iv) Tungstonia Wash HUC 160203011302;
 - (v) Salt Marsh Lake HUC 160203011304;
 - (vi) Indian George Wash HUC 160203011301
 - (vii) Outlet Bishop Springs HUC 160203011203; (viii) Warm Creek HUC 160203011204;

 - (ix) Headwaters Bishop Springs HUC 160203011202;
 - (x) Indian Pass HUC 160203011107;
 - (xi) Chevron Ridge HUC 160203011110;
 - (xii) Petes Knoll HUC 160203011109; (xiii) Red Gulch - HUC 160203011102
 - (xiv) Horse Canyon HUC 160203011106;
 - (xv) Hampton Creek HUC 160203011105:
 - (xvi) Knoll Springs HUC 160203011103;
 - (xvii) Browns Wash HUC 160203011101:
 - (xviii) Outlet Baker Creek HUC 160203011004;
 - (xix) Outlet Old Mans Canyon HUC 160203011003;

- (xx) Hendrys Creek HUC 160203011104;
- (xxi) Headwaters Old Mans Canyon - HUC 160203011002;
 - (xxii) Rock Canyon HUC 160203011001
 - (xxiii) Silver Creek Baker Creek HUC 160203010806;
 - (xxiv) Outlet Weaver Creek HUC 160203010804;
 - (xxv) Conger Spring HUC 160203010702; and
 - (xxvi) Sheepmens Little Valley HUC 160203010607.
 - (o) Morgan County stocking is prohibited in the
- following areas: (i) Weber River - HUC 16020102;
 - (ii) East Canyon Creek HUC 16020102; and
 - (iii) Lost Creek HUC 16020101.
- (p) Piute County stocking is prohibited in the following areas:
 - (i) Birch Creek HUC 160300010603;
 - (ii) Clear Creek HUC 1603000301;
 - (iii) Manning Creek HUC 160300030203;
 - (iv) Tenmile Creek HUC 160300030204.
- (q) Rich County stocking is prohibited in the following areas:
 - (i) Bear Lake including all its tributaries HUC 16010201;
 - (ii) Big Creek HUC 16010101;
- (iii) Birch Creek from Birch Creek Reservoir upstream and tributaries HUC 16010101;
- (iv) Little Creek from Little Creek Reservoir upstream and tributaries HUC 16010101;
 - (v) Otter Creek and its tributaries HUC 16010101;
 - (vi) Woodruff Creek HUC 16010101; and
- (vii) Home Canyon and Meachum Canyon (Deseret Ranch) - HUC 16010101.
- (r) Salt Lake County stocking is prohibited in the following areas:
 - (i) Big Cottonwood Canyon Creek HUC 160202040201;
- (ii) Little Cottonwood Canyon Creek - HUC 160202040202:
 - (iii) Mill Creek HUC 160202040301;
 - (iv) Parleys Creek HUC 160202040302;
 - (v) Emigration Creek HUC 160202040303; (vi) City Creek - HUC 160202040304; and
- Red Butte Creek/Emigration Creek HUC (vii)
- 160202040306.
- (s) San Juan County stocking is prohibited in any private fish pond above 7000 feet in elevation.
 - (t) Sanpete County:
- (i) stocking is prohibited in the following areas west of the Manti Mountain Range divide:
 - (A) Dry Creek/San Pitch River HUC 160300040201;
 - (B) Oak Creek/San Pitch River HUC 160300040202;
- (C) Cottonwood Canyon/San Pitch River - HUC 160300040203:
 - (D) Birch Creek/San Pitch River HUC 160300040204;
 - (E) Pleasant Creek HUC 160300040205;
 - (F) Dublin Wash/San Pitch River HUC 160300040206;
 - (G) Cedar Creek HUC 160300040207;
- Spring Hollow/San Pitch River HUC (H) 160300040208;
 - (I) Upper Oak Creek HUC 160300040302;
 - (J) Petes Canyon/San Pitch River HUC 160300040306;
 - (K) Uinta Gulch HUC 160202020201;
 - (L) Upper Thistle Creek HUC 160202020202;
 - (M) Nebo Creek HUC 160202020203;
 - (N) Middle Thistle Creek HUC 160202020204;
 - (O) Dry Canyon/San Pitch River HUC 160300040308; (P) Maple Canyon/San Pitch River - HUC 160300040309;
- Gunnison Reservoir/San Pitch River HUC 160300040503;
 - (R) Outlet San Pitch River HUC 160300040505;
 - (S) Beaver Creek HUC 140700020201;

- (T) Box Canyon/Muddy Creek HUC 140700020203;
- (U) Skumpah Creek-Salina Creek HUC 160300030402; and
 - (V) Headwaters Twelvemile Creek HUC 160300040402. (ii) stocking is prohibited in any private fish pond above
- 7000 feet in elevation east of the Manti Mountain Range divided.
- (u) Sevier County stocking is prohibited in the following areas:
 - (i) Clear Creek HUC 1603000301;
 - (ii) Salina Creek HUC 160300030402; and
 - (iii) U M Creek HUC 140700030101.
- (v) Summit County stocking is prohibited in the following areas:
 - (i) Bear River and all tributaries HUC 16010101;
 - (ii) Mill Creek and all tributaries HUC 16010101;
- (iii) Muddy Creek and Van Tassel Creek HUC 14040108:
 - (iv) Little West Fork/Blacks Fork HUC 14040107;
 - (v) Black Fork HUC 14040107
 - (vi) Archie Creek HUC 14040107:
 - (vii) West Fork Smiths Fork HUC 14040107;
 - (viii) Gilbert Creek HUC 14040107;
 - (ix) East Fork Smiths Fork HUC 14040107;
 - (x) Dahalgreen Creek HUC 14040106;
 - (xi) Henrys Fork HUC 14040106;
 - (xii) Spring Creek and Poison Creek HUC 14040106;
 - (xiii) West Fork Beaver Creek HUC 14040106;
 - (xiv) Middle Fork Beaver Creek HUC 14040106;
 - (xv) Echo Creek HUC 16020101;
 - (xvi) Chalk Creek HUC 16020101;
 - (xvii) Silver Creek HUC 16020101;
 - (xviii) Weber River HUC 16020101;
 - (xix) Beaver Creek HUC 16020101;
 - (xx) Provo River HUC 16020101;
 - (xxi) Kimball Creek HUC 160201020101;
- (xxii) Big Dutch Hollow/East Canyon Creek HUC 160201020103;
 - (xxiii) Silver Creek HUC 160201010403; and
- (xxiv) Toll Canyon/East Canyon Creek - HUC 160201020102.
- (w) Tooele County stocking is prohibited in the following areas:
 - (i) Toms Creek HUC 160203060201;
 - (ii) Goshute Canyon HUC 160203060202;
 - (iii) Eightmile Wash HUC 160203060203;
 - (iv) Indian Farm Creek HUC 160203060204;
 - (v) Willow Spring Wash HUC 160203060205;
 - (vi) Willow Canyon HUC 160203080104;
 - (vii) Bettridge Creek HUC 160203080106;
 - (viii) East Creek/East Deep Creek HUC 160203060806;
 - (ix) East Deep Creek HUC 160203060807;
 - (x) West Deep Creek HUC 160203060808;
- (xi) Gullmette Gulch/Deep Creek HUC 160203060902; (xii) Pony Express Canyon/Deep Creek - HUC 160203060904;
 - (xiii) Badlands HUC 160203060905:
 - (xiv) White Sage Flat/Deep Creek HUC 160203060907:
 - (xv) Lower Fish Springs Wash HUC 160203060403;
 - (xvi) Fish Springs HUC 160203060405;
 - (xvii) Wilson Health Springs HUC 160203060407;
 - (xviii) East Government Creek HUC 160203040101;
 - (xix) Vernon Creek HUC 160203040102; and
 - (xx) Faust Creek HUC 160203040105
- (x) Uintah County stocking is prohibited in any private fish pond above 7000 feet in elevation.
- (y) Utah County stocking is prohibited in the following areas:
 - (i) Starvation Creek HUC 160202020101;

- (ii) Upper Soldier Creek HUC 160202020102;
- (iii) Tie Fork HUC 160202020103;
- (iv) Middle Soldier Creek HUC 160202020105;
- (v) Lake Fork HUC 160202020106;
- (vi) Lower Soldier Creek HUC 160202020107;
- (vii) Upper Thistle Creek HUC 160202020202;
- (viii) Nebo Creek HUC 160202020203;
- (ix) Middle Thistle Creek HUC 160202020204;
- (x) Lower Thistle Creek HUC 160202020205;
- (xi) Sixth Water Creek HUC 160202020301;
- (xii) Cottonwood Canyon HUC 160202020302;
- (xiii) Fifth Water Creek HUC160202020303;
- (xiv) Upper Diamond Fork HUC 160202020304;
- (xv) Wanrhodes Canyon HUC 160202020305;
- (xvi) Middle Diamond Fork HUC 160202020306;
- (xvii) Lower Diamond Fork HUC 160202020307;
- (xviii) Headwaters Left Fork Hobble Creek HUC 160202020401;
- (xix) Headwaters Right Fork Hobble Creek HUC 160202020402;
- Outlet Left Fork Hobble Creek HUC (xx)160202020403;
- (xxi) Outlet Right Fork Hobble Creek - HUC 160202020404;
 - (xxii) Upper Spanish Fork Creek HUC 160202020501;
 - (xxiii) Middle Spanish Fork Creek HUC 160202020502;
 - (xxiv) Peteetneet Creek HUC 160202020601;
 - (xxv) Spring Creek HUC 160202020602;
 - (xxvi) Beer Creek HUC 160202020603;
- (xxvii) Big Spring Hollow/South Fork Provo River HUC 160202030502
 - (xxviii) Pole Creek/Salt Creek HUC 160202010104;
- (xxix) Middle American Fork Canyon - HUC 160202010802:
 - (xxx) Mill Fork HUC 160202020104; and
- Upper American Fork Canyon HUC (xxxi) 160202010801.
- (z) Wasatch County stocking is prohibited in the following areas:
 - (i) Willow Creek/Strawberry River HUC 140600040101;
 - (ii) Clyde Creek/Strawberry River HUC 140600040102;
 - (iii) Indian Creek HUC140600040104;
 - (iv) Trout Creek/Strawberry River HUC 140600040105;
 - (v) Soldier Creek/Strawberry River HUC 140600040106;
 - (vi) Willow Creek HUC 140600040301;
 - (vii) Current Creek Reservoir HUC 140600040401;
 - (viii) Little Red Creek HUC 140600040402;
 - (ix) Outlet Current Creek HUC 140600040403;
 - (x) Water Hollow/Current Creek HUC 140600040404;
- (xi) Headwaters West Fork Duchesne River HUC 140600030101;
 - (xii) Little South Fork Provo River HUC 160202030201;
- (xiii) Bench Creek/Provo River HUC160202030202;
- (xiv) Lady Long Hollow/Provo River - HUC 160202030203; (xv) Charcoal Canyon/Provo River - HUC 160202030204;
 - (xvi) Drain Tunnel Creek HUC 160202030301;
 - (xvii) Lake Creek HUC 160202030302:
- (xviii) Center Creek HUC 160202030303;
- (xix) Cottonwood Canyon/Provo River - HUC 160202030304;
 - (xx) Snake Creek HUC 160202030305;
 - (xxi) Spring Creek/Provo River HUC 160202030306;
 - (xxii) Daniels Creek HUC 160202030401; (xxiii) Upper Main Creek - HUC 160202030403;
 - (xxiv) Lower Main Creek HUC 160202030404; (xxv) Deer Creek Reservoir-Provo River -
- HUC160202030405;
 - (xxvi) Provo Deer Creek HUC 160202030501;

- (xxvii) Little Hobble Creek HUC 160202030402;
- (xxviii) Mill Hollow/South Fork Provo River HUC 160202030104; and
 - (xxix) Mud Creek HUC 140600040103.
- (aa) Washington County stocking is prohibited in the following areas:
 - (i) Ash Creek HUC 150100080405;
 - (ii) Beaver Dam Wash HUC 15010010;
 - (iii) Laverkin Creek HUC 150100080302;
 - (iv) Leeds Creek HUC 150100080906;
- (v) Baker Dam Reservoir/Santa Clara River HUC 150100080704;
 - (vi) Tobin Wash HUC 150100080802;
 - (vii) Sand Cove Wash HUC 150100080801;
- (viii) Manganese Wash/Santa Clara River HUC 150100080804;
- (ix) Wittwer Canyon/Santa Clara River HUC 150100080808;
 - (x) Cove Wash/Santa Clara River HUC 150100080809;
 - (xi) Moody Wash HUC 150100080603;
 - (xii) Upper Moody Wash HUC 150100080602;
 - (xiii) Magotsu Creek HUC 150100080704;
 - (xiv) South Ash Creek HUC 150100080405);
 - (xv) Water Canyon HUC 150100080701);
- (xvi) Chinatown Wash/Virgin River HUC 150100080508;
 - (xvii) Lower Gould Wash HUC 150100080508;
- (xviii) Grapevine Wash/Virgin River HUC 150100080903;
- (xix) Cottonwood Wash/Virgin River HUC 150100080909:
 - (xx) Middleton Wash/Virgin River HUC 150100080910;
 - (xxi) Lower Fort Pierce Wash HUC 150100080605;
 - (xxii) Atkinville Wash HUC 150100080303;
 - (xxiii) Lizard Wash HUC 150100080302;
 - (xxiv) Val Wash/Virgin River HUC 150100080307;
 - (xxv) Bulldog Canyon HUC 150100080310; and
 - (xxvi) Fort Pierce Wash HUC 15010009.
- (bb) Wayne County no areas closed to stocking fertile rainbow trout.
- (cc) Weber County stocking is prohibited in the following areas:
 - (i) North Fork Ogden River HUC 16020102;
- (ii) Middle Fork Ogden River and Gertsen Creek HUC 16020102; and
- (iii) South Fork Ogden River and Gertsen Creek HUC 16020102.

R657-59-17. Division Authority to Restrict Private Fish Ponds.

- (1)(a) Stocking and maintaining aquaculture products in private fish ponds pursuant to this rule is a conditional privilege that is subject to unilateral modification or termination by the division or other competent legal authority.
- (b) Those who establish and maintain private fish ponds under this rule do so with the understanding that the laws and regulations governing private fish ponds are subject to change and that such changes may require:
- (i) discontinuation of stocking particular species, strains, or reproductive capabilities of aquaculture product in the pond;
- (ii) partial or complete depopulation of the aquaculture product in the pond;
- (iii) modifications in screen requirements and other structural elements associated with the pond; or
- (iv) new restrictions and requirements in connection with operating the pond and maintaining the aquaculture product within it.
- (2) The division may unilaterally restrict a private fish pond operating with or without a certificate of registration or

exemption certificate from receiving or possessing particular species, strains and reproductive capabilities of aquaculture product previously authorized when stocking or continued possession of the product in the pond:

- (a) violates any federal, state or local law or any agreement between the state and another party;
- (b) negatively impacts native wildlife species listed by the division as sensitive or by the federal government as threatened or endangered;
- (c) poses an identifiable adverse threat to other wildlife species or their habitat; or
- (d) poses an identifiable adverse impact to the division's game fish stocking regimes or wildlife management objectives.
- (3) Any costs or losses incurred as the result of future modifications to this rule or the operational status of a private fish pond made pursuant to this section, including terminations and depopulations, shall be borne exclusively by the owner, lessee or operator of the private fish pond.

KEY: wildlife, aquaculture, fish August 21, 2012

23-15-9 23-15-10

R657. Natural Resources, Wildlife Resources.

R657-64. Predator Control Incentives. R657-64-1. Purpose and Authority.

- (1) This rule is promulgated under authority of Section 23-30-104 to establish procedures for:
- (a) targeted predator control and general predator control programs administered by the division for the benefit of mule deer; and
- (b) creation and distribution of educational and training materials related to mule deer protection.

R657-64-2. Definitions.

- (1) Terms used in this rule are defined in Section 23-30-102 and 23-13-2.
 - (2) In addition:
- (a) "Division" means the Utah Division of Wildlife Resources.
- (b) "General predator control" means a predatory animal removal effort by the division, which uses the public to remove predators for the benefit of mule deer.
- (c) "GPS" means Global Positioning System location in either the form of Latitude-Longitude coordinate or Universal Transverse Mercator (UTM) coordinate.
- (d) "Marked" means the permanent clipping or punching of ears on the predatory animal carcass or pelt.
 - (e) "Predatory animal" means a coyote.
- (f) "Targeted area" means an area within the State of Utah specifically identified for predatory animal removal during a specified season.
- (g) "Targeted predator control" means a predatory animal removal effort by the division or its contractors:
- (i) to remove predatory animals in an area where high predation on mule deer occurs; and
 - (ii) that focuses on specific locations and certain times.
 - (h) "State" means State of Utah.

R657-64-3. Predatory Animal Control Programs.

- (1) Two predatory animal control programs are created within the division to provide financial incentive to participants for the removal of coyotes detrimental to mule deer production.
- (a) The General Predator Control Program provides a financial incentive to any registered participant to remove coyotes within the State.
- (i) The financial incentive to participate in the program and remove coyotes under the conditions prescribed in this rule and by the division is \$50 compensation per animal, unless otherwise adjusted by the division, to be paid in accordance with R657-64-4.
- (b) The Targeted Predator Control Program provides compensation by contract to preapproved vendors to remove coyotes within prescribed areas of the State and during specified times of the year where predation on deer is most prevalent.
- (2) Participants in either program are not granted special authority to take coyotes beyond that available to non-participants, and each shall comply with all applicable federal, state, and local laws.
- (3) Participants in both programs are required to follow all relevant rules and regulations related to trapping and firearm use, as detailed in state code and rule R657-11, "Taking Furbearers."

R657-64-4. General Predator Control Program.

- (1) A person may participate in the General Predator Control Program, provided the applicant:
- (a) completes an online application, including the applicant's:
 - (i) full name;
 - (ii) mailing address;
 - (iii) phone number;

- (iv) e-mail address;
- (v) date of birth; and
- (vi) social security number;
- (b) completes an online orientation and training course for participation in the program;
- (c) agrees to the requirements of this rule and any additional terms and conditions specified by the division for program participation on its webpage;
- (d) acknowledges and agrees to the division submitting an Internal Revenue Service Form 1099 each calendar year where compensation totals require reporting under federal law;
- (e) acknowledges and agrees to verify that all coyotes submitted for compensation are taken by the applicant within the State.
- (f) acknowledges and agrees to collect and submit accurate GPS data documenting the precise location where each coyote is taken; and
- (g) acknowledges and agrees to not interfere with USDA Wildlife Services employees conducting similar coyote removal efforts in the area.
- (2) The division may deny an application to participate in the program for any of the following reasons:
 - (a) the application is incomplete or filled out incorrectly;
- (b) the application contains false or misleading information;
- (c) the applicant has failed to complete the online orientation and training course required in Subsection (1)(b);
- (d) the applicant has previously violated any of the terms of this rule or participation requirements imposed by the division;
- (e) the applicant's hunting privileges are suspended in the State at the time of application;
- (f) the applicant has been convicted of or entered a plea in abeyance to any crime of dishonesty in the previous five years; or
- (g) the applicant has committed any other crime, or violation of law or contract that bears a reasonable relationship to their reliability in accurately reporting the locations and times that predatory animals are taken.
- (3) Upon approval of the application, the division shall issue a registration number authorizing the applicant's participation in the program which will remain valid until June 30th each year, unless earlier suspended pursuant to R657-64-
- (4) Registered program participants will be eligible to receive from the division \$50 for each qualifying coyote presented, unless otherwise adjusted by the division, subject to the following conditions:
- (a) requests for payment shall be made only on the designated check-in dates and at the locations identified by the division:
- (b) any coyote presented to the division for the incentive payment must:
- (i) be taken by the participant within the State on or after July 1, 2012;
- (A) Program participants are not authorized to trespass or take coyotes on tribal trust lands without written tribal authorization.
- (ii) include the full pelt or the scalp with both ears attached, with neither previously marked or damaged to the extent that marking is unascertainable;
- (iii) include the lower jaw removed from the carcass with canine teeth intact;
 - (iv) be permanently marked by the division; and
- (c) requests for payment must be on a signed, division-approved compensation form that:
- (i) provides the name, mailing address, and registration number of the participant;
 - (ii) records the date and GPS location where each coyote

is taken; and

- (iii) verifies that the participant personally took the coyotes, the information provided is accurate, and all program terms and conditions have been complied with.
- (5) Program participants may designate a third party to check-in their coyotes with the division at the designated times and locations, provided:
- (a) the compensation form referred to in subsection (4)(c) is completed and signed by the program participant that took the coyotes;
- (b) the lower jaw and either the full pelt or the scalp (with both ears attached) of each coyote is presented to the division, as required in Subsection (4)(b)(ii) and (iii), with the compensation form; and
- (c) the compensation form identifies and authorizes the person that will present it to the division for compensation.
- (6) Compensation for qualified coyotes will be documented by written receipt at the time of submission to the division and payment by check will be mailed at a later date.
- (7) Participants shall be responsible for disposing of coyote pelts and ears presented to the division for compensation, but the division may retain the lower jaw.

R657-64-5. Targeted Predator Control Program.

- (1) The division may award contracts and compensate eligible vendors for targeted coyote removal services in areas of the State and at times specified in the contract.
- (a) Selected vendors will be compensated as prescribed in the contract and are ineligible to receive the \$50 incentive under the General Predator Control Program in R657-64-4 for coyotes taken under contract in the Targeted Predator Control Program.
- (b) Vendors participating in the Targeted Predator Control Program must submit to the division the lower jaw removed from the carcass with canine teeth intact and either the full pelt or the scalp with both ears attached for each coyote for which compensation credit is sought.
- (i) The division will document each animal and mark its ears, and may retain its lower jaw.
 - (c) Contract vendors shall:
- (i) be responsible for disposal of all coyote pelts and ears presented to the division for compensation credit, but the division may retain the lower jaw;
- (ii) not interfere with USDA Wildlife Services employees conducting similar coyote removal efforts within a targeted area;
- (iii) verify that all coyotes presented for compensation credit were taken:
- (A) by them personally or by another person operating under their direct supervision; and
- (B) within the areas and time periods prescribed in the contract; and
- (iv) provide and verify the accuracy of GPS data documenting the precise location where each coyote is taken.
- (2)(a) The division may establish a list or pool of preapproved vendors for participation in the Targeted Predator Control Program.
- (b) Preapproved vendors are eligible to receive a coyote removal contract.
- (c) The division may select one or more of the approved vendors for use in each targeted area for the season.
- (d) The division has full discretion to select any vendor to contract with among the pool of preapproved vendors and is under no obligation to use all the vendors or to provide equal opportunity to them.
- (e) The division is not bound to select vendors in any year, and does not guarantee that any vendor will be selected.
- (3)(a) A person or business entity may become a preapproved vendor in the Targeted Predator Control Program by complying with the following:
 - (i) complete and submit to the division an application on

the form provided by the division; and

- (ii) participate in the General Predator Control Program under R657-64-4 for one or more years with compensation credit awarded by the division for 25 or more coyotes each year.
- (A) In the case of a business entity, one or more of the entity's principals or owners must satisfy the requirements in Subsection (3)(a)(ii).
- (b) The division may deny an application for preapproved vendor status in the Targeted Predator Control Program for any of the following reasons:
 - (i) the application is incomplete or filled out incorrectly;
- (ii) the application contains false or misleading information;
- (iii) the applicant has previously violated any of the terms of this rule or participation requirements imposed by the division:
- (iv) the applicant's hunting privileges are suspended in the State at the time of application;
- (v) the applicant has been convicted of or entered a plea in abeyance to any crime of dishonesty in the previous five years; or
- (vi) the applicant has committed any other crime, or violation of law or contract that bears a reasonable relationship to their reliability in accurately reporting the locations and times that predatory animals are taken.

R657-64-6. Trap Locations.

- (1) Program participants and contract vendors are required to provide GPS data documenting the precise location where each coyote is taken.
- (2) To the extent GPS data discloses the location of trap lines and public disclosure of that data exposes the traps to the possibility of theft and damage, the data may be classified as "protected" under Section 63G-2-305(2) and restricted from public disclosure pursuant to Title 63G, Chapter 2, Government Records Access and Management Act, provided the requirements of Subsection (3) are satisfied.
- (3) Any person desiring to protect GPS data from public disclosure that locates trap lines must submit to the division a written claim of confidentiality explaining:
- (a) the financial and commercial harm reasonably expected to occur if the data is subject to public disclosure; and
- (b) why the person submitting the data has a greater interest in prohibiting access than the public in obtaining access.

R657-64-7. Coordination.

- (1) The division will coordinate with the Department of Agriculture and Food and the Agricultural and Wildlife Damage Prevention Board created in Section 4-23-4 to:
- (a) minimize unnecessary duplication of predatory animal control efforts;
- (b) prevent interference between predatory animal control programs administered under Title 4, Chapter 23, Agricultural and Wildlife Damage Prevention Act and this rule; and
- (c) enhance the effectiveness of predatory animal control efforts and maximize the benefit to both mule deer and livestock.

R657-64-8. Education and Training.

The division may conduct and administer training, education, and outreach activities related to mule deer protection and predator control.

R657-64-9. Appropriation of Funds.

- (1) Funding for the predatory animal control programs in this rule is appropriated annually by the Legislature.
- (2) Should appropriated funding be reduced or eliminated, funds available for compensation in the two predatory animal control programs may be ended without prior public notice.

(3) Once the annual funding allocation for coyote removal is expended for the general or targeted control programs in a given year, no further payments will be made for that year, regardless of pelts or ears that may be held by program participants.

R657-64-10. Liability.

- (1)(a) Any person who participates in either predatory animal control program under this rule assumes full and complete liability and responsibility for their acts and omissions while engaged in removing coyotes or redeeming them for compensation.
- (b) To the extent provided under the Utah Governmental Immunity Act and the liability limitations in this rule, the division shall not be liable in any civil action for any act or omission of a program participant while removing coyotes or redeeming them for compensation.
- (2) It is the responsibility of program participants to read, understand and comply with this rule and all other applicable federal, state, county, and municipal laws, regulations, and ordinances.

R657-64-11. Violations.

- (1) The division may suspend, terminate, or deny any authorization under this rule to participate in either or both predatory animal control programs for any of the violations listed in R657-64-4(2) or R657-64-5(3)(b).
- (2) Providing false information to the division or otherwise violating the provisions of this rule may be criminally prosecuted under applicable offenses defined in the Utah Code.

KEY: wildlife, predators, game laws, wildlife law August 7, 2012 23-30-102 23-30-104 23-13-17 R708. Public Safety, Driver License. R708-10. Classified License System.

R708-10-1. Authority.

This rule is authorized by Section 53-3-104 et seq.

R708-10-2. Specifications for Utah License Classifications.

Class A Commercial Driver - (must be at least 18 years of age). Every person operating any combination of vehicles over 26,000 lbs. GVWR (Gross Vehicle Weight Rating) where the towed unit is more than 10,000 lbs. GVWR.

Class B Commercial Driver - (must be at least 18 years of age). Every person operating a straight truck or bus (single vehicle) more than 26,000 lbs. GVWR or any combination of vehicles over 26,000 lbs. GVWR where the towed unit is less than 10,001 lbs. GVWR.

Class C operator - (must be at least 21 years of age). Every person operating a vehicle or combination of vehicles less than 26,001 GVWR which transports amounts of hazardous materials requiring placarding or which transports more than 15 occupants including the driver, or which is used as a school bus.

Class D operator - (must be at least 16 years of age). Every person operating vehicles not defined above except motorcycles.

R708-10-3. Endorsements.

H = Hazardous materials

M = Motorcycle.

N = Tank vehicle.

P = Passengers.

S = School bus. (includes P)

T = Double or triple trailers.

X = Hazardous material and tank combination.

Z = Taxis.

R708-10-4. Restrictions.

A = No restrictions.

 $\boldsymbol{B} = \boldsymbol{Corrective}$ lenses - Restricted to wearing corrective lenses while operating a vehicle.

C = Mechanical aid - Mechanical aid or compensatory device must be installed in the vehicle the driver is operating.

D = Prosthetic aid - Prosthetic aid must be used while operating a vehicle.

E = Automatic transmission - Restricted to driving a vehicle with automatic transmission.

F = Outside rearview mirrors - Restricted to driving a vehicle with outside rearview mirrors.

G = Daylight driving only - Restricted to driving during daylight hours only.

 \vec{J} = Restricted Other - Used as a free text field to identify additional restrictions.

 $K\!=\!CDL$ Intrastate only - Restricted to intrastate operation of commercial vehicles.

 $L=\mbox{\sc Vehicle}$ without airbrake - Restricted to vehicles not equipped with airbrakes.

M = Except Class A bus - Class A license prohibited from driving a Class A bus.

N = Except Class A and Class B bus - Class A license prohibited from driving a Class A or Class B bus.

U = Three wheel motorcycle - Restricted to operating only three-wheel motorcycles.

V = Medical variance - Driver must have a medical variance letter accompanied by a DOT Medical Card.

1 = Interlock device - Required to have an ignition interlock device installed in the vehicle they are operating.

2 = 249cc or less motorcycle - Restricted to operating a motorcycle with 249cc or less.

3 = 649cc or less motorcycle - Restricted to operating a motorcycle with 649cc or less.

4 = Street legal ATV - Restricted to operating a street legal ATV.

5 = 90cc or less motorcycle - Restricted to operating a motorcycle with 90cc or less.

6 = Speed posted 40 mph or less - Restricted to operating a vehicle on a road with a posted speed limit of 40 mph or less.

KEY: classified license, licensing August 9, 2012

Printed: October 11, 2012

Notice of Continuation April 7, 2009

53-3-104 et seq.

R708. Public Safety, Driver License.

R708-47. Emergency Contact Database.

R708-47-1. Authority.

This rule is authorized by Subsection 53-3-205.6(4).

R708-47-2. Purpose.

The purpose of this rule is to set standards establishing the procedures for a Utah license certificate holder, a Utah instruction permit holder, or a Utah identification card holder to provide the division with emergency contact information on person(s) to be contacted in the event of a motor vehicle accident or other emergency situation when the Utah certificate holder is unable to make contact with their designated emergency contact person(s) and to establish procedures to change the emergency contact information.

R708-47-3. Definitions.

- (1) "Emergency Contact Database" means the information maintained in the Utah Driver License Division database that was provided by a Utah license certificate holder, a Utah instruction permit holder, or a Utah identification card holder which designates and provides contact information on the Utah certificate holder's emergency contact(s).
- (2) "Emergency Contact Information" means the information provided to the division by a Utah license certificate holder, Utah instruction permit holder, or a Utah identification card holder on a person(s) they has designated to be contacted in the event of a motor vehicle accident or other emergency situation when the individual is unable to make contact which includes the person's:
 - (a) Name;
 - (b) Address;
 - (c) Relationship to the Utah certificate holder;
 - (d) Up to three (3) telephone numbers.
- (3) "Utah Interactive" means the company that is contracted with the state to provide and maintain web services for the division.

R708-47-4. Method to Provide Emergency Contact Information.

- (1) The holder of a Utah license certificate, instruction permit, or identification card may provide emergency contact information to the division by:
- (a) Accessing the web service provided by Utah Interactive; or
- (b) Submitting the completed Emergency Contact Database form (EMER).

R708-47-5. Method to Change the Emergency Contact Information.

- (1) The holder of a Utah license certificate, instruction permit, or identification card may modify, update or delete emergency contact information previously submitted to the division by:
- (a) Accessing the web service provided by Utah Interactive; or
- (b) Submitting the updated Emergency Contact Database form (EMER).

KEY: emergency contact database August 9, 2012

53-3-205.6

R728. Public Safety, Peace Officer Standards and Training. R728-401. Requirements For Approval and Certification of Peace Officer Basic Training Programs and Applicants. R728-401-1. Authority.

This rule is authorized by Section 53-6-105 (1)(a) which gives the power to the Director of Peace Officers Standards and Training to promulgate standards for the certification of peace officer training academies.

R728-401-2. Satellite Academy Approval.

- A. A law enforcement agency, correctional agency or institution of higher learning that meets the conditions and requirements set forth below may conduct a basic peace officer training program which is primarily established for the training of self-sponsored students, with the approval of the POST Council.
- B. Requests for new on-going academy programs primarily established for the training of self-sponsored students will only be approved when there is a demonstrated need for additional basic peace officer training programs in the county or region in which the new academy will operate.
- C. In order to demonstrate a need for an additional basic peace officer training program, the applying entity must provide evidence of at least one of the following:
- 1. There is no basic peace officer training program which is primarily established for the training of self-sponsored students within a 30 mile radius of the location where the new academy will operate.
- 2. One or more State, County or Local law enforcement agencies in the county or region has requested, in writing, that the applying entity establish and operate an on-going basic peace officer training program which is primarily established for the training of self-sponsored students.
- 3. An established satellite academy operating within the county or region or within 30 miles of the applying entity has confirmed that they are unable to meet the demand for basic peace officer training in the county or region.
- 4. The applying entity has the ability to provide a unique or specialized basic peace officer training program that an established satellite academy operating within the county or region or within 30 miles of the applicant is unable to provide.
- D. A law enforcement or correctional agency that has a temporary or specialized need to provide basic peace officer training to their own employees, that cannot reasonably be met by POST, may conduct a basic peace officer training program with the approval of the POST Council.
- E. POST will review the background and qualifications of the Satellite Academy Director or Training Coordinator before any entity will be approved to conduct a basic peace officer training program.

R728-401-3. Procedures for Course Validation.

A. The course must conform to the content and standards established by POST and approved by the POST Council.

- B. All applicants will pass the National Peace Officers Selection Test (NPOST). The NPOST entrance level test is a valid test used to demonstrate ability in the areas of reading comprehension, basic mathematic skills, basic grammar and writing skills. All applicants will also pass the POST physical fitness requirements as outlined in POST Policy and Procedure 2390Physical Training Requirements.
- C. All applicants will complete the POST application packet. POST must receive application packets at least four weeks prior to the start of training unless special circumstances exist and arrangements have been made with the POST Director or Deputy Director. Without exception, a medical evaluation from a medical doctor will be completed and submitted to POST before training begins.
 - 1. Sponsored applicants The sponsoring agency will

- complete the background investigation and insure that the requirements in Section 53-6-203 (applicants for admission to training programs) and R728-403 (Qualifications for Admission to Certified Peace Officer Training Academies) have been met. If the sponsoring agency has any question about an applicant's qualifications related to Section 53-6-203, or R728-403, POST shall be consulted before any training begins.
- 2. Self-Sponsored applicants POST will conduct a criminal history check on all self-sponsored applicants. Programs providing training to self-sponsored students will adhere to the following guidelines when providing POST with application packets.
- a. Check applications to insure completeness. POST will return any application not complete and deny training to that individual until a complete application is received and a criminal history check has been completed.
- b. Provide POST with applications at least four weeks prior to the start of training unless special circumstances exist and arrangements have been made with the POST Director or Deputy Director(without exception medical release forms will be completed and submitted to POST before physical training or testing begins).
- c. Bring to the attention of POST any information provided in the application warranting a close examination in light of the provisions outlined in Section 53-6-203 and R728-403
- Note: Any applicant denied by POST or by a satellite academy director may appeal the decision by following the approved POST appeal process.
- D. Equipment required to perform training must be furnished by the sponsoring agency or program. Equipment must meet POST standards.
- E. All instructors must be POST certified instructors, and approved to instruct in their assigned topic(s). Subject matter experts may be used as guest instructors.
- F. Lesson plans for each topic must be prepared in accordance with the currently approved student performance objectives.
- G. The POST approved on-line assessment system will be utilized to administer all quizzes and exams. Program coordinators must proctor all quizzes and exams. The final certification examination will be a comprehensive examination and will require a minimum score of 80% to pass. Physical fitness assessment standards are set by POST and approved by the POST Council. Program coordinators must administer the physical fitness assessment in accordance with POST approved procedures.
- H. Attendance rosters are to be kept to satisfy statutory requirements and copies of these rosters will be submitted to POST. In no case will a student who has missed more than 16 hours of the basic course become certifiable, until appropriate makeup work has been completed. If, as determined by the academy staff, a student has missed a significant part of any subject or block of instruction, that student will not be certifiable until appropriate make-up work is completed.
- I. Certified academies must ensure that students possess a valid driver license when involved in any training that requires the operating of a motor vehicle. POST recommends that driver license checks be made through the State Driver License Division.
- J. Successful completion of the course and completion of all POST required paperwork is necessary before the student will be certifiable. All paperwork must be completed and submitted to POST within two weeks of completion of the course.
- K. Final certification exams will only be administered after a student has completed all academic requirements for the block of instruction. If a student fails a final certification exam, they will be offered remediation and allowed one retake. The retake

Printed: October 11, 2012

53-6-205

examination must be taken within one year from the date of the original exam. Anyone who fails a certification exam retake will not be permitted to take the certification exam again until they satisfactorily complete another approved basic training program. Anyone failing the Physical Fitness Assessment will have one year to meet the requirements.

L. POST will conduct audits and site visits for each

certified academy to verify their conformity to POST standards.

When an individual has met all certification requirements, the director of the certified academy shall submit to POST a letter informing POST that all requirements have been met. Peace officer certification is granted when POST receives an application for certification signed by the chief administrator of a Utah law enforcement agency and confirms that the applicant has completed a basic peace officer training program and met all requirements.

N. No person may exercise peace officer authority until that person has satisfactorily completed an approved training program and received POST certification.

R728-401-4. Process for Requesting Certification.

Law enforcement administrators requesting certification of an employee shall submit to POST an Application for POST Certification. POST will verify that all requirements have been met and then issue the appropriate certification.

KEY: law enforcement officers, peace officer basic course, training academy approval, peace officer certification 53-6-202 August 6, 2012 **Notice of Continuation December 13, 2011** 53-6-203 53-6-204

R728. Public Safety, Peace Officer Standards and Training. R728-409. Suspension or Revocation of Peace Officer Certification.

R728-409-1. Authority.

Section 53-6-105(1)(k) provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

R728-409-2. Purpose.

The purpose of this rule is to establish procedures for the suspension or revocation of a peace officer's certification.

R728-409-3. Definitions.

- A. Terms used in this rule are defined in Section 53-6-102.
- B. In addition:
- 1. "ALJ" means an administrative law judge who conducts administrative hearings as provided in Subsection 53-6-211(3);
- 2. "Garrity warning" means a warning issued based on the decision in Garrity v. New Jersey, 385 U.S. 493 (1967);
 - 3. "on duty" means that a peace officer is:
- a. actively engaged in any of the duties of his employment as a peace officer;
- b. receiving compensation for activities related to his employment as a peace officer;
 - c. on the property of a law enforcement facility;
- d. in a law enforcement vehicle which is located in a public place; or
- e. in a public place and is wearing a badge or uniform, authorized by a law enforcement agency, which readily identifies the wearer as a peace officer;
- 4. "respondent" means a peace officer against whom the division has initiated an adjudicative proceeding under Section 53-6-211;
- 5. "revocation" means the permanent deprivation of a peace officer's certification, which does not allow for a peace officer whose certification has been revoked to be readmitted into any peace officer training program conducted by or under the approval of the division, or to have peace officer certification reinstated or restored by the division;
- 6. "sexual conduct" means the touching of the anus, buttocks or any part of the genitals of a person, or the touching of the breast of a female, whether or not through clothing, with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant; and
- 7. "suspension" means the temporary deprivation of a peace officer's certification.

R728-409-4. Cause for the Suspension or Revocation of a Peace Officer's Certification.

The division may initiate an investigation when it receives information that grounds for the suspension or revocation of a peace officer's certification exist under Subsection 53-6-211(1).

R728-409-5. Conduct Not in Violation of Subsection 53-6-211(1).

- Conduct which shall not be considered a violation of Subsection 53-6-211(1) includes:
- A. Any traffic offense which is a class C misdemeanor or infraction;
- B. A violation of a law enforcement agency's policy or procedure;
- C. Conduct which is discovered or established through questioning which goes beyond the scope of a properly administered interview as established in Garrity v. New Jersey, 385 U.S. 493 (1967); or
- D. Sexual activity which is protected under the right of privacy as recognized by the United States Supreme Court in Lawrence v. Texas, 539 U.S. 558 (2003).

R728-409-6. Investigative Procedure.

- A. The division shall initiate an investigation when it receives information from any reliable source that grounds for the suspension or revocation of certification exist under Subsection 53-6-211(1), including when any of the following circumstances occur:
- 1. A peace officer is charged with a criminal violation of law:
- 2. A peace officer has committed conduct which is a criminal act under law, but which has not been criminally charged or where criminal prosecution is not anticipated;
- 3. A peace officer has committed conduct in violation of Subsection 53-6-211(1), where the peace officer's employing agency has conducted disciplinary action and notified the division:
- 4. A peace officer is terminated for conduct which is in violation of Subsection 53-6-211(1);
- 5. A peace officer resigns for conduct which is in violation of Subsection 53-6-211(1);
- 6. A citizen makes a complaint which, on its face, appears to be a violation of Subsection 53-6-211(1);
- 7. The media reports about officer misconduct which appears to be in violation of Subsection 53-6-211(1) and there is independent evidence to confirm that the conduct occurred;
- 8. A peace officer or law enforcement agency makes a complaint about a peace officer alleging conduct in violation of Subsection 53-6-211(1);
- 9. A criminal justice related agency or political subdivision makes a complaint about a peace officer alleging conduct in violation of Subsection 53-6-211(1);
- 10. A background investigation has been conducted by the division on a peace officer seeking peace officer certification or entrance into a certified peace officer training program which indicates that the peace officer has engaged in conduct in violation of Subsection 53-6-211(1); or
- 11. A peace officer has provided false information to the peace officer's employing agency after having been issued a properly administered Garrity warning.
- C. A citizen seeking to file a complaint against a peace officer may be required to sign a written statement, detailing the incident and swearing to the accuracy of the statement after being advised that providing a false statement may result in prosecution under Section 76-8-511, Falsification of Government Record.
- D. A peace officer seeking to file a complaint against another peace officer may submit written documentation detailing the incident.
- E. If the division receives a complaint or information about misconduct of a peace officer, an investigator from the division will be assigned to investigate the complaint or information and to make a recommendation to proceed or to discontinue action in the matter. Assigned investigators are to ensure that all investigative procedures are properly documented and recorded in the case file.
- F. If a peace officer under investigation is employed by a law enforcement agency, the division shall notify the peace officer's employing agency concerning the complaint or information, unless the nature of the complaint would make such a course of action impractical. The date and time the department administrator and the officer are notified should be noted in the appropriate space on the complaint form.
- G. The division will refer any complaints made by officers or citizens of a criminal nature to the appropriate law enforcement agency having jurisdiction for investigation and prosecution if such a referral has not already been made.
- H. If the law enforcement agency which employs the peace officer has an open and active investigation, the division will wait until the agency has completed their investigation before taking action unless the division determines that it is not in the

public's best interest to wait.

- I. The division may use the information gathered by the law enforcement agency which employs the peace officer in its investigation and may use any adjudicative findings to help determine what course of action to take. This will not preclude the division from conducting an independent investigation if the division finds it is necessary.
- J. The division will take action based on the actual conduct of the peace officer as determined by an investigative process, not necessarily on the punishment instituted by the law enforcement agency which employs the peace officer or any court findings.
- K. Witnesses and other evidence may be subpoenaed for the investigation pursuant to Section 53-6-210.
- L. If ordinary investigative procedures cannot resolve the facts at issue, a peace officer may be requested to submit to a polygraph examination.
- M. The director may immediately suspend a peace officer's certification as provided in Section 63G-4-502 if the director believes it is necessary to ensure the safety and welfare of the public, the continued public trust or professionalism of law enforcement.
- N. Once the investigation is concluded, the division shall determine whether there is sufficient evidence to proceed with an adjudicative proceeding.
- O. If the division determines that there is insufficient evidence to find that a peace officer engaged in conduct in violation of Subsection 53-6-211(1), the director shall issue a letter to the peace officer indicating that the investigation has been concluded and that the division shall take no action.

R728-409-7. Purpose of Adjudicative Proceedings.

- A. The purpose of an adjudicative proceeding will be to determine whether there is sufficient evidence to find that the respondent committed the alleged conduct by clear and convincing evidence and whether such conduct falls within the grounds for administrative action enumerated in Subsection 53-6-211(1).
- B. All adjudicative proceedings initiated by the division for the purpose of suspending or revoking a peace officer's certification shall be formal proceedings as provided by Section 63G-4-202.

R728-409-8. Commencement of Adjudicative Proceedings - Filing of the Notice of Agency Action.

- A. Except as provided by 63G-4-502 all adjudicative proceedings initiated by the division for the purpose of suspending or revoking a peace officer's certification shall be commenced by the filing of a Notice of Agency Action.
- B. The Notice of Agency Action shall be signed by the director and shall comply with the requirements of Section 63G-4-201.
- C. The Notice of Agency Action shall be filed with the division and a copy shall be sent to the respondent by certified mail.

R728-409-9. Responsive Pleadings.

- A. The respondent must file with the division a written response, signed by the respondent or his attorney, within 30 days of the mailing date of the Notice of Agency Action.
- B. The written response must comply with the requirements in Section 63G-4-204.

R728-409-10. Consent Agreements.

- A. Once a Notice of Agency Action has been issued, the division may seek a consent agreement with the respondent.
- B. The respondent will have 20 days from the date that the consent agreement is signed by the director to respond to the division regarding the consent agreement.

- C. If a consent agreement is not sought or is not reached, the adjudicative proceeding will continue. The period of time in which the respondent must file a responsive pleading to the Notice of Agency Action is not extended if the parties are unable to reach a consent agreement.
- D. If a consent agreement is reached, it shall be signed by the respondent and the director and be filed with the division. The consent agreement shall indicate that the matter shall be heard at the next regularly scheduled council meeting.

R728-409-11. Default.

- A. The ALJ may enter an order of default against a party
- 1. the respondent fails to file the response required by rule R728-409-9; or
- 2. the respondent fails to attend or participate in the hearing.
- B. The order of default shall include a statement of the grounds for default and shall indicate that the matter will be heard at the next regularly scheduled council meeting.
- C. The ALJ shall issue the order of default. The order of default shall be filed with the division and a copy shall be sent to the respondent by certified mail.
- D. The respondent may seek to set aside the default order by filing a motion within 3 months of the date of the order of default. The ALJ may set aside the order of default for good cause shown.

R728-409-12. Scheduling a Hearing before the ALJ.

- A. After the division receives the responsive pleading from the respondent, notice of the location, date and time for the hearing will be issued by the division. The notice of hearing shall be filed with the division and a copy shall be sent to the respondent by certified mail.
- B. The hearing will be held within a reasonable time after service of the responsive pleading unless a later scheduling is ordered by the ALJ, or mutually agreed upon by the respondent and the division.

R728-409-13. Discovery and Subpoenas.

- A. In formal adjudicative proceedings parties may conduct only limited discovery. A respondent's right to discovery does not extend to interrogatories, requests for admissions, request for the production of documents, request for the inspection of items, or depositions.
- B. Upon request, the respondent is entitled to a copy of the materials contained in the division's investigative file that the division intends to use in the adjudicative proceeding.
- C. The disclosure of all discovery materials is subject to the provisions in the Government Records Access and Management Act, Section 63G-2-101 et seq. The division may charge a fee for discovery in accordance with Section 63G-2-203.
- D. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence for adjudicative proceedings shall be issued by the division pursuant to Section 53-6-210, by the ALJ when requested by any party, or by the ALJ on his own motion pursuant to Section 63G-4-205.

R728-409-14. Hearing Procedures.

- A. All hearings shall be conducted by the ALJ according to the requirements of Section 63G-4-206.
- B. At the hearing, the respondent has the right to be represented by an attorney. Legal counsel will not be provided to the respondent by the division and all costs associated with representation will be the sole responsibility of the respondent.

R728-409-15. ALJ Decision.

A. Within 30 days from the date a hearing is held, the ALJ

shall sign and issue a written decision, which shall include a statement of:

- 1. the ALJ's findings of fact based exclusively on the evidence of record in the adjudicative hearing or on facts officially noted;
 - 2. the ALJ's conclusions of law; and
 - 3. the reasons for the ALJ's decision.
- B. If the ALJ finds that there is sufficient evidence to find that the respondent engaged in conduct in violation of Subsection 53-6-211(1), the ALJ's decision shall indicate that the matter will be heard at the next regularly scheduled council meeting.
- C. If the ALJ finds that there is insufficient evidence to find that the respondent engaged in conduct in violation of Subsection 53-6-211(1), the matter will be dismissed.
- D. The ALJ shall file the decision with the division and a copy shall be sent to the respondent by certified mail.

R728-409-16. Action by the Council.

- A. Once a consent agreement has been reached or there has been an order of default or decision issued by the ALJ, the division shall present the matter to the council at their next regularly scheduled meeting. The division shall provide the council with the pleadings contained in the administrative file. The division shall also provide the council with any written information or comments provided by the chief, sheriff, or administrative officer of the respondent's employing agency.
- B. At the council meeting the respondent or the respondent's attorney may address the council regarding whether the respondent's peace officer certification should be suspended or revoked.
- C. The council shall review the matter and shall determine whether suspension or revocation of the respondent's peace officer certification is appropriate based upon the facts of the case and the POST Disciplinary Guidelines which were adopted on June 7, 2010 and amended on March 22, 2012.

R728-409-17. Final Order.

- A. After the council has decided the matter, the council chairperson shall issue a final order within 30 days of the council meeting.
- B. The final order shall indicate the action taken by the council with regards to the respondent's peace officer certification and shall include information on the appeal process outlined in R728-409-18.
- C. The council's action shall be effective on the date that the final order is issued.
- D. The council chairperson shall file the final order with the division. A copy of the final order shall be sent to the respondent by certified mail and the respondent's employing agency by regular mail.

R728-409-18. Judicial Review.

- A. A respondent may obtain judicial review of the council's action by filing a petition for judicial review with the Utah Court of Appeals within 30 days after the date that the final order is issued by the council chairperson.
- B. The petition must meet all requirements specified in Sections 63G-4-401 and 403.

KEY: law enforcement officers, certification, investigations, rules and procedures August 6, 2012 53-6-211

Notice of Continuation December 21, 2011

R850. School and Institutional Trust Lands, Administration. R850-100. Trust Land Management Planning. R850-100-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii) and 53C-2-201(3) which require that planning procedures be developed for trust lands, and for the opportunity for interested parties to participate in the planning process.

R850-100-150. Scope.

Nothing in this rule is intended to supersede or replace the provisions of R850-21-150, R850-22-150, R850-23-150, R850-24-125, R850-30-150, R850-40-150, R850-41-150, R850-50-150, R850-70-150, R850-80-150, R850-90-150, R850-120-150, or R850-140-350.

R850-100-175. Definitions.

The general definitions provided in R850-1-200 apply to this section. In addition, the words and terms used in Section R850-100-500 shall have the following-described meanings, unless otherwise indicated:

- 1. Public Lands: Lands and resources administered by the federal Bureau of Land Management or USDA Forest Service.
 - 2. Interested Parties:
- (a) The beneficiaries of the lands involved in any planning effort;
 - (b) local government officials.
- 3. Land Management, Tenure Adjustment, and Access Plans: A plan to evaluate and direct the management, disposal, and acquisition of lands in a specific area, and to provide for the establishment, maintenance, or both, of access to retained or acquired lands.
- 4. Local Government Officials: Elected county or municipal officials with jurisdiction over areas included in a planning effort.

R850-100-200. Simultaneous Use of Trust Land Assets.

The agency shall encourage the simultaneous use of compatible, revenue generating activities on trust lands.

R850-100-300. Joint Planning.

The agency may participate in joint planning with other land management agencies when the director determines that the commitment of agency resources is justified, and trust management obligations will be facilitated.

R850-100-400. Assessments of Natural and Cultural Resources.

- 1. The Resource Development Coordinating Committee (RDCC) process provides a natural resource assessment for purposes of trust land management. No other natural resource analysis is required beyond consultation with the RDCC. The public may comment on proposed trust land plans and uses through the RDCC process.
- Cultural resource analysis on specific actions shall be conducted pursuant to R850-60.

R850-100-500. Land Management, Tenure, and Access Plans.

- 1. The agency may develop land management, tenure adjustment, and access plans for selected geographical regions of the state.
- 2. The planning criteria, regions, and boundaries shall be established by the director.
 - 3. Plans developed under this section may:
- (a) Designate areas where particular uses will be permitted or denied;
 - (b) identify trust lands designated for disposal to the

federal government or other entities;

- (c) identify public lands desired for acquisition;
- (d) identify other lands and assets for acquisition that are not located on public lands; and
- (e) identify access routes across public lands necessary for the economic development of trust lands within the planning boundaries
- 4. Before adopting a plan developed under this section, the agency shall submit the plan for approval by the board of trustees.
- (a) Prior to presenting a plan to the board for approval, the agency shall solicit input from interested parties; and,
 - (b) submit the plan for review by the RDCC.

KEY: management, natural resource assessment, land use December 22, 2010 53C-1-302(1)(a)(ii) Notice of Continuation August 15, 2012 53C-2-201(3)

R861. Tax Commission, Administration.

R861-1A. Administrative Procedures.

R861-1A-2. Rulemaking Power Pursuant to Utah Code Ann. Section 59-1-210 and 63-46a-4.

- A. Policy and Scope. In accordance with the responsibility placed upon it by law, the Commission shall enact appropriate rules. These rules shall prescribe practices and procedures for the Commission and other state and county officials and agencies overwhich the Commission has supervisory power and shall interpret laws the Commission is charged with administering when such interpretation is deemed necessary and in the public interest.
- B. Preparation. In the preparation of rules the Commission may refer to appropriate materials and consult such parties as it deems advisable, whether or not such persons are employees of the Commission. Drafts of proposed rules may be submitted to the Office of the Attorney General for examination as to legality and form.
- C. Notice and Hearing. The Commission may publish, by means of local communication, notice of its intent to exercise its rulemaking power in a particular area. Notice therein will be given of a scheduled hearing or hearings not sooner than 15 days after such notice, at which hearing or hearings any party who would be substantially affected by such exercise may present argument in support thereof or in objection thereto. Such notice and hearing or hearings will be instituted when the Commission deems them to be of substantial value and in the public interest or in accordance with Utah Code Ann. Section 63-46a-5. Such notice and hearing or hearings shall not be a prerequisite to the validity of any rule.
- D. Adoption. Rules will be adopted by the Commission at formal meetings with a quorum present. Adopted rules will be written and entered into the official minutes of the Commission, which minutes are a public record available for examination by interested members of the public at the Commission offices. This proceeding and no other will be necessary for validity, unless otherwise required by the rulemaking procedures.
- E. Effective Date. In accordance with Utah Code Ann. Section 63-46a-4.
- F. Publication. Copies of adopted rules will be prepared and made available to interested parties requesting the same. Such rules may also be published periodically in booklets and bulletins. It shall be the policy of the Commission to provide for publication of all new rules at the time of each compilation of rules in the particular area. No rule, however, shall be deemed invalid by failure to prepare copies for distribution or to provide for publication in the manner herein described.
- G. Petitions for Exercise of Rulemaking Power. The Commission may be petitioned to exercise its power to adopt a rule of general application. Such petition shall be submitted in writing by any party who would be substantially and directly affected by such rule. The Commission will have wide discretion in this area and will exercise this rulemaking power upon petition only when it deems that such exercise would be of substantial value to the citizens of Utah. If the Commission accepts such a petition, it may adopt such rule as it deems appropriate; however, the petitioning party may submit a proposed rule for the consideration of the Commission. If the Commission acts favorably upon such a petition, it will adopt and publish the rule in the manner hereinabove described, and in addition notify the petitioner of such adoption by mail at his last known address. If the Commission declines to act on such petition, it will so notify the petitioning party in the same
- H. Repeal and Amendment. The procedure above described for the enactment of rules shall also be followed for the amendment or repeal of existing rules.

R861-1A-3. Division Conferences Pursuant to Utah Code

Ann. Sections 59-1-210 and 63G-4-102.

Any party directly affected by a commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in that action.

- (1) A request may be oral or written.
- (2) A conference will be conducted in an informal manner in an effort to clarify and narrow the issues and problems involved.
- (3) The party requesting a conference will be notified of the result:
 - (a) orally or in writing;
 - (b) in person or through counsel; and
- (c) at the conclusion of the conference or within a reasonable time thereafter.
- (4) A conference may be held at any time prior to a hearing, whether or not a petition for hearing, appeal, or other commencement of an adjudicative proceeding has been filed.

R861-1A-9. State Board of Equalization Procedures Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.

- (1) The commission sits as the state board of equalization in discharge of the equalization responsibilities given it by law. The commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.
 - (2) Appeals to the commission shall include:
- (a) a copy of the recommendation of a hearing officer if a hearing officer heard the appeal;
 - (b) a copy of the notice required under Section 59-2-919;
 - (c) a copy of the minutes of the board of equalization;
- (d) a copy of the property record maintained by the assessor;
- (e) if the county board of equalization does not include the record in its minutes, a copy of the record of the appeal required under R884-24P-66;
- (f) a copy of the evidence submitted by the parties to the board of equalization;
 - (g) a copy of the petition for redetermination; and
 - (h) a copy of the decision of the board of equalization.
- (3) A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.
- (4) Appeals to the commission shall be scheduled for hearing pursuant to commission rules.
- (5) Appeals to the commission shall be on the merits except for the following:
 - (a) dismissal for lack of jurisdiction;
 - (b) dismissal for lack of timeliness;
- (c) dismissal for lack of evidence to support a claim for relief.
- (6)(a) The commission shall consider, but is not limited to, the facts and evidence submitted to the county board.
 - (b) A party may raise a new issue before the commission.
- (7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be reviewed by the commission is the dismissal itself, not the merits of the appeal.
- (8) An appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the commission determines that:

- (a) dismissal under Subsection (5)(a) or (c) was improper;
- (b) the taxpayer failed to exhaust all administrative remedies at the county level;
- (c) in the interest of administrative efficiency, the matter can best be resolved by the county board;
- (d) the commission determines that dismissal under Subsection (5)(a)(c) is improper under R884-24P-66; or
 - (e) a new issue is raised before the commission by a party.
- (9) The provisions of this rule apply only to appeals to the commission as the state board of equalization. For information regarding appeals to the county board of equalization, please see Section 59-2-1004 and R884-24P-66.

R861-1A-10. Miscellaneous Provisions Pursuant to Utah Code Ann. Section 59-1-210.

- A. Rights of Parties. Nothing herein shall be construed to remove or diminish any right of any party under the Constitution of the United States, the Constitution of the state of Utah, or any existing law.
- B. Effect of Partial Invalidation. If any part of these rules be declared unconstitutional or in conflict with existing statutory law by a court of competent jurisdiction, the remainder shall not be affected thereby and shall continue in full force and effect.
- C. Enactment of Inconsistent Legislation. Any statute passed by the Utah Legislature inconsistent with these rules or any part thereof will effect a repeal of that part of these rules with which it is inconsistent, but of no other part.
- D. Presumption of Familiarity. It will be presumed that parties dealing with the Commission are familiar with:
 - 1. these rules and the provisions thereof,
 - 2. the revenue laws of the state of Utah, and
- 3. all rules enacted by the Commission in its administration thereof.

R861-1A-11. Appeal of Corrective Action Order Pursuant to Utah Code Ann. Section 59-2-704.

- A. Appeal of Corrective Action Order. Any county appealing a corrective action order issued pursuant to Section 59-2-704, shall, within 10 days of the mailing of the order, request in writing a hearing before the Commission. The Commission shall immediately set the time and place of the hearing, which shall be held no later than June 30 of the tax year to which the corrective action order applies.
- B. Hearings. Hearings on corrective action order appeals shall be conducted as formal hearings and shall be governed by the procedures contained in these rules. If the parties are able to stipulate to a modification of the corrective action order, and it is evident that there is a reasonable basis for modifying the corrective action order, an amended corrective action order may be executed by the Commission. One or more commissioners may preside at a hearing under this rule with the same force and effect as if a quorum of the Commission were present. However, a decision must be made and an order signed by a quorum of the Commission.
- C. Decisions and Orders. The Commission shall render its decision and order no later than July 10 of the tax year to which the corrective action order applies. Upon reaching a decision, the Commission shall immediately notify the clerk of the county board of equalization and the county assessor of that decision.
- D. Sales Information. Access to Commission property sales information shall be available by written agreement with the Commission to any clerk of the county board of equalization and county assessor appealing under this rule. All other reasonable and necessary information shall be available upon request, according to Commission guidelines.
- E. Conflict with Other Rules. This rule supersedes all other rules that may otherwise govern these proceedings before the Commission.

R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. Section 59-1-210.

This rule outlines the policies and procedures of the Commission regarding the public disclosure of and access to documents, workpapers, decisions, and other information prepared by the Commission under provisions of Utah Code Ann. Section 59-1-210.

- A. Property Tax Orders. Property tax orders signed by the Commission will be mailed to the appropriately named parties in accordance with the Commission's rules of procedure. Property tax orders may also be made available to persons other than the named parties upon written request to the Commission. Nonparty requests will be subject to the following limitations.
- 1. If, upon consultation with the taxpayer, the Commission determines that a particular property tax order contains information which, if disclosed, would constitute a significant competitive disadvantage to the taxpayer, the Commission may either prohibit the disclosure of the order or require that applicable information be removed from the order prior to it being made publicly available.
- 2. The limitation in subsection 1. does not apply if the taxpayer affirmatively waives protection against disclosure of the information.
- B. Other Tax Orders. Written orders signed by the Commission relating to all tax appeals other than property tax matters will also be mailed to the appropriately named parties in accordance with the Commission rules of procedure. Copies of these orders or information about them will not be provided to any person other than the named parties except for the following circumstances:
- 1. if the Commission determines that the parties have affirmatively waived any claims to confidentiality; or
- 2. if the Commission determines that the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, or any other information attributable to a return filed with the Commission.
 - C. Imposition and Waiver of Penalty and Interest.
- 1. All facts surrounding the imposition of penalty and interest charges as well as requests for waiver of penalty and interest charges are considered confidential and will not be disclosed to any persons other than the parties specifically involved. These facts include the names of the involved parties, the amount of penalty and interest, type of tax involved, amount of the tax owed, reasons for the imposition of the penalty and interest, and any other information relating to imposition of the penalty and interest, except as follows:
- (a) if the Commission affirmatively determines that a finding of fraud is involved and seeks the imposition of the appropriate fraud penalties, the Commission may make all pertinent facts available to the public once legal action against the parties has been commenced; or
- (b) if the Commission determines that the parties have affirmatively waived their rights to confidentiality, the Commission will make all pertinent facts available to the public.
 - D. Commission Notes and Workpapers.
- 1. All workpapers, notes, and other material prepared by the commissioners, as well as staff and employees of the Commission, are to be considered confidential, and access to the specific material is restricted to employees of the Commission and its legal counsel only. Examples of this restricted material include audit workpapers and notes, ad valorem appraisal worksheets, and notes taken during hearings and deliberations. In the case of information prepared as part of an audit, the auditing division will, upon request, provide summary information of the findings to the taxpayer. These items will not be available to any person or party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.
- 2. Relevant workpapers of the property tax division prepared in connection with the assessment of property by the

Commission, pursuant to the provisions of Utah Code Ann. Section 59-2-217, shall be provided to the owner of the property to which the assessment relates, at the owner's request.

- E. Reciprocal Agreements. Pursuant to Utah Code Ann. Sections 59-7-537, 59-10-545 and 59-12-109, the Commission may enter into individual reciprocal agreements to share specific tax information with authorized representatives of the United States Internal Revenue Service, tax officials of other states, and representatives of local governments within the state of Utah; provided, however, that no information will be provided to any governmental entity if providing such information would violate any statute or any agreement with the Internal Revenue Service.
- F. Other Agreements. Pursuant to Utah Code Ann. Section 59-12-109, the Commission may provide departments and political subdivisions of the state of Utah with copies of returns and other information required by Chapter 12 of Title 59. This information is available only in official matters and must be requested in writing by the head of the department or political subdivision. The request must specifically indicate the information being sought and how the information will be used. The Commission will respond in writing to the request and shall impose conditions of confidentiality on the use of the information disclosed.
- G. Multistate Tax Commission. The Commission is authorized to share specific tax information for audit purposes with the Multistate Tax Commission.
- H. Statistical Information. The Commission authorizes the preparation and publication of statistical information regarding the payment and collection of state taxes. The information will be prepared by the various divisions of the Commission and made available after review and approval of the Commission.
- I. Public Record Information. Pursuant to Utah Code Ann. 59-1-403(3)(c), the Commission may publicize the name and other appropriate information, as contained in the public record, concerning delinquent taxpayers, including their addresses, the amount of money owed by tax type, as well as any legal action taken by the Commission, including charges filed, property seized, etc. No information will be released which is not part of the existing public record.

R861-1A-13. Requests for Accommodation and Grievance Procedures Pursuant to Utah Code Ann. Section 63G-3-201, 28 CFR 35.107 1992 edition, and 42 USC 12201.

- (1) Individuals with a disability may request reasonable accommodations to services, programs, or activities, or a job or work environment in the following manner.
 - (a) Requests shall be directed to: Accommodations Coordinator

Utah State Tax Commission

210 North 1950 West

Salt Lake City, Utah 84134

Telephone: 801-297-3811 TDD: 801-297-3819 or relay

- (b) Requests shall be made at least three working days prior to any deadline by which the accommodation is needed.
 - (c) Requests shall include the following information:
 - (i) the individual's name and address;
- (ii) a notation that the request is made in accordance with the Americans with Disabilities Act;
- (iii) a description of the nature and extent of the individual's disability;
- (iv) a description of the service, program, activity, or job or work environment for which an accommodation is requested;
- (v) a description of the requested accommodation if an accommodation has been identified.
- (2) The accommodations coordinator shall review all requests for accommodation with the applicable division director and shall issue a reply within two working days.

- (a) The reply shall advise the individual that:
- (i) the requested accommodation is being supplied; or
- (ii) the requested accommodation is not being supplied because it would cause an undue hardship, and shall suggest alternative accommodations. Alternative accommodations must be described; or
- (iii) the request for accommodation is denied. A reason for the denial must be included; or
- (iv) additional time is necessary to review the request. A projected response date must be included.
- (b) All denials of requests under Subsections (2)(a)(ii) and (2)(a)(iii) shall be approved by the executive director or designee.
- (c) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.
- (3) Individuals with a disability who are dissatisfied with the reply to their request for accommodation may file a request for review with the executive director in the following manner.
 - (a) Requests for review shall be directed to:

Executive Director

Utah State Tax Commission

210 North 1950 West

Salt Lake City, Utah 84134

Telephone: 801-297-3841 TDD: 801-297-3819 or relay at 711

- (b) A request for review must be filed within 180 days of the accommodations coordinator's reply.
 - (c) The request for review shall include:
 - (i) the individual's name and address;
 - (ii) the nature and extent of the individual's disability;
 - (iii) a copy of the accommodation coordinator's reply;
- (iv) a statement explaining why the reply to the individual's request for accommodation was unsatisfactory;
 - (v) a description of the accommodation desired; and
- (vi) the signature of the individual or the individual's legal representative.
- (4) The executive director shall review all requests for review and shall issue a reply within 15 working days after receipt of the request for review.
- (a) If unable to reach a decision within the 15 working day period, the executive director shall notify the individual with a disability that the decision is being delayed and the amount of additional time necessary to reach a decision.
- (b) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.
- (5) The record of each request for review, and all written records produced or received as part of each request for review, shall be classified as protected under Section 63G-2-305 until the executive director issues a decision.
- (6) Once the executive director issues a decision, any portions of the record that pertain to the individual's medical condition shall remain classified as private under Section 63G-2-302 or controlled under Section 63G-2-304, whichever is appropriate. All other information gathered as part of the appeal shall be classified as private information. Only the written decision of the executive director shall be classified as public information.
- (7) Individuals with a disability who are dissatisfied with the executive director's decision may appeal that decision to the commission in the manner provided in Sections 63G-4-102 through 63G-4-105.

R861-1A-15. Requirement of Social Security and Federal Identification Numbers Pursuant to Utah Code Ann. Section 59-1-210.

A. Taxpayers shall provide the Tax Commission with their social security number or federal identification number, as

required by the Tax Commission.

- B. Sole proprietor and partnership applicants shall provide the Tax Commission with the following information for every owner or partner of the applying entity:
 - 1. name;
 - 2. home address;
- 3. social security number and federal identification number, as required by the Tax Commission.
- C. Corporation and limited liability applicants shall provide the Tax Commission with the following information for every officer or managing member of the applying entity:
 - 1. name;
 - 2. home address; and
- 3. social security number and federal identification number, as required by the Tax Commission.
- D. Business trust applicants shall provide the Tax Commission with the following information for the responsible trustees:
 - 1. name;
 - 2. home address; and
- 3. social security number and federal identification number, as required by the Tax Commission.

R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.

- (1) The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.
 - (2) The structure of the agency is as follows:
- (a) The Office of the Commission, including the commissioners and the following units that report to the commission:
 - (i) Internal Audit;
 - (ii) Appeals;
 - (iii) Economic and Statistical; and
 - (iv) Public Information.
- (b) The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:
 - Administration;
 - (ii) Taxpayer Services;
 - (iii) Motor Vehicle;
 - (iv) Auditing;
 - (v) Property Tax;
 - (vi) Processing; and
 - (vii) Motor Vehicle Enforcement.
- (3) The Executive Director shall oversee service agreements from other departments, including the Department of Human Resources and the Department of Technology Services.
- (4) The commission hereby delegates full authority for the following functions to the executive director:
- (a) general supervision and management of the day to day management of the operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in Subsection (2)(b);
- (b) management of the day to day relationships with the customers of the agency;
- (c) all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in Subsections (4)(d) and (5);
- (d) in conformance with standards established by the commission, waivers of penalty and interest pursuant to Section 59-1-401 in amounts under \$10,000, or offers in compromise agreements in amounts under \$10,000;

- (e) except as provided in Subsection (5)(g), voluntary disclosure agreements with companies, including multilevel marketers:
- (f) determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the commission;
- (g) human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and
- (h) administration of Title 63G, Chapter 2, Government Records Access and Management Act.
- (5) The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:
 - (a) the agency budget;
 - (b) the strategic plan of the agency;
 - (c) administrative rules and bulletins;
- (d) waivers of penalty and interest in amounts of \$10,000 or more pursuant to Section 59-1-401 as per the waiver of penalty and interest policy;
- (e) offer in compromise agreements that abate tax, penalty and interest over \$10,000 as per the offer in compromise policy;
- (f) stipulated or negotiated agreements that dispose of matters on appeal; and
- (g) voluntary disclosure agreements that meet the following criteria:
- (i) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and
- (ii) the agreement forgives a known past tax liability of \$10,000 or more.
- (6) The commission shall retain authority for the following functions:
 - (a) rulemaking;
 - (b) adjudicative proceedings;
- (c) private letter rulings issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;
 - (d) internal audit processes;
 - (e) liaison with the governor's office;
- (i) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.
- (ii) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission; and
 - (f) liaison with the Legislature.
- (i) The commission will set legislative priorities and communicate those priorities to the executive director.
- (ii) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency.
- (7) Correspondence that has been directed to the commission or individual commissioners that relates to matters delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.
- (8) The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

- (a) Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.
- (b) The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.
- (9) The commission shall meet with the executive director periodically for the purpose of exchanging information and coordinating operations.
- (a) The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.
- (b) The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.
- (c) When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

R861-1A-18. Allocations of Remittances Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-705.

- A. Remittances received by the commission shall be applied first to penalty, then interest, and then to tax for the filing period and account designated by the taxpayer.
- B. If no designation for period is made, the commission shall allocate the remittance so as to satisfy all penalty, interest, and tax for the oldest period before applying any excess to other periods.
- C. Fees associated with Tax Commission collection activities shall be allocated from remittances in the manner designated by statute. If a statute does not provide for the manner of allocating those fees from remittances, the commission shall apply the remittance first to the collection activity fees, then to penalty, then interest, and then to tax for the filing period.

R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 59-10-533, 59-10-535, 59-12-114, 59-13-210, 63G-4-201, 63G-4-401, 68-3-7, and 68-3-8.5.

- (1) A request for a hearing to correct a centrally assessed property tax assessment pursuant to Section 59-2-1007 must be in writing. The request is deemed to be timely if:
- (a) it is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or
- (b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before June 1.
- (c) A request for a hearing that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).
- (2) Except as provided in Subsection (3), a petition for redetermination of a deficiency must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal. The petition is deemed to be timely if:
 - (a) in the case of mailed or hand-delivered documents:
- (i) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period;
- (ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of

the 30-day period; or

- (b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day period.
- (c) A petition for redetermination that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).
- (3) A petition for redetermination of a claim for refund filed in accordance with Sections 59-10-532 or 59-10-533 is deemed to be timely if:
 - (a) in the case of mailed or hand-delivered documents:
- (i) the petition is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or
- (ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute; or
- (b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the time frame provided by statute.
- (c) A petition for redetermination of a claim for refund that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).
- (4)(a) An appeal of an action taken by the Motor Vehicle Division under Title 41, Chapter 1a, or the Motor Vehicle Enforcement Division under Title 41, Chapter 3, must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal.
- (b) An appeal under Subsection (4)(a) is deemed to be timely if:
 - (i) in the case of mailed or hand-delivered documents:
- (A) the petition is received in the commission offices on or before the close of business of the last day of the 30-day time period; or
- (B) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day time period; or
- (ii) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day time period.
- (c) An appeal of an action that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).
- (5) Any party adversely affected by an order of the commission may seek judicial review within the time frame provided by statute. Copies of the appeal shall be served upon the commission and upon the Office of the Attorney General.

R861-1A-22. Petitions for Commencement of Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, and 63G-4-201.

- (1) Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.
- (2) Contents. A petition for adjudicative action need not be in any particular form, but shall be in writing and, in addition to the requirements of 63G-4-201, shall contain the following:
- (a) name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;
- (b) a telephone number where the petitioning party or that party's representative can be reached during regular business hours;
 - (c) petitioner's tax identification, social security number or

other relevant identification number, such as real property parcel number or vehicle identification number;

- (d) particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;
- (e) if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and
- (f) in the case of property tax cases, the assessed value sought.
- (3) Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

R861-1A-23. Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63G-4-202.

- (1) All matters shall be designated as formal proceedings and set for an initial hearing, a status conference, or a scheduling conference pursuant to R861-1A-26.
- (2) A matter may be diverted to a mediation process pursuant to R861-1A-32 upon agreement of the parties and the presiding officer.

R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63G-4-206, and 63G-4-208

- (1) The following may preside at a formal proceeding:
- (a) a commissioner;
- (b) an administrative law judge appointed by the commission; or
- (c) in the case of a formal proceeding that relates to a matter that is not a tax, fee, or charge as defined under Section 59-1-1402:
 - (i) a commissioner;
- (ii) an administrative law judge appointed by the commission; or
 - (iii) a hearing officer appointed by the commission.
- (2) Assignment of a presiding officer to a case will be made pursuant to agency procedures and not at the request of any party to the appeal.
- (a) A party may request that one or more commissioners be present at any hearing. However, the decision of whether the request is granted rests with the commission.
- (b) If more than one commissioner, administrative law judge, or hearing officer is present at any hearing, the hearing will be conducted by the presiding officer assigned to the appeal, unless otherwise determined by the commission.
- (3) A formal proceeding includes an initial hearing pursuant to Section 59-1-502.5, unless it is waived upon agreement of all parties, and a formal hearing on the record, if the initial hearing is waived or if a party appeals the initial hearing decision.
 - (a) Initial Hearing.
- (i) An initial hearing pursuant to Section 59-1-502.5 shall be in the form of a conference.
- (ii) In accordance with Section 59-1-502.5, the commission shall make no record of an initial hearing.
- (iii) Any issue may be settled in the initial hearing, but any party has a right to a formal hearing on matters that remain in dispute after the initial hearing decision is issued.
- (iv) Any party dissatisfied with the result of the initial hearing must file a timely request for a formal hearing before pursuing judicial review of unsettled matters.
 - (b) Formal Hearing.
- (i) The commission shall make a record of all formal hearings, which may include a written record or an audio

recording of the proceeding.

(ii) Evidence presented at the initial hearing will not be included in the record of the formal hearing, unless specifically requested by a party and admitted by the presiding officer.

R861-1A-26. Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63G-4-204 through 63G-4-209.

- (1) A scheduling or status conference may be held.
- (a) At the conference, the parties and the presiding officer
 - (i) establish deadlines and procedures for discovery;
 - (ii) discuss scheduling;
 - (iii) clarify other issues:
- (iv) determine whether to refer the action to a mediation process; and
 - (v) determine whether the initial hearing will be waived.
- (b) The scheduling or status conference may be converted to an initial hearing upon agreement of the parties.
- (2) Notice of Hearing. At least ten days prior to a hearing date, the commission shall notify the petitioning party or the petitioning party's representative by mail, e-mail, or facsimile of the date, time and place of any hearing or proceeding.
- (3) Proceedings Conducted by Telephone. Any proceeding may be held with one or more of the parties on the telephone if the presiding officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Each party to the proceeding is responsible for notifying the presiding officer of the telephone number where contact can be made for purposes of conducting the hearing.
 - (4) Representation.
- (a) A party may pursue an appeal before the commission without assistance of legal counsel or other representation. However, a party may be represented by legal counsel or other representation at every stage of adjudication. Failure to obtain legal representation shall not be grounds for complaint at a later stage in the adjudicative proceeding or for relief on appeal from an order of the commission.
- (i) An attorney licensed in a jurisdiction outside Utah may represent a taxpayer before the commission without being admitted pro hac vice in Utah.
- (ii) For appeals concerning Utah corporate franchise and income taxes or Utah individual income taxes, legal counsel must file a power of attorney or the taxpayer must submit a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized legal counsel to represent him or her in the appeal. For all other appeals, legal counsel may, as an alternative, submit an entry of appearance.
- (iii) Any representative other than legal counsel must submit a signed power of attorney authorizing the representative to act on the party's behalf and binding the party by the representative's action, unless the taxpayer submits a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized the representative to represent him or her in the appeal.
- (iv) If a party is represented by legal counsel or other representation, all documents will be directed to the party's representative. Documents will be mailed to the representative's street or other address as shown in documents submitted by the representative. Documents may also be transmitted by facsimile number, e-mail address or other electronic means. A request by a party that documents be transmitted by e-mail shall constitute a waiver of confidentiality of any confidential information disclosed in that e-mail.
- (b) Any division of the commission named as party to the proceeding may be represented by the Attorney General's Office upon an attorney of that office submitting an entry of appearance.

- (5) Subpoena Power.
- (a) Issuance. Subpoenas may be issued to secure the attendance of witnesses or the production of evidence.
- (i) If all parties are represented by counsel, an attorney admitted to practice law in Utah may issue and sign the subpoena.
- (ii) In all other cases, the party requesting the subpoena must prepare it and submit it to the presiding officer for review and, if appropriate, signature. The presiding officer may inform a party of its rights under the Utah Rules of Civil Procedure.
- (b) Service. Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure.
 - (6) Motions.
- (a) Consolidation. The presiding officer has discretion to consolidate cases when the same tax assessment, series of assessments, or issues are involved in each, or where the fact situations and the legal questions presented are virtually identical.
- (b) Continuance. A continuance may be granted at the discretion of the presiding officer.
 - (i) In the absence of a scheduling order:
- (A) Each party to an appeal may receive one continuance, upon request, prior to the initial hearing.
- (B) If the initial hearing is waived or a formal hearing is timely requested after an initial hearing decision is issued, each party may receive one continuance, upon request, prior to the formal hearing.
- (C) A request must be submitted no later than ten days prior to the proceeding for which the continuance is requested and may be denied if a party is prejudiced by the continuance.
- (ii) If a scheduling order has been issued or the requesting party has already been granted a continuance, a continuance request must be submitted in writing to the presiding officer. The request must set forth specific reasons for the continuance. After reviewing the request with one or more commissioners, the presiding officer shall grant the request only if the presiding officer determines that adequate cause has been shown and that no other party or parties will be unduly prejudiced.
- (c) Default. The presiding officer may enter an order of default against a party in accordance with Section 63G-4-209.
- (i) The default order shall include a statement of the grounds for default and shall be delivered to all parties.
- (ii) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.
- (d) Ruling on Motions. Motions may be made during the hearing or by written motion.
- (i) Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be served upon all other parties to the proceeding.
- (ii) Upon the filing of any motion, the presiding officer
 - (A) grant or deny the motion; or
- (B) set the matter for briefing, hearing, or further proceedings.
- (iii) If a hearing on a motion is held that may dispose of all or a portion of the appeal or any claim or defense in the appeal, the commission shall make a record of the proceeding, which may include a written record or an audio recording of the proceeding.
- (e) Requests to Withdraw Locally-Assessed Property Tax Appeals.
- (i) A party who appeals a county board of equalization decision to the commission may unilaterally withdraw its appeal if:
- (A) it submits a written request to withdraw the appeal 20 or more days prior to:
 - (I) the initial hearing; or

- (II) the formal hearing, if the parties waived the initial hearing or participated in a mediation conference in lieu of the initial hearing; and
- (B) no other party has filed a timely appeal of the county board of equalization decision.
- (ii) A party who appeals an initial hearing decision issued by the commission may unilaterally withdraw its appeal if:
- (A) it submits a written request to withdraw 20 or more days prior to the formal hearing, regardless of whether the party who appealed the initial hearing order is also the party who appealed the county board of equalization decision; and
- (B) no other party has filed a timely appeal of the initial hearing decision.

R861-1A-27. Discovery Pursuant to Utah Code Ann. Section 63G-4-205.

- (1) Discovery procedures in formal proceedings shall be established during the scheduling, and status conference in accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.
- (2) The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 63G-4-206, 76-8-502, and 76-8-503.

- (1) Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence, and the degree of proof in a hearing before the commission shall be the same as in a judicial proceeding in the state courts of Utah.
- (2) Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.
- (a) The presiding officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.
- (b) The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.
- (c) If a party attempts to introduce evidence into a hearing, and that evidence is excluded, the party may proffer the excluded testimony or evidence to allow the reviewing judicial authority to pass on the correctness of the ruling of exclusion on appeal.
- (3) At the discretion of the presiding officer or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to prefile the testimony.
- (a) Prefiled testimony may be placed on the record without being read into the record if the opposing parties have had reasonable access to the testimony before it is presented. Except upon finding of good cause, reasonable access shall be not less than ten working days.
- (b) Prefiled testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness
- (c) The presiding officer may require the witness to present a summary of the prefiled testimony. In that case, the witness shall reduce the summary to writing and either file it with the prefiled testimony or serve it on all parties within 10 days after filing the testimony.
- (d) If an opposing party intends to cross-examine the witness on prefiled testimony or the summary of prefiled testimony, that party must file a notice of intent to cross-examine at least 10 days prior to the date of the hearing so that witness can be scheduled to appear or within a time frame agreed upon by the parties.
 - (4) The presiding officer shall rule and sign orders on

matters concerning the evidentiary and procedural conduct of the proceeding.

- (5) Oral testimony at a formal hearing will be sworn. The oath will be administered by the presiding officer or a person designated by him. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.
- (6) Any party appearing in an adjudicative proceeding may submit a memorandum of authorities. The presiding officer may request a memorandum from any party if deemed necessary for a full and informed consideration of the issues.

R861-1A-29. Decisions, Orders, and Reconsideration Pursuant to Utah Code Ann. Sections 59-1-205 and 63G-4-302.

- (1) "Taxpayer" for purposes of the requirement under Section 59-1-205 that in a tie vote of the commission the position of the taxpayer is considered to have prevailed, includes:
- (a) a person that has received a license issued by the commission; or
 - (b) an applicant for a license issued by the commission.
 - (2) Decisions and Orders.
- (a) Initial hearing decisions, formal hearing decisions, and other dispositive orders.
- (i) A quorum of the commission shall deliberate all hearing decisions and other orders that could dispose of all or a portion of an appeal or any claim or defense in the appeal.
- (ii) A quorum of the commission shall sign all hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.
- (iii) An administrative law judge, if he or she was the presiding officer for an appeal, may elect not to sign the commission's hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.
- (iv) An initial hearing decision shall become final upon the expiration of 30 days after the date of its issuance, except in any case where a party has earlier requested a formal hearing in writing. The date a party requests a formal hearing is the earlier of the date the envelope containing the request is postmarked or the date the request is received at the commission.
 - (b) Orders that are not dispositive.
- (i) A quorum of the commission is not required to participate in an order that does not dispose of a portion of an appeal or any claim or defense in the appeal.
- (ii) The presiding officer is authorized to sign all orders that do not dispose of a portion of an appeal or any claim or defense in the appeal.
- (iii) The commission may, at its option, sign any order that does not dispose of a portion of an appeal or any claim or defense in the appeal.
- (3) Reconsideration. Within 20 days after the date that an order that is dispositive of a portion or all of an appeal or any claim or defense in the appeal is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.
- (a) The commission shall respond to the petition within 20 days after the date that it was received in the appeals unit to notify the petitioner whether the reconsideration is granted or denied, or is under review.
- (i) If no notice is issued within the 20-day period, the commission's lack of action on the request shall be deemed to be a denial and a final order.
- (ii) For purposes of calculating the 30-day limitation period for pursuing judicial review, the date of the commission's order on the reconsideration or the order of denial is the date of the final agency action.
 - (b) If no petition for reconsideration is made, the 30-day

limitation period for pursuing judicial review begins to run from the date of the final agency action.

R861-1A-30. Ex Parte Communications Pursuant to Utah Code Ann. Sections 63G-4-203 and 63G-4-206.

- (1) No commissioner or administrative law judge shall make or knowingly cause to be made to any party to an appeal any communication relevant to the merits of a matter under appeal unless notice and an opportunity to be heard are afforded to all parties.
- (2) No party shall make or knowingly cause to be made to any commissioner or administrative law judge an ex parte communication relevant to the merits of a matter under appeal for the purpose of influencing the outcome of the appeal. Discussion of procedural matters are not considered ex parte communication relevant to the merits of the appeal.
- (3) A presiding officer may receive aid from staff assistants if:
- (a) the assistants do not receive ex parte communications of a type that the presiding officer is prohibited from receiving, and
- (b) in an instance where assistants present information which augments the evidence in the record, all parties shall have reasonable notice and opportunity to respond to that information
- (4) Any commissioner or administrative law judge who receives an ex parte communication relevant to the merits of a matter under appeal shall place the communication into the case file and afford all parties an opportunity to comment on the information.

R861-1A-31. Declaratory Orders Pursuant to Utah Code Ann. Section 63G-4-503.

- (1) A party has standing to bring a declaratory action if that party is directly and adversely affected or aggrieved by an agency action within the meaning of the relevant statute.
- (2) A party with standing may petition for a declaratory order to challenge:
- (a) the commission's interpretation of statutory language as stated in an administrative rule; or
 - (b) the commission's grant of authority under a statute.
- (3) The commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.
- (4) The commission may refuse to render a declaratory order if the order will not completely resolve the controversy giving rise to the proceeding or if the petitioner has other remedies through the administrative appeals processes. The commission's decision to accept or reject a petition for declaratory order rests in part on the petitioner's standing to raise the issue and on a determination that the petitioner has not already incurred tax liability under the statutes or rules challenged.
- (5) A declaratory order that invalidates all or part of an administrative rule shall trigger the rulemaking process to amend the rule.

R861-1A-32. Mediation Process Pursuant to Utah Code Section 63G-4-102.

- (1) Except as otherwise precluded by law, a resolution to any matter of dispute may be pursued through mediation.
- (a) The parties may agree to pursue mediation any time before the formal hearing on the record.
- (b) The choice of mediator and the apportionment of costs shall be determined by agreement of the parties.
- (2) If mediation produces a settlement agreement, the agreement shall be submitted to the presiding officer pursuant

to R861-1A-33.

- (a) The settlement agreement shall be prepared by the parties or by the mediator, and promptly filed with the presiding officer.
- (b) The settlement agreement shall be adopted by the commission if it is not contrary to law.
- (c) If the mediation does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.
- (d) If any issues remain unresolved, the appeal will be scheduled for a formal hearing pursuant to R861-1A-23.

R861-1A-33. Settlement Agreements Pursuant to Utah Code Sections 59-1-210 and 59-1-502.5.

- A. "Settlement agreement" means a stipulation, consent decree, settlement agreement or any other legally binding document or representation that resolves a dispute or issue between the parties.
 - B. Procedure:
- 1. Parties with an interest in a matter pending before a division of the Tax Commission may submit a settlement agreement for review and approval, whether or not a petition for hearing has been filed.
- 2. Parties to an appeal pending before the commission may submit a settlement agreement to the presiding officer for review and approval.
- 3. Each settlement agreement shall be in writing and executed by each party or each party's legal representative, if any, and shall contain:
- a) the nature of the claim being settled and any claims remaining in dispute;
 - b) a proposed order for commission approval; and
- c) a statement that each party has been notified of, and allowed to participate in settlement negotiations.
- 4. A settlement agreement terminates the administrative action on the issues settled before all administrative remedies are exhausted, and, therefore, precludes judicial review of the issues. Each settlement agreement shall contain a statement that the agreement is binding and constitutes full resolution of all issues agreed upon in the settlement agreement.
- 5. The signed agreement shall stay further proceedings on the issues agreed upon in the settlement until the agreement is accepted or rejected by the commission or the commission's designee.
- a) If approved, the settlement agreement shall take effect by its own terms.
- b) If rejected, action on the claim shall proceed as if no settlement agreement had been reached. Offers made during the negotiation process will not be used as an admission against that party in further adjudicative proceedings.

R861-1A-34. Private Letter Rulings Pursuant to Utah Code Ann. Section 59-1-210.

- Private letter rulings are written, informational statements of the commission's interpretation of statutes or administrative rules, or informational statements concerning the application of statutes and rules to specific facts and circumstances.
- 1. Private letter rulings address questions that have not otherwise been addressed in statutes, rules, or decisions issued by the commission.
- 2. The commission shall not knowingly issue a private letter ruling on a matter pending before the commission in an audit assessment, refund request, or other agency action, or regarding matters that are pending before the court on judicial review of a commission decision. Any private letter ruling inadvertently issued on a matter pending agency or judicial action shall be set aside until the conclusion of that action.
 - 3. Requests for private letter rulings must be addressed to

- the commission in writing. If the requesting party is dissatisfied with the ruling, that party may resubmit the request along with new facts or information for commission review.
- B. The weight afforded a private letter ruling in a subsequent audit or administrative appeal depends upon the degree to which the underlying facts addressed in the ruling were adequate to allow thorough consideration of the issues and interests involved.
- C. A private letter ruling is not a final agency action. Petitioner must use the designated appeal process to address judiciable controversies arising from the issuance of a private letter ruling.
- 1. If the private letter ruling leads to a denial of a claim, an audit assessment, or some other agency action at a divisional level, the taxpayer must use the appeals procedures to challenge that action within 30 days of the final division decision.
- 2. If the only matter at issue in the private letter ruling is a challenge to the commission's interpretation of statutory language or a challenge to the commission's authority under a statute, the matter may come before the commission as a petition for declaratory order submitted within 30 days of the date of the ruling challenged.

R861-1A-35. Manner of Retaining Records Pursuant to Utah Code Ann. Sections 59-1-210, 59-5-104, 59-5-204, 59-6-104, 59-7-506, 59-8-105, 59-8a-105, 59-10-501, 59-12-111, 59-13-211, 59-13-312, 59-13-403, 59-14-303, and 59-15-105.

- A. Definitions.
- 1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.
- "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.
- 3. "Hard copy" means any documents, records, reports, or other data printed on paper.
- 4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.
- 5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.
- 6. "Taxpayer" means the person required, under Title 59 or other statutes administered by the Tax Commission, to collect, remit, or pay the tax or fee to the Tax Commission.
- B. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the commission in machine-sensible format upon request by the commission.
- C. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this rule. However, this does not relieve the taxpayer of the obligation to comply with B.
- D. Recordkeeping requirements for machine-sensible
- Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the commission upon request. A taxpayer has discretion to discard duplicated

records and redundant information provided its responsibilities under this rule are met.

- 2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.
- 3. Taxpayers are not required to construct machinesensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.
 - 4. Electronic Data Interchange Requirements.
- a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record.
- b) For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the commission to interpret the coded information.
- c) The taxpayer may capture the information necessary to satisfy D.4.b) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name, i.e., they contain only codes for that information, the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes.
 - 5. Electronic data processing systems requirements.
- a) The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.
 - 6. Business process information.
- a) Upon the request of the commission, the taxpayer shall provide a description of the business process that created the retained records. The description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.
 - b) The taxpayer shall be capable of demonstrating:
- (1) the functions being performed as they relate to the flow of data through the system;
- (2) the internal controls used to ensure accurate and reliable processing; and
- (3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.
- c) The following specific documentation is required for machine-sensible records retained pursuant to this rule:
 - (1) record formats or layouts;
- (2) field definitions, including the meaning of all codes used to represent information;
 - (3) file descriptions, e.g., data set name; and
 - (4) detailed charts of accounts and account descriptions.
 - E. Records maintenance requirements.
 - 1. The commission recommends but does not require that

- taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 C.F.R., Section 1234,(1995).
- 2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.
 - F. Access to machine-sensible records.
- 1. The manner in which the commission is provided access to machine-sensible records as required in B. may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.
- 2. Access will be provided in one or more of the following manners:
- a) The taxpayer may arrange to provide the commission with the hardware, software, and personnel resources necessary to access the machine-sensible records.
- b) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.
- c) The taxpayer may convert the machine-sensible records to a standard record format specified by the commission, including copies of files, on a magnetic medium that is agreed to by the commission.
- d) The taxpayer and the commission may agree on other means of providing access to the machine-sensible records.
 - G. Taxpayer responsibility and discretionary authority.
- 1. In conjunction with meeting the requirements of D., a taxpayer may create files solely for the use of the commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of D. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.
- 2. A taxpayer may contract with a third party to provide custodial or management services of the records. The contract shall not relieve the taxpayer of its responsibilities under this rule.
 - H. Alternative storage media.
- 1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.
- 2. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:
- a) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and made available on request. This documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.
- b) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

- c) Upon request by the commission, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.
- d) When displayed on equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.
- e) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.
- f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.
 - I. Effect on hard-copy recordkeeping requirements.
- 1. Except as otherwise provided in this section, the provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in H.
- 2. Hard-copy records not produced or received in the ordinary course of transacting business, e.g., when the taxpayer uses electronic data interchange technology, need not be created.
- 3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. These details include those listed in D.4.a) and D.4.b).
- 4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.
- 5. Nothing in this section shall prevent the commission from requesting hard-copy printouts in lieu of retained machinesensible records at the time of examination.

R861-1A-36. Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-7-505, 59-10-512, 59-12-107, 59-13-206, and 59-13-307.

- (1) Individuals who submit an application to renew their vehicle registration on the Internet web site authorized by the Tax Commission shall use the Tax Commission assigned personal identification number included with their registration renewal information as their signature for the renewal application submitted over the Internet.
- (2) Taxpayers who use the Tax Commission authorized Internet web site to file tax return information for tax types that may be filed on that web site shall use the personal identification number provided by the Tax Commission as their signature for the tax return information filed on that web site.
- (3) Taxpayers who file a tax return under Title 59, Chapter 10, Individual Income Tax Act, electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-10-512.
- (4) Taxpayers who file a corporate franchise and income tax return electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-7-505.

R861-1A-37. Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.

(1) The provisions of this rule apply to the disclosure of commercial information under Section 59-1-404. For disclosure of information other than commercial information, see rule

R861-1A-12.

- (2) For purposes of Section 59-1-404, "assessed value of the property" includes any value proposed for a property.
- (3) For purposes of Subsection 59-1-404(2), "disclosure" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:
 - (a) named party of a decision or order;
 - (b) party requesting a private letter ruling; or
- (c) designated representative of a party described in (3)(a) or (3)(b).
- (4) For purposes of Subsection 59-1-404(6), "published decision" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:
 - (a) named party of a decision or order;
 - (b) party requesting a private letter ruling; or
- (c) designated representative of a party described in (4)(a) or (4)(b).
- (5) Information that may be disclosed under Section 59-1-404(3) includes:
- (a) the following information related to the property's tax exempt status:
- (i) information provided on the application for property tax exempt status;
- (ii) information used in the determination of whether a property tax exemption should be granted or revoked; and
- (iii) any other information related to a property's property tax exemption:
- (b) the following information related to penalty or interest relating to property taxes that the commission or county legislative body determines should be abated:
 - (i) the amount of penalty or interest that is abated;
- (ii) information provided on an application or request for abatement of penalty or interest;
- (iii) information used in the determination of the abatement of penalty or interest; and
- (iv) any other information related to the amount of penalty or interest that is abated; and
- (c) the following information related to the amount of property tax due on property:
- (i) the amount of taxes refunded or deducted as an erroneous or illegal assessment under Section 59-2-1321;
- (ii) information provided on an application or request that property has been erroneously or illegally assessed under Section 59-2-1321; and
- (iii) any other information related to the amount of taxes refunded or deducted under (5)(c)(i).
- (6)(a) Except as provided in (6)(b), commercial information disclosed during an action or proceeding may not be disclosed outside the action or proceeding by any person conducting or participating in the action or proceeding.
- (b) Notwithstanding (6)(a), commercial information contained in a decision issued by the commission may be disclosed outside the action or proceeding if all of the parties named in the decision agree in writing to the disclosure.
- (7) The commission may disclose commercial information in a published decision as follows.
- (a) If the property taxpayer that provided the commercial information does not respond in writing to the commission within 30 days of the decision's issuance, requesting that the commercial information not be published and identifying the specific commercial information the taxpayer wants protected, the commission may publish the entire decision.
- (b) If the property taxpayer that provided the commercial information indicates to the commission in writing the specific commercial information that the taxpayer wants protected, the commission may publish a version of the decision that contains commercial information not identified by the taxpayer under

(7)(a).

(8) The commission may share commercial information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, if these political subdivisions, or the federal government grant substantially similar privileges to this state.

R861-1A-38. Class Actions Pursuant to Utah Code Ann. Section 59-1-304.

- A. Unless the limitations of Section 59-1-304(2) apply, the commission may expedite the exhaustion of administrative remedies required by individuals desiring to be included as a member of the class.
- B. In expediting exhaustion of administrative remedies, the commission may take any of the following actions:
- 1. publish sample claim forms that provide the information necessary to process a claim in a form that will reduce the burden on members of the putative class and expedite processing by the commission;
- 2. provide for waiver of initial hearings where requested by any party;
- 3. provide for expedited rulings on motions for summary judgment where the facts are not contested and the legal issues have been previously determined by the commission in ruling on the case brought by class representatives. The parties may waive oral hearing and have final orders issued based upon information submitted in the claims and division responses;
- 4. consolidate the cases for hearing at the commission, where a group of claims presents identical legal issues and it is agreed by the parties that the resolution of the legal issues would be dispositive of the claims;
- 5. designate a claim as a test or sample claim with any rulings on that test or sample claim to be applicable to all other similar claims, upon agreement of the claiming parties; or
- any other action not listed in this rule if that action is not contrary to procedures required by statute.

R861-1A-39. Penalty for Failure to File a Return Pursuant to Utah Code Ann. Sections 10-1-405, 59-1-401, 59-12-118, and 69-2-5.

- (1)(a) Subject to Subsection (1)(b), "failure to file a tax return," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes a tax return that does not contain information necessary for the commission to make a correct distribution of tax revenues to counties, cities, and towns.
 - (b) Subsection (1)(a) applies to a tax return filed under:
 - (i) Chapter 12, Sales and Use Tax Act;
- (ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or
- (iii) Title 69, Chapter 2, Emergency Telephone Service Law.
- (2)(a) "Unpaid tax," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes tax remitted to the commission under Subsection (2)(b) that is:
 - (i) not accompanied by a tax return; or
- (ii) accompanied by a tax return that is subject to the penalty for failure to file a tax return.
 - (b) Subsection (2)(a) applies to a tax remitted under:
 - (i) Chapter 12, Sales and Use Tax Act;
- (ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or
- (iii) Title 69, Chapter 2, Emergency Telephone Service Law

R861-1A-40. Waiver of Requirement to Post Security Prior to Judicial Review Pursuant to Utah Code Ann. Section 59-1-611.

- (1) "Post security" is as defined in Section 59-1-611.
- (2)(a) A taxpayer that seeks judicial review of a final commission determination of a deficiency may apply for a waiver of the requirement to post security with the commission by:
 - (i) submitting a letter requesting the waiver;
- (ii) providing financial information requested by the commission; and
- (iii) providing a copy of the financial information to the attorney general that is representing the commission in the judicial review.
- (b) The financial information described in Subsection (2)(a) shall be signed by the taxpayer under penalties of perjury.
- (3) Upon review of the financial information described in Subsection (2), the commission shall:
- (a) determine whether the taxpayer qualifies for a waiver of the requirement to post security with the commission; or
- (b) if unable to make the determination under Subsection (3)(a) from the financial information, request additional information from the taxpayer as necessary to make that determination.

R861-1A-42. Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code Ann. Section 59-1-401.

- (1) Procedure.
- (a) A taxpayer may request a waiver of penalties or interest for reasonable cause under Section 59-1-401 if the following conditions are met:
- (i) the taxpayer provides a signed statement, with appropriate supporting documentation, requesting a waiver;
 - (ii) the total tax owed for the period has been paid;
- (iii) the tax liability is based on a return the taxpayer filed with the commission, and not on an estimate provided by the taxpayer or the commission:
- (iv) the taxpayer has not previously received a waiver review for the same period; and
- (v) the taxpayer demonstrates that there is reasonable cause for waiver of the penalty or interest.
- (b) Upon receipt of a waiver request, the commission shall:
 - (i) review the request;
- (ii) notify the taxpayer if additional documentation is needed to consider the waiver request; and
- (iii) review the account history for prior waiver requests, taxpayer deficiencies, and historical support for the reason given.
- (c) Each request for waiver is judged on its individual merits.
- (d) If the request for waiver of penalty or interest is denied, the taxpayer has a right to appeal. Procedures for filing appeals are found in Title 63G, Chapter 4, Administrative Procedures Act, and commission rules.
- (2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.
- (3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:
 - (a) Timely Mailing:
- (i) The taxpayer mailed the return with payment to the commission by the due date and it was not timely delivered by the post office through no fault of the taxpayer.
- (ii) In cases where the taxpayer cannot document a post office error, the penalties may be waived if the taxpayer:
 - (A) has an excellent history of compliance;
- (B) proves that sufficient funds were in the bank as of the date of payment, and the check was written in numerical order;

and

- (C) presents documentation showing that the return or payment was mailed timely.
- (b) Wrong Filing Place: The return or payment was filed on time, but was delivered to the wrong office or agency.
 - (c) Death or Serious Illness:
- (i) The death or serious illness of a taxpayer or a member of the taxpayer's immediate family caused the delay.
- (ii) With respect to a business, trust or estate, the death or illness must have been of the individual, or the immediate family of the individual, who had sole authority to file the return.
- (iii) The death or illness must have occurred on or immediately prior to the due date of the return.
- (d) Unavoidable Absence: The person having sole responsibility to file the return was absent from the state due to circumstances beyond his or her control.
 - (e) Disaster Relief:
- (i) A delay in reporting, filing, or paying was due either to a federal or state declared disaster or to a natural disaster, such as fire or accident, that results in the destruction of records or disruption of business.
- (ii) If delinquency or delay is due to a federally declared disaster, federal relief guidelines shall be followed.
- (iii) In the absence of federal guidelines, and for other listed disasters, the taxpayer must demonstrate the matter was corrected within a reasonable time, given the circumstances.
 - (f) Reliance on Erroneous Tax Commission Information:
- (i) Underpayments and late filings or payments were attributable to incorrect advice obtained from the commission, unless the taxpayer gave the commission inaccurate or insufficient information.
- (ii) Proof of erroneous information may be based on written communication provided by the commission or, if the taxpayer clearly documents, verbal communication. Clear documentation of verbal communication should include the dates, times, and names of commission employees who provided the erroneous information.
- (iii) A failure to comply will also be excused if it is demonstrated that the taxpayer requested the necessary tax forms and instructions timely, and the commission failed to timely provide the forms and instructions requested.
- (g) Tax Commission Office Visit: The taxpayer proves that before expiration of the time for filing the return or making the payment, the taxpayer visited a commission office for information or help in preparing the return and a commission employee was not available for consultation.
- (h) Unobtainable Records: For reasons beyond the taxpayer's control, the taxpayer was unable to obtain records to determine the amount of tax due.
 - (i) Reliance on Competent Tax Advisor:
- (i) The taxpayer fails to file a return after furnishing all necessary and relevant information to a competent tax advisor, who incorrectly advised the taxpayer that a return was not required.
- (ii) The taxpayer is required, and has an obligation, to file the return. Reliance on a tax advisor to prepare a return does not automatically constitute reasonable cause for failure to file or pay. The taxpayer must demonstrate that ordinary business care, prudence, and diligence were exercised in determining whether to seek further advice.
 - (j) First Time Filer:
- (i) It is the first return required to be filed and the taxes were filed and paid within a reasonable time after the due date.
- (ii) The commission may also consider waiving penalties on the first return after a filing period change if the return is filed and tax is paid within a reasonable time after the due date.
 - (k) Bank Error:
- (i) The taxpayer's bank has made an error in returning a check, making a deposit or transferring money.

- (ii) A letter from the bank verifying its error is required.
- (l) Compliance History:
- (i) The commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining whether a penalty may be waived.
- (ii) The commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.
- (m) Employee Embezzlement: The taxpayer shows that failure to pay was due to employee embezzlement of the tax funds and the taxpayer was unable to obtain replacement funds from any other source.
- (n) Recent Tax Law Change: The taxpayer's failure to file and pay was due to a recent change in tax law that the taxpayer could not reasonably be expected to be aware of.
- (4) Other Considerations for Determining Reasonable Cause.
- (a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:
- (i) whether the commission had to take legal means to collect the taxes;
 - (ii) if the error is caught and corrected by the taxpayer;
- (iii) the length of time between the event cited and the filing date;
 - (iv) typographical or other written errors; and
 - (v) other factors the commission deems appropriate.
- (b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.
- (c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.
- (d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

R861-1A-43. Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207.

- (1) A commissioner may participate electronically in a meeting open to the public under Section 52-4-207 if:
- (a) two commissioners are present at a single anchor location; or
 - (b) one commissioner is present at the anchor location.
- (2) If Subsection (1)(b) applies, the commissioner at the anchor location shall conduct the meeting.
- (3)(a) The commission shall indicate in a public notice if the public may participate electronically in a meeting open to the public under Section 52-4-207.
- (b) A notice provided under Subsection (3)(a) shall direct the public on how to participate electronically in the meeting.

R861-1A-44. Definition of Delivery Service Pursuant to Utah Code Ann. Section 59-1-1404.

For purposes of determining the date on which a document has been mailed under Section 59-1-1404, "delivery service" means the following delivery services the Internal Revenue Service has determined to be a designated delivery service under Section 7502, Internal Revenue Code:

- (1) DHL Express (DHL):
- (a) DHL Same Day Service;
- (b) DHL Next Day 10:30 a.m.;
- (c) DHL Next Day 12:00 p.m.;
- (d) DHL DHL Next Day 3:00 p.m.; and
- (e) DHL 2nd Day Service;
- (2) Federal Express (FedEx):
- (a) FedEx Priority Overnight;
- (b) FedEx Standard Overnight;

KEY: developmental disabilities, grievance procedures, taxation, disclosure requirements
August 27, 2012 10-1-405
Notice of Continuation January 3, 2012 41-1a-209

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(c) FedEx 2 Day;	52-4-207
(d) FedEx International Priority; and	59-1-205
(e) FedEx International First; and	59-1-207
(3) United Parcel Service (UPS):	59-1-210
(a) UPS Next Day Air;	59-1-301
(b) UPS Next Day Air Saver;	59-1-302.1
(c) UPS 2nd Day Air;	59-1-304
(c) UPS 2nd Day Air A.M.;	59-1-401
(d) UPS Worldwide Express Plus; and	59-1-403
(e) UPS Worldwide Express.	59-1-404
1	59-1-405
R861-1A-45. Procedures for Commission Meetings Not	59-1-501
Open to the Public Pursuant to Utah Code Ann. Section 59-	59-1-502.5
1-405.	59-1-602
(1) When the commission holds a meeting that is not open	59-1-611
to the public pursuant to Section 59-1-405, the commission	59-1-705
shall:	59-1-706
(a) follow the procedures set forth in commission rules:	59-1-1004 50-1-1404
(i) R861-1A-9, Tax Commission as Board of Equalization;	59-1-1404
(ii) R861-1A-11, Appeal of Corrective Action;	59-7-505
(iii) R861-1A-20, Time of Appeal;	59-10-512
(iv) R861-1A-22, Petitions for Commencement of	59-10-532
Adjudicative Proceedings;	59-10-533
(v) R861-1A-23, Designation of Adjudicative	59-10-535
Proceedings;	59-12-107
(vi) R861-1A-24, Formal Adjudicative Proceedings;	59-12-114
(vii) R861-1A-26, Procedures for Formal Adjudicative	59-12-118
Proceedings;	59-13-206
(viii) R861-1A-27, Discovery;	59-13-210
(ix) R861-1A-28, Evidence in Adjudicative Proceedings;	59-13-307
(x) R861-1A-29, Decision, Orders, and Reconsideration;	59-10-544
(xi) R861-1A-30, Ex Parte Communications;	59-14-404
(xii) R861-1A-31, Declaratory Orders;	59-2-212
(xiii) R861-1A-32, Mediation Process;	59-2-701
(xiv) R861-1A-33, Settlement Agreements;	59-2-705
(xv) R861-1A-34, Private Letter Rulings;	59-2-1003
(xvi) R861-1A-38, Class Actions;	59-2-1003 59-2-1004
(xvii) R861-1A-40, Waiver of Requirement to Post	59-2-1006
Security Prior to Judicial Review; and	59-2-1007
	59-2-704
(xviii) R861-1A-42, Waiver of Penalty and Interest for	
Reasonable Cause; and	59-2-924 50-7-517
(b) for all meetings other than initial hearings, or the	59-7-517
deliberating and issuing of an order relating to adjudicative	63G-3-301
proceedings, keep confidential written minutes and a	63G-4-102
confidential recording of the meeting.	76-8-502
(2) Written minutes of a meeting under Subsection (1)(b)	76-8-503
shall include:	59-2-701
(a) the date, time, and place of the meeting;	63G-4-201
(b) the names of each person present at the meeting;	63G-4-202
(c) the substance of all matters proposed, discussed, or	63G-4-203
decided by the commission, which may include a summary of	63G-4-204
comments made by the commissioners;	63G-4-205 through 63G-4-209
(d) a record, by commissioner, of each vote taken by the	63G-4-302
commission;	63G-4-401
(e) a summary of comments made by a person, other than	63G-4-503
a commissioner, present at the meeting; and	63G-3-201(2)
(f) any other information that is a record of the	68-3-7
proceedings of the meeting that any commissioner requests be	68-3-8.5
entered in the minutes or recording.	69-2-5
(3) Recorded minutes of a meeting under Subsection (1)(b)	42 USC 12201
shall be:	28 CFR 25.107 1992 Edition
(a) properly labeled or identified with the date, time, and	
place of the meeting; and	
(b) a complete and unedited record of the meeting.	

59-12-104

59-12-118

R865. Tax Commission, Auditing.

R865-21U. Use Tax.

R865-21U-1. Nature of Use Tax Pursuant to Utah Code Ann. Section 59-12-103.

- A. The tax imposed on amounts paid or charged for transactions under Title 59, Chapter 12 is a:
- 1. sales tax, if the tax is collected and remitted by a seller on the seller's in-state or out-of-state sales; or
 - 2. use tax, if the tax is remitted by a purchaser.
- The two taxes are compensating taxes, one supplementing the other, but both cannot be applicable to the same transaction. The rate of tax is the same.

R865-21U-2. Rules Common to Both Sales and Use Taxes Pursuant to Utah Code Ann. Section 59-12-118.

A. The use tax is a complement to the sales tax and the rules promulgated are common to both taxes.

R865-21U-6. Liability of Purchasers for Payment of Tax Pursuant to Utah Code Ann. Section 59-12-107.

- (1) For purposes of this section:
- (a) "Income tax return" means a tax return filed under:
- (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or
- (ii) Title 59, Chapter 10, Individual Income Tax Act, except for Title 59, Chapter 10, Part 4.
- (b) "Sales tax license" means a license issued under Title 59, Chapter 12, Sales and Use Tax Act.
- (2) A purchaser of an item that is subject to sales and use tax must account for the tax liability by paying the tax:
- (a) to the seller from whom the item was purchased if the seller has a sales tax license; or
- (b) directly to the commission if the seller from whom the item was purchased does not collect the sales tax from the purchaser.
 - (3) A purchaser that is subject to Subsection (2)(b) shall:
- (a) if the purchaser has a sales tax license pay the tax on the purchaser's sales and use tax return; or
- (b) if the purchaser does not have a sales tax license, pay the tax on the purchaser's income tax return.
- (4)(a) A purchaser paying the tax to the commission under Subsection (3)(b) shall compute the tax using the rates provided in the income tax instructions for the address of the purchaser as shown on the income tax return.
- (b) If a purchaser is not required to file an income tax return, the purchaser shall:
- (i) report and pay the tax on the income tax return the purchaser would otherwise be required to file; and
- (ii) include with the return a statement stating that no income tax is due and that the return is submitted for payment of use tax only.

R865-21U-16. Property Sold or Used In Interstate Commerce Pursuant to Utah Code Ann. Section 59-12-107.

- A. The fact that tangible personal property is purchased in interstate or foreign commerce does not exempt the property from the tax if the property is stored, used, or otherwise consumed within this state after the shipment in interstate or foreign commerce has ended.
- B. The fact that tangible personal property is used in this state in interstate or foreign commerce following its storage in this state does not exempt the storage of the property from the tax. The fact that tangible personal property is used in this state in interstate or foreign commerce does not exempt the use of the property from the tax.

KEY: taxation, user tax

August 27, 2012 Notice of Continuation October 28, 2010

59-12-103

59-12-107

R895. Technology Services, Administration.

R895-3. Computer Software Licensing, Copyright, Control, Retention, and Transfer.

R895-3-1. Purpose.

The purpose of this rule is to establish the State of Utah's position and its intent to:

- (1) comply with computer software licensing agreements and applicable federal laws, including copyright and patent laws;
- (2) define the methods by which the State of Utah (State) will control and protect computer software; and
- (3) establish the State's right, title and interest in statedeveloped computer software, including the sale and transfer of such software under certain conditions.

R895-3-2. Application.

All state agencies of the executive branch of the State government shall comply with this rule, which applies to the use, acquisition and transfer of all computer software, regardless of the operating environment or source of the software.

R895-3-3. Authority.

This rule is issued by the Chief Information Officer under the authority of Section 63F-1-206 of the Technology Governance Act, and in accordance with Section 63G-3-201 of the Utah Rulemaking Act, Utah Code Annotated.

R895-3-4. Definitions.

As used in this rule:

- (1) "Audit" means to review compliance with laws, rules and policies that apply to computer software and related documentation; and to report findings and conclusions.
- (2) "Commercial computer software" means computer software that is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices.
- (3) "Computer program" means a set of statements or instructions used in an information processing system to provide storage, retrieval, and manipulation of data from the computer system and any associated documentation and source material that explain how to operate the program.
 (4) "Computer software" means sets of instructions or
- (4) "Computer software" means sets of instructions or programs structured in a manner designed to cause a computer to carry out a desired result.
- (5) "Spot Audit" means a periodic audit described in (1) and conducted by a person or persons performing the State Software Controller function.
- (6) "State agency" means any agency or administrative sub-unit of the executive branch of the State government except:
 - (a) the State Board of Education; and
- (b) the Board of Regents and institutions of higher education.
- (7) "State-developed computer software" means computer software and related documentation developed under contract with the State or by State employees under the conditions set forth in the Employment Inventions Act, Section 34-39-1 et seq., Utah Code Annotated.

R895-3-5. Compliance and Responsibilities: Software Licensing.

- (1) Each state agency and its employees shall comply with computer software licensing agreements, state laws, federal contracts, federal funding agreements, and federal laws, including copyright and patent laws.
- (2) All management personnel will discourage software piracy and take appropriate personnel action up to and including dismissal, against any employee who has been found to be in violation of software license agreements. Personnel action shall be in full accordance with the Department of Human Resource Management Rule R477-11-1 et seq., Utah Administrative

Code.

- (3) Each state agency shall:
- (a) establish a software controller function that has the responsibility and authority to manage software licenses, software licensing agreements, software inventory, and the oversight of and reporting on spot audits;
- (b) coordinate training to employees who are assigned to, as part of their job responsibilities, the software controller function:
- (c) provide training to other employees appropriate to their responsibilities including those who install, transfer and dispose of software:
- (d) provide to employees notices of the state agency's software use policy at appropriate locations. Appropriate locations may include computing facilities, offices, lunchrooms or websites.
- (e) keep and maintain an inventory of all state-owned computer software and software licensing agreements by:.
- (i) establishing accurate software inventories and maintaining them;
- (ii) establishing a baseline inventory of software already purchased;
- (iii) maintaining this inventory through annual inventory reviews that reconcile purchases against inventory;
- (iv) acquiring and using auditing tools to assist in establishing the inventory baseline and performing the ongoing reconciliation;
- (f) dispose of software in accordance with the software license agreement.
- (g) remove from the storage media before disposing of a computer, all private, protected or controlled data as defined by the Government Records Access and Management Act, UCA 63G-2-101 et seq.
- (h) Understand the conditions of computer software licensing agreements before purchasing computer software, and inform State employees, whose responsibility it is to monitor the State's compliance with computer software licensing agreements, of these conditions.
- (i) Inform employees that are engaged in developing or controlling the distribution of software for the State, that any state-developed software is an asset owned by the State and controlled according to the terms of this rule.
- (4) A state software controller function is established within the Department of Technology Services with the following responsibilities:
 - (a) coordinate all centralized software purchases;
- (b) manage software licenses, software licensing agreements and software inventory for centralized software purchases;
- (c) coordinate and provide information to employees who are responsible for the software controller function within each state agency;
- (d) coordinate statewide audits or spot audits as needed. In determining when to conduct a spot audit personnel performing this function will take into consideration factors including but not limited to:
- (i) an unusual organizational activity such as high employee turnover;
- (ii) large development projects or recent large scale changes in computer software.

R895-3-6. Compliance and Responsibilities: Retention and Transfer of State-Developed Computer Software.

- (1) Unless otherwise prohibited by federal law, regulation, contract or funding agreement, a state agency may retain the right, title and interest in any state-developed computer software. To do so, the agency shall:
- (a) clearly define in all contracts that it controls the ownership rights for computer software development and related

documentation; and

- (b) mark all computer software and related documentation developed by employees of the State with the copyright symbol and year, and label "Utah State Government" on all media on which the computer software or documentation is stored and at the beginning of the computer software execution.
- (2) A state agency may sell or otherwise transfer the right, title and interest in any state-developed computer software. In order to carry this out, the agency must do the following:
- (a) Submit a request to and obtain approval from the Chief Information Officer prior to the sale or transfer of state-developed computer software. The agency's request shall include a copy of the transfer agreement and any other contractual information. A summary report of these requests will be provided to the Information Technology Policy and Strategy Committee. An example of a model transfer or sale of state-developed software agreement may be obtained from the Chief Information Officer.
- (b) Clearly specify within the transfer documents whether the costs of development will be recovered from the receiver.
- (c) Clearly specify within the transfer documents whether the costs associated with copying and sending the statedeveloped computer software will be recovered from the receiver.
- (d) Clearly specify within the transfer documents that the receiver is responsible for acquiring any commercial computer software upon which the state-developed computer software may be dependent.
- (e) Clearly specify within the transfer documents that no additional services, such as installation, training, or maintenance, will be provided unless the parties have agreed otherwise.
- (f) Clearly specify within the transfer documents that the state-developed computer software is being transferred in "as is" condition, and that the State will not be held liable for any incidental or consequential damages under any circumstances.
- (g) Retain a record of the transfer, and process it in accordance with the Government Records Access and Management Act, Section 63G-2-101 et seq., Utah Code Annotated.
- (3) In accordance with the requirements of (2), a state agency may initiate an agreement to transfer state-developed computer software when reasons exist to share such software with another state or entity.
- (4) The Chief Information Officer may measure compliance of a state agency and its employees with this rule by conducting periodic audits in accordance with Section 63F-1-206, Utah Code Annotated. In performing audits, the Chief Information Officer may utilize external auditors and an agency's internal auditor(s) when such resources are available and the use of such resources is appropriate.

KEY: computer software, licensing, copyright, transfer
December 17, 2002 63F-1-206
Notice of Continuation August 31, 2012 63G-3-201
34-39-1 et seq.
63G-2-101 et seq.

R918. Transportation, Operations, Maintenance.

R918-6. Maintenance Responsibility at Intersections, Overcrossings, and Interchanges between Class A Roads and Class B or Class C Roads.

R918-6-1. Authority.

Section 72-1-201 assigns to the Utah Department of Transportation general responsibility for the maintenance of the state transportation system, and directs the department to make policy and rules governing the same, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. Sections 72-3-102, 72-3-103, and 72-3-104 assign maintenance responsibility for Class A Roads (state roads), Class B Roads (county roads), and Class C Roads (city streets), to the state, counties, and municipalities, respectively. Section 72-1-208 directs the department to cooperate with counties and municipalities in the maintenance of highways and allows the department to provide maintenance services to them under terms mutually agreed upon. Section 72-3-109 delineates the division of responsibilities for state highways within cities and towns. Section 72-6-105 provides that the department may enter into written agreements with counties and municipalities for the maintenance of any highway.

R918-6-2. Purpose and Background.

- (1) The purpose of this rule is to assign maintenance responsibility between the department and the local government entity for roadway and roadside features at the intersection of state and local roads, including grade-separated interchanges, overcrossings, undercrossings, and at-grade intersections.
- (2) In general, the department is responsible for the maintenance of all state roads, including roadside features associated with those roads, except as otherwise delineated in state law. Likewise, county and municipal governments are responsible for roads under their jurisdiction. Where state roads intersect with roads under local jurisdiction, confusion sometimes arises regarding the maintenance responsibility for specific features at those locations. This rule is intended to clarify which jurisdiction has responsibility for which elements at those locations, and to address the large majority of such situations. Sometimes, however, unusual circumstances or geometry may render a logical division of responsibilities difficult. In those cases, formal agreements between the parties involved are appropriate and encouraged. The language in this rule was developed to encourage consistency regarding maintenance responsibilities between the department and local government. It is recognized the traveling public may benefit in some cases from deviations from the guidelines set forth in this rule to meet the capabilities and skills available individually at the department's maintenance sheds and/or local road departments. In such cases, Region Directors of the department and local officials should together evaluate the guidelines and deviate from them as necessary and as mutually agreed upon, to meet the needs of a specific situation. Open and frequent communication supported by a written agreement is strongly encouraged.

R918-6-3. Definitions.

For the purpose of this rule, the following definitions apply.

- (1) "Local road" means any road under the jurisdiction of any public entity other than UDOT. The entity may be a county, a municipality, or an agency of the federal government.
- (2) "Overcrossing" means a grade-separated intersection where no access between the intersecting roadways is provided, and where the state road or interstate highway crosses over the local road.
- (3) "Undercrossing" means a grade-separated intersection where no access between the intersecting roadways is provided, and where the state road or interstate highway crosses under the

local road.

- (4) "Grade-separated interchange" means an intersection where the state road or interstate highway and the local road are separated from each other by one or more structures, and where access between the two roads is provided by means of entrance and exit ramps.
- (5) "At-grade intersection" means a surface street intersection that may be signalized or unsignalized, where one or more of the intersecting streets are state routes;
 (6) "Department", or "UDOT", means the Utah
- (6) "Department", or "UDOT", means the Utah Department of Transportation.
- (7) "Full control of access", means access to adjoining land that is designated as no access or limited access by means of the right-of-way instrument.

R918-6-4. General Maintenance Responsibilities.

- (1) Signal Systems. Maintenance responsibility for all signal systems on state roads, and components that are required for the functionality of those systems, belongs to UDOT. This includes detection and signing on the local legs of the intersection.
- (2) Park Strips, Sidewalks, and Pedestrian Ramps. Maintenance responsibility for park strips and sidewalks, including that portion of pedestrian access ramps behind the curb, belongs to the local government. Replacement and upgrading as part of road improvement projects may be done by UDOT.
- (3) Curb and Gutter. Maintenance responsibility for curb and gutter belongs to UDOT for state routes, and to the local government for local routes. UDOT responsibility on the local leg extends to the point of tangency of the curb radius.
- (4) Snow Removal. Responsibility for snow removal from the roadway belongs to UDOT for state routes, and to the local government for local routes. UDOT is responsible for snow removal on ramps at interchanges on state routes.
- (5) Pavement Maintenance. Responsibility for roadway pavement maintenance belongs to UDOT for state routes, and to the local government for local routes. This includes the pavement surface on or under bridges. For at-grade intersections, UDOT is responsible for pavement maintenance through the intersection, bounded by a line extending to the point of tangency of the edge of oil, or of the curb return if a curb exists, on the local leg. If the geometry of the approach is unusual, such as angled instead of rounded, UDOT responsibility shall extend to a point agreeable to both parties. In no case, however, shall UDOT responsibility extend beyond the right-of-way line. UDOT is responsible for pavement maintenance on ramps at interchanges on state routes.
- (6) Traffic Islands. Responsibility for traffic islands belongs to UDOT for state routes, and to the local government for local routes. For at-grade intersections, UDOT is responsible for island maintenance through the intersection. Maintenance responsibility for any landscaping within traffic islands is described in R918-6-4(15).
- (7) Pavement Striping and Messages. Responsibility for pavement striping and marking belongs to UDOT for state routes, and to the local government for local routes. Local jurisdiction responsibility includes stop bars and crosswalks on the local legs of unsignalized intersections. At signalized intersections, UDOT is responsible for stop bars and crosswalks on all legs, and the local government is responsible for lane lines and other markings or messages on the local legs.
- (8) Highway Lighting. Responsibility for maintenance, including payment of power bills, repairs and replacement when necessary, of highway lighting is divided as follows.
 - (a) UDOT is responsible for:
 - (i) mainline interstate, interchange, and underpass lighting;
- (ii) cross street underpass lighting at interchanges with on/off ramps;

- (iii) sign lighting on state routes or along the interstate corridor;
- (iv) traffic signals on state routes or interstate corridor off ramps;
- (v) un-signalized intersection lighting at on or off ramp intersecting cross street; and
- (vi) signal-attached lighting at non-traditional signalized intersections, such as Diverging Diamond Interchanges (DDI), and Single Point Urban Interchanges (SPUI).
 - (b) Local government is responsible for:
 - (i) street lighting along state routes, other than interstate;
- (ii) cross street underpass lighting where no interchange on or off ramps occur;
- (iii) all decorative lighting requested by the municipality or county including street, bridge, and underpass lighting; and
- (iv) lighting at traditional signalized intersections along state routes.
- (9) Signs. Responsibility for signs belongs to UDOT for signs facing traffic on state routes, and to the local government for signs facing traffic on local routes, with the exception that UDOT is responsible for traffic control, route marker, junction, and guide signs associated with a state route but facing traffic on a local route. For STOP and YIELD signs on the local legs of unsignalized intersections, the local government is responsible for initial installation and non-safety critical maintenance such as minor vandalism, graffiti, or leaning, and UDOT is responsible for safety critical maintenance such as replacement of knock-downs. At signalized intersections, UDOT is responsible for signs mounted on the signal mast arm. UDOT will coordinate the installation of signs on local routes with the local agency prior to sign installation. The local government is responsible for street name signs, except those mounted on signal mast arms.
- (10) Crash Cushions, Barrier, Etc. Responsibility for crash cushions, barrier, guardrail, and end treatments, belongs to UDOT for those elements protecting traffic on state routes, and to the local government for those protecting traffic on local routes.
- (11) Sweeping. Responsibility for roadway sweeping belongs to UDOT for state routes, and to the local government for local routes. UDOT is responsible for sweeping on ramps at interchanges.
- (12) Graffiti. Graffiti removal from structures is the responsibility of the entity having the best access to the graffiti. In general, that is the entity having jurisdiction of the road underneath the structure.
- (13) Cattle Guards. UDOT provides cattle guards within the rural area of the State at all freeway access points to fully controlled access highways, either on the cross road or the entrance ramps, as necessary to meet the requirements of the particular location. Responsibility for maintenance of these cattle guards belongs to UDOT. Where cattle guards exist along partially controlled access state roads, either across a local road or a private road, responsibility for maintenance of the cattle guard belongs to the local jurisdiction or to the private property owner.
- (14) Weed Control. In accordance with Section 72-3-109, responsibility for weed control and mowing behind the curb or beyond the shoulder at at-grade intersections, both signalized and unsignalized, belongs to the local government. On facilities with full control of access, UDOT will be responsible for weed control and mowing to a point that ensures adequate sight distance.
- (15) Decorative Landscaping. Responsibility for maintenance of landscaping beyond the baseline described in UDOT Aesthetics Guidelines, including irrigation systems, belongs to the local jurisdiction.
- (16) Drainage Facilities such as catch basins, culverts, etc. In general, storm drain systems and culverts will be maintained

by the owner of the drainage facility, unless otherwise stipulated in a cooperative agreement. Catch basins and their connector pipes at intersections will be maintained by the entity having jurisdiction for the road.

R918-6-5. Maintenance Responsibility at Overcrossings and at Interchanges where the State Route Crosses Over the Local Route.

- (1) UDOT is responsible for:
- (a) maintenance, repairs, and replacement of all structure elements, including decks, parapets, bent caps, beams, columns, footings, abutments, approach slabs, and slope protection;
 - (b) maintenance of drains on the structure;
 - (c) maintenance of retaining walls;
- (d) fence maintenance on the structure and its approaches and ramps; and
- (e) vegetation control, including mowing, along the state route, as demarcated by access control or Right-of-Way fencing.
 - (2) The local jurisdiction is responsible for:
 - (a) maintenance of drainage under the structure;
- (b) vegetation control, including mowing, along the local route, as demarcated by access control or Right-of-Way fencing; and
- (c) maintenance of decorative landscaping beyond the UDOT Aesthetics Guideline baseline, as described in R918-6-4(15).
- (3) If the local entity proposes a pavement treatment that would decrease vertical clearance under the structure to less than the current standard, such work shall be done in consultation with UDOT.

R918-6-6. Maintenance Responsibility at Undercrossings and at Interchanges where the State Route Crosses Under the Local Route.

- (1) UDOT is responsible for:
- (a) major structure maintenance, including repair or replacement of parapets, bent caps, beams, columns, footings, abutments, approach slabs, and slope protection;
- (b) deck maintenance where necessary to preserve the structural integrity of the bridge such as where the rebar is exposed;
 - (c) maintenance of retaining walls;
 - (d) maintenance of drainage under the structure;
- (e) vegetation control, including mowing, along the state route, as demarcated by access control or Right-of-Way fencing; and
 - (f) fence maintenance under the structure.
 - (2) The local jurisdiction is responsible for:
- (a) minor deck and parapet maintenance which includes maintenance of the wearing surface down to the first mat of reinforcing steel, and of any bituminous surfacing above that. This maintenance should include preventive sealing as well as repair of spalls and delaminations. If UDOT performs a deck rehabilitation project involving pothole patching, waterproofing membrane and asphalt overlay, the responsibility to maintain the asphalt wearing surface would also default to the local owner upon completion of the initial installation. If the local entity proposes a deck treatment that would add static load to the structure, such work shall be done in consultation with UDOT;
 - (b) maintenance of drains on the structure;
 - (c) fence maintenance on the structure and its approaches;
- (d) vegetation control, including mowing, along the local route, as demarcated by access control or Right-of-Way fencing; and
- (e) maintenance of decorative landscaping beyond the UDOT Aesthetics Guideline baseline, as described in R918-6-4(15).

KEY: maintenance, intersections, interchanges, structures

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