R70. Agriculture and Food, Regulatory Services.
R70-330. Raw Milk for Retail.
R70-330-1. Authority.

A. Promulgated under the authority of Section 4-3-2.

B. Scope: This rule establishes the requirements for the manufacture, production, distribution, holding, delivery, storage, offering for sale and sale of raw milk for retail.

C. History: The Utah Department of Agriculture and Food, with the concurrence of the U.S. Food and Drug Administration (FDA) strongly advises against the consumption of raw milk. There are numerous documented outbreaks of milkborne disease involving Salmonella and Campylobacter infections directly linked to the consumption of un-pasteurized milk. Cases of raw milk associated campylobacteriosis have been reported in the states of Arizona, California, Colorado, Georgia, Kansas, Maine, Montana, New Mexico, Oregon, Pennsylvania, and Utah. An outbreak of salmonellosis, involving 50 cases was confirmed in Ohio in 2002. Recent cases of Escherichia coli (E. coli) 0157:H7, Listeria monocytogenes, and Yersinia enterocolitica infections have also been attributed to raw milk consumption.

R70-330-2. Definitions.

A. "Raw milk" means milk as defined by law that has not been pasteurized, or heat treated. The word milk shall be interpreted to include the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy hoofed mammals.

B. "Properly staffed" means a person or persons on premise available to sell milk, exchange money, and lock and secure the retail store.

C. "Department" means the Utah Department of Agriculture and Food.

R70-330-3. Permits.

A permit shall be required to manufacture, distribute, sell, deliver, hold, store or offer for sale raw milk. Such permit shall be suspended when these rules or applicable sections of the Utah Dairy Act, Utah Code Annotated (UCA), Vol. 1, Title 4, Chapter 3, are violated. Cow-share programs, as defined in the Utah Dairy Act, shall not be allowed, either in conjunction with a permitted raw for pasteurization dairy, a permitted raw milk for retail dairy, or in lieu of a permit to sell raw milk for retail.

R70-330-4. Building and Premises Requirements.

The building and premises requirements at the time of the issuance of a new permit shall be the same as the current Grade A building guidelines. In addition to these guidelines, there shall be separate rooms provided for (1) packaging and sealing of raw milk, (2) the washing of returned multi-use containers when applicable, and (3) a sales room for the sale of raw milk in a properly protected area that is not located in any of the milk handling rooms. These rooms shall meet or exceed the construction standards of a Grade A milkhouse. If the Raw for Retail dairy also raises chickens ,or other poultry, for meat and/or eggs, their housing and movement shall be restricted to areas that do not include the milkhouse, milk barn and their immediate surroundings, the corrals and alleys where there is normally cows or goats, and other locations where there is normal cow or goat traffic. They shall also be restricted from areas normally considered traffic areas of the raw milk customers.

R70-330-5. Sanitation and Operating Requirements.

A. Sanitation and operating requirements of all raw milk facilities shall be the same as that required on a Grade A dairy farm producing milk for pasteurization. Milk packaging areas and container washing areas at the raw milk facilities shall meet the requirements for Grade A pasteurized milk processing plants.

B. All milk shall be cooled to 50 degrees F. or less within one hour of the commencement of milking and to 41 degrees F. or less within two hours after the completion of milking.

C. The blend temperature after the first milking and subsequent milkings shall not exceed 50 degrees. Milk not handled in the manner required in this subsection and subsection "B" above shall be deemed adulterated and shall not be sold.

1. All raw for retail farm bulk milk tanks put into use on or after August 7, 2007 shall be equipped with an approved temperature-recording device, in addition to the indicating thermometer. Daily temperature logs shall be maintained for bulk milk tanks in use prior to August 7, 2007.

2. The recording device shall be operated continuously and be maintained in a properly functioning manner. Circular recording charts shall not overlap.

3. The recording device shall be verified as accurate every six (6) months and documented in a manner acceptable to the department.

4. Recording thermometer charts shall be maintained on the premises for a minimum of six (6) months and available to the department.

5. The recording thermometer shall be installed near the milk storage tank and accessible to the department.

6. The recording thermometer shall comply with the current technical specifications in the Pasteurized Milk Ordinance for tank recording thermometers.

7. The recording thermometer charts shall properly identify the producer, date, and signature of the person removing the chart.

D. The temperature of the milk at the time of bottling shall not exceed 41 degrees F.

E. The sale and delivery of raw milk shall be made on the premise where the milk is produced and packaged, or at a self-owned, properly staffed, retail store. Sanitation and construction requirements of the facilities used as self-owned, retail stores shall be the same as those contained in the Wholesome Food Act, Title 4, Chapter 5. Transportation shall be done by the producer with no intervening storage, change of ownership, or loss of physical control. The temperature of the milk shall be maintained at 41 degrees F or below. Each display case shall have a properly calibrated thermometer, and a daily temperature log shall be maintained and made accessible to the Department.

F. Raw milk brick cheese, when held at no less than 35 degrees F. for 60 days or longer, may be sold at retail stores or for wholesale distribution, at locations other than the premise where the milk was produced.

G. Except as provided in part (F) above, all products made from raw milk including, but not limited to, cottage cheese, buttermilk, sour cream, yogurt, heavy whipping cream, half and half, butter, and ice cream shall not be allowed for sale in Utah.

H. Milk that has been heat treated, shall not be labeled as "Raw Milk" for retail sale.

I. Inspections of the self-owned retail store shall be performed no less than four times per year to insure compliance with the sanitation, construction, and cooling requirements as set forth in the Wholesome Food Act, Title 4, Chapter 5.

R70-330-6. Bacteriological Standards.

A. The bacterial standards for unpackaged raw milk, packaged raw milk sold on premise and packaged raw milk sold at a self-owned retail store shall be a bacterial count of no more than 20,000 per ml. and a coliform count of no more than 10 per ml.

B. The department shall suspend a permit issued under Section 4-3-8 if two out of four consecutive samples or two samples in a 30-day period violate the sample limits established

in R70-330-6(A).

R70-330-7. Testing.

A. Raw Milk for Retail Testing.

1. Unpackaged Raw Milk

a. The Department shall collect a representative sample of milk from each Raw for Retail farm bulk tank once each month. All samples shall be delivered to the State Dairy Testing Laboratory. Tests shall include those prescribed for Raw Milk for Pasteurization as found in the Pasteurized Milk Ordinance, and in addition shall include added water, and/or other adulterants.

b. The Somatic Cell Count (SCC) in unpackaged raw milk for retail shall not exceed 400,000 cells per milliliter (ml) for cows, and not to exceed 1,500,000 cells per ml for goats. Whenever three out of five samples fail to meet this standard in a 5-month period, the Department shall suspend the raw for retail permit. The suspension shall remain effective until a sample result meets the standard. A temporary permit shall be issued at that time. The permit shall be fully reinstated when three of five samples meet the standard in a five-month period.

2. Packaged Raw Milk sold on Premise

a. It shall be the responsibility of the Department to collect a representative sample of packaged raw milk once each month. All samples shall be delivered to the State Dairy Testing Laboratory. Tests shall include those prescribed for Grade "A" Pasteurized milk as found in the Pasteurized Milk Ordinance.

3. Packaged Raw Milk sold at Self-Owned Retail Stores

a. It shall be the responsibility of the producer to have a sampler certified by the Department to collect a sample from each batch of milk and submit it to the State Dairy Laboratory or a certified independent laboratory to be tested for Antibiotic Drug Residue, Standard Plate Count (SPC) and Coliform Count. All milk from the sampled batch shall be withheld from sale until the results of the tests are known. Whenever a sample result exceeds the standard in any of the prescribed categories,

(i) the producer shall not allow the milk to enter into commerce and shall dispose of the milk in a manner agreeable to the Department. The producer may sell raw milk from batches that were produced earlier and whose testing results met the standards.

b. The producer shall recall all milk from the failed batch that is already in commerce.

c. A database shall be kept and made available for review by both the Utah Department of Agriculture and Food and the Utah Department of Health of all customers, which shall include names, addresses, and telephone numbers of customers, dates of purchases and amounts of milk purchased.

d. If another agency's epidemiological investigation finds probable cause to implicate a raw for retail dairy in a milkborne illness outbreak, the Raw for Retail Permit may be suspended by the Department until such time as milk samples are pathogen free when analyzed by the Department or other Department approved testing laboratories, and until an inspection can be performed at the facility by a Compliance Officer from the Department.

B. Animal Health Tests.

1. General herd health examination.

a. Whenever the USDA/APHIS has determined Utah is "Certified Free" of a zoonotic disease relative to an animal species which is milked for human or animal consumption, no testing for that disease in that species shall be required.

b. Whenever USDA/APHIS has determined that Utah is not "Certified Free" of a zoonotic disease relative to an animal species which is milked for human or animal consumption, testing shall be conducted, as follows:

(i). Prior to inclusion in a raw milk supply, and each six months thereafter, all animals shall be examined by a veterinarian. Each animal in the herd must be positively identified as an individual. This examination shall include an examination of the milk by a method recommended by the Pasteurized Milk Ordinance, shall include a statement of the udder health of each animal, and a general systemic health evaluation.

(ii). Tuberculosis testing. Prior to inclusion in a raw milk supply, each animal shall have been tested for tuberculosis within 60 days prior to the beginning of milk production and shall be retested for tuberculosis once each year thereafter. All positively reacting animals shall be sent to slaughter in accordance with R58-10 and R58-11.

(iii). Brucellosis testing. Each bovine animal from which raw milk for retail is produced shall be positively identified as a properly vaccinated animal or shall be negative to the official blood test for brucellosis within 30 days prior to the beginning of each lactation. All positively reacting animals shall be sent to slaughter in accordance with R58-10 and R58-11. Goats and sheep shall be tested once each year for brucellosis with the official blood test and all positively reacting animals shall be sent to slaughter in accordance with R58-10 and R58-11.

(iv). Bulk tank milk testing. All bovine raw milk for retail shall be bulk tank tested at least four times yearly with the brucella milk ring test. If such brucella ring test is positive for brucellosis, then each animal in the herd shall be tested with the official blood test and any reactors found shall be immediately sent to slaughter in accordance with R58-10 and R58-11.

(v). This section shall not apply whenever the Utah State Veterinarian has determined that an animal species in Utah which is milked for human or animal consumption is not at risk for a specific zoonotic disease.

C. Personnel Health.

Each employee of the dairy working in the milk handling operation shall obtain a valid medical examination health card signed by a physician and approved by the department once each year and shall hold a valid food handler's permit. No person shall work in a milk handling operation if infected from any contagious illness or if they have on their hands or arms any exposed infected cut or lesion. If there is any question in this regard, the department may ask for an additional certification from a physician that this person is free from disease which may be transmitted by milk.

R70-330-8. Packaging and Labeling.

A. Label Requirements.

The consumer containers for raw milk for retail shall be furnished by the permittee and shall be labeled with the following information:

1. The common or usual name of the product without grade designation. The common name for raw milk is "Raw Milk". If it is other than cow's milk, the word "milk" shall be preceded with the name of the animal, i.e., "Raw Goat Milk".

2. The name, address, and zip code of the place of production and packaging.

3. Proper indication of the volume of the product either on the container itself or on the label.

4. Nutritional labeling information when applicable.

5. The phrase: "Raw milk, no matter how carefully produced, may be unsafe.", shall appear on the label in a conspicuous place. The height of the smallest letter shall be no less than one eighth inch.

6. The phrase: "Keep Refrigerated", shall also appear on the label with the height of the smallest letter no less than one eighth inch.

7. The shelf life labeling of bottled raw milk shall include a pull date, expiration date, or best-if-used-by date, and shall be displayed and clearly visible on raw milk. Raw milk shall not be sold after the pull date, expiration date, or best-if-used-by date has expired, and the date shall not be more than nine days after packaging.

8. Other provisions of labeling laws in effect in Utah relative to dairy/food products also apply. On the primary panel the words "raw" and "milk" shall be the same size lettering.

B. Products not labeled as required shall be deemed misbranded.

R70-330-9. Limitations on Raw Milk Distribution.

A. Raw milk distribution to the public for human consumption is limited to the following circumstances:

1. A raw milk producer may sell raw milk to the public on the producer's farm if the producer obtains a raw for retail permit from the department, and

2. A raw milk producer may sell raw milk to the public at the producer's self-owned off-premise retail store if the producer obtains a raw for retail permit from the department.

3. A raw milk producer may distribute raw milk to members of the producer's immediate family on the producer's farm.

B. Other methods or circumstances whereby raw milk is distributed to the public for human consumption, including the giving away of samples, are prohibited.

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R81. Alcoholic Beverage Control, Administration.
R81-4A. Restaurant Liquor Licenses.
R81-4A-1. Licensing.

(1) Restaurant liquor licenses are issued to persons as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B-5-310.

(2) A restaurant liquor licensee that wishes to operate the same licensed premises under the operational restrictions of a recreational amenity on-premise beer retailer during certain designated periods of the day or night, must apply for and be issued a separate recreational amenity on-premise beer retailer license subject to the following:

(a) The same restaurant licensee must separately apply for a state recreational amenity on-premise beer retailer license pursuant to the requirements of Sections 32B-5-201, -202 and 32B-6-702 through -705.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) Restaurant liquor licensees holding a separate recreational amenity on-premise beer retailer license must operate in accordance with 32B-6-706 and R81-10A during the hours the on-premise beer retailer license is active.

(d) Liquor storage areas on the restaurant premises shall be deemed to remain on the floor plan of the restaurant premises and shall be kept locked during the hours the recreational amenity on-premise beer retailer license is active.

R81-4A-2. Application.

(1) No license or sublicense application will be included on the agenda of a monthly commission meeting for consideration for issuance of a restaurant license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-204 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation of a full service restaurant, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); 32B-6-206 (requirements for a master full service restaurant license); and

(b) the department has inspected the restaurant premise(s).

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

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

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

(3) Subsection (1)(a) does not preclude the commission from considering an application for a conditional restaurant license under the terms and conditions of 32B-5-205.

(4) Applicants may apply for a Master Full Service Restaurant License as defined by 32B-6-206 so long as five or more locations are indicated as sublicenses on the application.

(a) The five locations must be owned by the same person or entity.

(b) Locations that do not already have a full service restaurant license must meet all requirements for licensing as a full service restaurant under subsection (1).

(c) Once the master license is granted, the licensee may add additional locations by filing an application approved by the department demonstrating that the location meets all application requirements under section (1).

R81-4A-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-204(4), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4A-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4A-5. Restaurant Liquor Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when a restaurant liquor licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

(iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds $1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4A-6. Restaurant Liquor Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section 32B-6-205(6). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4A-7. Sale and Purchase of Alcoholic Beverages.

(1) Alcoholic beverages (including light beer) may be furnished after the licensee or their employee confirms that the patron has the intent to order food that is prepared and sold for consumption on site. An order for food may not include food items normally provided to patrons without charge. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section 32B-6-205(4), shall be commenced upon the patron's first purchase and shall be maintained by the restaurant during the course of the patron's stay at the restaurant regardless of where the patron orders and consumes an alcoholic beverage.

(2) The restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section 32B-6-205(7).

(a) The restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(b) If any inspection or audit discloses that the sales of food are less than 70% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 70%. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

(3) Liquor dispensing shall be in accordance with Section 32B-5-304; Section R81-1-9 (Liquor Dispensing Systems), and Section R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

R81-4A-8. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the restaurant as approved by the department.

R81-4A-9. Alcoholic Product Flavoring.

Restaurant liquor licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the restaurant liquor license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No restaurant employee under the age of 21 years may handle alcoholic product flavorings.

R81-4A-10. Table, Counter, and "Grandfathered Bar Structure" Service.

(1) A wine service may be performed by the server at the patron's table, counter, or "grandfathered bar structure" for wine either purchased at the restaurant or carried in by a patron. The wine may be opened and poured by the server.

(2) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter, or "grandfathered bar structure".

R81-4A-11. Consumption at Patron's Table, Counter, and "Grandfathered Bar Structure".

(1) A patron's table, counter, or "grandfathered bar structure" may be located in waiting, patio, garden and dining areas previously approved by the department.

(2) Consumption of any alcoholic beverage must be within a reasonable proximity of a patron's table, counter, or "grandfathered bar structure so as to ensure that the server can maintain a written beverage tab on the amount of alcoholic beverages consumed.

R81-4A-12. Menus; Price Lists.

(1) Contents of Alcoholic Beverage Menu.

(a) Each licensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer.

(b) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.

(c) Customers shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(d) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4A-13. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-4A-14. Brownbagging.

When private events, as defined in 32B-1-102(77), are held on the premises of a licensed restaurant, the proprietor may, in his or her discretion, allow members of the private group to bring onto the restaurant premises, their own alcoholic beverages under the following circumstances:

(1) When the entire restaurant is closed to the general public for the private event, or

(2) When an entire room or area within the restaurant such as a private banquet room is closed to the general public for the private event, and members of the private group are restricted to that area, and are not allowed to co-mingle with public patrons of the restaurant.

R81-4A-15. Grandfathered Bar Structures.

(1) Authority and Purpose.

(a) This rule is pursuant to 32B-6-202 which provides that:

(i) a bar structure, as defined in 32B-1-102(7), located in a currently licensed restaurant as of May 11, 2009, may be "grandfathered" to allow alcoholic beverages to continue to be stored or dispensed at the bar structure, and in some instances to be served to an adult patron seated at the bar structure;

(ii) a bar structure in a restaurant that is not operational as of May 12, 2009, may be similarly "grandfathered" if, as of May

12, 2009:

(A) a person has applied for a restaurant license from the commission;

(B) the person is "actively engaged in the construction of the restaurant" as defined by commission rule; and

(C) the person is granted a restaurant liquor license by the commission no later than December 31, 2009.

(b) This rule is also pursuant to 32B-6-202 which provides that:

(i) a "grandfathered bar structure" is no longer "grandfathered" once the restaurant "remodels the grandfathered bar structure"; and

(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".

(2) Application of Rule.

(a) "Actively engaged in the construction of the restaurant" for purposes of 32B-6-202(1)(a)(ii)(A)(I) means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "remodels the grandfathered bar structure" for purposes of 32B-6-202(1)(b) means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to 32B-5-303(3), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

KEY: alcoholic beverages

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	32B-5-303(3)
	32B-6-202
	32B-6-206

R81. Alcoholic Beverage Control, Administration.
R81-4C. Limited Restaurant Licenses.
R81-4C-1. Licensing.

(1) Limited restaurant licenses are issued to persons as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B-5-310.

(2) A limited restaurant license that wishes to operate the same licensed premises under the operational restrictions of a recreational amenity on-premise beer retailer during certain designated periods of the day or night, must apply for and be issued a separate recreational amenity on-premise beer retailer license subject to the following:

(a) The same limited restaurant licensee must separately apply for a state on-premise beer retailer license pursuant to the requirements of Sections 32B-5-201, -202 and 32B-6-702 to -705.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) Limited restaurant licensees holding a separate recreational amenity on-premise beer retailer license must operate in accordance with 32B-6-706 and R81-10A during the hours the on-premise beer retailer license is active.

(d) Liquor storage areas on the limited restaurant premises shall be deemed to remain on the floor plan of the limited restaurant premises and shall be kept locked during the hours the recreational amenity on-premise beer retailer license is active.

R81-4C-2. Application.

(1) No license or sublicense application will be included on the agenda of a monthly commission meeting for consideration for issuance of a limited restaurant license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204 and 32B-6-304 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation of a limited restaurant license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); 32B-6-306 (requirements for a master limited service license); and

(b) the department has inspected the limited restaurant premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

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

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

(3) Subsection (1)(a) does not preclude the commission from considering an application for a conditional limited restaurant license under the terms and conditions of 32B-5-205.

(4) Applicants may apply for a Master Limited Service Restaurant License as defined by 32B-6-306 so long as five or more locations are indicated as sublicenses on the application.

(a) The five locations must be owned by the same person or entity.

(b) Locations that do not already have a limited service restaurant license must meet all requirements for licensing as a limited service restaurant under subsection (1).

(c) Once the master license is granted, the licensee may add additional locations by filing an application approved by the department demonstrating that the location meets all application requirements under section (1).

R81-4C-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-304(4), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4C-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4C-5. Limited Restaurant Licensee Wine and Heavy Beer Order and Return Procedures.

The following procedures shall be followed when a limited restaurant licensee orders wine or heavy beer from or returns wine or heavy beer to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4C-6. Limited Restaurant Licensee Operating Hours.

Allowable hours of wine and heavy beer sales shall be in accordance with Section 32B-6-305(6). However, the licensee may open the wine and heavy beer storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4C-7. Sale and Purchase of Alcoholic Beverages.

(1) Alcoholic beverages (including light beer) may be furnished after the licensee or their employee confirms that the

patron has the intent to order food that is prepared and sold for consumption on site. An order for food may not include food items normally provided to patrons without charge. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section 32B-6-305(4), shall be commenced upon the patron's first purchase and shall be maintained by the limited restaurant during the course of the patron's stay at the limited restaurant regardless of where the patron orders and consumes an alcoholic beverage.

(2) The limited restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section 32B-6-305(7).

(a) The limited restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, wine, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(b) If any inspection or audit discloses that the sales of food are less than 70% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 70%. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

(3) Wine dispensing shall be in accordance with Section 32B-5-304(2); and R81-1-11 (Multiple-Licensed Facility Storage and Service) of these rules.

R81-4C-8. Alcoholic Product Flavoring.

(1) Limited restaurant licensees may use alcoholic product flavorings including spirituous liquor products in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No limited restaurant employee under the age of 21 years may handle alcoholic product flavorings.

R81-4C-9. Table, Counter, and "Grandfathered Bar Structure" Service.

(1) A wine service may be performed by the server at the patron's table, counter, or "grandfathered bar structure" for wine either purchased at the limited restaurant or carried in by a patron. The wine may be opened and poured by the server.

(2) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter, or "grandfathered bar structure".

R81-4C-10. Consumption at Patron's Table, Counter, and Grandfathered Bar Structure".

(1) A patron's table, counter, or "grandfathered bar structure" may be located in waiting, patio, garden and dining areas previously approved by the department.

(2) Consumption of any alcoholic beverage must be within a reasonable proximity of a patron's table, counter, or "grandfathered bar structure" so as to ensure that the server can maintain a written beverage tab on the amount of alcoholic beverages consumed.

R81-4C-11. Menus; Price Lists.

(1) Contents of Alcoholic Beverage Menu.

(a) Each limited restaurant licensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all wine, heavy beer, and beer. This list shall include any charges for the service of packaged wines or heavy beer.

(b) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.

(c) Customers shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(d) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4C-12. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-4C-13. Brownbagging.

When private events, as defined in 32B-1-102(77), are held on the premises of a licensed limited restaurant, the proprietor may, in his or her discretion, allow members of the private group to bring onto the restaurant premises, their own wine, heavy beer or beer under the following circumstances:

(1) When the entire limited restaurant is closed to the general public for the private event, or

(2) When an entire room or area within the limited restaurant such as a private banquet room is closed to the general public for the private event, and members of the private group are restricted to that area, and are not allowed to co-mingle with public patrons of the restaurant.

R81-4C-14. Grandfathered Bar Structures.

(1) Authority and Purpose.

(a) This rule is pursuant to 32B-6-302 which provides that:

(i) a bar structure, as defined in 32B-1-102(7), located in a currently licensed limited restaurant as of May 11, 2009, may be "grandfathered" to allow alcoholic beverages to continue to be stored or dispensed at the bar structure, and in some instances to be served to an adult patron seated at the bar structure;

(ii) a bar structure in a limited restaurant that is not operational as of May 12, 2009, may be similarly "grandfathered" if, as of May 12, 2009:

(A) a person has applied for a limited restaurant license from the commission;

(B) the person is "actively engaged in the construction of the restaurant" as defined by commission rule; and

(C) the person is granted a limited restaurant liquor license by the commission no later than December 31, 2009.

(b) This rule is also pursuant to 32B-6-302 which provides that:

(i) a "grandfathered bar structure" is no longer "grandfathered" once the limited restaurant "remodels the grandfathered bar structure"; and

(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".

(2) Application of Rule.

(a) "Actively engaged in the construction of the restaurant" for purposes of 32B-6-302(1)(a)(ii)(A)(I) means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "remodels the grandfathered bar structure" for purposes of 32B-6-302(1)(b)means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to 32B-5-303(3), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

KEY: alcoholic beverages
November 26, 2013 **32B-2-202**
Notice of Continuation July 10, 2013 **32B-5-303(3)**
32B-6-207
32B-6-301 through 305.1

R81. Alcoholic Beverage Control, Administration.
R81-10C. Beer-Only Restaurant Licenses.
R81-10C-1. Licensing.

(1) Beer-only restaurant licenses are issued to persons as defined in Section 32B-1-102(74). The department must be immediately notified of any action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued to ensure there is no violation of Sections 32B-5-310.

R81-10C-2. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a beer only restaurant license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-904 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation of a beer-only restaurant license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the beer-only restaurant premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

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

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-10C-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-904(4) may be withdrawn during the time the license is in effect. If the beer-only restaurant licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-10C-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j)must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-10C-5. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-10C-6. Sale and Purchase of Beer.

(1) Beer may be furnished after the licensee or their employee confirms that the patron has the intent to order food that is prepared and sold for consumption on site. An order for food may not include food items normally provided to patrons without charge. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section 32B-6-905(4), shall be commenced upon the patron's first purchase and shall be maintained by the restaurant during the course of the patron's stay at the restaurant regardless of where the patron orders and consumes an alcoholic beverage.

(2) The restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section 32B-6-905(7).

(a) The restaurant shall maintain records separately showing quarterly expenditures and sales for beer and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(b) If any inspection or audit discloses that the sales of food are less than 70% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 70%. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

(3) Beer dispensing shall be in accordance with Section 32B-5-304(5) and Section R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

R81-10C-7. Alcoholic Product Flavoring.

Beer Only Restaurant licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No restaurant employee under the age of 21 years may handle alcoholic product flavorings.

R81-10C-8. Table, Counter, and "Grandfathered Bar Structure" Service.

(1) Beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter, or "grandfathered bar structure".

R81-10C-9. Consumption at Patron's Table, Counter, and "Grandfathered Bar Structure".

(1) A patron's table, counter, or "grandfathered bar structure" may be located in waiting, patio, garden and dining areas previously approved by the department.

(2) Consumption of any alcoholic beverage must be within a reasonable proximity of a patron's table, counter, or "grandfathered bar structure so as to ensure that the server can maintain a written beverage tab on the amount of alcoholic beverages consumed.

R81-10C-10. Grandfathered Bar Structures.

(1) Authority and Purpose.

(a) This rule is pursuant to 32B-6-902 which provides that:

(i) a bar structure, as defined in 32B-1-102(7), located in an establishment licensed as an on-premise beer retailer and operational as of August 1, 2011, may be "grandfathered" to

allow beer to continue to be stored or dispensed at the bar structure, and in some instances to be served to an adult patron seated at the bar structure;

(b) This rule is also pursuant to 32B-6-902 which provides that:

(i) a "grandfathered bar structure" is no longer "grandfathered" once the restaurant "remodels the grandfathered bar structure"; and

(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".

(2) Application of Rule.

(a) "remodels the grandfathered bar structure" for purposes of 32B-6-902(1)(b) means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to 32B-5-303(3), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

KEY: alcoholic beverages
November 26, 2013 **32B-2-202**
32B-5
32B-6-901 through 905

R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rule of the Division of Occupational and Professional Licensing.
R156-1-101. Title.

This rule is known as the "General Rule of the Division of Occupational and Professional Licensing."

R156-1-102. Definitions.

In addition to the definitions in Title 58, as used in Title 58 or this rule:

(1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification.

(2) "Aggravating circumstances" means any consideration or factors that may justify an increase in the severity of an action to be imposed upon an applicant or licensee. Aggravating circumstances include:

(a) prior record of disciplinary action, unlawful conduct, or unprofessional conduct;

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

(e) obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the Division;

(f) submission of false evidence, false statements or other deceptive practices during the disciplinary process including creating, destroying or altering records after an investigation has begun;

(g) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the Division;

(h) vulnerability of the victim;

(i) lack of good faith to make restitution or to rectify the consequences of the misconduct involved;

(j) illegal conduct, including the use of controlled substances; and

(k) intimidation or threats of withholding clients' records or other detrimental consequences if the client reports or testifies regarding the unprofessional or unlawful conduct.

(3) "Cancel" or "cancellation" means nondisciplinary action by the Division to rescind, repeal, annul, or void a license issued in error. Such action includes rescinding a license issued to an applicant whose payment of the required application fee is dishonored when presented for payment, or who has been issued a conditional license pending a criminal background check and the check cannot be completed due to the applicant's failure to resolve an outstanding warrant or to submit acceptable fingerprint cards.

(4) "Charges" means the acts or omissions alleged to constitute either unprofessional or unlawful conduct or both by a licensee, which serve as the basis to consider a licensee for inclusion in the diversion program authorized in Section 58-1-404.

(5) "Denial of licensure" means action by the Division refusing to issue a license to an applicant for initial licensure, renewal of licensure, reinstatement of licensure or relicensure.

(6)(a) "Disciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(2)(a) through (2)(b).

(b) "Disciplinary action", as used in Subsection 58-1-401(5), shall not be construed to mean an adverse licensure action taken in response to an application for licensure. Rather, as used in Subsection 58-1-401(5), it shall be construed to mean an adverse action initiated by the Division.

(7) "Diversion agreement" means a formal written agreement between a licensee, the Division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section 58-1-404.

(8) "Diversion committees" mean diversion advisory committees authorized by Subsection 58-1-404(2)(a)(i) and created under Subsection R156-1-404a.

(9) "Duplicate license" means a license reissued to replace a license which has been lost, stolen, or mutilated.

(10) "Emergency review committees" mean emergency adjudicative proceedings review committees created by the Division under the authority of Subsection 58-1-108(2).

(11) "Expire" or "expiration" means the automatic termination of a license which occurs:

(a) at the expiration date shown upon a license if the licensee fails to renew the license before the expiration date; or

(b) prior to the expiration date shown on the license:

(i) upon the death of a licensee who is a natural person;

(ii) upon the dissolution of a licensee who is a partnership, corporation, or other business entity; or

(iii) upon the issuance of a new license which supersedes an old license, including a license which:

(A) replaces a temporary license;

(B) replaces a student or other interim license which is limited to one or more renewals or other renewal limitation; or

(C) is issued to a licensee in an upgraded classification permitting the licensee to engage in a broader scope of practice in the licensed occupation or profession.

(12) "Inactive" or "inactivation" means action by the Division to place a license on inactive status in accordance with Sections 58-1-305 and R156-1-305.

(13) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the Division regulatory and compliance officer, or if the Division regulatory and compliance officer is unable to so serve for any reason, a Department administrative law judge, or if both the Division regulatory and compliance officer and a Department administrative law judge are unable to so serve for any reason, an alternate designated by the director in writing.

(14) "License" means a right or privilege to engage in the practice of a regulated occupation or profession as a licensee.

(15) "Limit" or "limitation" means nondisciplinary action placing either terms and conditions or restrictions or both upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(16) "Mitigating circumstances" means any consideration or factors that may justify a reduction in the severity of an action to be imposed upon an applicant or licensee.

(a) Mitigating circumstances include:

(i) absence of prior record of disciplinary action, unlawful conduct or unprofessional conduct;

(ii) personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;

(iii) timely and good faith effort to make restitution or rectify the consequences of the misconduct involved;

(iv) full and free disclosure to the client or Division prior to the discovery of any misconduct;

(v) inexperience in the practice of the occupation and profession provided such inexperience is not the result of failure to obtain appropriate education or consultation that the applicant or licensee should have known they should obtain prior to beginning work on a particular matter;

(vi) imposition of other penalties or sanctions if the other penalties and sanctions have alleviated threats to the public health, safety, and welfare; and

(vii) remorse.

(b) The following factors may not be considered as mitigating circumstances:

(i) forced or compelled restitution;

(ii) withdrawal of complaint by client or other affected persons;

(iii) resignation prior to disciplinary proceedings;

(iv) failure of injured client to complain;

(v) complainant's recommendation as to sanction; and

(vi) in an informal disciplinary proceeding brought pursuant to Subsection 58-1-501(2)(c) or (d) or Subsections R156-1-501(1) through (5):

(A) argument that a prior proceeding was conducted unfairly, contrary to law, or in violation of due process or any other procedural safeguard;

(B) argument that a prior finding or sanction was contrary to the evidence or entered without due consideration of relevant evidence;

(C) argument that a respondent was not adequately represented by counsel in a prior proceeding; and

(D) argument or evidence that former statements of a respondent made in conjunction with a plea or settlement agreement are not, in fact, true.

(17) "Nondisciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) through (2)(d).

(18) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the Division under the authority of Subsection 58-1-203(1)(f).

(19) "Probation" means disciplinary action placing terms and conditions upon a license;

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(20) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.

(21) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.

(22) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (26)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.

(23) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.

(24) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (25)(a), placed on a license issued to an applicant for licensure.

(25) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(26) "Revoke" or "revocation" means disciplinary action by the Division extinguishing a license.

(27) "Suspend" or "suspension" means disciplinary action by the Division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.

(28) "Surrender" means voluntary action by a licensee giving back or returning to the Division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.

(29) "Temporary license" or "temporary licensure" means a license issued by the Division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.

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

(31) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions of law and do not constitute a reprimand, but which may address any or all of the following:

(a) Division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of Division concerns.

R156-1-102a. Global Definitions of Levels of Supervision.

(1) Except as otherwise provided by statute or rule, the global definitions of levels of supervision herein shall apply to supervision terminology used in Title 58 and Title R156, and shall be referenced and used, to the extent practicable, in statutes and rules to promote uniformity and consistency.

(2) Except as otherwise provided by statute or rule, all unlicensed personnel specifically allowed to practice a regulated occupation or profession are required to practice under an appropriate level of supervision defined herein, as specified by the licensing act or licensing act rule governing each occupation or profession.

(3) Except as otherwise provided by statute or rule, all license classifications required to practice under supervision shall practice under an appropriate level of supervision defined herein, as specified by the licensing act or licensing act rule governing each occupation or profession.

(4) Levels of supervision are defined as follows:

(a) "Direct supervision" and "immediate supervision" mean the supervising licensee is present and available for face-to-face communication with the person being supervised when and where occupational or professional services are being provided.

(b) "Indirect supervision" means the supervising licensee:

(i) has given either written or verbal instructions to the person being supervised;

(ii) is present within the facility in which the person being supervised is providing services; and

(iii) is available to provide immediate face-to-face communication with the person being supervised as necessary.

(c) "General supervision" means that the supervising licensee:

(i) has authorized the work to be performed by the person being supervised;

(ii) is available for consultation with the person being supervised by personal face-to-face contact, or direct voice contact by telephone, radio or some other means, without regard to whether the supervising licensee is located on the same premises as the person being supervised; and

(iii) can provide any necessary consultation within a reasonable period of time and personal contact is routine.

(5) "Supervising licensee" means a licensee who has satisfied any requirements to act as a supervisor and has agreed to provide supervision of an unlicensed individual or a licensee in a classification or licensure status that requires supervision in accordance with the provisions of this chapter.

R156-1-103. Authority - Purpose.

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

R156-1-106. Division - Duties, Functions, and Responsibilities.

(1) In accordance with Subsection 58-1-106(2), the following responses to requests for lists of licensees may include multiple licensees per request and may include home telephone numbers, home addresses, and e-mail addresses, subject to the restriction that the addresses and telephone numbers shall only be used by a requester for purposes for which the requester is properly authorized:

(a) responses to requests from another governmental entity, government-managed corporation, a political subdivision, the federal government, another state, or a not-for-profit regulatory association to which the Division is a member;

(b) responses to requests from an occupational or professional association, private continuing education organizations, trade union, university, or school, for purposes of education programs for licensees;

(c) responses to a party to a prelitigation proceeding convened by the Division under Title 78, Chapter 14;

(d) responses to universities, schools, or research facilities for the purposes of research;

(e) responses to requests from licensed health care facilities or third party credentialing services, for the purpose of verifying licensure status for issuing credentialing or reimbursement purposes; and

(f) responses to requests from a person preparing for, participating in, or responding to:

(i) a national, state or local emergency;

(ii) a public health emergency as defined in Section 26-23b-102; or

(iii) a declaration by the President of the United States or other federal official requesting public health-related activities.

(2) In accordance with Subsection 58-1-106(3)(a) and (b), the Division may deny a request for an address or telephone number of a licensee to an individual who provides proper identification and the reason for the request, in writing, to the Division, if the reason for the request is deemed by the Division to constitute an unwarranted invasion of privacy or a threat to the public health, safety, and welfare.

(3) In accordance with Subsection 58-1-106(3)(c), proper identification of an individual who requests the address or telephone number of a licensee and the reason for the request, in writing, shall consist of the individual's name, mailing address, and daytime number, if available.

R156-1-107. Organization of Rules - Content, Applicability and Relationship of Rules.

(1) The rules and sections in Title R156 shall, to the extent practicable, follow the numbering and organizational scheme of the chapters in Title 58.

(2) Rule R156-1 shall contain general provisions applicable to the administration and enforcement of all occupations and professions regulated in Title 58.

(3) The provisions of the other rules in Title R156 shall contain specific or unique provisions applicable to particular occupations or professions.

(4) Specific rules in Title R156 may supplement or alter Rule R156-1 unless expressly provided otherwise in Rule R156-1.

R156-1-109. Presiding Officers.

In accordance with Subsection 63G-4-103(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

(1) The Division regulatory and compliance officer is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the Division regulatory and compliance officer is unable to so serve for any reason, a replacement specified by the director is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the director, or with regard to Title 58, Chapter 55, by the Construction Services Commission, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director or commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as provided in Subsection (4) or otherwise specified in writing by the director, the presiding officer for adjudicative proceedings before the Division are as follows:

(a) Director. The director shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(b), and R156-46b-201(2)(a) through (c), however resolved, including stipulated settlements and hearings; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(g), (j), (l), (m), (o), (p), and (q), and R156-46b-202(2)(a), (b)(ii), (c), and (d), however resolved, including memoranda of understanding and stipulated settlements.

(b) Bureau managers or program coordinators. Except for Title 58, Chapter 55, the bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsection R156-46b-201(1)(c), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-15A-210(1) through (4); and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (d),(f), (h), (j), (n) and R156-46b-202(2)(b)(iii).

(iii) At the direction of a bureau manager or program coordinator, a licensing technician or program technician may sign an informal order in the name of the licensing technician or program technician provided the wording of the order has been approved in advance by the bureau manager or program coordinator and provided the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR" immediately precedes the licensing technician's or program technician's signature.

(c) Citation Hearing Officer. The regulatory and compliance officer or other citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(k).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(e) for convening a board of appeal under Subsection 15A-1-207(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

(e) Residence Lien Recovery Fund Advisory Board. The

Residence Lien Recovery Fund Advisory Board shall be the presiding officer for adjudicative proceedings described in Subsection R156-46b-202(1)(f) that exceed the authority of the program coordinator, as delegated by the board, or are otherwise referred by the program coordinator to the board for action.

(4) Unless otherwise specified in writing by the Construction Services Commission, the presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, are established or clarified as follows:

(a) Commission.

(i) The commission shall be the presiding officer for all adjudicative proceedings under Title 58, Chapter 55, except as otherwise delegated by the commission in writing or as otherwise provided in this rule; provided, however, that all orders adopted by the commission as a presiding officer shall require the concurrence of the director.

(ii) Unless otherwise specified in writing by the commission, the commission is designated as the presiding officer:

(A) informal adjudicative proceedings described in Subsections R156-46b-202(1)(l), (m),(o), (p), and (q), and R156-46b-202(2)(b)(i), (c), and (d), however resolved, including memoranda of understanding and stipulated settlements;

(B) to serve as fact finder and adopt orders in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed under Title 58, Chapter 55; and

(C) to review recommended orders of a board, an administrative law judge, or other designated presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, and to adopt an order of its own. In adopting its order, the commission may accept, modify or reject the recommended order.

(iii) If the commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.

(iv) Orders of the commission shall address all issues before the commission and shall be based upon the record developed in an adjudicative proceeding conducted by the commission. In cases in which the commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the commission shall consist of the findings of fact, conclusions of law, and recommended order submitted to the commission by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

(v) The commission or its designee shall submit adopted orders to the director for the director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the director.

(vi) If the director or his designee refuses to concur in an adopted order of the commission or its designee, the director or his designee shall return the order to the commission or its designee with the reasons set forth in writing for the nonconcurrence therein. The commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return, provided that unless the director or his designee and the commission or its designee agree to an extension, any final order must be issued within 90 days of the date of the initial recommended order, or the adjudicative proceeding shall be dismissed. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the commission or its designee and the director or his designee to resolve the reasons for the director's refusal to concur in an adopted order.

(vii) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(viii) The final order issued by the commission and concurred in by the director may be appealed by filing a request for agency review with the executive director or his designee within the department.

(ix) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209.

(b) Director. The director is designated as the presiding officer for the concurrence role on disciplinary proceedings under Subsections R156-46b-202(2)(b)(i), (c), and (d) as required by Subsection 58-55-103(1)(b)(iv).

(c) Administrative Law Judge. Unless otherwise specified in writing by the commission, the department administrative law judge is designated as the presiding officer to conduct formal adjudicative proceedings before the commission and its advisory boards, as specified in Subsection 58-1-109(2).

(d) Bureau Manager. Unless otherwise specified in writing by the commission, the responsible bureau manager is designated as the presiding officer for conducting informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through (d),(h), and (n).

(e) At the direction of a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the wording of the order has been approved in advance by the bureau manager and provided the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.

(f) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

(g) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(h) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.

R156-1-110. Issuance of Investigative Subpoenas.

(1) All requests for subpoenas in conjunction with a Division investigation made pursuant to Subsection 58-1-106(1)(c), shall be made in writing to the investigative subpoena authority and shall be accompanied by an original of the proposed subpoena.

(a) Requests to the investigative subpoena authority shall contain adequate information to enable the subpoena authority to make a finding of sufficient need, including: the factual basis for the request, the relevance and necessity of the particular person, evidence, documents, etc., to the investigation, and an explanation why the subpoena is directed to the particular person upon whom it is to be served.

(b) Approved subpoenas shall be issued under the seal of the Division and the signature of the subpoena authority.

(2) The person who requests an investigative subpoena is responsible for service of the subpoena.

(3)(a) Service may be made:

(i) on a person upon whom a summons may be served pursuant to the Utah Rules of Civil Procedure; and

(ii) personally or on the agent of the person being served.

(b) If a party is represented by an attorney, service shall be made on the attorney.

(4)(a) Service may be accomplished by hand delivery or by mail to the last known address of the intended recipient.

(b) Service by mail is complete upon mailing.

(c) Service may be accomplished by electronic means.

(d) Service by electronic means is complete on transmission if transmission is completed during normal business hours at the place receiving the service; otherwise, service is complete on the next business day.

(5) There shall appear on all investigative subpoenas a certificate of service.

(6) The investigative subpoena authority may quash or modify an investigative subpoena if it is shown to be unreasonable or oppressive.

(a) A motion to quash or modify an investigative subpoena shall be filed with and served upon the subpoena authority no later than ten days after service of the investigative subpoena.

(b) A response by the Division to a motion to quash or modify an investigative subpoena shall be filed with and served upon the subpoena authority no later than five business days after receipt of a motion to quash or modify an investigative subpoena.

(c) No final reply by the recipient of an investigative subpoena who files a motion to quash or modify shall be permitted.

R156-1-205. Peer or Advisory Committees - Executive Director to Appoint - Terms of Office - Vacancies in Office - Removal from Office - Quorum Requirements - Appointment of Chairman - Division to Provide Secretary - Compliance with Open and Public Meetings Act - Compliance with Utah Administrative Procedures Act - No Provision for Per Diem and Expenses.

(1) The executive director shall appoint the members of peer or advisory committees established under Title 58 or Title R156.

(2) Except for ad hoc committees whose members shall be appointed on a case-by-case basis, the term of office of peer or advisory committee members shall be for four years. The executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the peer or advisory committee is appointed every two years.

(3) No peer or advisory committee member may serve more than two full terms, and no member who ceases to serve may again serve on the peer or advisory committee until after the expiration of two years from the date of cessation of service.

(4) If a vacancy on a peer or advisory committee occurs, the executive director shall appoint a replacement to fill the unexpired term. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(5) If a peer or advisory committee member fails or refuses to fulfill the responsibilities and duties of a peer or advisory committee member, including the attendance at peer committee meetings, the executive director may remove the peer or advisory committee member and replace the member in accordance with this section. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(6) Committee meetings shall only be convened with the approval of the appropriate board and the concurrence of the Division.

(7) Unless otherwise approved by the Division, peer or advisory committee meetings shall be held in the building occupied by the Division.

(8) A majority of the peer or advisory committee members shall constitute a quorum and may act in behalf of the peer or advisory committee.

(9) Peer or advisory committees shall annually designate one of their members to serve as peer or advisory committee chairman. The Division shall provide a Division employee to act as committee secretary to take minutes of committee meetings and to prepare committee correspondence.

(10) Peer or advisory committees shall comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings, in their meetings.

(11) Peer or advisory committees shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

(12) Peer or advisory committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in peer or advisory committees business, except as otherwise provided in Title 58 or Title R156.

R156-1-206. Emergency Adjudicative Proceeding Review Committees - Appointment - Terms - Vacancies - Removal - Quorum - Chairman and Secretary - Open and Public Meetings Act - Utah Administrative Procedures Act - Per Diem and Expenses.

(1) The chairman of the board for the profession of the person against whom an action is proposed may appoint the members of emergency review committees on a case-by-case or period-of-time basis.

(2) With the exception of the appointment and removal of members and filling of vacancies by the chairman of a board, emergency review committees, committees shall serve in accordance with Subsections R156-1-205(7), and (9) through (12).

R156-1-301. Application for Licensure - Filing Date - Applicable Requirements for Licensure - Issuance Date.

(1) The filing date for an application for licensure shall be the postmark date of the application or the date the application is received and date stamped by the Division, whichever is earlier.

(2) Except as otherwise provided by statute, rule or order, the requirements for licensure applicable to an application for licensure shall be the requirements in effect on the filing date of the application.

(3) The issuance date for a license issued to an applicant for licensure shall be as follows:

(a) the date the approval is input into the Division's electronic licensure database for applications submitted and processed manually; or

(b) the date printed on the verification of renewal certificate for renewal applications submitted and processed electronically via the Division's Internet Renewal System.

R156-1-302. Consideration of Good Moral Character, Unlawful Conduct, Unprofessional Conduct, or Other Mental or Physical Condition.

Pursuant to the provisions of Subsection 58-1-401(1) and (2), if an applicant or licensee has failed to demonstrate good moral character, has been involved in unlawful conduct, has been involved in unprofessional conduct, or has any other mental or physical condition which conduct or condition, when considered with the duties and responsibilities of the license held or to be held, demonstrates a threat or potential threat to

the public health, safety or welfare, the Division may consider various relevant factors in determining what action to take regarding licensure including the following:

(1) aggravating circumstances, as defined in Subsection R156-1-102(2);

(2) mitigating circumstances, as defined in Subsection R156-1-102(16);

(3) the degree of risk to the public health, safety or welfare;

(4) the degree of risk that a conduct will be repeated;

(5) the degree of risk that a condition will continue;

(6) the magnitude of the conduct or condition as it relates to the harm or potential harm;

(7) the length of time since the last conduct or condition has occurred;

(8) the current criminal probationary or parole status of the applicant or licensee;

(9) the current administrative status of the applicant or licensee;

(10) results of previously submitted applications, for any regulated profession or occupation;

(11) results from any action, taken by any professional licensing agency, criminal or administrative agency, employer, practice monitoring group, entity or association;

(12) evidence presented indicating that restricting or monitoring an individual's practice, conditions or conduct can protect the public health, safety or welfare;

(13) psychological evaluations; or

(14) any other information the Division or the board reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety or welfare.

R156-1-305. Inactive Licensure.

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee may not apply for inactive licensure status.

(2) The following licenses issued under Title 58 that are active in good standing may be placed on inactive licensure status:

(a) advanced practice registered nurse;
(b) architect;
(c) audiologist;
(d) certified nurse midwife;
(e) certified public accountant emeritus;
(f) certified registered nurse anesthetist;
(g) certified court reporter;
(h) certified social worker;
(i) chiropractic physician;
(j) clinical mental health counselor;
(k) clinical social worker;
(l) contractor;
(m) deception detection examiner;
(n) deception detection intern;
(o) dental hygienist;
(p) dentist;
(q) direct-entry midwife;
(r) genetic counselor;
(s) health facility administrator;
(t) hearing instrument specialist;
(u) landscape architect;
(v) licensed advanced substance use disorder counselor;
(w) marriage and family therapist;
(x) naturopath/naturopathic physician;
(y) optometrist;
(z) osteopathic physician and surgeon;
(aa) pharmacist;
(bb) pharmacy technician;
(cc) physical therapist;
(dd) physician assistant;
(ee) physician and surgeon;
(ff) podiatric physician;
(gg) private probation provider;
(hh) professional engineer;
(ii) professional land surveyor;
(jj) professional structural engineer;
(kk) psychologist;
(ll) radiology practical technician;
(mm) radiologic technologist;
(nn) security personnel;
(oo) speech-language pathologist;
(pp) substance use disorder counselor; and
(qq) veterinarian.

(3) Applicants for inactive licensure shall apply to the Division in writing upon forms available from the Division. Each completed application shall contain documentation of requirements for inactive licensure, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(4) If all requirements are met for inactive licensure, the Division shall place the license on inactive status.

(5) A license may remain on inactive status indefinitely except as otherwise provided in Title 58 or rules which implement Title 58.

(6) An inactive license may be activated by requesting activation in writing upon forms available from the Division. Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(7) An inactive licensee whose license is activated during the last 12 months of a renewal cycle shall, upon payment of the appropriate fees, be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their activated license.

(8) A Controlled Substance license may be placed on inactive status if attached to a primary license listed in Subsection R156-1-305(2) and the primary license is placed on inactive status.

R156-1-308a. Renewal Dates.

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE
RENEWAL DATES

(1)	Acupuncturist	May 31	even years
(2)	Advanced Practice Registered Nurse	January 31	even years
(3)	Advanced Practice Registered Nurse-CRNA	January 31	even years
(4)	Architect	May 31	even years
(5)	Athlete Agent	September 30	even years
(6)	Athletic Trainer	May 31	odd years
(7)	Audiologist	May 31	odd years
(8)	Barber	September 30	odd years
(9)	Barber School	September 30	odd years
(10)	Building Inspector	November 30	odd years
(11)	Burglar Alarm Security	March 31	odd years
(12)	C.P.A. Firm	September 30	even years
(13)	Certified Court Reporter	May 31	even years
(14)	Certified Dietitian	September 30	even years
(15)	Certified Medical Language Interpreter	March 31	odd years
(16)	Certified Nurse Midwife	January 31	even years
(17)	Certified Public Accountant	September 30	even years
(18)	Certified Social Worker	September 30	even years
(19)	Chiropractic Physician	May 31	even years
(20)	Clinical Mental Health Counselor	September 30	even years
(21)	Clinical Social Worker	September 30	even years
(22)	Construction Trades Instructor	November 30	odd years
(23)	Contractor	November 30	odd years
(24)	Controlled Substance License	Attached to primary license renewal	

(25)	Controlled Substance Precursor	May 31	odd years
(26)	Controlled Substance Handler	September 30	odd years
(27)	Cosmetologist/Barber	September 30	odd years
(28)	Cosmetology/Barber School	September 30	odd years
(29)	Deception Detection	November 30	even years
(30)	Dental Hygienist	May 31	even years
(31)	Dentist	May 31	even years
(32)	Direct-entry Midwife	September 30	odd years
(33)	Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	November 30	even years
(34)	Electrologist	September 30	odd years
(35)	Electrology School	September 30	odd years
(36)	Elevator Mechanic	November 30	even years
(37)	Environmental Health Scientist	May 31	odd years
(38)	Esthetician	September 30	odd years
(39)	Esthetics School	September 30	odd years
(40)	Factory Built Housing Dealer	September 30	even years
(41)	Funeral Service Director	May 31	even years
(42)	Funeral Service Establishment	May 31	even years
(43)	Genetic Counselor	September 30	even years
(44)	Health Facility Administrator	May 31	odd years
(45)	Hearing Instrument Specialist	September 30	even years
(46)	Internet Facilitator	September 30	odd years
(47)	Landscape Architect	May 31	even years
(48)	Licensed Advanced Substance Use Disorder Counselor	May 31	odd years
(49)	Licensed Practical Nurse	January 31	even years
(50)	Licensed Substance Use Disorder Counselor	May 31	odd years
(51)	Marriage and Family Therapist	September 30	even years
(52)	Massage Apprentice, Therapist	May 31	odd years
(53)	Master Esthetician	September 30	odd years
(54)	Medication Aide Certified	March 31	odd years
(55)	Nail Technologist	September 30	odd years
(56)	Nail Technology School	September 30	odd years
(57)	Naturopath/Naturopathic Physician	May 31	even years
(58)	Occupational Therapist	May 31	odd years
(59)	Occupational Therapy Assistant	May 31	odd years
(60)	Optometrist	September 30	even years
(61)	Osteopathic Physician and Surgeon, Online Prescriber	May 31	even years
(62)	Outfitter/Hunting Guide	May 31	even years
(63)	Pharmacy Class A-B-C-D-E, Online Contract Pharmacy	September 30	odd years
(64)	Pharmacist	September 30	odd years
(65)	Pharmacy Technician	September 30	odd years
(66)	Physical Therapist	May 31	odd years
(67)	Physical Therapist Assistant	May 31	odd years
(68)	Physician Assistant	May 31	even years
(69)	Physician and Surgeon, Online Prescriber	January 31	even years
(70)	Plumber Apprentice, Journeyman, Master, Residential Master, Residential Journeyman	November 30	even years
(71)	Podiatric Physician	September 30	even years
(72)	Pre Need Funeral Arrangement Sales Agent	May 31	even years
(73)	Private Probation Provider	May 31	odd years
(74)	Professional Engineer	March 31	odd years
(75)	Professional Geologist	March 31	odd years
(76)	Professional Land Surveyor	March 31	odd years
(77)	Professional Structural Engineer	March 31	odd years
(78)	Psychologist	September 30	even years
(79)	Radiologic Technologist, Radiology Practical Technician Radiologist Assistant	May 31	odd years
(80)	Recreational Therapy Therapeutic Recreation Technician, Therapeutic Recreation Specialist, Master Therapeutic Recreation Specialist	May 31	odd years
(81)	Registered Nurse	January 31	odd years
(82)	Respiratory Care Practitioner	September 30	even years
(83)	Security Personnel	November 30	even years
(84)	Social Service Worker	September 30	even years
(85)	Speech-Language Pathologist	May 31	odd years
(86)	Veterinarian	September 30	even years
(87)	Vocational Rehabilitation Counselor	March 31	odd years

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Associate Clinical Mental Health Counselor licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(b) Associate Marriage and Family Therapist licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Certified Advanced Substance Use Disorder Counselor licenses shall be issued for a period of four years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(d) Certified Advanced Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(e) Certified Substance Use Disorder Counselor licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(f) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(g) Certified Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed, whichever occurs first.

(h) Dental Educator licenses shall be issued for a two year renewable term, until the date of termination of employment with the dental school as an employee, or until the failure to maintain any of the requirements of Section 58-69-302.5, whichever occurs first.

(i) Funeral Service Apprentice licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(j) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

(k) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(l) Type I Foreign Trained Physician-Educator licenses

will be issued initially for a one-year term and thereafter renewed every two years following issuance.

(m) Type II Foreign Trained Physician-Educator licenses will be issued initially for an annual basis and thereafter renewed annually up to four times following issuance if the licensee continues to satisfy the requirements described in Subsection 58-67-302.7(3) and completes the required continuing education requirements established under Section 58-67-303.

R156-1-308b. Renewal Periods - Adjustment of Renewal Fees for an Extended or Shortened Renewal Period.

(1) Except as otherwise provided by statute or as required to establish or reestablish a renewal period, each renewal period shall be for a period of two years.

(2) The renewal fee for a renewal period which is extended or shortened by more than one month to establish or reestablish a renewal period shall increased or decreased proportionately.

R156-1-308c. Renewal of Licensure Procedures.

The procedures for renewal of licensure shall be as follows:

(1) The Division shall send a renewal notice to each licensee at least 60 days prior to the expiration date shown on the licensee's license. The notice shall include directions for the licensee to renew the license via the Division's website.

(2) Except as provided in Subsection(4), renewal notices shall be sent by mail deposited in the post office with postage prepaid, addressed to the last mailing address shown on the Division's automated license system.

(3) In accordance with Subsection 58-1-301.7(1), each licensee is required to maintain a current mailing address with the Division. In accordance with Subsection 58-1-301.7(2), mailing to the last mailing address furnished to the Division constitutes legal notice.

(4) If a licensee has authorized the Division to send a renewal notice by email, a renewal notice may be sent by email to the last email address shown on the Division's automated license system. If selected as the exclusive method of receipt of renewal notices, such mailing shall constitute legal notice. It shall be the duty and responsibility of each licensee who authorizes the Division to send a renewal notice by email to maintain a current email address with the Division.

(5) Renewal notices shall provide that the renewal requirements are outlined in the online renewal process and that each licensee is required to document or certify that the licensee meets the renewal requirements prior to renewal.

(6) Renewal notices shall advise each licensee that a license that is not renewed prior to the expiration date shown on the license automatically expires and that any continued practice without a license constitutes a criminal offense under Subsection 58-1-501(1)(a).

(7) Licensees licensed during the last 12 months of a renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their license.

R156-1-308d. Waiver of Continuing Education Requirements - Renewal Requirements.

(1)(a) In accordance with Subsection 58-1-203(1)(g), a licensee may request a waiver of any continuing education requirement established under this title or an extension of time to complete any requirement on the basis that the licensee was unable to complete the requirement due to a medical or related condition, humanitarian or ecclesiastical services, extended presence in a geographical area where continuing education is not available, etc.

(b) A request must be submitted no later than the deadline for completing any continuing education requirement.

(c) A licensee submitting a request has the burden of proof and must document the reason for the request to the satisfaction of the Division.

(d) A request shall include the beginning and ending dates during which the licensee was unable to complete the continuing education requirement and a detailed explanation of the reason why. The explanation shall include the extent and duration of the impediment, extent to which the licensee continued to be engaged in practice of his profession, the nature of the medical condition, the location and nature of the humanitarian services, the geographical area where continuing education is not available, etc.

(e) The Division may require that a specified number of continuing education hours, courses, or both, be obtained prior to reentering the practice of the profession or within a specified period of time after reentering the practice of the profession, as recommended by the appropriate board, in order to assure competent practice.

(f) While a licensee may receive a waiver from meeting the minimum continuing education requirements, the licensee shall not be exempted from the requirements of Subsection 58-1-501(2)(i), which requires that the licensee provide services within the competency, abilities and education of the licensee. If a licensee cannot competently provide services, the waiver of meeting the continuing education requirements may be conditioned upon the licensee limiting practice to areas in which the licensee has the required competency, abilities and education.

R156-1-308e. Automatic Expiration of Licensure Upon Dissolution of Licensee.

(1) A license that automatically expires prior to the expiration date shown on the license due to the dissolution of the licensee's registration with the Division of Corporations, with the registration thereafter being retroactively reinstated pursuant to Section 16-10a-1422, shall:

(a) upon written application for reinstatement of licensure submitted prior to the expiration date shown on the license, be retroactively reinstated to the date of expiration of licensure; and

(b) upon written application for reinstatement submitted after the expiration date shown on the current license, be reinstated on the effective date of the approval of the application for reinstatement, rather than relating back retroactively to the date of expiration of licensure.

R156-1-308f. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal of Licensure During Adjudicative Proceedings - Conditional Initial, Renewal, or Reinstatement Licensure During Audit or Investigation.

(1) When an initial, renewal or reinstatement applicant under Subsections 58-1-301(2) through (3) or 58-1-308(5) or (6)(b) is selected for audit or is under investigation, the Division may conditionally issue an initial license to an applicant for initial licensure, or renew or reinstate the license of an applicant pending the completion of the audit or investigation.

(2) The undetermined completion of a referenced audit or investigation rather than the established expiration date shall be indicated as the expiration date of a conditionally issued, renewed, or reinstated license.

(3) A conditional issuance, renewal, or reinstatement shall not constitute an adverse licensure action.

(4) Upon completion of the audit or investigation, the Division shall notify the initial license, renewal, or reinstatement applicant whether the applicant's license is unconditionally issued, renewed, reinstated, denied, or partially denied or reinstated.

(5) A notice of unconditional denial or partial denial of licensure to an applicant the Division conditionally licensed, renewed, or reinstated shall include the following:

(a) that the applicant's unconditional initial issuance, renewal, or reinstatement of licensure is denied or partially denied and the basis for such action;

(b) the Division's file or other reference number of the audit or investigation; and

(c) that the denial or partial denial of unconditional initial licensure, renewal, or reinstatement of licensure is subject to review and a description of how and when such review may be requested.

R156-1-308g. Reinstatement of Licensure which was Active and in Good Standing at the Time of Expiration of Licensure - Requirements.

The following requirements shall apply to reinstatement of licensure which was active and in good standing at the time of expiration of licensure:

(1) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the Division between the date of the expiration of the license and 30 days after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the Division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and a late fee.

(2) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the Division between 31 days after the expiration of the license and two years after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the Division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and reinstatement fee.

(3) In accordance with Subsection 58-1-308(6)(a), if an application for reinstatement is received by the Division more than two years after the date the license expired and the applicant has not been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States during the time the license was expired, the applicant shall:

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

(b) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested; and

(c) pay the established license fee for a new applicant for licensure.

(4) In accordance with Subsection 58-1-308(6)(b), if an application for reinstatement is received by the Division more than two years after the date the license expired but the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States shall:

(a) provide documentation that the applicant has continuously, since the expiration of the applicant's license in Utah, been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

(b) provide documentation that the applicant has completed or is in compliance with any renewal qualifications;

(c) provide documentation that the applicant's application was submitted within six months after reestablishing domicile within Utah or terminating full-time government service; and

(d) pay the established license renewal fee and the reinstatement fee.

R156-1-308h. Reinstatement of Restricted, Suspended, or Probationary Licensure During Term of Restriction, Suspension, or Probation - Requirements.

(1) Reinstatement of restricted, suspended, or probationary licensure during the term of limitation, suspension, or probation shall be in accordance with the disciplinary order which imposed the discipline.

(2) Unless otherwise specified in a disciplinary order imposing restriction, suspension, or probation of licensure, the disciplined licensee may, at reasonable intervals during the term of the disciplinary order, petition for reinstatement of licensure.

(3) Petitions for reinstatement of licensure during the term of a disciplinary order imposing restriction, suspension, or probation, shall be treated as a request to modify the terms of the disciplinary order, not as an application for licensure.

R156-1-308i. Reinstatement of Restricted, Suspended, or Probationary Licensure After the Specified Term of Suspension of the License or After the Expiration of Licensure in a Restricted, Suspended or Probationary Status - Requirements.

Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a license after the specified term of suspension of the license or after the expiration of the license in a restricted, suspended or probationary status shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and conditions of license reinstatement;

(2) pay the established license renewal fee and the reinstatement fee;

(3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession for which the applicant was suspended, restricted, or placed on probation; and

(4) pay any fines or citations owed to the Division prior to the expiration of license.

R156-1-308j. Relicensure Following Revocation of Licensure - Requirements.

An applicant for relicensure following revocation of licensure shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(2) pay the established license fee for a new applicant for licensure; and

(3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was revoked.

R156-1-308k. Relicensure Following Surrender of Licensure - Requirements.

The following requirements shall apply to relicensure applications following the surrender of licensure:

(1) An applicant who surrendered a license that was active and in good standing at the time it was surrendered shall meet the requirements for licensure listed in Sections R156-1-308a through R156-1-308l.

(2) An applicant who surrendered a license while the

license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(b) pay the established license fee for a new applicant for licensure;

(c) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was surrendered;

(d) pay any fines or citations owed to the Division prior to the surrender of license.

R156-1-308l. Reinstatement of Licensure and Relicensure - Term of Licensure.

Except as otherwise governed by the terms of an order issued by the Division, a license issued to an applicant for reinstatement or relicensure issued during the last 12 months of a renewal cycle shall, upon payment of the appropriate fees, be issued for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than requiring the licensee to immediately renew their reinstated or relicensed license.

R156-1-310. Cheating on Examinations.

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the Division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

Cheating is defined as the use of any means or instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

(a) communication between examinees inside of the examination room or facility during the course of the examination;

(b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;

(c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;

(d) permitting anyone to copy answers to the examination;

(e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;

(f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;

(g) obtaining, using, buying, selling, possession of or having access to a copy of any portion of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the Division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;

(b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the Division may consider the examination to have been failed by the applicant or licensee because of the cheating; or

(c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

(d) If cheating is detected after the examination, the Division shall make appropriate inquiry to determine the facts concerning the cheating and shall thereafter take appropriate action.

(e) Upon determination that an applicant has cheated on an examination, the applicant may be denied the privilege of retaking the examination for a reasonable period of time, and the Division may deny the applicant a license and may establish conditions the applicant must meet to qualify for a license including the earliest date on which the Division will again consider the applicant for licensure.

R156-1-404a. Diversion Advisory Committees Created.

(1) There are created diversion advisory committees of at least three members for the professions regulated under Title 58. The diversion committees are not required to be impaneled by the director until the need for the diversion committee arises. Diversion committees may be appointed with representatives from like professions providing a multi-disciplinary committee.

(2) Committee members are appointed by and serve at the pleasure of the director.

(3) A majority of the diversion committee members shall constitute a quorum and may act on behalf of the diversion committee.

(4) Diversion committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in diversion committees business.

R156-1-404b. Diversion Committees Duties.

The duties of diversion committees shall include:

(1) reviewing the details of the information regarding licensees referred to the diversion committee for possible diversion, interviewing the licensees, and recommending to the director whether the licensees meet the qualifications for diversion and if so whether the licensees should be considered for diversion;

(2) recommending to the director terms and conditions to be included in diversion agreements;

(3) supervising compliance with all terms and conditions of diversion agreements;

(4) advising the director at the conclusion of a licensee's diversion program whether the licensee has completed the terms of the licensee's diversion agreement; and

(5) establishing and maintaining continuing quality review of the programs of professional associations and/or private organizations to which licensees approved for diversion may

enroll for the purpose of education, rehabilitation or any other purpose agreed to in the terms of a diversion agreement.

R156-1-404c. Diversion - Eligible Offenses.

In accordance with Subsection 58-1-404(4), the unprofessional conduct which may be subject to diversion is set forth in Subsections 58-1-501(2)(e) and (f).

R156-1-404d. Diversion - Procedures.

(1) Diversion committees shall complete the duties described in Subsections R156-1-404b(1) and (2) no later than 60 days following the referral of a licensee to the diversion committee for possible diversion.

(2) The director shall accept or reject the diversion committee's recommendation no later than 30 days following receipt of the recommendation.

(3) If the director finds that a licensee meets the qualifications for diversion and should be diverted, the Division shall prepare and serve upon the licensee a proposed diversion agreement. The licensee shall have a period of time determined by the diversion committee not to exceed 30 days from the service of the proposed diversion agreement to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsections 58-1-404.

(4) If a final diversion agreement is not reached with the director within 30 days from service of the proposed diversion agreement, the Division shall pursue appropriate disciplinary action against the licensee in accordance with Section 58-1-108.

(5) In accordance with Subsection 58-1-404(5), a licensee may be represented, at the licensee's discretion and expense, by legal counsel during negotiations for diversion, at the time of execution of the diversion agreement and at any hearing before the director relating to a diversion program.

R156-1-404e. Diversion - Agreements for Rehabilitation, Education or Other Similar Services or Coordination of Services.

(1) The Division may enter into agreements with professional or occupational organizations or associations, education institutions or organizations, testing agencies, health care facilities, health care practitioners, government agencies or other persons or organizations for the purpose of providing rehabilitation, education or any other services necessary to facilitate an effective completion of a diversion program for a licensee.

(2) The Division may enter into agreements with impaired person programs to coordinate efforts in rehabilitating and educating impaired professionals.

(3) Agreements shall be in writing and shall set forth terms and conditions necessary to permit each party to properly fulfill its duties and obligations thereunder. Agreements shall address the circumstances and conditions under which information concerning the impaired licensee will be shared with the Division.

(4) The cost of administering agreements and providing the services thereunder shall be borne by the licensee benefiting from the services. Fees paid by the licensee shall be reasonable and shall be in proportion to the value of the service provided. Payments of fees shall be a condition of completing the program of diversion.

(5) In selecting parties with whom the Division shall enter agreements under this section, the Division shall ensure the parties are competent to provide the required services. The Division may limit the number of parties providing a particular service within the limits or demands for the service to permit the responsible diversion committee to conduct quality review of the programs given the committee's limited resources.

R156-1-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct;

(2) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company;

(3) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd." in the commercial use of the name of the limited partnership;

(4) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation;

(5) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing; or

(6) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", 2004, established by the Federation of State Medical Boards, which is hereby adopted and incorporated by reference.

R156-1-502. Administrative Penalties.

(1) In accordance with Subsection 58-1-401(5) and Section 58-1-502, except as otherwise provided by a specific chapter under Title R156, the following fine schedule shall apply to citations issued under the referenced authority:

TABLE

FINE SCHEDULE	
FIRST OFFENSE	
Violation	Fine
58-1-501(1)(a)	$ 500.00
58-1-501(1)(c)	$ 800.00
58-1-501(2)(o)	$ 0 - $250.00
SECOND OFFENSE	
58-1-501(1)(a)	$1,000.00
58-1-501(1)(c)	$1,600.00
58-1-501(2)(o)	$251.00 - $500.00
THIRD OFFENSE	
Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-1-502(2)(j)(iii).	

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

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

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

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-1-503. Reporting Disciplinary Action.

The Division may report disciplinary action to other state or federal governmental entities, state and federal data banks, the media, or any other person who is entitled to such information under the Government Records Access and Management Act.

R156-1-506. Supervision of Cosmetic Medical Procedures.

The 80 hours of documented education and experience required under Subsection 58-1-506(2)(f)(iii) to maintain competence to perform nonablative cosmetic medical procedures is defined to include the following:

(1) the appropriate standards of care for performing nonablative cosmetic medical procedures;

(2) physiology of the skin;

(3) skin typing and analysis;

(4) skin conditions, disorders, and diseases;

(5) pre and post procedure care;

(6) infection control;

(7) laser and light physics training;

(8) laser technologies and applications;

(9) safety and maintenance of lasers;

(10) cosmetic medical procedures an individual is permitted to perform under this title;

(11) recognition and appropriate management of complications from a procedure; and

(12) current cardio-pulmonary resuscitation (CPR) certification for health care providers from one of the following organizations:

(a) American Heart Association;

(b) American Red Cross or its affiliates; or

(c) American Safety and Health Institute.

KEY: diversion programs, licensing, supervision, evidentiary restrictions

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Notice of Continuation January 5, 2012 58-1-308

58-1-501(2)

R156. Commerce, Occupational and Professional Licensing.
R156-37f. Controlled Substance Database Act Rule.
R156-37f-101. Title.

This rule shall be known as the "Controlled Substance Database Act Rule".

R156-37f-102. Definitions.

In addition to the definitions in Sections 58-17b-102, 58-37-2 and 58-37f-102, as used in this chapter:

(1) "ASAP" means the American Society for Automation in Pharmacy system.

(2) "DEA" means Drug Enforcement Administration.

(3) "NABP" means the National Association of Boards of Pharmacy.

(4) "NCPDP" means National Council for Prescription Drug Programs.

(5) "NDC" means National Drug Code.

(6) "Research facility" means a facility in which research takes place that has policies and procedures describing such research.

(7) "Rx" means a prescription.

R156-37f-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 37f.

R156-37f-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.

R156-37f-203. Submission, Collection, and Maintenance of Data.

(1) The format for submission to the Database shall be in accordance with the ASAP Telecommunications Format for Controlled Substances published by the American Society for Automation in Pharmacy, revised May 1995 (ASAP Format), which is hereby incorporated by reference. The Division may approve alternative formats substantially similar to this standard. This standard is further classified by the Database as follows:

(a) Mandatory Data. The following Database data fields are mandatory:

(i) pharmacy NABP or NCPDP number;

(ii) patient birth date;

(iii) patient gender code;

(iv) date filled;

(v) Rx number;

(vi) new-refill code;

(vii) metric quantity;

(viii) days supply;

(ix) NDC number;

(x) prescriber identification number;

(xi) date Rx written;

(xii) number refills authorized;

(xiii) patient last name;

(xiv) patient first name; and

(xv) patient street address, including zip code (extended).

(b) Preferred Data. The following Database data fields are strongly suggested:

(i) customer identification number;

(ii) compound code;

(iii) DEA suffix;

(iv) Rx origin code;

(v) customer location;

(vi) alternate prescriber number; and

(vii) state in which the prescription is filled.

(c) Optional Data. All other data fields in the ASAP Format not included in Subsections (a) and (b) are optional.

(2) Upon request, the Division will consider approving alternative formats, or adjustments to the ASAP Format, as might be necessary due to the capability or functionality of Database collection instruments. A proposed alternative format shall contain all mandatory data elements.

(3) In accordance with Subsection 58-37f-203(1)(c), the data required in Subsection (1) shall be submitted to the Database through one of the following methods:

(a) electronic data sent via telephone modem;

(b) electronic data submitted on floppy disk or compact disc (CD);

(c) if approved by the Database staff prior to submission, electronic data sent via encrypted electronic mail (e-mail);

(d) electronic data sent via a secured internet transfer method, including but not limited to sFTP site transfer and HyperSend; or

(e) any other electronic method approved by the Database manager prior to submission.

(4) The required information may be submitted on paper if:

(a) the pharmacy or pharmacy group submits a written request to the Division and receives prior approval for a paper submission; and

(b)(i) the pharmacy or pharmacy group has no computerized record keeping system upon which the data can be electronically recorded; or

(ii) The pharmacy or pharmacy group is unable to conform its submission(s) to an electronic format without incurring undue financial hardship.

(5)(a) Each pharmacy or pharmacy group shall submit all data collected at least once every seven days on a weekly reporting cycle established by the pharmacy.

(i) If the data is submitted by a single pharmacy entity, the data shall be submitted in chronological order according to the date each prescription was filled.

(ii) If the data is submitted by a pharmacy group, the data is required to be sorted by individual pharmacy within the group, and the data of each individual pharmacy within the group is required to be submitted in chronological order according to the date each prescription was filled.

(b)(i) A Class A, B, or D pharmacy or pharmacy group that has a controlled substance license but has not dispensed a controlled substance during the preceding seven days shall:

(A) submit a null report stating that no controlled substance was dispensed during the preceding seven days; or

(B) comply with this Subsection (5)(c).

(ii) A null report may be submitted on paper without prior approval of the Division. The Division shall facilitate electronic null reporting as resources permit.

(c)(i) A Class A, B, or D pharmacy or pharmacy group that has a controlled substance license but is not dispensing controlled substances and does not anticipate doing so in the immediate future may submit a certification of such, in a form preapproved by the Division, in lieu of weekly null reporting.

(ii) The certification must be resubmitted at the end of each calendar year.

(iii) If a pharmacy or pharmacy group that has submitted a certification under this Subsection (5)(c) dispenses a controlled substance:

(A) the certification shall immediately and automatically terminate;

(B) the pharmacy or pharmacy group shall provide written notice of the certification termination to the Division within seven days of dispensing the controlled substance; and

(C) the Database reporting requirements shall be applicable to the pharmacy or pharmacy group immediately upon the dispensing of the controlled substance.

(6) The pharmacist-in-charge, or his or her designee, for each reporting pharmacy shall submit its report, regardless of the reporting method, on a data transmission form (DTF)

substantially equivalent to the DTF approved by the Division. The DTF may be mailed, faxed, emailed, or electronically uploaded to the Database. A copy of the DTF is required to be kept at the pharmacy unless an alternate location has been designated by the reporting pharmacy and approved by the Division. The DTF shall include the following information:

(a) pharmacy name;
(b) pharmacy facsimile (fax) and voice phone numbers;
(c) pharmacy e-mail address;
(d) pharmacy NABP/NCPDP number;
(e) period of time covered by each submission of data;
(f) number of prescriptions in the submission;
(g) submitting pharmacist's signature attesting to the accuracy of the report; and
(h) date of the report submission.

R156-37f-301. Access to Database Information.

In accordance with Subsections 58-37f-301(1)(a) and (b):

(1) The Division Director shall designate in writing those individuals employed by the Division who shall have access to the information in the Database (Database staff).

(2)(a) A request for information from the Database may be made:

(i) directly to the Database by electronic submission, if the requester is registered to use the Database; or

(ii) by oral or written submission to the Database staff, if the requester is not registered to use the Database.

(b) An oral request may be submitted by telephone or in person.

(c) A written request may be submitted by facsimile, email, regular mail, or in person except as otherwise provided herein.

(d) The Division may in its discretion require a requestor to verify the requestor's identity.

(3) The following Database information may be disseminated to a verified requestor who is permitted to obtain the information:

(a) dispensing/reporting pharmacy ID number/name;
(b) subject's birth date;
(c) date prescription was filled;
(d) prescription (Rx) number;
(e) metric quantity;
(f) days supply;
(g) NDC code/drug name;
(h) prescriber ID/name;
(i) date prescription was written;
(j) subject's last name;
(k) subject's first name; and
(l) subject's street address;

(4) Federal, state and local law enforcement authorities and state and local prosecutors requesting information from the Database under Subsection 58-37f-301(2)(d) must provide a valid case number of the investigation or prosecution.

(5) An individual whose records are contained within the Database may not receive an accounting of persons or entities that have requested or received Database information about the individual.

(6) An individual whose records are contained within the Database may obtain his or her own information and records by:

(a) personally appearing before the Database staff with government-issued picture identification confirming the requester's identity; or

(b) submitting a signed and notarized request that includes the requester's:

(i) full name;
(ii) complete home address;
(iii) date of birth; and
(iv) driver license or state identification card number.

(7) A requester holding power of attorney for an individual whose records are contained within the Database may obtain the individual's information and records by:

(a) personally appearing before the Database staff with government-issued picture identification confirming the requester's identity; and

(b) providing:

(i) an original, properly executed power of attorney designation; and

(ii) a signed and notarized request, executed by the individual whose information is contained within the Database, and including the individual's:

(A) full name;
(B) complete home address;
(C) date of birth; and
(D) driver license or state identification card number verifying the individual's identity.

(8) A requestor who is the legal guardian of a minor or incapacitated individual whose records are contained within the Database may obtain the individual information and records by:

(a) personally appearing before the Database staff with government-issued picture identification confirming the requester's identity;

(b) submitting the minor or incapacitated individual's:

(i) full name;
(ii) complete home address;
(iii) date of birth; and
(iv) if applicable, state identification card number verifying the individual's identity; and

(c) submitting legal proof that the requestor is the guardian of the individual who is the subject of the request for information from the Database.

(9) A requestor who has a release-of-records from an individual whose records are contained within the Database may obtain the individual's information and records by:

(a) submitting a request in writing;

(b) submitting an original, signed and notarized release-of-records in a format acceptable to the Database staff, identifying the purpose of the release; and

(c) submitting the individual's:

(i) full name;
(ii) complete home address;
(iii) telephone number;
(iv) date of birth; and
(v) driver license or state identification card number verifying the identity of the person who is the subject of the request.

(10) An employee of a licensed practitioner who is authorized to prescribe controlled substances may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(d)if, prior to making the request:

(a) the licensed practitioner has provided to the Division a written designation that includes the designating practitioner's DEA number and the designated employee's:

(i) full name;
(ii) complete home address;
(iii) e-mail address;
(iv) date of birth; and
(v) driver license number or state identification card number;

(b) the designated employee has registered for an account for access to the Database and provided a unique user identification and password;

(c) the designated employee has passed a Database background check of available criminal court and Database records; and

(d) the Database has issued the designated employee a user personal identification number (PIN) and activated the employee's Database account. (11) An employee of a business that employs a licensed practitioner who is authorized to prescribe controlled substances may obtain Database

information to the extent permissible under Subsection 58-37f-301(2)(d) if, prior to making the request:

(a) the licensed practitioner and employing business have provided to the Division a written designation that includes:

(i) the designating practitioner's DEA number;

(ii) the name of the employing business; and

(iii) the designated employee's:

(A) full name;

(B) complete home address;

(C) e-mail address;

(D) date of birth; and

(E) driver license number or state identification card number;

(b) the designated employee has registered for an account for access to the Database and provided a unique user identification and password;

(c) the designated employee has passed a Database background check of available criminal court and Database records; and

(d) the Database has issued the designated employee a user personal identification number (PIN) and activated the employee's Database account.

(12) An individual who is employed in the emergency room of a hospital that employs a licensed practitioner who is authorized to prescribe controlled substances may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(d) if, prior to making the request:

(a) the practitioner and the hospital operating the emergency room have provided to the Division a written designation that includes:

(i) the designating practitioner's DEA number;

(ii) the name of the hospital;

(iii) the names of all emergency room practitioners employed at the hospital; and

(iv) the designated employee's:

(A) full name;

(B) complete home address;

(C) e-mail address;

(C) date of birth; and

(D) driver license number or state identification card number;

(b) the designated employee has registered for an account for access to the Database and provided a unique user identification and password;

(c) the designated employee has passed a Database background check of available criminal court and Database records; and

(d) the Database has issued the designated employee a user personal identification number (PIN) and activated the employee's Database account.

(13) The Utah Department of Health may access Database information for purposes of scientific study regarding public health. To access information, the scientific investigator shall:

(a) demonstrate to the satisfaction of the Division that the research is part of an approved project of the Utah Department of Health;

(b) provide a description of the research to be conducted, including:

(i) a research protocol for the project; and

(ii) a description of the data needed from the Database to conduct that research;

(c) provide assurances and a plan that demonstrates all Database information will be maintained securely, with access being strictly restricted to the requesting scientific investigator;

(d) provide for electronic data to be stored on a secure database computer system with access being strictly restricted to the requesting scientific investigator; and

(e) pay all relevant expenses for data transfer and manipulation.

(14) Database information that may be disseminated under Section 58-37f-301 may be disseminated by the Database staff either:

(a) verbally;

(b) by facsimile;

(c) by email;

(d) by U.S. mail; or

(e) where adequate technology is in place to ensure that a record will not be compromised, intercepted, or misdirected, by electronic access.

R156-37f-801a. Reporting of Information by Pharmacies Participating in the Pilot Program for Real-time Reporting.

(1) In accordance with Subsection 58-37f-801(1)(a), the pilot area is designated as the entire state of Utah. Any pharmacy or pharmacy group that submits information to the Database is eligible and may participate in the Real-time Pilot Program.

(2) In accordance with Subsection 58-37f-801(8), each licensed pharmacy participating in the pilot program for real-time reporting shall, in conjunction with controlled substance point of sale, submit from the pharmacy's database to the Controlled Substance Database, the information required by Section 58-37f-203 as implemented by Section R156-37f-203, through real-time interface and reporting software developed by the Division's contract provider.

R156-37f-801b. Access to Information in the Database Submitted by Pharmacies Participating in the Pilot Program for Real-time Reporting.

In accordance with Subsection 58-37f-801(8), access to information in the Database submitted by pharmacies participating in the pilot program for real-time reporting shall be the same as set forth in Section 58-37f-301 as implemented by Section R156-37f-301.

KEY: controlled substance database, licensing
November 21, 2013 **58-1-106(1)(a)**
58-37f-301(1)

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

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

R156-46b-103. Authority - Purpose.

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

(a) classifying Division adjudicative proceedings;

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

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

R156-46b-201. Formal Adjudicative Proceedings.

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

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

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

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

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

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

(i) revocation of licensure;

(ii) suspension of licensure;

(iii) restricted licensure;

(iv) probationary licensure;

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

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

(vii) issuance of a public reprimand;

(b) unilateral modification of a disciplinary order; and

(c) termination of diversion agreements.

R156-46b-202. Informal Adjudicative Proceedings.

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

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

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

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

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

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

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

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

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

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

(j) matters relating to diversion program;

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

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

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

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

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

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

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

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

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

(b) disciplinary proceedings against:

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

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

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

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

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

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

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

R156-46b-301. Designation.

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

R156-46b-401. In General.

(1) The procedures for formal Division adjudicative proceedings are set forth in Sections 63G-4-204 through 63G-4-208, Rule R151-4-114, and this rule.

(2) The procedures for informal Division adjudicative proceedings are set forth in Section 63G-4-203, Rule R151-4-114, and this rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R156-46b-405. Informal Agency Advice.

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

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

KEY: administrative procedures, government hearings, occupational licensing
November 21, 2013 63G-4-102(6)
Notice of Continuation January 31, 2011 58-1-106(1)(a)

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 or 5" 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.

(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 or 5 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 or 5 diagnosis and the determination of an individualized treatment plan.

(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; and

(b) general psychology.

(2) In accordance with Subsection 58-60-506(5)(a)(ii), completion of the equivalent of an associate's degree includes not less than 90 quarter or 60 semester credit hours of course work from accredited institutions of higher education that have accreditation recognized by the Council for Higher Education Accreditation of the American Council on Education (CHEA).

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 the program;

(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

November 21, 2013	**58-60-501**
Notice of Continuation January 31, 2011	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-61. Psychologist Licensing Act Rule.
R156-61-101. Title.

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

R156-61-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 61, as used in Title 58, Chapters 1 and 61 or this rule:

(1) "Approved diagnostic and statistical manual for mental disorders" means the following:

(a) Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition: DSM-5 or Fourth Edition: DSM-IV published by the American Psychiatric Association;

(b) 2013 ICD-9-CM for Physicians, Volumes 1 and 2 Professional Edition published by the American Medical Association; or

(c) ICD-10-CM 2013: The Complete Official Draft Code Set published by the American Medical Association.

(2) "CoA" means Committee on Accreditation of the American Psychological Association.

(3) "Direct supervision" of a supervisee in training, as used in Subsection 58-61-304(1)(f), means:

(a) a supervisor meeting with the supervisee when both are physically present in the same room at the same time; or

(b) a supervisor meeting with the supervisee remotely via real-time electronic methods that allow for visual and audio interaction between the supervisor and supervisee under the following conditions:

(i) the supervisor and supervisee shall enter into a written supervisory agreement which, at a minimum, establishes the following:

(A) frequency, duration, reason for, and objectives of electronic meetings between the supervisor and supervisee;

(B) a plan to ensure accessibility of the supervisor to the supervisee despite the physical distance between their offices;

(C) a plan to address potential conflicts between clinical recommendations of the supervisor and the representatives of the agency employing the supervisee;

(D) a plan to inform a supervisee's client or patient and employer regarding the supervisee's use of remote supervision;

(E) a plan to comply with the supervisor's duties and responsibilities as established in rule; and

(F) a plan to physically visit the location where the supervisee practices on at least a quarterly basis during the period of supervision or at a lesser frequency as approved by the Division in collaboration with the Board;

(ii) the supervisee submits the supervisory agreement to the Division and obtains approval before counting direct supervision completed via live real-time methods toward the 40 hour direct supervision requirement; and

(iii) in evaluating a supervisory agreement, the Division shall consider whether it adequately protects the health, safety, and welfare of the public.

(4)(a) "Predoctoral internship" refers to a formal training program that meets the minimum requirements of the Association of Psychology Postdoctoral and Internship Centers (APPIC) offered to culminate a doctoral degree in clinical, counseling, or school psychology.

(b) A training program may be a full-time one year program or a half-time two year program.

(5)(a) "Program accredited by the CoA", as used in Subsections R156-61-302a(1), means a psychology department program that is accredited at the time of completion of a doctoral psychology degree.

(b) No other accredited educational program at a degree granting institution is considered to meet the requirement in Subsections R156-61-302a(1), and in no case are departments or institutions of higher education considered accredited.

(6)(a) "Program of respecialization", as used in Subsection R156-61-302a(3), is a formal program designed to prepare someone with a doctoral degree in psychology with the necessary skills to practice psychology.

(b) The respecialization activities shall include substantial requirements that are formally offered as an organized sequence of course work and supervised practicum leading to a certificate (or similar recognition) by an educational body that offers a doctoral degree qualifying for licensure in the same area of practice as that of the certificate.

(7) "Qualified faculty", as used in Subsection 58-1-307(1)(b), means a university faculty member who provides pre-doctoral supervision of clinical or counseling experience in a university setting who:

(i) is licensed in Utah as a psychologist; and

(ii) is training students in the context of a doctoral program leading to licensure.

(8) "Residency program", as used in Subsection 58-61-301(1)(b), means a program of post-doctoral supervised clinical training necessary to meet licensing requirements as a psychologist.

(9)(a) "Psychology training", as used in Subsection 58-61-304(1)(e), means practical training experience providing direct services in the practice of mental health therapy and psychology under supervision. All activities in full-time internships and full-time post-doctoral positions devoted solely to mental health delivery meet this definition.

(b) Activities not directly related to the practice of psychology, even if commonly performed by psychologists, do not meet the definition of psychology training under Subsection 58-61-304(1)(e). Examples of ineligible activities include psychology coursework, analog clinical activities (e.g. role plays), activities required for business purposes (e.g. billing), supervision of others engaged in activities other than practice of psychology (e.g. supervising adolescents in wilderness settings), and activities commonly performed by non-psychologists (e.g. teaching of psychology on topics not of a professional nature).

R156-61-103. 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 61.

R156-61-104. 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.

R156-61-201. Advisory Peer Committee Created - Membership - Duties.

(1) There is hereby enabled in accordance with Subsection 58-1-203(1)(f), the Ethics Committee as an advisory peer committee to the Psychologist Licensing Board on either a permanent or ad hoc basis consisting of members licensed in good standing as psychologists qualified to engage in the practice of mental health therapy, in number and area of expertise necessary to fulfill the duties and responsibilities of the committee as set forth in Subsection (3).

(2) The committee shall be appointed and serve in accordance with Section R156-1-205.

(3) The committee shall assist the Division in its duties, functions, and responsibilities defined in Section 58-1-202 including:

(a) upon the request of the Division, reviewing reported violations of Utah law or the standards and ethics of the profession by a person licensed as a psychologist and advising the Division if allegations against or information known about the person presents a reasonable basis to initiate or continue an investigation with respect to the person;

(b) upon the request of the Division providing expert

advice to the Division with respect to conduct of an investigation; and

(c) when appropriate serving as an expert witness in matters before the Division.

R156-61-302a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-61-304(1)(d), an institution or program of higher education awarding a psychology degree that qualifies an applicant for licensure as a psychologist shall be accredited by the CoA.

(a) An applicant shall graduate from the actual program that is accredited by CoA. No other program within the department or institution qualifies unless separately accredited.

(b) If a transcript does not uniquely identify the qualifying CoA accredited degree program, it is the responsibility of the applicant to provide signed, written documentation from the program director or department chair that the applicant did indeed graduate from the qualifying accredited degree program.

(2) In accordance with Subsection 58-61-304(1)(d), an institution or program of higher education awarding a psychology doctoral degree that is not accredited by CoA shall meet the following criteria in order to qualify an applicant for licensure as a psychologist:

(a) if located in the United States or Canada, be an institution having a doctoral psychology program recognized by the Association of State and Provincial Psychology Boards (ASPPB)/National Register Joint Designation Committee as being found to meet "designation criteria", at the time the applicant received the earned degree. Whether a program is found to meet designation criteria is a decision to be made by the ASPPB/National Register Joint Designation Committee; or

(b) if located outside of the United States or Canada, be an institution that meets the ASPPB National Register (NR) Designation Guidelines for defining a doctoral degree in psychology as determined by the NR.

(3) An applicant whose psychology doctoral degree training is not designed to lead to clinical practice or who wishes to practice in a substantially different area than the training of the doctoral degree shall complete a program of respecialization as defined in Subsection R156-61-102(5), and shall meet requirements of Subsections R156-61-302a(2).

(4) The date of completion of the doctoral degree shall be the graduation date listed on the official transcript.

R156-61-302b. Qualifications for Licensure - Experience Requirements.

(1) An applicant for licensure as a psychologist under Subsection 58-61-304(1)(e) or mental health therapy under Subsections 58-61-304(1)(e) and (1)(f) shall complete a minimum of 4,000 hours of psychology training approved by the Division in collaboration with the Board. The training shall:

(a) be completed in not less than two years;

(b) be completed in not more than four years following the awarding of the doctoral degree unless the Division in collaboration with the Board approves an extension due to extenuating circumstances;

(c) be completed while the applicant is enrolled in an approved doctoral program or licensed as a certified psychology resident;

(d) be completed while the applicant is under the supervision of a qualified psychologist meeting the requirements under Section R156-61-302d;

(e) if completed under the supervision of a qualified faculty member who is not an approved psychology training supervisor in accordance with Subsection R156-61-302d, the training shall not be credited toward the 4,000 hours of psychology doctoral clinical training;

(f) be completed as part of a supervised psychology training program as defined in Subsection R156-61-102(4) that does not exceed:

(i) 40 hours per week for full-time internships and full-time post doctoral positions; or

(ii) 20 hours of part-time internships and part-time post doctoral positions; and

(g) be completed while the applicant is under supervision of a minimum of one hour of supervision for every 20 hours of pre-doctoral training and experience and one hour for every 40 hours of post-doctoral training and experience.

(2) In accordance with Subsection 58-61-301(1)(b), an individual engaged in a post-doctoral residency program of supervised clinical training shall be certified as a psychology resident.

(3) An applicant for licensure may accrue any portion of the 4,000 hours of psychology doctoral degree training and experience required in Subsection 58-61-304(1)(e) in a pre-doctoral program.

(4) An applicant who applies for licensure as a psychologist who completes the 4,000 hours of psychology doctoral degree training and experience required in Subsection 58-61-304(1)(e) in a pre-doctoral program or post-doctoral residency, and meets qualifications for licensure, may be approved to sit for the examinations, and upon passing the examinations will be issued a psychologist license.

(5) An applicant for licensure as a psychologist who has commenced and completed all or part of the psychology or mental health therapy training requirements under Subsection R156-61-302b(1) outside the state, may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training is equivalent to the requirements for training under Subsections 58-61-304(1)(e) and (f), and Subsection R156-61-302b(1).

R156-61-302c. Qualifications for Licensure - Examination Requirements.

(1) The examination requirements which shall be met by an applicant for licensure as a psychologist under Subsection 58-61-304(1)(g) are:

(a) passing the Examination for the Professional Practice of Psychology (EPPP) developed by the American Association of State Psychology Board (ASPPB) with a passing score as recommended by the ASPPB; and

(b) passing the Utah Psychologist Law and Ethics Examination with a score of not less than 75%.

(2) A person may be admitted to the EPPP and Utah Psychologist Law and Ethics examinations in Utah only after meeting the requirements under 58-61-305, and after receiving written approval from the Division.

(3) If an applicant is admitted to an EPPP examination based upon substantive information that is incorrect and furnished knowingly by the applicant, the applicant shall automatically be given a failing score and shall not be permitted to retake the examination until the applicant submits fees and a correct application demonstrating the applicant is qualified for the examination and adequately explains why the applicant knowingly furnished incorrect information. If an applicant is inappropriately admitted to an EPPP examination because of a Division or Board error and the applicant receives a passing score, the results of the examination may not be used for licensure until the deficiency which would have barred the applicant for admission to the examination is corrected.

(4) An applicant who fails the EPPP examination three times will only be allowed subsequent admission to the examination after the applicant has appeared before the Board, developed with the Board a plan of study in appropriate subject matter, and thereafter completed the planned course of study to the satisfaction of the Board.

(5) An applicant who is found to be cheating on the EPPP

examination or in any way invalidating the integrity of the examination shall automatically be given a failing score and shall not be permitted to retake the examination for a period of at least three years or as determined by the Division in collaboration with the Board.

(6) In accordance with Section 58-1-203 and Subsection 58-61-304(1)(g), an applicant for the EPPP or the Utah Psychologist Law and Ethics Examination shall pass the examinations within one year from the date of the psychologist application for licensure. If the applicant does not pass the examinations within one year, the pending psychologist application shall be denied. The applicant may continue to register to take the EPPP examination under the procedures outlined in Subsection R156-61-302c(4).

(7) In accordance with Section 58-1-203 and Subsection 58-61-304(2)(d), an applicant for psychologist licensure by endorsement shall pass the Utah Psychologist Law and Ethics Examination within six months from the date of the psychologist application for licensure. If the applicant does not pass the examination in six months, the pending psychologist application shall be denied.

R156-61-302d. Qualifications for Designation as an Approved Psychology Training Supervisor.

In accordance with Subsections 58-61-304(1)(e) and (f), to be approved by the Division in collaboration with the Board as a supervisor of psychology or mental health therapy training, an individual shall:

(1) be currently licensed in good standing as a psychologist in the jurisdiction in which the supervised training is being performed; and

(2) have practiced as a licensed psychologist for not fewer than 4,000 hours in a period of not less than two years.

R156-61-302e. Duties and Responsibilities of a Supervisor of Psychology Training and Mental Health Therapist Training.

The duties and responsibilities of a psychologist supervisor are further defined, clarified or established as follows. The psychologist supervisor shall:

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training, including supervision of all activities requiring a mental health therapy license;

(2) engage in a relationship with the supervisee in which the supervisor is independent from control by the supervisee, and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) supervise not more than three full-time equivalent supervisees unless otherwise approved by the Division in collaboration with the Board;

(4) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, ability to diagnose patients, and other factors determined by the supervisor;

(5) comply with the confidentiality requirements of Section 58-61-602;

(6) provide timely and periodic review of the client records assigned to the supervisee;

(7) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of psychology;

(8) submit appropriate documentation to the Division with respect to work completed by the supervisee evidencing the performance of the supervisee during the period of supervised psychology training and mental health therapist training, including the supervisor's evaluation of the supervisee's competence in the practice of psychology and mental health therapy;

(9) ensure that the supervisee is certified by the Division as a psychology resident, or is enrolled in a psychology doctoral program and engaged in a training experience authorized by the educational program;

(10) ensure the psychologist supervisor is legally able to personally provide the services which the psychologist supervisor is supervising; and

(11) ensure the psychologist supervisor meets all other requirements for supervision as described in this section.

R156-61-302f. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 61, is established by rule in Section R156-1-308a.

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

R156-61-302g. License Reinstatement - Requirements.

An applicant for reinstatement of a license after two years following expiration of that license shall:

(1) upon request meet with the Board for the purpose of evaluating the applicant's current ability to safely and competently engage in practice as a psychologist and to make a determination of education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the Board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of psychology and/or mental health therapy training;

(3) take or retake, and pass the Utah Psychology Law Examination; or the EPPP Examination, or both, if it is determined by the Board it is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a psychologist; and

(4) complete a minimum of 48 hours of professional education in subjects determined necessary by the Board to ensure the applicant's ability to engage safely and competently in practice as a psychologist.

R156-61-302h. Continuing Education.

(1) There is hereby established a continuing education requirement for all individuals licensed or certified under Title 58, Chapter 61.

(2) During each two year period commencing on October 1 of each even numbered year:

(a) a licensed psychologist shall be required to complete not less than 48 hours of continuing education directly related to the licensee's professional practice;

(b) a certified psychology resident shall be required to complete not less than 24 hours of continuing education directly related to professional practice.

(3) The required number of hours of continuing education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(4) Continuing education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a psychologist;

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

(c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training, and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the

professional education program and records of that registration and completion are available for review.

(5) Credit for continuing education shall be recognized in accordance with the following:

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

(b) A maximum of ten hours per two year period may be recognized for teaching in a college or university, teaching continuing education courses in the field of psychology, or supervision of an individual completing the experience requirement for licensure as a psychologist.

(c) A minimum of six hours per two year period shall be completed in ethics/law.

(d) A maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a psychologist.

(e) A maximum of 18 hours per two year period may be recognized for Internet or distance learning courses that includes an examination, a completion certificate and recognized by the American Psychological Association or a state or province psychological association.

(f) A maximum of six hours per two year period may be recognized for regular peer consultation, review and meetings if properly documented that the peer consultation, review and meetings meet the following requirements:

(i) have an identifiable clear statement of purpose and defined objective for the educational consultation/meeting directly related to the practice of a psychologist;

(ii) are relevant to the licensee's professional practice;

(iii) are presented in a competent, well organized manner consistent with the stated purpose and objective of the consultation/meeting;

(iv) are prepared and presented by individuals who are qualified by education, training and experience; and

(v) have associated with it a competent method of registration of individuals who attended.

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after the close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain information with respect to qualified professional education to demonstrate it meets the requirements under this section.

R156-61-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violation of any provision of the "Ethical Principles of Psychologists and Code of Conduct" of the American Psychological Association (APA) as adopted by the APA, June 1, 2010 edition, which is adopted and incorporated by reference;

(2) violation of any provision of the "ASPPB Code of Conduct" of the Association of State and Provincial Psychology Boards (ASPPB) as adopted by the ASPPB, 2005 edition, which is adopted and incorporated by reference;

(3) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-61-302d and R156-61-302e;

(4) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(5) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(6) failing to establish and maintain appropriate professional boundaries with a client or former client;

(7) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(8) engaging in sexual activities or sexual contact with a client with or without client consent;

(9) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(10) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and the client;

(11) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and that individual;

(12) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(13) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(14) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(15) exploiting a client for personal gain;

(16) using a professional client relationship to exploit a client or other person for personal gain;

(17) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(18) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(19) failure to cooperate with the Division during an investigation

(20) participating in a residency program or other post degree experience without being certified as a psychology resident for post-doctoral training and experience;

(21) supervising a residency program of an individual who is not certified as a psychology resident; or

(22) when providing services remotely:

(a) failing to practice according to professional standards of care in the delivery of services remotely;

(b) failing to protect the security of electronic, confidential data and information; or

(c) failing to appropriately store and dispose of electronic, confidential data and information.

KEY: licensing, psychologists

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	58-61-101

R162. Commerce, Real Estate.
R162-2c. Utah Residential Mortgage Practices and Licensing Rules.
R162-2c-101. Title.

This chapter is known as the "Utah Residential Mortgage Practices and Licensing Rules."

R162-2c-102. Definitions.

(1) The acronym "ALM" stands for associate lending manager.

(2) The acronym "BLM" stands for branch lending manager.

(3) "Certification" means authorization from the division to:

(a) establish and operate a school that provides courses for Utah-specific prelicensing education or continuing education; or

(b) function as an instructor for courses approved for Utah-specific prelicensing education or continuing education.

(4) "Credit hour" means 50 minutes of instruction within a 60-minute time period, allowing for a ten-minute break.

(5) "Control person" is defined in Section 61-2c-102(1)(p).

(6) "Expired license" means a license that is not renewed according to applicable deadlines, but is eligible to be reinstated.

(7) "Individual applicant" means any individual who applies to obtain or renew a license to practice as a mortgage loan originator or lending manager.

(8) "Incentive program" means a program through which a licensed entity may, pursuant to Subsection R162-2c-301b, pay a licensed mortgage loan originator who is sponsored by the entity for bringing business into the entity.

(9) "Instruction method" means the forum through which the instructor and student interact and may be:

(a) classroom: traditional instruction where instructors and students are located in the same physical location;

(b) classroom equivalent: an instructor-led course where the instructor and students may be in two or more physical locations; or

(c) online: instructor and student interact through an online classroom.

(10) "Instructor applicant" means any individual who applies to obtain or renew certification as an instructor of Utah-specific pre-licensing or continuing education courses.

(11)(a) "Lending manager" is defined in Section 61-2c-102(1)(aa).

(b) "Lending manager license" includes:

(i) a principal lending manager license;

(ii) an associate lending manager license; and

(iii) a branch lending manager license.

(12) The acronym "LM" stands for lending manger and includes the following licensing designations:

(a) principal lending manager;

(b) associate lending manager; and

(c) branch lending manager.

(13) "Mortgage entity" means any entity that:

(a) engages in the business of residential mortgage lending;

(b) is required to be licensed under Section 61-2c-201; and

(c) operates under a business name or other trade name that is registered with the Division of Corporations and Commercial Code.

(14) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry.

(15) The acronym "NMLS" stands for Nationwide Mortgage Licensing System.

(16) "Other trade name" means any assumed business name under which an entity does business.

(17) "Personal information" means a person's first name or first initial and last name, combined with any one or more of the following data elements relating to that person when either the name or data element is unencrypted or not protected by another method that renders the data unreadable or unusable:

(a) Social Security number;

(b) financial account number, or credit or debit card number; or

(c) driver license number or state identification card number.

(18) The acronym "PLM" stands for principal lending manager.

(19) "Qualifying individual" means the LM, managing principal, or qualified person who is identified on the MU1 form in the nationwide database as the person in charge of an entity.

(20) "Reapplication" or "reapply" refers to a request for licensure that is submitted after the deadline for reinstatement expires and the license has become terminated.

(21) "Reinstatement" or "reinstate" refers to a request for a licensure that is submitted after the applicable December 31 license expiration date passes and by or before February 28 of the following calendar year.

(22) As used in Subsection R162-2c-201, "relevant information" includes:

(a) court dockets;

(b) charging documents;

(c) orders;

(d) consent agreements; and

(e) any other information the division may require.

(23) "Restricted license" means any license that is issued subject to a definite period of suspension or terms of probation.

(24) "Safeguard" means to prevent unauthorized access, use, disclosure, or dissemination.

(25) "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;

(c) any vocational-technical school;

(d) any state or federal agency or commission;

(e) any nationally recognized mortgage organization that has been approved by the commission;

(f) any Utah mortgage organization that has been approved by the commission;

(g) any local mortgage organization that has been approved by the commission; or

(h) any proprietary mortgage education school that has been approved by the commission.

(26) "School applicant" means a director or owner of a school who applies to obtain or renew a school's certification.

(27) "Terminated license" means a license that was not renewed or reinstated according to applicable deadlines.

R162-2c-201. Licensing and Registration Procedures.

(1) Mortgage loan originator.

(a) To obtain a Utah license to practice as a mortgage loan originator, an individual who is not currently and validly licensed in any state shall:

(i) evidence good moral character pursuant to R162-2c-202(1);

(ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(iii) evidence financial responsibility pursuant to R162-2c-202(3);

(iv) obtain a unique identifier through the nationwide database;

(v) successfully complete, within the 12-month period prior to the date of application, 15 hours of Utah-specific pre-licensing education as approved by the division;

(vi)(A) successfully complete 20 hours of pre-licensing

education as approved by the nationwide database according to the nationwide database outline for national course curriculum; or

(B) if the individual previously passed the 20-hour national course, obtained a license, and thereafter allowed the license to expire, successfully complete continuing education:

(I) approved by the nationwide database; and

(II) in the number of hours that would have been required to renew the expired license in the year in which the individual allowed the license to expire;

(vii) take and pass the examinations that meet the requirements of Section 61-2c-204.1(4) and that:

(A) are approved and administered through the nationwide database; and

(B) consist of a national component and a Utah-specific state component;

(viii) request licensure as a mortgage loan originator through the nationwide database;

(ix) authorize a criminal background check and submit fingerprints through the nationwide database;

(x) authorize the nationwide database to provide the individual's credit report to the division for review;

(xi) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(xii) record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

(xiii) complete, sign, and submit to the division a social security verification form as provided by the division; and

(xiv) pay all fees through the nationwide database as required by the division and by the nationwide database.

(b) To obtain a Utah license to practice as a mortgage loan originator, an individual who is currently and validly licensed in another state shall:

(i) evidence good moral character pursuant to R162-2c-202(1);

(ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(iii) evidence financial responsibility pursuant to R162-2c-202(3);

(iv)(A) successfully complete, within the 12-month period prior to the date of application, 15 hours of Utah-specific mortgage loan originator prelicensing education; and

(B) take and pass the Utah-specific state examination component;

(v) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(vi) record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

(vii) request licensure as a mortgage loan originator through the nationwide database;

(viii) authorize a criminal background check through the nationwide database;

(ix) authorize the nationwide database to provide the individual's credit report to the division for review;

(x) complete, sign, and submit to the division a social security verification form as provided by the division; and

(xi) pay all fees through the nationwide database as required by the division and by the nationwide database.

(2) Lending manager. To obtain a Utah license to practice as an LM, an individual shall:

(a) evidence good moral character pursuant to R162-2c-202(1);

(b) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(c) evidence financial responsibility pursuant to R162-2c-202(3);

(d) provide to the division:

(i) the individual's unique identifier as assigned through the nationwide database; and

(ii) evidence that the individual has taken and passed:

(A) the 20-hour national mortgage loan originator prelicensing course; and

(B) the mortgage loan originator examinations that:

(I) meet the requirements of Section 61-2c-204.1(4);

(II) are approved and administered through the nationwide database; and

(III) consist of a national component and a Utah-specific state component;

(e) obtain approval from the division to take the Utah-specific LM prelicensing education by evidencing that the applicant has satisfied, during the five-year period preceding the date of application, the experience requirement of Section 61-2c-206(1)(d) through:

(i)(A) three years full-time experience originating first-lien residential mortgages pursuant to Section 61-2c-102(1)(ee)(i)(A):

(I) under a license issued by a state regulatory agency; or

(II) as an employee of a depository institution; and

(B) evidence of having originated a minimum of 45 first-lien residential mortgages; or

(ii)(A)(I) two years full-time experience as described in this Subsection (2)(e)(i)(A); and

(II) additional full-time experience per the equivalency calculation in Subsection R162-2c-501a; and

(B)(I) evidence of having originated a minimum of 30 first-lien residential mortgages; and

(II) up to 15 additional points according to the experience points schedule in Subsection R162-2c-501b;

(f) within the 12-month period preceding the date of application, successfully complete 40 hours of Utah-specific LM prelicensing education as certified by the division;

(g) take and pass a lending manager examination as approved by the commission;

(h) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(i) record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

(j)(i) register in the nationwide database by selecting the "lending manager" license type and completing the associated MU4 form; and

(ii) designate in the nationwide database whether the individual will be acting for the sponsoring entity as:

(A) the principal lending manager;

(B) an associate lending manager; or

(C) a branch lending manager;

(k) authorize a criminal background check and submit fingerprints through the nationwide database;

(l) authorize the nationwide database to provide the individual's credit report to the division for review;

(m) complete, sign, and submit to the division a social security verification form as provided by the division; and

(n) pay all fees through the nationwide database as required by the division and by the nationwide database.

(3) Mortgage entity.

(a) To obtain a Utah license to operate as a mortgage entity, a person shall:

(i) establish that all control persons meet the requirements for moral character pursuant to R162-2c-202(1);

(ii) establish that all control persons meet the requirements

for competency pursuant to R162-2c-202(2);

(iii) register any other trade name with the Division of Corporations and Commercial Code;

(iv) register the entity in the nationwide database by:

(A) submitting an MU1 form that includes:

(I) all required identifying information;

(II) the name of the PLM who, pursuant to Subsection R162-2c-301a(3)(a)(iv), will serve as the entity's qualifying individual;

(III) the name of any LM who, pursuant to Subsection R162-2c-301a(3)(a)(iv), will serve as a branch lending manager;

(IV) the name of any individuals who may serve as control persons;

(V) the entity's registered agent; and

(VI) any other trade name under which the entity will operate; and

(B) creating a sponsorship through the nationwide database that identifies the mortgage loan originator(s) sponsored by the entity;

(v) register any branch office operating from a different location than the entity;

(vi) pay all fees through the nationwide database as required by the division and by the nationwide database;

(vii) provide to the division proof that any assumed business name or other trade name is registered with the Division of Corporations and Commercial Code;

(viii) provide to the division all court documents related to any criminal proceeding not disclosed through a previous application or renewal and involving any control person;

(ix) provide to the division complete documentation of any action taken by a regulatory agency against:

(A) the entity itself; or

(B) any control person; and

(C) not disclosed through a previous application or renewal; and

(x) provide to the division a notarized letter on company letterhead, signed by the owner or president of the entity, authorizing the PLM to use the entity's name.

(b) Restrictions on entity name. No license may be issued by the division to an entity that proposes to operate under a name that closely resembles the name of another entity licensee, or that the division determines might otherwise be confusing or misleading to the public.

(4) Branch office.

(a) To register a branch office with the division, a person shall:

(i) obtain a Utah entity license for the entity under which the branch office will be registered;

(ii) submit to the nationwide database an MU3 form that includes:

(A) all required identifying information; and

(B) the name of the LM who will serve as the branch lending manager;

(iii) create a sponsorship through the nationwide database that identifies the mortgage loan originator(s) who will work from the branch office; and

(iv) pay all fees through the nationwide database as required by the division and by the nationwide database.

(b) A person who registers another trade name and operates under that trade name from an address that is different from the address of the entity shall register the other trade name as a branch office pursuant to this Subsection (4).

(c)(i) A PLM may not simultaneously serve as a BLM if Subsection R162-2c-301a(3)(a)(iv)(B) applies.

(ii) An individual may not serve as the BLM for more than one branch at any given time.

(5) Licenses not transferable.

(a) A licensee shall not transfer the licensee's license to any other person.

(b) A licensee shall not allow any other person to work under the licensee's license.

(c) If a change in corporate structure of a licensed entity creates a separate and unique legal entity, that entity shall obtain a unique license, and shall not operate under any existing license.

(6) Expiration of test results.

(a) Scores for the mortgage loan originator licensing examination shall be valid for five years.

(b) Scores for the LM exam shall be valid for 90 days.

(7) Incomplete LM application.

(a) The division may grant a 30-day extension of the 90-day application window upon a finding that:

(i) an applicant has made a good faith attempt to submit a completed application; but

(ii) requires more time to provide missing documents or to obtain additional information.

(b) If the applicant does not supply the required documents or information within the 30-day extension, the division may deny the application as incomplete.

(8) Nonrefundable fees. All fees are nonrefundable, regardless of whether an application is granted or denied.

(9) Other trade names.

(a) The division shall not approve a license for any person operating under an assumed business name that poses a reasonable likelihood of misleading the public into thinking that the person is:

(i) endorsed by the division, the state government, or the federal government;

(ii) an agency of the state or federal government; or

(iii) not engaged in the business of residential mortgage loans.

(b) A mortgage entity that operates under another trade name shall register the other trade name by including it on the MU1 form and obtaining the required registration.

R162-2c-202. Qualifications for Licensure.

(1) Character. Individual applicants and control persons shall evidence good moral character, honesty, integrity, and truthfulness.

(a) An applicant may not have:

(i) been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner to, or resolved by diversion or its equivalent:

(A) a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering;

(B) any felony in the seven years preceding the day on which an application is submitted to the division;

(C) in the five years preceding the day on which an application is submitted to the division:

(I) a misdemeanor involving moral turpitude; or

(II) a crime in another jurisdiction that is the equivalent of a misdemeanor involving moral turpitude;

(D) in the three years preceding the day on which an application is submitted to the division, any misdemeanor involving a finding of:

(I) fraud;

(II) misrepresentation;

(III) theft; or

(IV) dishonesty;

(ii) had a license as a mortgage loan originator revoked by a government regulatory body at any time, unless the revocation is subsequently vacated or converted;

(iii) had a professional license or registration, whether issued by a Utah regulatory body or by another jurisdiction, suspended, surrendered, canceled, or denied in the five years preceding the date the individual applies for licensure if the suspension, surrender, cancellation, or denial is based on misconduct in a professional capacity that relates to:

(A) moral character;
(B) honesty;
(C) integrity;
(D) truthfulness; or
(E) the competency to transact the business of residential mortgage loans;
(iv) in the five years preceding the day on which an application is submitted to the division, been the subject of a bar by the:
(A) Securities and Exchange Commission;
(B) New York Stock Exchange; or
(C) Financial Industry Regulatory Authority;
(v) had a permanent injunction entered against the individual:
(A) by a court or administrative agency; and
(B) on the basis of:
(I) conduct or a practice involving the business of residential mortgage loans; or
(II) conduct involving fraud, misrepresentation, or deceit.
(b) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past other than those specified in this Subsection (1)(a) that reflect negatively on the applicant's moral character, honesty, integrity, and truthfulness. In evaluating an applicant for these qualities, the division and commission may consider any evidence, including the following:
(i) criminal convictions or plea agreements, with particular consideration given to convictions or plea agreements relative to charges that involve moral turpitude;
(ii) the circumstances that led to any criminal conviction or plea agreement under consideration;
(iii) past acts related to honesty or moral character, with particular consideration given to any such acts involving the business of residential mortgage loans;
(iv) dishonest conduct that would be grounds under Utah law for sanctioning an existing licensee;
(v) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;
(vi) court findings of fraudulent or deceitful activity;
(vii) evidence of non-compliance with court orders or conditions of sentencing;
(viii) evidence of non-compliance with:
(A) terms of a diversion agreement still subject to prosecution;
(B) a probation agreement; or
(C) a plea in abeyance; or
(ix) failure to pay taxes or child support obligations.
(2) Competency. Individual applicants and control persons shall evidence competency to transact the business of residential mortgage loans. In evaluating an applicant for competency, the division and commission may consider any evidence that reflects negatively on an applicant's competency, including:
(a) civil judgments, with particular consideration given to any such judgments involving the business of residential mortgage loans;
(b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;
(c) failure of any previous mortgage loan business in which the individual was engaged, as well as the circumstances surrounding that failure;
(d) evidence as to the applicant's business management and employment practices, including the payment of employees, independent contractors, and third parties;
(e) the extent and quality of the applicant's training and education in mortgage lending;
(f) the extent and quality of the applicant's training and education in business management;
(g) the extent of the applicant's knowledge of the Utah Residential Mortgage Practices Act;
(h) evidence of disregard for licensing laws;
(i) evidence of drug or alcohol dependency;
(j) sanctions placed on professional licenses; and
(k) investigations conducted by regulatory agencies relative to professional licenses.
(3) Financial responsibility. Individual applicants shall evidence financial responsibility. To evaluate an applicant for financial responsibility, the division shall:
(a) access the credit information available through the NMLS of:
(i) an applicant for initial licensure, beginning October 18, 2010; and
(ii) a licensee who requests renewal during the 2010 renewal period, unless the licensee's credit report was reviewed in issuing the initial license; and
(b) give particular consideration to:
(i) outstanding civil judgments;
(ii) outstanding tax liens;
(iii) foreclosures;
(iv) multiple social security numbers attached to the individual's name;
(v) child support arrearages; and
(vi) bankruptcies.
(4) Age. An applicant shall be at least 18 years of age.
(5) Minimum education. An applicant shall have a high school diploma, GED, or equivalent education as approved by the commission.

R162-2c-203. Utah-Specific Education Certification.
(1) School certification.
(a) A school offering Utah-specific education shall certify with the division before providing any instruction.
(b) To certify, a school applicant shall prepare and supply the following information to the division:
(i) contact information, including:
(A) name, phone number, email address, and address of the physical facility;
(B) name, phone number, email address, and address of any school director;
(C) name, phone number, email address, and address of any school owner; and
(D) an e-mail address where correspondence will be received by the school;
(ii) evidence that all school directors and owners meet the moral character requirements outlined in R162-2c-202(1) and the competency requirements outlined in R162-2c-202(2);
(iii) school description, including:
(A) type of school;
(B) description of the school's physical facilities; and
(C) type of instruction method;
(iv) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;
(v) proof that each instructor:
(A) has been certified by the division; or
(B) is exempt from certification under Subsection 203(5)(f);
(vi) statement of attendance requirements as provided to students;
(vii) refund policy as provided to students;
(viii) disclaimer as provided to students; and
(ix) criminal history disclosure statement as provided to students.
(c) Minimum standards.
(i) The course schedule may not provide or allow for more than eight credit hours per student per day.
(ii) The attendance statement shall require that each student attend at least 90% of the scheduled class time.
(iii) The disclaimer shall adhere to the following requirements:

(A) be typed in all capital letters at least 1/4 inch high; and

(B) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the mortgage entities that may be soliciting for licensees at this school."

(iv) The criminal history disclosure statement shall:

(A) be provided to students while they are still eligible for a full refund; and

(B) clearly inform the student that upon application with the nationwide database, the student will be required to:

(I) accurately disclose the student's criminal history according to the licensing questionnaire provided by the nationwide database and authorized by the division; and

(II) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;

(C) clearly inform the student that the division will consider the applicant's criminal history pursuant to R162-2c-202(1) in making a decision on the application; and

(D) include a section for the student's attestation that the student has read and understood the disclosure.

(d) Within ten days after the occurrence of any material change in the information outlined in Subsection (1), the school shall provide to the division written notice of that change.

(2) School certification expiration and renewal. A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order for the school to remain in operation. To renew, a school applicant shall:

(a) complete a renewal application as provided by the division;

(b) pay a nonrefundable renewal fee;

(c) provide a list of all proposed courses with a projected schedule of days, times, and locations of classes; and

(d) provide the information specified in Subsection 3(c) for Utah-specific course certification for the division's evaluation of each proposed course.

(3) Utah-specific course certification.

(a) A school providing a Utah-specific course shall certify the course with the division before offering the course to students.

(b) Application shall be made at least 30 days prior to the date on which a course requiring certification is proposed to begin.

(c) To certify a course, a school applicant shall prepare and supply the following information:

(i) instruction method;

(ii) outline of the course, including:

(A) a list of subjects covered in the course;

(B) reference to the approved course outline for each subject covered;

(C) length of the course in terms of hours spent in classroom instruction;

(D) number of course hours allocated for each subject;

(E) at least three learning objectives for every hour of classroom time;

(F) instruction format for each subject; i.e, lecture or media presentation;

(G) name and credentials of any guest lecturer; and

(H) list of topic(s) and session(s) taught by any guest lecturer;

(iii) a list of the titles, authors, and publishers of all required textbooks;

(iv) copies of any workbook used in conjunction with a non-lecture method of instruction;

(v) a copy of each quiz and examination, with an answer key; and

(vi) the grading system, including methods of testing and standards of grading.

(d) Minimum standards.

(i) All texts, workbooks, supplement pamphlets and other materials shall be appropriate, current, accurate, and applicable to the required course outline.

(ii) The course shall cover all of the topics set forth in the associated outline.

(iii) The lecture method shall be used for at least 50% of course instruction unless the division gives special approval otherwise.

(iv) A school applicant that uses a non-lecture method for any portion of course instruction shall provide to the student:

(A) an accompanying workbook as approved by the division for the student to complete during the instruction; and

(B) a certified instructor available within 48 hours of the non-lecture instruction to answer student questions.

(v) The division shall not approve an online education course unless:

(A) there is a method to ensure that the enrolled student is the person who actually completes the course;

(B) the time spent in actual instruction is equivalent to the credit hours awarded for the course; and

(C) there is a method to ensure that the student comprehends the material.

(4) Course expiration and renewal.

(a) A prelicensing course expires at the same time the school certification expires.

(b) A prelicensing course certification is renewed automatically when the school certification is renewed.

(5) Education committee.

(a) The commission may appoint an education committee to:

(i) assist the division and the commission in approving course topics; and

(ii) make recommendations to the division and the commission about:

(A) whether a particular course topic is relevant to residential mortgage principles and practices; and

(B) whether a particular course topic would tend to enhance the competency and professionalism of licensees.

(b) The division and the commission may accept or reject the education committee's recommendation on any course topic.

(6) Instructor certification.

(a) Except as provided in this Subsection (6)(f), an instructor shall certify with the division before teaching a Utah-specific course.

(b) Application shall be made at least 30 days prior to the date on which the instructor proposes to begin teaching.

(c) To certify as an instructor of mortgage loan originator prelicensing courses, an individual shall provide evidence of:

(i) a high school diploma or its equivalent;

(ii)(A) at least five years of experience in the residential mortgage industry within the past ten years; or

(B) successful completion of appropriate college-level courses specific to the topic proposed to be taught;

(iii)(A) a minimum of twelve months of full-time teaching experience;

(B) part-time teaching experience that equates to twelve months of full-time teaching experience; or

(C) participation in instructor development workshops totaling at least two days in length; and

(iv) having passed, within the six-month period preceding the date of application, the lending manager licensing examination.

(d) To certify as an instructor of LM prelicensing courses, an individual shall:

(i) meet the general requirements of this Subsection 6(c); and

(ii) meet the specific requirements for any of the following courses the individual proposes to teach.

(A) Management of a Residential Mortgage Loan Office: at least two years practical experience in managing an office engaged in the business of residential mortgage loans.

(B) Mortgage Lending Law: two years practical experience in the field of real estate law; and either:

(I) current active membership in the Utah Bar Association; or

(II) degree from an American Bar Association accredited law school.

(C) Advanced Appraisal:

(I) at least two years practical experience in appraising; and

(II) current state-certified appraiser license.

(D) Advanced Finance:

(I) at least two years practical experience in real estate finance; and

(II) association with a lending institution as a loan originator.

(e) To act as an instructor of continuing education courses, an individual shall certify through the nationwide database.

(f) The following instructors are not required to be certified by the division:

(i) a guest lecturer who:

(A) is an expert in the field on which instruction is given;

(B) provides to the division a resume or similar documentation evidencing satisfactory knowledge, background, qualifications, and expertise; and

(C) teaches no more than 20% of the course hours;

(ii) a college or university faculty member who evidences academic training, industry experience, or other qualifications acceptable to the division;

(iii) an individual who:

(A) evidences academic training, industry experience, or other qualifications satisfactory to the division; and

(B) receives approval from the commission; and

(iv) a division employee.

(g) Renewal.

(i) An instructor certification for Utah-specific prelicensing education expires 24 months from the date of issuance and shall be renewed before the expiration date.

(ii) To renew an instructor certification for Utah-specific prelicensing education, an applicant shall submit to the division:

(A) evidence of having taught at least 20 hours of classroom instruction in a certified mortgage education course during the preceding two years;

(B) evidence of having attended an instructor development workshop sponsored by the division during the preceding two years; and

(C) a renewal fee as required by the division.

(iii) To renew an instructor certification for continuing education, an individual shall certify through the nationwide database.

(h) Reinstatement.

(i) An instructor who is certified by the division may reinstate an expired certification within 30 days of expiration by:

(A) complying with this Subsection (6)(g); and

(B) paying an additional non-refundable late fee.

(ii) Until six months following the date of expiration, an instructor who is certified by the division may reinstate a certification that has been expired more than 30 days by:

(A) complying with this Subsection (6)(g);

(B) paying an additional non-refundable late fee; and

(C) completing six classroom hours of education related to residential mortgages or teaching techniques.

(7)(a) The division may monitor schools and instructors for:

(i) adherence to course content;

(ii) quality of instruction and instructional materials; and

(iii) fulfillment of affirmative duties as outlined in R162-2c-301a(5)(a) and R162-2c-301a(6)(a).

(b) To monitor schools and instructors, the division may:

(i) collect and review evaluation forms; or

(ii) assign an evaluator to attend a course and make a report to the division.

R162-2c-204. License Renewal, Reinstatement, and Reapplication.

(1) Deadlines.

(a) License renewal.

(i) To renew on time, a person who holds an active license as of October 31 shall renew by December 31 of the same calendar year.

(ii)(A) A person who obtains a license on or after November 1 shall renew by December 31 of the following calendar year.

(B) A person who is not required to renew in the first year of licensure pursuant to this Subsection (1)(a)(ii)(A) shall nevertheless complete, prior to December 31 of the first year of licensure, continuing education as required for renewal pursuant to Subsection R162-2c-204(3)(a) if the individual did not complete the mortgage loan originator national pre-licensing education during the calendar year.

(b) Reinstatement. The deadline to reinstate a license that expires on December 31 is February 28 of the year following the date of expiration.

(c) After the reinstatement deadline passes, a person shall reapply for licensure pursuant to Subsection R162-2c-204(3)(c).

(2) Qualification for renewal.

(a) Character.

(i) Individuals applying to renew or reinstate a license shall evidence that they maintain good moral character, honesty, integrity, and truthfulness as required for initial licensure.

(ii)(A) An individual applying for a renewed license may not have:

(I) a felony that resulted in a conviction or plea agreement during the renewal period; or

(II) a finding of fraud, misrepresentation, or deceit entered against the applicant by a court of competent jurisdiction or a government agency and occurring within the renewal period.

(B) A licensee shall submit a fingerprint background report in order to renew a license:

(A) in the renewal period beginning November 1, 2015; and

(B) every fifth year following the renewal period beginning November 1, 2015.

(iii) The division may deny an individual applicant a renewed license upon evidence, as outlined in Subsection R162-2c-202(1)(b), of circumstances that reflect negatively on the applicant's character, honesty, integrity, or truthfulness and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iv) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standards for character, honesty, integrity, and truthfulness required of individual applicants.

(c) Financial responsibility. A licensee shall submit a credit report in order to renew a license:

(i) in the renewal period beginning November 1, 2015; and

(ii) every fifth year following the renewal period beginning November 1, 2015.

(b) Competency.

(i) Individual applicants and control persons shall evidence that they maintain the competency required for initial licensure.

(ii) The division may deny an individual applicant a renewed license upon evidence, as outlined in Subsection R162-

2c-202(2), of circumstances that reflect negatively on the applicant's competency and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iii) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standard for competency required of individual applicants.

(3) Education requirements for renewal, reinstatement, and reapplication.

(a) License renewal.

(i) Except as provided in this Subsection (3)(a)(ii), an individual who holds an active license as of January 1 of the calendar year shall complete, within the calendar year in which the individual's license is scheduled to expire, the following courses, none of which may be duplicative of courses taken in the same or preceding renewal period:

(A) beginning with the 2014 renewal, a division-approved course on Utah law, completed annually; and

(B) eight hours of continuing education approved through the nationwide database, as follows:

(I) three hours federal laws and regulations;

(II) two hours ethics (fraud, consumer protection, fair lending issues);

(III) two hours training related to lending standards for non-traditional mortgage products; and

(IV) one hour undefined instruction on mortgage origination.

(ii) An individual who completes the mortgage loan originator national pre-licensing education between January 1 and December 31 of the calendar year is exempt from continuing education, including the division-approved course on Utah law specified in Subsection (3)(a)(i)(A), for the renewal period ending December 31 of the same calendar year.

(b) Reinstatement. To reinstate an expired mortgage loan originator or lending manager license, an individual shall, by February 28 of the calendar year following the date on which the license expired, complete:

(i) the division-approved course on Utah law specified in Subsection (3)(a)(i)(A); and

(ii) eight hours of continuing education:

(A) in topics listed in this Subsection (3)(a)(i)(B); and

(B)(I) approved by the nationwide database as "continuing education" if completed prior to the date of expiration; or

(II) approved by the nationwide database as "late continuing education" if completed between the date of expiration and the deadline for reinstatement.

(c) Reapplication.

(i) To reapply for licensure after the reinstatement deadline passes and by or before December 31 of the calendar year following the date on which the license expired, an individual shall complete the division-approved course on Utah law and continuing education requirement outlined in this Subsection (3)(b).

(ii) To reapply for licensure after the deadline described in this Subsection (3)(c)(i) passes, an individual shall:

(A) complete eight hours of continuing education:

(I) in topics listed in this Subsection (3)(a)(i); and

(II) approved by the nationwide database as "late continuing education"; and

(B) within the 12-month period preceding the date of reapplication, take and pass:

(I) the 15-hour Utah-specific mortgage loan originator pre-licensing education, if the terminated license was a mortgage loan originator license; or

(II) the 40-hour Utah-specific lending manager pre-licensing education and associated examination, if the terminated license was a lending manager license; and

(C) complete the division-approved course on Utah law specified in Subsection (3)(a)(i)(A).

(4) Renewal, reinstatement, and reapplication procedures.

(a) An individual licensee shall:

(i) evidence having completed education as required by Subsection R162-2c-204(3);

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database; and

(iii) submit through the nationwide database:

(A) a request for renewal, if renewing or reinstating a license; or

(B) a request for a new license, if reapplying; and

(iv) pay all fees as required by the division and by the nationwide database, including all applicable late fees.

(b) An entity licensee shall:

(i) submit through the nationwide database a request for renewal;

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database;

(iii) renew the registration of any branch office or other trade name registered under the entity license; and

(iv) pay through the nationwide database all fees, including all applicable late fees, required by the division and by the nationwide database.

R162-2c-205. Notification of Changes.

(1) An individual licensee who is registered with the nationwide database shall:

(a) enter into the national database any change in the following:

(i) name of licensee;

(ii) contact information for licensee, including:

(A) mailing address;

(B) telephone number(s); and

(C) e-mail address(es);

(iii) sponsoring entity; and

(iv) license status (sponsored or non-sponsored); and

(b) pay all change fees charged by the national database and the division.

(2) An entity licensee shall:

(a) enter into the national database any change in the following:

(i) name of licensee;

(ii) contact information for licensee, including:

(A) mailing address;

(B) telephone number(s);

(C) fax number(s); and

(D) e-mail address(es);

(iii) sponsorship information;

(iv) control person(s);

(v) qualifying individual;

(vi) license status (sponsored or non-sponsored); and

(vii) branch offices or other trade names registered under the entity license; and

(b) pay any change fees charged by the national database and the division.

R162-2c-209. Sponsorship.

(1) A mortgage loan originator who is sponsored by an entity may operate and advertise under the name of:

(a) the entity;

(b) a branch office registered under the license of the entity; or

(c) another trade name registered under the license of the entity.

(2) A mortgage loan originator who operates or advertises under a name other than that of the entity by which the mortgage loan originator is sponsored:

(a) shall exercise due diligence to verify that the name being used is properly registered under the entity license; and

(b) shall not be immune from discipline if the individual conducts the business of residential mortgage loans on behalf of more than one entity, in violation of Section 61-2c-209(4)(b)(iii).

(3) An individual who holds a license as a mortgage loan originator may perform loan processing activities regardless of whether:

(a) the individual's license is sponsored by a licensed entity at the time the loan processing activities are performed; or

(b) the individual is employed by a licensed entity.

R162-2c-301a. Unprofessional Conduct.

(1) Mortgage loan originator.

(a) Affirmative duties. A mortgage loan originator who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator shall:

(i) solicit business and market products solely in the name of the mortgage loan originator's sponsoring entity;

(ii) conduct the business of residential mortgage loans solely in the name of the mortgage loan originator's sponsoring entity;

(iii) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:

(A) appraisal fees;

(B) inspection fees;

(C) credit reporting fees; and

(D) insurance premiums;

(iv) turn all records over to the sponsoring entity for proper retention and disposal; and

(v) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. A mortgage loan originator who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator may not:

(i) charge for services not actually performed;

(ii) require a borrower to pay more for third party services than the actual cost of those services;

(iii) withhold, without reasonable justification, payment owed to a third party service provider in connection with the business of residential mortgage loans;

(iv) alter an appraisal of real property; or

(v) unless acting under a valid real estate license and not under a mortgage license, perform any act that requires a real estate license under Title 61, Chapter 2f, including:

(A) providing a buyer or seller of real estate with a comparative market analysis;

(B) assisting a buyer or seller to determine the offering price or sales price of real estate;

(C) representing or assisting a buyer or seller of real estate in negotiations concerning a possible sale of real estate;

(D) advertising the sale of real estate by use of any advertising medium;

(E) preparing, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property; or

(F) altering, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property.

(c) A mortgage loan originator does not engage in an activity requiring a real estate license where the mortgage loan originator:

(i) offers advice about the consequences that the terms of a purchase agreement might have on the terms and availability of various mortgage products;

(ii) owns real property that the mortgage loan originator offers "for sale by owner"; or

(iii) advertises mortgage loan services in cooperation with a "for sale by owner" seller where the advertising clearly identifies:

(A) the owner's contact information;

(B) the owner's role;

(C) the mortgage loan originator's contact information; and

(D) the specific mortgage-related services that the mortgage loan originator may provide to a buyer; or

(iv) advertises in conjunction with a real estate brokerage where the advertising clearly identifies the:

(A) contact information for the brokerage;

(B) role of the brokerage;

(C) mortgage loan originator's contact information; and

(D) specific mortgage-related services that the mortgage loan originator may provide to a buyer.

(2) Lending manager.

(a) Affirmative duties. A lending manager who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405.

(b) An LM who is designated in the nationwide database as the principal lending manager of an entity shall:

(i) be accountable for the affirmative duties outlined in Subsection (1)(a);

(ii) provide to all sponsored mortgage loan originators and unlicensed staff specific written policies as to their affirmative duties and prohibited activities, as established by:

(A) federal law governing residential mortgage lending;

(B) state law governing residential mortgage lending and including the Utah Residential Mortgage Practices Act; and

(C) administrative rules promulgated by the division under authority of the Utah Residential Mortgage Practices Act;

(iii) exercise reasonable supervision over all sponsored mortgage loan originators and over all unlicensed staff by:

(A) directing the details and means of their work activities;

(B) requiring that they read and agree to comply with the Utah Residential Mortgage Practices Act and the rules promulgated thereunder;

(C) requiring that they conduct all residential mortgage loan business in the name of the sponsoring entity; and

(D) prohibiting unlicensed staff from engaging in any activity that requires licensure;

(iv) establish and enforce written policies and procedures for ensuring the independent judgment of any underwriter employed by the PLM's sponsoring entity;

(v) establish and follow procedures for responding to all consumer complaints;

(vi) personally review any complaint relating to conduct by a sponsored mortgage loan originator or unlicensed staff member that might constitute a violation of federal law, state law, or division administrative rules;

(vii) establish and maintain a quality control plan that:

(A) complies with HUD/FHA requirements;

(B) complies with Freddie Mac and Fannie Mae requirements; or

(C) includes, at a minimum, procedures for:

(I) performing pre-closing and post-closing audits of at least ten percent of all loan files; and

(II) taking corrective action for problems identified through the audit process; and

(viii) review for compliance with applicable federal and state laws all advertising and marketing materials and methods used by:

(A) the PLM's sponsoring entity; and

(B) the entity's sponsored mortgage loan originators; and

(ix)(A) actively supervise:

(I) any ALM sponsored by the entity; and

(II) any BLM who is assigned to oversee the mortgage

loan origination activities of a branch office; and

(B) remain personally responsible and accountable for adequate supervision of all sponsored mortgage loan originators, unlicensed staff, and entity operations throughout all locations.

(c) An LM who is designated as a branch lending manager in the nationwide database shall:

(i) work from the branch office the LM is assigned to manage;

(ii) personally oversee all mortgage loan origination activities conducted through the branch office; and

(iii) personally supervise all mortgage loan originators and unlicensed staff affiliated with the branch office.

(d) Prohibited conduct. An LM who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. An LM may not engage in any activity that is prohibited for a mortgage loan originator or a mortgage entity.

(3) Mortgage entity.

(a) Affirmative duties. A mortgage entity that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage entity shall:

(i) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:

(A) appraisal fees;

(B) inspection fees;

(C) credit reporting fees; and

(D) insurance premiums;

(ii) retain and dispose of records according to R162-2c-302; and

(iii) comply with a division request for information within 10 business days of the date of the request;

(iv)(A) notify the division of the location from which the entity's PLM will work; and

(B) if the entity originates Utah loans from a location where the PLM is not present to oversee and supervise activities related to the business of residential mortgage loans, assign a separate LM to serve as the BLM per Section 61-2c-102(1)(e); and

(v) if using an incentive program, strictly comply with Subsection R162-2c-301b.

(b) Prohibited conduct. A mortgage entity shall be subject to discipline under Sections 61-2c-401 through 405 if:

(i) any sponsored mortgage loan originator or LM engages in any prohibited conduct; or

(ii) any unlicensed employee performs an activity for which licensure is required.

(4) Reporting unprofessional conduct.

(a) The division shall report in the nationwide database any final disciplinary action taken against a licensee for unprofessional conduct.

(b) A licensee may challenge the information entered by the division into the nationwide database pursuant to Section 63G-2-603.

(5) School.

(a) Affirmative duties. A school that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A school shall:

(i) within 15 calendar days of any material change in the information outlined in R162-2c-203(1)(b), provide to the division written notice of the change;

(ii) with regard to the criminal history disclosure required under R162-2c-203(1)(b)(ix),

(A) obtain each student's signature before allowing the student to participate in course instruction;

(B) retain each signed criminal history disclosure for a minimum of two years; and

(C) make any signed criminal history disclosure available to the division upon request;

(iii) maintain a record of each student's attendance for a minimum of five years after enrollment;

(iv) upon request of the division, substantiate any claim made in advertising materials;

(v) maintain a high quality of instruction;

(vi) adhere to all state laws and regulations regarding school and instructor certification;

(vii) provide the instructor(s) for each course with the required course content outline;

(viii) require instructors to adhere to the approved course content;

(ix) comply with a division request for information within 10 business days of the date of the request;

(x) upon completion of the course requirements, provide a certificate of completion to each student; and

(xi) ensure that the material is current in courses taught on:

(A) Utah statutes;

(B) Utah administrative rules;

(C) federal laws; and

(D) federal regulations.

(b) Prohibited conduct. A school that engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A school may not:

(i) accept payment from a student without first providing to that student the information outlined in R162-2c-203(1)(b)(vi) through (ix);

(ii) continue to operate after the expiration date of the school certification and without renewing;

(iii) continue to offer a course after its expiration date and without renewing;

(iv) allow an instructor whose instructor certification has expired to continue teaching;

(v) allow an individual student to earn more than eight credit hours of education in a single day;

(vi) award credit to a student who has not complied with the minimum attendance requirements;

(vii) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course;

(viii) give valuable consideration to a person licensed with the division under Section 61-2c for referring students to the school;

(ix) accept valuable consideration from a person licensed with the division under Section 61-2c for referring students to a licensed mortgage entity;

(x) allow licensed mortgage entities to solicit prospective mortgage loan originators at the school during class time or during the 10-minute break that is permitted during each hour of instruction;

(xi) require a student to attend any program organized for the purpose of solicitation;

(xii) make a misrepresentation in its advertising;

(xiii) advertise in any manner that denigrates the mortgage profession;

(xiv) advertise in any manner that disparages a competitor's services or methods of operation;

(xv) advertise or teach any course that has not been certified by the division;

(xvi) advertise a course with language that indicates division approval is pending or otherwise forthcoming; or

(xvii) attempt by any means to obtain or to use in its educational offerings the questions from any mortgage examination unless the questions have been dropped from the current bank of exam questions.

(6) Instructor.

(a) Affirmative duties. An instructor who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. An instructor shall:

(i) adhere to the approved outline for any course taught; and

(ii) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. An instructor who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. An instructor may not:

(i) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or

(ii) continue to teach any course after the course has expired and without renewing the course certification.

R162-2c-301b. Employee Incentive Program.

(1)(a) Under this Subsection R162-2c-301b, a licensed entity may pay an incentive to a mortgage loan originator who is sponsored by the entity and licensed in:

(i) Utah; or

(ii) another state.

(b) A licensed entity may not pay an incentive to an unlicensed employee.

(2) A PLM or entity that uses an incentive program shall:

(a) prior to paying any incentive to an individual, specifically describe in the individual's contract for employment:

(i) the methodology by which any incentive will be calculated, including the limitation specified in Subsection (2)(b); and

(ii) the circumstances under which an incentive will be paid, including the limitation specified in this Subsection (2)(c); and

(b) limit the dollar amount or value of any single incentive to $300 or less;

(c) limit the sponsored mortgage loan originator to receiving no more than three incentive payments in a calendar year; and

(d)(i) keep complete records of all incentive payments made, including:

(A) borrower name;

(B) property address;

(C) transaction closing date;

(D) date of incentive payment;

(E) name of employee receiving incentive payment; and

(F) amount paid; and

(ii) make such records available to the division for audit or inspection upon request.

(3) Before paying an incentive to a mortgage loan originator who is not licensed in Utah, the PLM or entity shall ensure that the individual did not:

(a) solicit or advertise to the client regarding financing for a Utah property; or

(b) perform any other activity that constitutes the business of residential mortgage loans pursuant to Section 61-2c-102(1)(h).

R162-2c-302. Requirements for Record Retention and Disposal.

(1) Record Retention.

(a) An entity licensed under the Utah Residential Mortgage Practices Act shall maintain and safeguard for the period set forth in Section 61-2c-302 the following records:

(i) application forms;

(ii) disclosure forms;

(iii) truth-in-lending forms;

(iv) credit reports and the explanations therefor;

(v) conversation logs;

(vi) verifications of employment, paycheck stubs, and tax returns;

(vii) proof of legal residency, if applicable;

(viii) appraisals, appraisal addenda, and records of communications between the appraiser and the registrant, licensee, and lender;

(ix) underwriter denials;

(x) notices of adverse action;

(xi) loan approval;

(xii) name and contact information for the borrower in the transaction; and

(xiii) all other records required by underwriters involved with the transaction or provided to a lender.

(b) Records may be maintained electronically if the storage system complies with Title 46 Chapter 04, Utah Uniform Electronic Transactions Act.

(c) A licensed entity shall make all records available to the division pursuant to Section 61-2c-302(3).

(d) An individual who terminates sponsorship with an entity shall turn over to the entity any records in the individual's possession at the time of termination.

(2) Record Disposal. A person who disposes of records at the end of the retention period shall destroy personal information by shredding, erasing, or otherwise making the information indecipherable.

(3) Responsible Party.

(a) If a licensed entity is actively engaged in the business of residential mortgage loans, the PLM is responsible for proper retention, maintenance, safeguarding, and disposal of records.

(b) If a licensed entity ceases doing business in Utah, the control person(s) as of its last day of operation are responsible for proper retention, maintenance, safeguarding, and disposal of records.

R162-2c-401. Administrative Proceedings.

(1) Request for agency action.

(a) If completed in full and submitted in compliance with the rules promulgated by the division, the following shall be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq.:

(i) an original or renewal application for a license;

(ii) an original or renewal application for a school certification;

(iii) an original or renewal application for a course certification; and

(iv) an original or renewal application for an instructor certification.

(b) Any other request for agency action shall:

(i) be in writing;

(ii) be signed by the requestor; and

(iii) comply with Utah Administrative Procedures Act, Section 63G-4-201(3).

(c) The following shall not be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq., even if submitted in compliance with this Subsection (1)(b):

(i) a complaint against a licensee; and

(ii) a request that the division commence an investigation or a disciplinary action against a licensee.

(2) 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.

(3) Informal adjudicative proceedings.

(a) All adjudicative proceedings as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as informal adjudicative proceedings. These informal proceedings shall include:

(i) a proceeding on an original or renewal application for a license;

(ii) a proceeding on an original or renewal application for a school, instructor, or course certification; and

(iii) except as provided in Section 63G-4-502, a proceeding for disciplinary action commenced by the division pursuant to Section 63G-4-201(2) following investigation of a

complaint.

(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Residential Mortgage Practices and Licensing Act or by these rules.

(4) Hearings not allowed. A hearing may not be held in the following informal adjudicative proceedings:

(a) the issuance of an original or renewed license when the application has been approved by the division;

(b) the issuance of an original or renewed school certification, instructor certification, or course certification when the application has been approved by the division;

(c) the issuance of any interpretation of statute, rule, or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the division;

(d) the denial of an application for an original or renewed license on the ground that it is incomplete;

(e) the denial of an application for an original or renewed school, instructor, or course certification on the ground that it does not comply with the requirements stated in these rules; or

(f) a proceeding on an application for an exemption from a continuing education requirement.

(5) Hearings required. A hearing before the commission shall be held in the following circumstances:

(a) a proceeding commenced by the division for disciplinary action pursuant to Section 61-2c-402 and Section 63G-4-201(2);

(b) an appeal of a division order denying or restricting a license; and

(c) an application that presents unusual circumstances such that the division determines that the application should be heard by the commission.

(6) 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 the chairperson 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 4;

(ii) Utah Administrative Code Section R151-4 et seq.; and

(iii) the rules promulgated by the division.

(c) Except as provided in Subsection 7(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, 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 pre-paid delivery, mail to the address last provided to the division pursuant to Section 61-2c-106 or Subsection R162-2c-201, as applicable, written notice of the date, time, and place scheduled for the hearing.

(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:

(A) the party 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 the 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 R151-4-110(1)(a), an attorney may represent a respondent.

(7) 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) The division shall provide its witness and exhibit list to the respondent at the time it mails its notice of hearing.

(ii) The respondent shall provide its witness and exhibit list 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 each 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.

(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.

R162-2c-402. Disciplinary Action.

In reviewing a request to convert a revocation to a suspension pursuant to Section 61-2c-402(4)(a):

(1) The commission may not convert a revocation that was based on a felony conviction involving fraud, misrepresentation, deceit or dishonesty, breach of trust, or money laundering.

(2) The commission may consider converting a revocation that was based on other criminal history, including:

(a) a plea in abeyance, diversion agreement, or similar

disposition of a felony charge; and

(b) a misdemeanor offense, regardless of the nature of the charge or the disposition of the case.

R162-2c-501a. Optional Experience Equivalency Calculation.

(1) Thirty months of full-time experience in the following activities shall be considered equivalent to one year of experience as a first-lien residential mortgage loan originator:

(a) loan underwriter;

(b) mortgage loan manager;

(c) loan processor;

(d) certified mortgage prelicensing instructor; and

(e) second-lien residential loan originator.

(2) An applicant who wishes to receive experience credit under this Subsection R162-2c-501a, but who cannot demonstrate experience equivalent to a full year of first-lien residential mortgage loan origination shall:

(a) be awarded experience credit as deemed appropriate by the division; and

(b) complete the experience requirement through additional experience as a first-lien residential mortgage loan originator, as determined by the division.

R162-2c-501b. Optional Experience Points Table.

TABLE
APPENDIX 3 - OPTIONAL EXPERIENCE TABLE

Professional activity	possible points
(1) Loan underwriter	0.5 pt/month
(2) Mortgage loan manager	0.5 pt/month
(3) Loan processor	0.5 pt/month
(4) Certified mortgage prelicensing instructor	0.5 pt/month
(5) Second-lien residential loan originator	0.5 pt/month

KEY: residential mortgage, loan origination, licensing, enforcement

November 20, 2013 **61-2c-103(3)**
61-2c-402(4)(a)

R277. Education, Administration.
R277-106. Utah Professional Practices Advisory Commission Appointment Process.
R277-106-1. Definitions.

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

B. "Nomination application" means:

(1) written and signed statement by the superintendent of the school district or charter school director in which the educator is currently employed, that the superintendent/director understands the time commitment of UPPAC members and supports the educator in applying for one three-year term as identified in statute. If the applicant is a school district superintendent or charter school director, the chair of the local/charter school board shall provide a statement of support for the educator;

(2) written and signed statement by the educator's building principal or director that the principal/director understands the time commitment of UPPAC members and supports the educator in applying for one three-year term. If the applicant is a principal, the applicant shall include a statement of understanding of the time commitment in the personal statement provided by the applicant;

(3) written and signed personal statement by the applicant expressing the applicant's desire to serve as a UPPAC member, a summary of the applicant's professional experience, including associations and professional affiliations; and

(4) the applicant's vita.

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

D. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, under Section 53A-6-301.

R277-106-2. Authority and Purpose.

A. This rule is adopted pursuant to Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-6-303(1)(a) which directs the Board to adopt rules establishing procedures for nominating and appointing UPPAC members, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish nomination and appointment procedures for UPPAC members.

R277-106-3. UPPAC Notification, Nomination and Application Process.

A. The UPPAC Executive Secretary shall notify school districts, charter schools and education organizations in writing of openings on UPPAC for the upcoming term by May 15 of the year in which UPPAC vacancies shall be filled by appointment by the Superintendent.

B. As provided under Section 53A-6-303(1)(b), nomination petitions shall be filed with the Superintendent.

R277-106-4. UPPAC Selection Process.

A. The UPPAC Executive Secretary shall review all complete and properly filed applications and may make recommendation(s), per direction from the Superintendent, to the Superintendent prior to May 30 of the year in which membership on UPPAC is sought.

(1) The Executive Secretary may seek additional information to provide to the Superintendent about the experience and qualification of UPPAC applicants.

(2) Recommendations shall maintain a representative balance of six teachers and three other educators.

(3) Recommendations shall consider rural/urban, elementary/secondary, gender, ethnic, and geographical balance of UPPAC members.

B. The Superintendent shall make UPPAC appointments consistent with Section 53A-6-303.

C. Community members

(1) Community members may be nominated by the state organization or a local chapter of the education organization with the largest membership of parents of students and teachers in the state.

(2) Community members who are members of a parent/teacher, parent/teacher/student organization may submit their names to the education organization described in Section 53A-6-302(1) for nomination by the organization.

(3) The two community members shall not serve concurrent terms.

D. If current UPPAC members desire to serve for a second term, the member shall indicate the desire to serve an additional term in writing to the Superintendent prior to May 15 of the year in which the member's term expires.

E. The applications(s) of (a) UPPAC member(s) seeking reappointment shall be considered for recommendation at the same time that new appointments are considered.

F. The Executive Secretary may retain applications for consideration for mid-term vacancies or for vacancies in subsequent years.

R277-106-5. Filling of Vacancies.

A. The UPPAC Executive Secretary shall recommend names to the Superintendent to fill vacancies that occur midyear.

B. The UPPAC Executive Secretary may recommend names of previous applicants for UPPAC vacancies or names from school districts or charter schools or other groups or areas of the state that are under represented to fill vacancies.

KEY: professional competency, professional practices*
November 7, 2013 Art X Sec 3
Notice of Continuation September 9, 2013 53A-6-303(1)(a)
53A-1-401(3)

R277. Education, Administration.
R277-113. LEA Fiscal Policies and Accountability.
R277-113-1. Definitions.

A. "Arm's length transaction" means a transaction between two unrelated, independent and unaffiliated parties or a transaction between two parties acting in their own self interest that is conducted as if the parties were strangers so that no conflict of interest exists.

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

C. "Exclusive contract or arrangement" means an agreement requiring a buyer to purchase or exchange all needed goods or services from one seller.

D. "Internal controls" are procedures designed to safeguard assets, detect errors and misappropriations, produce timely and accurate financial reports, and ensure compliance with laws and rules.

E. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and for purposes of this rule, the Utah Schools for the Deaf and the Blind.

F. "Management" means an LEA superintendent or director, deputy or associate, business administrator or manager, or other educational administrator or designated staff.

G. "Public funds" (Utah Code Section 51-7-3(25)) means money, funds, and accounts, regardless of the source from which the funds are derived, that are owned, held, or administered by the state or any of its political subdivisions including LEAs or other public bodies.

H. "School sponsored" means an activity, fundraising event, club, camp, clinic or other event or activity that is authorized by a specific LEA or public school which supports the LEA or authorized curricular school club, activity, sport, class or program, that also satisfies at least one of the following conditions:

(1) it is managed or supervised by an LEA or public school, or LEA or public school employee;

(2) it uses the LEA or public school's facilities, equipment, or other school resources; or

(3) it is supported or subsidized, more than inconsequently, by public funds, including the public school's activity funds or minimum school program dollars.

I. "Utah Public Officers' and Employees' Ethics Act" (Utah Code Sections 67-16-1 through 15) means an Act that provides standards of conduct for officers and employees of the state of Utah and its political subdivisions in areas where there are actual or potential conflicts of interest between their public duties and their private interests.

R277-113-2. 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, and by Section 53A-1-402(1)(e) which directs the Board to establish rules and minimum standards for school productivity and cost effectiveness measures.

B. The purpose of this rule is to (1) require LEAs to formally adopt and implement policies regarding the management and use of public funds; (2) provide minimum standards, procedures and definitions for LEA policies; (3) direct that LEAs make policies, procedures and training materials available to the public and readily accessible on LEA or public school websites, to the extent of resources available; (4) require LEAs to train employees in appropriate financial practices, necessary accounting procedures and ethical financial practices; and (5) provide for consistency among LEAs regarding fiscal policies, procedures and accountability practices.

R277-113-3. Board Responsibilities.

A. The Board shall provide training and informational materials and model policies for use by LEAs in developing LEA and public school-specific financial policies about the use and management of public funds before March 31, 2013.

B. The Board shall provide online training and resources for LEAs regarding the use and management of public funds and ethical practices for licensed Utah educators who manage, control, participate in fundraising, or expend public funds before March 31, 2013.

C. The Board may provide and establish a cycle for state review of LEA fiscal policies and standards.

D. The Board shall work with and provide information upon request to the Utah State Auditors Office, the Legislative Fiscal Auditors and other state agencies with the right to information from the Utah State Office of Education.

R277-113-4. LEA Responsibilities.

A. LEAs shall develop, have approved by local/charter boards and implement the fiscal policies required in R277-113-5 before September 15, 2013. These policies shall be in writing.

B. LEAs shall also develop a plan for training LEA and public school employees, at least annually, on policies enacted by the LEA specific to job function.

(1) These policies shall be available at each LEA main office, at individual public schools, and on the LEA's website.

(2) The LEA fiscal policies and training may have different components, specificity, and levels of complexity for public elementary and secondary schools.

(3) LEAs may have one policy or more than one satisfying the minimum requirements of this rule.

(4) An LEA policy shall address how often the policy shall be reviewed, including periodic updates or training and resource manuals.

(5) An LEA policy may reference specific training manuals or other resources that provide detailed descriptions of business practices which are too lengthy or detailed to include in the LEA policy.

C. An LEA shall designate board members to serve on an audit or finance committee. The LEA audit or finance committee has the following responsibilities:

(1) ensuring that management properly develops and adheres to a sound system of internal controls consistent with the requirements of R277-113-5;

(2) receiving a report of the risk assessment process undertaken by management in developing the system of internal controls;

(3) developing a process to review financial information, financial statements, and LEA and individual school records on a regular basis;

(4) ensuring that management conducts a competitive RFP process to hire external auditors and other professional services and making a recommendation to the LEA board on the results of the RFP process consistent with the State Procurement Code;

(5) receiving communication from or meeting with the external auditors annually and receiving a direct report of the audit findings, exceptions, and other matters noted by the auditor;

(6) reporting the annual audit reports and findings or other matters communicated by the external auditor or other regulatory bodies to the LEA board in a public meeting;

(7) ensuring that matters reported by external audits, internal audits, or other regulatory bodies are resolved in a timely manner.

D. The definition of school sponsored and requirements of R277-113-4F do not apply to activities, fundraising events, clinics, clubs, camps, or activities organized by a third party which have not been designated by the LEA as school sponsored. All transactions pertaining to nonschool sponsored

events shall be conducted at arm's length; revenues and expenditures shall not be commingled with public funds.

E. For nonschool sponsored events, funds may be managed or held by a public school employee, only consistent with R277-107.

F. The definition of school sponsored and requirements of R277-113-4F do not apply to non-curricular clubs specifically authorized and meeting all criteria of Sections 53A-11-1205 through 1208.

G. LEAs and individual public schools shall comply with the following regarding school and nonschool sponsored activities:

(1) may enter into contractual agreements to allow for fundraising and use of LEA facilities. An agreement shall take into consideration the LEA's fiduciary responsibility for the management and use of public funds. LEAs should consult with the LEA insurer or legal counsel, or both, to ensure risks are adequately considered and managed;

(2) shall annually review fundraising activities that support or subsidize LEA or public school-authorized clubs, activities, sports, classes or programs to determine if the activities are school sponsored consistent within R277-113-1H;

(3) shall ensure that revenues raised from school sponsored activities and funds expended from the proceeds are considered public funds consistent with R277-113-1G;

(4) shall maintain adequate records to ensure that funds collected from or during school sponsored activities are in compliance with LEA cash handling policies as required by R277-113-5;

(5) shall maintain adequate records to show that expenditures made to support activities from LEA or public school funds are in compliance with LEA expenditure of funds policies as required by R277-113-5;

(6) shall make records of activities available to parents, students, and donors and shall maintain the records in sufficient detail to track individual contributions and expenditures as well as overall financial outcome. Records may be private or protected consistent with Sections 63G-2-302, 303, 305, and the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g;

H. Public Education Foundations established by LEAs shall follow the requirements provided in Section 53A-4-205.

R277-113-5. Required LEA Fiscal Policies.

A. The following fiscal policies shall be required in each LEA. LEAs shall ensure that each policy addresses the applicable Utah Code references or Board Rules in each section. The required items are minimum requirements. LEAs may include other related items, provide LEA specific policy and guidance, and set polices that are more restrictive and inclusive than the minimum provisions established by the Board.

B. LEAs shall ensure that policies address applicable elements from the Utah Public Officers' and Employees' Ethics Act, Utah Educator Standards (R277-515), and the definition of public funds.

C. LEA fiscal policies shall address the following:

(1) Cash Handling: The LEA cash handling policy shall address cash receipts (cash, checks, credit cards, and other items) collected at the LEA and individual public schools through school sponsored activities and shall include:

(a) establishment of internal controls and procedures over the collection, deposit, and reconciliation of cash receipts received;

(b) compliance with Utah Code 51-4-2(2) regarding deposits.

(2) Expenditure of Public Funds: The LEA expenditure policy shall address expenditures made by checks, electronic transfers and credit/purchase cards that are made by the LEA and individual public schools through school sponsored activities and shall include:

(a) establishment of internal controls and procedures over the initiation, approval and monitoring of expenditures, credit or purchase card transactions, employee reimbursements, travel, and payroll;

(b) directives regarding the appropriate use of the LEA tax exempt status number;

(c) compliance with Section 63G-6a-1204 regarding length of multi-year contracts;

(d) compliance with Section 63G-6a et seq., procurement state law and Board rule regarding construction and improvements, and compliance with Title IX; and

(e) procedures and documentation maintained by the LEA if the LEA chooses to enter into exclusive contracts or arrangements consistent with state procurement law and the LEA procurement policy.

(3) Fundraising: The LEA fundraising policy shall establish procedures for LEA and public school fundraising in general, establish an approval process for fundraising activities, school sponsored activities, provide for compliance with school fee and fee waiver provisions, and shall include:

(a) specific designation of employees by title or job description who are authorized to approve fundraising, school sponsored activities, and grant fee waivers with appropriate attention to student and family confidentiality;

(b) establishment of internal controls and procedures over the approval of fundraising and school sponsored activities and compliance with associated cash handling and expenditure policies;

(c) directives regarding the appropriate use of the LEA tax exempt status number, and issuance of charitable donation receipts;

(d) procedures governing LEA or public school employee interaction with parents, donors, and nonschool sponsored organizations;

(e) disclosure requirements for LEA and public school employees approving or otherwise managing or overseeing fundraising activities who also have a financial or controlling interest or access to bank accounts in the fundraising organization or company.

(f) This policy shall be in harmony with Article X of the Utah Constitution establishing a free public education system, with R277-407 regarding school fees, and compliance with Title IX.

(g) The LEA may include procedures governing student participation and incentives offered to students, allowable types of fundraising activities, and participation in school sponsored activities by volunteer or outside organizations.

(4) Donations and Gifts: The LEA donation and gift policy shall establish acceptance and approval process for monetary donations, donations and gifts with donor restrictions, donations of gifts, goods, materials or equipment, and funds or items designated for construction or improvements of facilities, and shall include:

(a) establishment of internal controls and procedures over the acceptance and approval of donations and gifts and compliance with associated cash handling and expenditure policies;

(b) directives regarding the appropriate use of the LEA tax exempt status number, and issuance of charitable donation receipts;

(c) procedures regarding the objective valuation of donations or gifts if advertising or other services are offered to the donor in exchange for a donation or gift;

(d) procedures governing LEA or public school employee conduct with parents, donors, and nonschool sponsored organizations;

(e) procedures establishing provisions to direct donations or gifts to the LEA or LEA programs, individual public school

or public school programs, and restricting donations from being directed at specific LEA employees, individual students, vendors, or brand name goods or services;

(f) compliance with Title 63G, Chapter 6a regarding the procurement code, state law and Board rule regarding construction and improvements, IRS regulations and tax deductible directives, and compliance with Title IX.

(g) The LEA may include procedures for accepting donations and gifts through an LEA's legally organized foundation, if applicable, or procedures for recognition of donors, or granting naming rights.

R277-113-6. LEA Financial Policies and Compliance with State and Federal Law.

A. LEAs are responsible to ensure that policies comply with the following state laws and Board Rules:

(1) Utah Constitution Article X, Section 3;

(2) Utah Code 63G-6a, Utah Procurement Code;

(3) Utah Code 51-4, Deposit of Funds Due State;

(4) Utah Code 67-16, Utah Public Officers' and Employees' Ethics Act;

(5) 20 U.S.C. Section 1232g, Family Educational Rights and Privacy Act;

(6) Utah Code 63G-2, Government Records Access and Management Act;

(7) Utah Code Section 53A-12, Fees and Textbooks;

(8) Utah Code Section 53A-4-205, Public Education Foundations;

(9) Utah Code 53A-11-1205 through 53A-11-1208:

(a) 53A-11-1205, Noncurricular clubs -- Annual authorization;

(b) 53A-11-1206, Clubs -- Limitations and denials;

(c) 53A-11-1207, Faculty oversight of authorized clubs;

(d) 53A-11-1208, Use of school facilities by clubs;

(10) R277-407, School Fees;

(11) R277-107, Educational Services Outside of Educator's Regular Employment;

(12) R277-515, Utah Educator Standards;

(13) R277-605, Coaching Standards and Athletic Clinics.

B. In establishing policies and providing staff training, LEAs shall consider requirements of Title IX, including:

(1) Fundraising shall equitably benefit males and females;

(2) Males and females shall have reasonably equal access to facilities, fields and equipment;

(3) School sponsored activities shall be reasonably equal for males and females.

KEY: school sponsored activities, public funds, fiscal policies and procedures, audit committee

November 7, 2013 **Art X, Sec 3**
53A-1-401(3)
53A-1-402(1)(e)

R277. Education, Administration.
R277-403. Student Reading Proficiency and Notice to Parents.
R277-403-1. Definitions.

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

B. "Competency" means a demonstrable acquisition of a specified knowledge, skill or ability that has been organized into a hierarchical arrangement leading to higher levels of knowledge, skill or ability.

C. "Lacks proficiency" for purposes of this rule means that a student requires additional instruction beyond that provided to typically developing peers in order to close the gap between the student's current level of reading achievement and that expected of all students in that grade as determined by valid and reliable assessments as designated by the Board.

D. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

E. "Midpoint of the school year" means January 31 of the school year.

F. "Notification to parents" for purposes of this rule means notice by any reasonable means including electronic notice, notice by telephone, written notice, or personal notice.

G. "Reading below grade level" for purposes of this rule means that a student requires additional instruction beyond that provided to typically developing peers in order to close the gap between the student's current level of reading achievement and that expected of all students in that grade as determined by valid and reliable assessments as designated by the Board.

H. "Reading remediation interventions" means instruction or activities or both in reading given to students in addition to their regular reading instruction, during another time in the school day, outside regular instructional time, or in the summer, which is focused on specific needs as identified by reliable and valid assessments.

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

J. "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.

R277-403-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-17a-150(14) which directs the Board to make rules to implement the Program and to require progress reports from each LEA documenting the LEA's satisfaction with its reading goal(s), and by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions of terms used in Section 53A-1-606.6, to provide necessary testing and reporting windows and timelines, and to require submission by LEAS of student reading assessment data to the USOE.

R277-403-3. LEA Responsibilities.

A. LEAs shall administer the Board approved benchmark assessments at the beginning, in the middle, and at the end of grade one, grade two and grade three within testing windows determined by USOE.

B. Following each benchmark assessment, an LEA or school within an LEA shall notify parents or guardians of the student's results.

C. At the beginning, in the middle and at the end of the school year, each LEA or school within an LEA, shall identify every student currently enrolled in the school who is in the first, second or third grade who is not reading at grade level.

D. If a benchmark assessment or supplemental reading assessment indicates a student lacks competency in a reading skill, the LEA shall:

(1) provide notice to parents of student's lack of competency;

(2) provide information to the parent or guardian regarding appropriate interventions available to the student outside regular instructional time that may include tutoring, before and after school programs, or summer school;

(3) provide focused individualized intervention to develop the reading skill;

(4) administer formative assessments to measure the success of the focused intervention; and

(5) inform the student's parent or guardian of activities that the parent or guardian may engage in with the student to assist the student in improving reading competency.

E. LEAs shall report to parents in the beginning, by February 15, and at the end of grade one, grade two and grade three, assessment results.

F. LEAs shall also report to parents the student's reading level at the end of third grade.

G. LEAs shall provide as part of the UTREx Data Submission, the following information:

(1) the number of students in each of grades 1, 2 and 3 that were reading below grade level at the beginning, midpoint, and end of the school year;

(2) the number of students in each grade level that were reading below grade level at the midpoint of the school year and who received reading remediation interventions;

(3) the name of each student in grades 1, 2 and 3 and a designation of whether the student is reading at grade level or below grade level; and

(4) the name of each student in grades 1, 2 and 3 who received reading interventions as required under R277-403-3G in the prior school year.

R277-403-4. Board/USOE Responsibilities.

A. The Board shall designate one benchmark assessment for use statewide by all LEAs to assess the reading competency of students in grades one, two, and three for the beginning, midpoint and end of year assessments.

B. The USOE shall provide guidance to LEAs about valid and reliable assessments to be used for the midpoint supplemental assessments to assist in evaluating the reading grade level of students.

C. The USOE shall provide procedures for LEAs to determine expected reading levels of first, second and third grade students.

D. The Board shall contract with an educational technology provider, selected through a request for proposals process, for a diagnostic assessment system for reading for students in kindergarten through grade three that meets the requirements of 53A-1-606.7.

E. To the extent of funds available, the USOE shall select interested LEAs to use the diagnostic assessment for reading.

F. The USOE shall provide timelines to LEAs for notification to the USOE of:

(1) LEA selected assessments;

(2) student reading data required by law;

(3) assurance of compliance with all legislative and Board requirements as requested.

G. LEAs that select the assessment technology shall use the assessment consistent with Board directives.

H. The Board shall evaluate the diagnostic assessment system for reading by comparing the learning gains for students in LEAs that do not use the diagnostic assessment system for reading with LEAs that used the diagnostic reading assessment.

I. The Board shall report to the Education Interim Committee consistent with timelines and information required under Section 53A-17a-150(13).

J. The Board shall make an annual report to the Public

Education Appropriations Subcommittee as described in 53A-17a-150(16).

KEY: students, reading, competency
November 7, 2013 **Art X, Sec 3**
Notice of Continuation June 10, 2013 **53A-1-606.6(2)**
53A-1-401(3)

R277. Education, Administration.
R277-404. Requirements for Assessments of Student Achievement.
R277-404-1. Definitions.

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

B. "College readiness assessment" means an assessment adopted by the Board that includes a college admissions test that provides an assessment of language arts, mathematics, and science, that is most commonly used by local universities to assess student preparation for college. The college readiness assessment may include the Armed Services Vocational Aptitude Battery (ASVAB) and a battery of assessments that is predictive of success in higher education.

C. "Days," for purposes of this rule, means calendar days unless specifically designated otherwise in this rule.

D. "Direct Writing Assessment (DWA)" means a Board-designated online assessment to measure writing performance for students in grades five and eight.

E. "English Language Learner (ELL) student" means a student who is learning in English as a second language.

F. "English Language Proficiency Test (ELPT)" means an assessment designed to measure the acquisition of the English language for English Language Learners.

G. "Individualized Education Program (IEP)" means an individualized instructional and assessment plan for students who are eligible for special education services under the Individuals with Disabilities Education Act of 2004.

H. "LEA" means local education agency, including local school boards/ public school districts and schools, and charter schools.

I. "National Assessment of Education Progress (NAEP)" is the national achievement assessment administered by the United States Department of Education to measure and track student academic progress.

J. "Pre-post" means an assessment administered at the beginning of the school year and at the end of the school year to determine individual student growth in academic proficiency which has occurred during the school year.

K. "Section 504 accommodation plan" required by Section 504 of the Rehabilitation Act of 1973, means a plan designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

L. "Summative adaptive assessments" means assessments administered to assess a student's achievement. The assessments are administered online to measure the full range of student ability by adapting to each student's responses, selecting more difficult questions when a student answers correctly and less difficult questions when a student answers incorrectly. Summative assessments provide summary information allowing a student or groups of students to be compared with other students.

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

N. "Utah Alternate Assessment (UAA)" means an assessment instrument for students in special education with disabilities so severe they are not able to participate in the components of U-PASS even with assessment accommodations or modifications. The UAA measures progress on the Utah core instructional goals and objectives in the student's individual education program (IEP).

O. "Utah eTranscript and Record Exchange (UTREx)" means a system that allows individual detailed student records to be exchanged electronically between public education LEAs and the USOE, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

P. "Utah Performance Assessment System for Students (U-PASS)" means:

(1) summative adaptive assessments of students in grades 3 through 12 in basic skills courses;

(2) an online writing assessment in grades 5 and 8;

(3) college readiness assessments;

(4) the use of student behavior indicators in assessing student performance; and

(5) assessment of students in grade 3 to measure reading grade level.

R277-404-2. 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, Sections 53A-1-603 through 53A-1-611 which direct the Board to adopt rules for the maintenance and administration of U-PASS, 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 provide consistent definitions and to provide standards and procedures for a Board developed and directed comprehensive assessment system for all students, as required by state and federal law.

R277-404-3. Board Responsibilities.

A. The Board shall maintain a comprehensive assessment system for all students in grades K-12. This assessment system shall include:

(1) Summative adaptive assessments in English language arts for grades 3 - 11; mathematics for grades 3 - 8; secondary math 1, 2, 3; and science for grades 4 - 8; earth systems, biology, physics and chemistry;

(2) Direct Writing Assessment (DWA) for grades 5 and 8;

(3) Pre-post kindergarten assessment for kindergarten students as determined by the LEA;

(4) one benchmark reading assessment determined by USOE for 1st, 2nd and 3rd grade students at the midpoint of the year. This assessment shall be administered at the beginning, midpoint and end of year;

(5) Third grade summative end of year reading assessment;

(6) Utah Alternate Assessment (UAA);

(7) English Language Proficiency Test (ELPT);

(8) National Assessment of Educational Progress (NAEP);

(9) College readiness assessments for grades 11, 10 and either grade 9 or 8 as determined by the LEA; and

(10) Reporting by the USOE of U-PASS results to include:

(a) the computation of student performance based on information that is disaggregated with respect to race, ethnicity, gender, limited English proficiency, eligibility for special education services, and those students who qualify for free or reduced price school lunch;

(b) security features to maintain the integrity of the system, including statewide uniform assessment dates, multiple assessment forms, assessment administration protocols, and training; and

(c) compilation of summative adaptive assessment results and online writing assessment scores and assessment summaries.

B. The Board shall provide specific rules, administrative guidelines, timelines, procedures, and assessment ethics training and requirements for all required assessments.

C. The Board shall provide information and applications:

(1) establishing procedures for applying for and awarding funding for computer adaptive assessment technology;

(2) specifying how funds for computer adaptive assessment technology shall be allocated among LEAs that qualify to receive the funding; and

(3) requiring reporting of the expenditure of funds awarded for computer adaptive assessment technology and evidence that the funds were used to implement computer adaptive assessments.

D. The Board shall provide resources, to the extent available, and recommendations for:

(1) LEA implementation of the assessment system;

(2) professional development for teachers to administer assessments and interpret assessment results; and

(3) teacher access to assessment scores from the previous school year for students who have been assigned to the teacher's class for the new school year.

E. All Utah public school students shall participate in the comprehensive assessment system unless the UAA or ELPT is approved for specific students consistent with federal law.

R277-404-4. LEA Responsibilities.

A. LEAs shall develop a comprehensive assessment system plan to include the assessments described in R277-404-3A. This plan shall, at a minimum, include:

(1) professional development for teachers to fully implement the assessment system;

(2) training for educators and appropriate paraprofessionals in the requirements of assessment administration ethics; and

(3) training for educators and appropriate paraprofessionals to utilize assessment results effectively to inform instruction.

B. LEAs shall make all policies and procedures consistent with the law, Board rules for standardized assessment administration, and the USOE Testing Ethics Policy available from the USOE.

C. At least once each school year, LEAs shall provide professional development for all teachers, administrators, and standardized assessment administrators concerning guidelines and procedures for standardized assessment administration, including teacher responsibility for assessment security and proper professional practices.

D. LEA assessment staff shall use the USOE Testing Ethics Policy in providing training for all assessment administrators/proctors.

R277-404-5. School Responsibilities.

A. LEAs/schools shall require teachers and assessment administrators/proctors to individually sign the Testing Ethics signature page provided by the USOE acknowledging or assuring that the teacher shall administer assessments consistent with ethics and protocol requirements.

B. All teachers and assessment administrators shall conduct assessment preparation, supervise assessment administration, provide assessment results and complete error resolution.

C. All teachers and assessment administrators/proctors shall securely handle and return all protected assessment materials, where instructed, in strict accordance with the procedures and directions specified in assessment administration manuals, LEA rules and policies, Board rules, USOE Testing Ethics Policy, and state applications of federal requirements for funding.

R277-404-6. Assessment Requirements, Protocols, and Security.

A. Teachers, test administrators/proctors, administrators, school personnel and volunteers, under the direction of school personnel, shall not:

(1) provide students directly or indirectly with specific questions, answers, or the content of any specific item in any standardized assessment prior to assessment administration;

(2) download, copy, print, or make any facsimile of protected assessment material prior to assessment administration without express permission of the USOE and LEA administrators;

(3) change, alter or amend any student answer or any other standardized assessment materials at any time in such a way that alters the student's intended response;

(4) use any prior form of any standardized assessment (including pilot assessment materials) that has not been released by the USOE in assessment preparation without express permission of the USOE and LEA administrators;

(5) violate any specific assessment administrative procedure specified in the assessment administration manual, or violate any state or LEA standardized assessment policy or procedure, or violate any procedure specified in the USOE Testing Ethics Policy;

(6) fail to administer a required assessment;

(7) submit falsified data; or

(8) knowingly do anything that would affect the security, validity, or reliability of standardized assessment scores of any individual student, class, or school.

B. All assessment materials, questions and student responses for required assessments shall be designated protected, consistent with Section 63G-2-305, until released by the USOE.

C. A student's individual responses and scores shall be available to the student's parent(s)/legal guardian(s) consistent with the federal Family Educational Rights and Privacy Act (FERPA), 20 USC, Sec. 1232g; 34 CFR Part 99.

D. Each LEA shall ensure that all assessment content is secured so that only authorized personnel have access and that assessment materials are returned to USOE following testing, as required by the USOE. Individual educators shall not retain test materials, in either paper or electronic form, for purposes inconsistent with ethical test administration or beyond the time period allowed for test administration.

E. Violation of any of these rules subjects licensed educators to possible disciplinary action under R277-515, Utah Educator Standards.

F. A student's IEP, ELL, or Section 504 team shall determine a student's participation in statewide assessments.

R277-404-7. Time Periods for Assessment Administration.

A. LEAs shall administer assessments required under R277-404-3, and consistent with the following schedule:

(1) All summative adaptive assessments and UAAs (elementary and secondary, English language arts, math, science) shall be administered within the USOE annually designated assessment windows.

(2) The grade 5 and grade 8 Direct Writing Assessment shall be administered in a three week window beginning at least 14 weeks prior to the last day of school.

(3) The UALPA shall be administered to all English Language Learner students identified as Level 1 Entering, Level 2 Beginning, Level 3 Developing, Level 4 Expanding, or enrolled for the first time in the LEA at any time during the school year. The assessment shall be administered annually to show progress. LEAs shall submit UALPA paper answer documents to the USOE-identified scoring provider for scanning and scoring on a schedule defined by the USOE.

(4) Pre-post kindergarten assessment for kindergarten students as determined by the LEA during assessment windows determined by the LEA.

(5) One benchmark reading assessment specifically and solely determined by the USOE for grade 1, grade 2, and grade 3 students administered to students in the beginning, midpoint, and end of the school year.

(6) Grade 3 summative end of year reading assessment determined specifically and solely by USOE administered by LEAs consistent with USOE procedures.

(7) NAEP assessments determined and required annually by the United States Department of Education and administered to students as directed by United States Department of Education.

B. LEAs shall complete all required assessment procedures prior to the end of the USOE-defined assessment window(s).

C. LEAs shall set dates for summative adaptive assessment administration for courses taught on alternative, year-round, semester or trimester schedules. LEAs shall assess students at the point in the course where students have had approximately the same amount of instructional time as students on a traditional full year schedule. LEAs with alternative scheduling shall provide course level test administration schedule(s) to the USOE before instruction begins for the course.

R277-404-8. Data Exchanges.

A. The USOE IT Section shall communicate regularly with LEAs regarding required formats for electronic submission of required data.

B. LEAs shall update UTREx data using the processes and according to schedule(s) determined by the USOE.

C. LEAs shall ensure that any computer software for maintaining or submitting LEA data is compatible with data reporting requirements as determined in R277-484.

D. The USOE shall provide directions to all LEAs detailing the data exchange requirements for each assessment.

E. Each LEA shall verify that all the requirements of the USOE-provided directions have been satisfied.

F. Consistent with Utah law, the USOE shall return assessment results from all required assessments to the school before the end of the school year.

G. Each LEA shall check all assessment results for each school within the LEA and for the LEA as a whole, verify their accuracy with the USOE, and certify that they are prepared for publication within two weeks of receipt of the data. Except in compelling circumstances, as determined by the USOE, no changes shall be made to LEA data after this two week period. Compelling circumstances may include:

(1) a natural disaster or other catastrophic occurrence, such as a school fire or flood, that precludes timely review of data; and

(2) resolution of a professional practices issue that may impede reporting of the data.

H. LEAs shall not release data publicly until authorized to do so by the USOE.

R277-404-9. Crisis Indicators in State Assessments.

A. Students participating in state assessments may reveal intentions to harm themselves or others, that a student is at risk of harm from others, or may reveal other indicators that the student is in a crisis situation.

B. If a student's response comes to the attention of USOE assessment staff, the USOE shall notify the school principal, counselor or other LEA personnel who USOE staff determines has legitimate educational interests, whenever the USOE identifies and determines, in its sole discretion, that a student response indicates the student may be in a crisis situation.

C. As soon as practicable, the school district superintendent/charter school director, or designee shall be given the name of the individual contacted at the school regarding a student's potential crisis situation.

D. The USOE shall provide the school and district with a copy of the relevant student response.

E. Using their professional judgment, school personnel contacted by USOE shall notify the student's parent, guardian or law enforcement of the student's expressed intentions as soon as practical under the circumstances.

F. The student response provided by USOE shall not be part of the student's record and the school shall destroy any copies of the student response once the school or district personnel involved in resolution of the matter determine the student response is no longer necessary.

G. School personnel who contact a parent, guardian or law enforcement agency in response to the USOE's notification of potential harm shall provide the USOE with the name of the person contacted and the date of the contact within three business days from the date of contact.

KEY: assessment, student achievement
November 7, 2013 Art X Sec 3
Notice of Continuation September 16, 2013 53A-1-603 through 53A-1-611
53A-1-401(3)

R277. Education, Administration.
R277-477. Distribution of Funds from the Interest and Dividend Account and Administration of the School LAND Trust Program.
R277-477-1. Definitions.

A. "Approving Entity" means the school district, University, or other legally authorized entity that approves or rejects plans for a district or charter school.

B. "Board" means the Utah State Board of Education. The Board is the primary beneficiary representative and advocate for beneficiaries of the School Trust corpus and the School LAND Trust Program.

C. "Chartering Entity" means the school district, Board, university, or other entity authorized to charter a charter school.

D. "Charter trust land council" means a council comprised of a two person majority of elected parents or guardians of students attending the charter school and may include other members, as determined by the board of the charter school. The governing board of a charter school may serve as a charter trust land council if the board membership includes at least two more parents or guardians of students currently enrolled at the school than all other members combined consistent with Section 53A-16-101.5. If not, the board of the charter school shall develop a school policy governing the election of a charter trust land council. R277-491 does not apply to charter trust land councils.

E. "Councils" means school community councils and charter trust lands councils.

F. "Fall enrollment report" means the audited census of students registered in Utah public schools as reported in the audited October 1 Fall Enrollment Report from the previous year.

G. "Funds" means interest and dividend income as defined under Section 53A-16-101.5(2).

H. "Interest and Dividends Account" means a restricted account within the Uniform School Fund created under Section 53A-16-101 established to collect interest and dividends from the permanent State School Fund until the end of the fiscal year. The funds are distributed to school districts, charter schools and the USDB through the School LAND Trust Program at the beginning of the next fiscal year.

I. "Local board of education" means the locally-elected board designated in Section 53A-3-101 that makes decisions and directs the actions of local school districts and is directed in Section 53A-16-101.5(5)(b) to approve School LAND Trust plans for schools under the local board's authority.

J. "Most critical academic needs" for purposes of this rule means academic needs identified in an individual school's improvement plan developed consistent with Section 53A-1a-108.5 or identified in the school charter.

K. "School Children's Trust Section" means employees who report to the State Superintendent of Public Instruction (Superintendent) or Superintendent's designee and have responsibilities as outlined in Sections 53A-16-101.5 and 53A-16-101.6.

L. "School community council" means the council organized at each school district public school as established in Section 53A-1a-108 and R277-491. The council includes the principal, school employee members and parent members. There shall be at least a two parent member majority.

M. "State Charter School Board (SCSB)" means the board designated under Section 53A-1a-501.5 that has responsibility for making recommendations regarding the welfare of charter schools to the Board.

N. "State Superintendent of Public Instruction (Superintendent)" means the individual appointed by the Board as provided for in Section 53A-1-301(1) to administer all programs assigned to the Board in accordance with the policies and the standards established by the Board.

O. "Student" means a child in public school grades kindergarten through twelve counted on the audited October 1 Fall Enrollment Report of the school district, charter school, or USDB.

P. "USDB" means the Utah Schools for the Deaf and the Blind.

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

R277-477-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, by Section 53A-16-101.5(3)(c) which allows the Board to adopt rules regarding the time and manner in which the student count shall be made for allocation of school trust land funds, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) provide financial resources to public schools to enhance or improve student academic achievement and implement an academic component of the school improvement plan;

(2) involve parents and guardians of a school's students in decision making regarding the expenditure of School LAND Trust Program money allocated to the school;

(3) provide direction in the distribution from the Interest and Dividends Account created in Section 53A-16-101 and funded in Section 53A-16-101.5(2);

(4) provide for appropriate and adequate oversight of the expenditure and use of School LAND Trust monies by designated local boards of education, chartering entities, and the Board;

(5) provide for:

(a) reviewing and monitoring of funds and revenue generated by school trust lands and the permanent State School Fund;

(b) compliance by councils with requirements in statute and Board rule; and

(c) allocation of the monies as provided in Section 53A-16-101.5(3)(c) based on student count.

(6) define the roles, duties, and responsibilities of the School Children's Trust Section within the USOE.

R277-477-3. Distribution of Funds - Local Board or Local Charter Board Approval of School LAND Trust Plans.

A. All public schools receiving School LAND Trust Program funds shall have a council as required by Sections 53A-1a-108 and R277-491, a charter school trust lands council as required in 53A-16-101.5 (7), or have a local board approved exemption under R277-491-3(C). District public schools and charter schools shall submit a Principal Assurance Form, as described in R277-491(5)(a).

B. All charter schools that elect to receive School LAND Trust funds shall have a charter trust lands council, develop an academic plan in accordance with the school charter, and report the date when the charter trust lands council and charter board approved the plan. Plans shall be submitted on the School LAND Trust Program website no later than May 1.

C. Local boards of education or the other approving entity shall consider plans annually and may approve or disapprove a school plan. If a plan is not approved, the approving entity shall provide a written explanation of why the plan was not approved and request a revised plan for reconsideration, consistent with Section 53A-16-101.5.

D. Information on each school's plan to address most critical academic needs shall be completed via the School LAND Trust website maintained through the USOE for accurate and uniform reporting.

E. Plans shall be electronically submitted to the USOE on the School LAND Trust Program website, including a record of

the vote by the school community council or charter trust land council when the school plan was approved including the date of the vote, votes for, against, and absent, consistent with Section 53A-16-101.5.

F. To facilitate submission of information by schools, each school board shall establish a school district submission date for the school district schools not later than May 1 of each year. Timelines shall allow for school committee reconsideration and amendment of the school plan following local board of approving entity explanation or plan rejection.

G. Funds shall only be distributed to schools with plans approved by the approving entity.

H. Prior to distribution of funds, the School Children's Trust Section shall ensure that plans include academic goals, specific steps to meet those goals, measurements to assess improvement and specific expenditures focused on student academic improvement. Funds shall not be distributed until schools have an approved plan to use their funds to enhance or improve a school's academic excellence consistent with Section 53A-16-101.5 and R277-477. For charter schools, the School Children's Trust Section shall provide notice to the SCSB of changes required of charter schools for compliance with state law and Board rule.

I. Examples of successful plans using School LAND Trust Program monies include programs focused on:

(1) credit recovery courses and programs;

(2) study skills classes;

(3) college entrance exam preparation classes;

(4) academic field trips;

(5) classroom equipment and materials such as flashcards, math manipulatives, calculators, microscopes, maps or books;

(6) teachers, teacher aides, and student tutors;

(7) professional development directly tied to school academic goals;

(8) student focused educational technology, including hardware and software, computer carts and work stations;

(9) books, textbooks, workbooks, library books, bookcases, and audio-visual materials;

(10) student planners; and

(11) nominal student incentives that are academic in nature or of marginal total cost.

I. Examples of plans ineligible for School LAND Trust Program funding include, but are not limited to:

(1) security;

(2) phone, cell phone, electric, and other utility costs;

(3) behavior, character education, bullying prevention;

(4) sports and playground equipment;

(5) athletic or intermural programs;

(6) extra-curricular non-academic expenditures;

(7) audio-visual systems in non-classroom locations;

(8) non-academic field trips;

(9) food and drink for council meetings or parent nights;

(10) printing and mailing costs for notices to parents;

(11) accreditation, administrative, clerical, or secretarial costs;

(12) cash or cash equivalent incentives for students;

(13) other furniture; and

(14) staff bonuses.

J. Schools serving students with disabilities may use funds as needed to directly influence and improve student performance according to the students' Individual Education Plans (IEPs).

K. The school trust is intended to benefit all of Utah's school children. Councils are encouraged to design and implement plans in a way to benefit all children at each school.

L. School districts and charter schools wishing to submit information to the School LAND Trust website through a comprehensive electronic plan shall meet the parameters for programming and data entry required by the USOE. They shall review School LAND Trust plans on the USOE website prior to local board of education or chartering entity approval to ensure information consistent with the law has been downloaded by individual schools into the electronic plan visible on the School LAND Trust Program website.

M. A form that includes the names of members of the council shall be signed by members of the council to indicate their involvement in implementing the current School LAND Trust plan and developing the school plan for the upcoming year. The form shall be uploaded to the database by the principal, director, or school district employee.

N. When approving school plans on the School LAND Trust Program website, the approving entity shall report the meeting date(s) when the approving entity approved the plans.

R277-477-4. Distribution of Funds - Determination of Proportionate Share.

A. A designated amount appropriated by the Legislature from the Interest and Dividends Account shall be used to fund the School Children's Trust Section, the administration of the program and other duties outlined in this rule and Sections 53A-16-101.5 and 53A-16-101.6. Any unused balance initially allocated for School LAND Trust Program administration shall be deposited in the Interest and Dividends Account for future distribution to schools in the School LAND Trust Program.

B. Funds shall be distributed to school districts and charter schools as provided under Section 53A-16-101.5(3)(a). The distribution shall be based on the state's total fall enrollment as reflected in the audited October 1 Fall Enrollment Report from the previous school year.

C. Each school district shall distribute funds received under R277-477-3A to each school within each school district on an equal per student basis.

D. Charter schools shall receive funding from the USOE on a per pupil basis, provided that each charter school receives at least 0.4 percent of the total available to charter schools as a group. The remainder of the distribution to charter schools shall be allocated to all charter schools that do not receive the minimum amount, on a per pupil basis.

E. Local boards of education shall adjust distributions, maintaining an equal per student distribution within a school district for school openings and closures and for boundary changes occurring after the audited October 1 Fall Enrollment Report of the prior year.

F. If a school chooses not to apply for School LAND Trust Program funds nor meet the requirements for receiving funds, the funds allocated for that school shall be retained by the USOE and included with the statewide distribution for the following school year.

G. Local boards and school districts shall ensure timely notification to chairs and principals of the availability of the funds to schools with approved plans.

H. Plans submitted by the USDB governing board shall be reviewed and approved by the School Children's Trust Section and reported to the State Superintendent or designee.

R277-477-5. School LAND Trust Program: Implementation of Plans and Required Reporting.

A. Schools shall make full good faith efforts to implement the plan as approved.

B. The school community council or charter school trust land council may amend a current year plan when necessary. The council shall amend the plan by a majority vote of a quorum of the council. A school's website shall show an amended plan.

C. Funds not used in the school approved plan may be carried over by the school to the next school year and added to the School LAND Trust Program funds available for expenditure in that school the following year.

D. Schools shall provide an explanation for any carry over

that exceeds one-tenth of the school's allocation in the school plan or report. Districts and schools with consistently large carryover balances over multiple years are not making adequate and appropriate progress on their plans, and shall be subject to compliance review findings and corrective action. E. District and charter school business officials shall enter prior year audited expenditures by category on the School LAND Trust website on or before October 15th. The expenditure data shall appear in the final reports submitted online by principals for reporting to parents as required in Section 53A-1a-108.

F. Expenditures made after the close of the fiscal year shall be accounted for as expenditures in the following fiscal year.

G. Final reports shall be submitted by schools on the website by November 15.

R277-477-6. School LAND Trust Program - School Children's Trust to Review Compliance.

A. The financial report in each school final report shall be reviewed by the School Children's Trust Section for consistency with the narrative submitted by that council.

B. Final reports indicating that funds from the School LAND Trust Program were expended inconsistent with the requirements and academic intent of the law, inconsistent with R277-477 or R277-491 and/or inconsistent with the school board/charter board approved plan shall be listed by the School Children's Trust Section and reported to the district contact, district superintendent, and local board or charter board president annually.

C. USOE staff may visit schools receiving funds from the School LAND Trust Program as directed by the Superintendent to discuss the program, receive information and suggestions, provide training, and answer questions.

D. Annual compliance reviews shall be conducted to review expenditure of funds relative to the approved plan and allowable expenses.

E. The School Children's Trust Section shall report annually to the Board Audit Committee on compliance review findings and other compliance issues. The Board Audit Committee shall make determinations regarding questioned costs and corrective action, following review and consideration of compliance and financial reviews conducted by the School Children's Trust Section.

F. The State Board Audit Committee may reduce or eliminate funds if a school has failed to comply with code or Board rule.

KEY: schools, trust lands funds
November 7, 2013 **Art X Sec 3**
Notice of Continuation June 10, 2013 **53A-16-101.5(3)(c)**
53A-1-401(3)

R277. Education, Administration.
R277-497. School Grading System.
R277-497-1. Definitions.

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

B. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

R277-497-2. 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-1-1113 which directs the Board to adopt rules to implement a school grading system, 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 provide consistent definitions, standards and procedures for LEAs to report school data through a school grading system.

R277-497-3. Board Responsibilities.

A. Beginning in the 2012-2013 school year, the Board shall implement a school grading system. The school grading system shall include the following elements:

(1) A report of school academic performance in language arts, writing, math, and science expressed in a grading system (A,B,C,D,F), for academic achievement including:

(a) student assessed proficiency, and

(b) student assessed growth.

(2) Academic achievement shall be based on:

(a) student performance on the Board-approved grade/subject level assessments, and

(b) college and career readiness indicators, such as graduation rates.

B. The Board shall use generally accepted standards of validity and reliability to determine the appropriate requirements for letter grades that combine to make up a school report through the school grading system.

C. Beginning with the 2012-2013 school year data, the Board shall:

(1) implement a school grading system that makes data and reports available to parents, educators and the public. The report shall include the elements described in R277-497-3A.

(2) School data and reports shall be available to parents, educators and the public through a public website that facilitates the comparison of public schools based on the school grading system and demographics.

D. The Board-implemented school grading system shall include test scores for students with disabilities consistent with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401(3).

E. After the 2012-2013 school year, the Board shall:

(1) seek and review evaluation information on the calculations and methodologies used to determine academic achievement reports and consider modifications to refine and improve the process and availability of the information.

R277-497-4. LEA Responsibilities.

A. LEAs shall provide accurate and timely data as required under R277-484 to allow for the development of the school reports.

B. LEAs shall use the school reports as a communication tool to inform parents and the community about school performance.

C. LEAs shall ensure that the school reports are available for all parents.

R277-497-5. School Responsibilities.

A. Schools shall provide data for the school reports as provided in R277-484.

B. Schools shall cooperate with the Board and LEAs to ensure that the school reports are available for all parents.

KEY: school reports, grading system

July 9, 2012	**Art X, Sec 3**
Notice of Continuation November 8, 2013	**53A-1-1113**
	53A-1-401(3)

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

A. "Accredited" means a Board-approved educator preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC) or the Council for Accreditation of Educator Preparation (CAEP).

B. "Accredited school" for purposes of this rule, means a public or private school that meets standards essential for the operation of a quality school program and has received formal approval through a regional accrediting association.

C. "Authorized staff" for purposes of this rule means an individual designated by the USOE or an LEA and approved by the USOE and who has completed CACTUS training.

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

E. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history; and

(5) a record of disciplinary action taken against the educator.

F. "ESEA subject" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA).

G. "LEA" 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.

H. "Letter of Authorization" means a designation given to an individual for one year, such as an out-of-state candidate or individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by an LEA.

I. "Level 1 license" means a Utah professional educator license issued upon completion of a Board-approved educator preparation program or an alternative preparation program, or to an applicant that holds an educator license issued by another state or country that has met all ancillary requirements established by law or rule.

J. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:

(1) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;

(2) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah;

(3) additional requirements established by law or rule.

K. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received National Board Certification or a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school, or holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language hearing Association (ASHA) certification.

L. "License areas of concentration" means designations to licenses obtained by completing a Board-approved educator preparation program or an alternative preparation program in a specific area of educational studies to include the following: Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Middle (still valid, but not issued after 1988, 5-9), Secondary (6-12), Administrative/Supervisory (K-12), Career and Technical Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders, Speech-Language Pathologist, Speech-Language Technician. License areas of concentration may also bear endorsements relating to subjects or specific assignments.

M. "License endorsement (endorsement)" means a specialty field or area earned through completing required course work established by the USOE or through demonstrated competency approved by the USOE; the endorsement shall be listed on the professional educator license indicating the specific qualification(s) of the holder.

N. "Professional learning plan" means a plan developed by an educator in collaboration with the educator's supervisor consistent with R277-500 detailing appropriate professional learning activities for the purpose of renewing the educator's license.

O. "Renewal" means reissuing or extending the length of a license consistent with R277-500.

P. "State Approved Endorsement Program (SAEP)" means a plan in place developed between the USOE and a licensed educator to direct the completion of endorsement requirements by the educator consistent with R277-520-11.

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

R277-502-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, by Section 53A-6-104 which gives the Board power to issue licenses, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule specifies the types of license levels and license areas of concentration available and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah. The rule provides a process and criteria for educators whose licenses have lapsed and return to the teaching profession. All licensed educators employed in the Utah public schools shall be licensed consistent with this rule in order for the district to receive full funding under Section 53A-17a-107(2).

R277-502-3. Program Approval and Requirements.

A. The Board shall accept educator license recommendations from educator preparation programs that have applied for Board approval and have met the requirements described in this rule and the Standards for Program Approval established by the Board in R277-504, R277-505, or R277-506 as determined by USOE.

B. The Board, or its designee, shall establish deadlines and uniform forms and procedures for all aspects of licensing.

C. To be approved for license recommendation the educator preparation program shall:

(1) be accredited by NCATE or TEAC; or

(2) be accredited by CAEP using the CAEP Program Review with National Recognition or CAEP Program Review with feedback options; and

(3) have a physical location in Utah where students attend classes or if the program provides only online instruction:

(a) the program's primary headquarters shall be located in Utah and

(b) the program shall be licensed to do business in Utah through the Utah Department of Commerce;

(3) include coursework designed to ensure that the educator is able to meet the Utah Effective Teaching Standards and Educational Leadership Standards established in R277-530;

(4) in the case of content endorsements, include coursework that is, at minimum, equivalent to the course requirements for the endorsement as established by USOE;

(5) establish entry requirements designed to ensure that only high quality individuals enter the licensure program; requirements shall include the following minimum components, beginning August 1, 2014:

(a) a minimum high school/college GPA of 3.0; and

(b) a USOE-cleared fingerprint background check; and

(c) a passing score on a Board-approved basic skills test; or

(d) an ACT composite score of 21 with a verbal/English score no less than 20 and a mathematics/quantitative score of no less than 19; or

(e) a combined SAT score of 1000 with neither mathematics nor verbal below 450.

(f) An institution may waive any of the entrance requirements provided in R277-502-3(5) based on program established guidelines for no more than 10 percent of an entrance cohort.

(6) include a student teaching or intern experience that meets the requirements detailed in R277-504, R277-505, and R277-506.

D. USOE representatives shall be a part of the accrediting team for any Board-approved educator preparation program seeking to maintain or receive program approval. USOE representatives shall be responsible for:

(1) observing and monitoring the accreditation process;

(2) reviewing subject specific programs to determine if the program meets state standards for licensure in specific areas;

(3) reviewing program procedures to ensure that Board requirements for licensure are followed;

(4) reviewing licensure candidate files to determine if Board requirements for licensure are followed by the program.

E. After completion of the accreditation site visit, a Board-approved educator preparation program, working with the USOE, shall prepare and submit a program approval request for consideration by the Board that includes:

(1) program summary;

(2) accreditation findings;

(3) program areas of distinction;

(4) program enrollment;

(5) program goals and direction.

F. If the program approval request is approved by the Board, the program shall be considered Board-approved until the next scheduled accreditation visit unless the program is placed on probation by the USOE and program approval is revoked by the Board under R277-502-3N.

G. New educator preparation programs that seek Board approval or previously Board-approved educator preparation programs that seek approval for additional license area preparation and endorsements shall submit applications to USOE including:

(1) information detailing the exact license areas of concentration and endorsements that the program intends to award;

(2) detailed course information, including required course lists, course descriptions, and course syllabi for all courses that will be required as part of a program;

(3) detailed information showing how the required coursework will ensure that the educator satisfies all standards in the Utah Effective Teaching Standards and Educational Leadership Standards established in R277-530 and Professional Educator Standards established in R277-515;

(4) information about program timelines and anticipated enrollment.

H. Applications for new educator preparation programs shall be approved by the Board.

I. Applications for previously Board-approved educator preparation programs desiring Board approval for additional license areas and endorsements:

(1) shall be reviewed and approved by USOE;

(2) may receive preliminary approval pending Utah State Board of Regents approval of the new program if the program is within a public institution.

J. An educator preparation program seeking accreditation may apply to the Board for probationary approval for a maximum of three years contingent on the completion of the accreditation process.

K. A previously Board-approved educator preparation program shall submit an annual report to the USOE by July 1 of each year. The report shall summarize the institution's annual accreditation report and shall include the following:

(1) student enrollment counts designated by anticipated license area of concentration and endorsement and disaggregated by gender and ethnicity;

(2) information explaining any significant changes to course requirements or course content;

(3) the program's response to USOE-identified areas of concern or areas of focus;

(4) information regarding any program-determined areas of concern or areas of focus and the program's planned response;

(5) a summary explanation of students admitted under the waiver identified in R277-502-3C(5)(f) and an explanation of the waiver.

L. The USOE shall provide reporting criteria to Board-approved educator preparation programs regarding the annual report and USOE-designated areas of concern or focus by January 31 annually.

M. Educator preparation programs that submit inadequate or incomplete information to the USOE may be placed on a probationary status by USOE.

N. Board-approved educator preparation programs on probationary status that continue to fail to meet requirements may have their license recommendation status revoked in full or in part by the Board with at least one year notice.

O. An individual that completes a Board-approved educator preparation program may be recommended for licensure within five years of program completion if the individual meets current licensing requirements.

P. If five years have passed since an individual completed a Board-approved preparation program, the individual may be recommended for licensure following review by the individual program. The preparation program officials shall determine whether any content or pedagogy coursework previously completed meets current program standards and if additional coursework, hours or other activities are necessary. The individual shall complete all work required by the program officials before receiving a license recommendation.

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

A. Level 1 License Requirements

(1) An initial license, the Level 1 license, is issued to an individual who is recommended by a Board-approved educator preparation program or approved alternative preparation program, or an educator with a professional educator license from another state.

(a) LEAs and Board-approved educator preparation programs shall cooperate in preparing candidates for the educator Level 1 license. The resources of both may be used to assist candidates in preparation for licensing.

(b) The recommendation indicates that the individual has satisfactorily completed the programs of study required for the

preparation of educators and has met licensing standards in the license areas of concentration for which the individual is recommended.

(2) The Level 1 license is issued for three years.

(3) A Level 1 license holder shall satisfy all requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

(4) An educator qualified to teach any ESEA subject shall be considered Highly Qualified in at least one ESEA subject prior to moving from Level 1 to Level 2.

(5) A license applicant who has received or completed license preparation activities or coursework inconsistent with this rule may present compelling information and documentation for review and approval by the USOE to satisfy the licensing requirements.

(6) If an educator has taught for three years in a K-12 public education system in Utah, a Level 1 license may only be renewed if:

(a) the employing LEA has requested a one year extension consistent with R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers; or

(b) the individual has continuous experience as a speech language pathologist in a clinical setting.

B. Level 2 License Requirements

(1) A Level 2 license may be issued by the Board to a Level 1 license holder upon satisfaction of all USOE requirements for the Level 2 license and upon the recommendation of the employing LEA.

(2) The recommendation shall be made following the completion of three years of successful, professional growth and educator experience, satisfaction of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers, any additional requirements imposed by the employing LEA, and before the Level 1 license expires.

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

(4) The Level 2 license may be renewed for successive five year periods consistent with R277-500, Educator Licensing Renewal.

C. Level 3 License Requirements

(1) A Level 3 license may be issued by the Board to a Level 2 license holder who:

(a) has achieved National Board Certification; or

(b) has a doctorate in education in a field related to a content area in a unit of the public education system or an accredited private school; or

(c) holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language Hearing Association (ASHA) certification.

(2) A Level 3 license is valid for seven years unless suspended or revoked for cause by the Board.

(3) The Level 3 license may be renewed for successive seven year periods consistent with R277-500.

(4) A Level 3 license shall revert to a Level 2 license if the holder fails to maintain National Board Certification status or fails to maintain a current Certificate of Clinical Competence from the American Speech-Language-Hearing Association.

D. License Renewal Timeline

Licenses expire on June 30 of the year of expiration recorded on CACTUS and may be renewed any time after January of the same year. Responsibility for license renewal rests solely with the holder.

R277-502-5. Professional Educator License Areas of Concentration, and Endorsements and Under-Qualified Employees.

A. Unless excepted under rules of the Board, to be employed in the public schools in a capacity covered by the following license areas of concentration, a person shall hold a valid license issued by the Board in the respective license areas of concentration:

(1) Early Childhood (K-3);
(2) Elementary (1-8);
(3) Elementary (K-6);
(4) Middle (still valid, and issued before 1988, 5-9);
(5) Secondary (6-12);
(6) Administrative/Supervisory (K-12);
(7) Career and Technical Education;
(8) School Counselor;
(9) School Psychologist;
(10) School Social Worker;
(11) Special Education (K-12);
(12) Preschool Special Education (Birth-Age 5);
(13) Communication Disorders;
(14) Speech-Language Pathologist;
(15) Speech-Language Technician.

B. Under-qualified educators:

(1) Educators who are licensed and hold the appropriate license area of concentration but who are working out of their endorsement area(s) shall request and prepare an SAEP to complete the requirements of an endorsement with a USOE education specialist; or

(2) LEAs may request Letters of Authorization from the Board for educators employed by LEAs if educators have not completed requirements for areas of concentration or endorsements.

(a) An approved Letter of Authorization is valid for one year.

(b) Educators may be approved for no more than three Letters of Authorization throughout their employment in Utah schools. Exceptions to the three Letters of Authorization limitation may be granted by the State Superintendent of Public Instruction or his designee on a case by case basis following specific approval of the request by the LEA governing board. Letters of Authorization approved prior to the 2000-2001 school year shall not be counted in this limit.

(c) Following the expiration of the Letter of Authorization, the educator who is still not completely approved for licensing shall be considered under-qualified.

C. License areas of concentration may be endorsed to indicate qualification in a subject or content area. An endorsement is not valid for employment purposes without a current license and license area of concentration.

R277-502-6. Returning Educator Relicensure.

A. A previously licensed educator with an expired license may renew an expired license upon satisfaction of the following:

(1) Completion of criminal background check including review of any criminal offenses and clearance by the Utah Professional Practices Advisory Commission;

(2) Employment by an LEA;

(3) Completion of a one-year professional learning plan developed jointly by the school principal or charter school director and the returning educator consistent with R277-500 that also considers the following:

(a) previous successful public school teaching experience;

(b) formal educational preparation;

(c) period of time between last public teaching experience and the present;

(d) school goals for student achievement within the employing school and the educator's role in accomplishing those goals;

(e) returning educator's professional abilities, as determined by a formal discussion and observation process completed within the first 30 days of employment; and

(f) completion of additional necessary professional development for the educator, as determined jointly by the

principal/school and educator.

(4) Filing of the professional development plan within 30 days of hire;

(5) Successful completion of required Board-approved exams for licensure;

(6) Satisfactory experience as determined by the LEA with a trained mentor; and

(7) Submission to the USOE of the completed and signed Return to Original License Level Application, available on the USOE website prior to June 30 of the school year in which the educator seeks to return.

B. The Professional Learning Plan is independent of the License Renewal Point requirements in R277-500-3C.

C. Returning educators who previously held a Level 2 or Level 3 license shall be issued a Level 1 license during the first year of employment. Upon completion of the requirements listed in R277-502-6A and a satisfactory LEA evaluation, the employing LEA may recommend the educator's return to Level 2 or Level 3 licensure.

D. Returning educators who taught less than three consecutive years in a public or accredited private school shall complete the Early Years Enhancement requirements before moving from Level 1 to Level 2 licensure.

R277-502-7. Professional Educator License Reciprocity.

A. Utah is a member of the Compact for Interstate Qualification of Educational Personnel under Section 53A-6-201.

B. A Level 1 license may be issued to an individual holding a professional educator license in another state who has completed preparation equivalent to Board-approved standards and who has completed Board-approved testing, as required by R277-503-3.

(1) If the applicant has three or more continuous years of previous educator experience in a public or accredited private school, a Level 2 license may be issued upon the recommendation of the employing Utah LEA after at least one year.

(2) If the applicant has less than three years of previous educator experience in a public or accredited private school, a Level 2 license may be issued following satisfaction of the requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

R277-502-8. Professional Educator License Fees.

A. The Board 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 for testing, evaluation, and course work shall be borne by the applicant unless other arrangements are agreed to in advance by the employing LEA.

D. Costs to review nonresident educator applications may exceed the cost to review resident applications due to the following:

(1) The review is necessary to ensure that nonresident applicants' training satisfies Utah's course and curriculum standards.

(2) The review of nonresident licensing applications is time consuming and potentially labor intensive.

E. Differentiated fees may be set consistent with the time and resources required to adequately review all applicants for educator licenses.

KEY: professional competency, educator licensing
November 7, 2013 Art X Sec 3
Notice of Continuation August 14, 2012 53A-6-104
53A-1-401(3)

R277. Education, Administration.
R277-704. Financial and Economic Literacy: Integration into Core Curriculum and Financial and Economic Literacy Student Passports.
R277-704-1. Definitions.

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

B. "Financial and economic literacy project" means a program or series of activities developed locally to encourage the understanding of financial and economic literacy among students and their families and to assist public school educators in making financial and economic literacy an integrated and permanent part of the public school curriculum.

C. "Financial and economic literacy student passport" means a collection of approved activities, assessments, or achievements completed during a given time period which indicate advancement in financial and economic understanding.

D. "Professional development" for public school educators means the act of engaging in professional learning in order to improve student learning.

E. "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 and local 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.

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

R277-704-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which gives general control and supervision of the public school system to the Board, by Section 53A-13-110 which directs the Board to work with financial and economic experts and private and non-profit entities to develop and integrate financial and economic literacy and skills into the public school curriculum at all appropriate levels and to develop a financial and economic literacy student passport which is optional for students and tracks student mastery of financial and economic literacy concepts, 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:

(1) to provide funds appropriated by the Legislature to develop and integrate financial and economic literacy concepts effectively into the core curriculum in various programs and at various grade levels;

(2) to begin the development of a financial and economic literacy student passport;

(3) to provide for educator professional development using business and community expertise, allowing for maximum creativity and flexibility;

(4) to provide curriculum resources and assessments for financial and economic literacy;

(5) to provide passport criteria and tracking capabilities for the financial and economic literacy passport for students grades K-12; and

(6) to provide simple and consistent messaging to students that becomes part of the core curriculum that reinforces the importance of financial and economic literacy and helps students and their parents to locate and use school and community resources to improve financial and economic literacy among students and families.

R277-704-3. Financial and Economic Literacy Student Passport.

A. The Board and the USOE shall develop and promote a financial and economic literacy student passport model, which would include tracking of student progress toward a passport.

B. Early efforts will focus on students in grades nine through 12.

C. Development efforts will include parent and community participation.

D. A major goal of the development and promotion of a financial and economic literacy student passport will be to inform and educate students and their parents throughout the public school experience of the importance of financial and economic literacy and its applicability to all areas of the public school curriculum.

E. Public schools shall provide parents/guardians and students with the following:

(1) during kindergarten enrollment, a financial and economic literacy passport and information about post-secondary education savings options; and

(2) information and encouragement toward the financial and economic literacy student passport opportunity upon development as part of the SEOP process.

R277-704-4. Financial and Economic Literacy Professional Development Opportunities.

A. The USOE shall provide professional development on all areas of financial and economic literacy utilizing the expertise of community and business groups.

B. Professional development activities shall inform public school educators about financial and economic literacy, encourage greater understanding of personal financial and economic responsibility, provide information and resources for teaching about financial and economic literacy without promoting specific products or businesses, and work with the USOE to develop messaging or advertising to promote financial and economic literacy.

KEY: financial, economics, literacy

November 9, 2009	**Art X Sec 3**
Notice of Continuation November 8, 2013	**53A-13-110**
	53A-1-401(3)

R277. Education, Administration.
R277-705. Secondary School Completion and Diplomas.
R277-705-1. Definitions.

A. "Accreditation" means the formal process for internal and external review and approval under the Standards for the Northwest Accreditation Commission, a division of Advance Education Inc., (AdvancED Northwest).

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

C. "Demonstrated competence" means subject mastery as determined by LEA standards and review. LEA review may include such methods and documentation as: tests, interviews, peer evaluations, writing samples, reports or portfolios.

D. "Diploma" means an official document awarded by an LEA consistent with state and LEA graduation requirements and the provisions of this rule.

E. "Individualized Education Program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with the Utah Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA).

F. "LEA" means a local education agency, including local school boards/public school districts and schools, and charter schools.

G. "Military child or children" means a K-12 public education student whose parent(s) or legal guardian(s) satisfies the definition of Section 53A-11-1401.

H. "Secondary school" means grades 7-12 in whatever kind of school the grade levels exist. Grade 6 may be considered a secondary grade for some purposes.

I. "Section 504 plan" means a written statement of reasonable accommodations for a student with a qualifying disability that is developed, reviewed, and revised in accordance with Section 504 of the Rehabilitation Act of 1973.

J. "Special purpose schools" means schools designated by regional accrediting agencies, such as AdvancED Northwest. These schools typically serve a specific population such as students with disabilities, youth in custody, or schools with specific curricular emphasis. Their courses and curricula are designed to serve their specific populations and may be modified from traditional programs.

K. "Supplemental education provider" means a private school or educational service provider which may or may not be accredited, that provides courses or services similar to public school courses/classes.

L. "Transcript" means an official document or record(s) generated by one or several schools which includes, at a minimum: the courses in which a secondary student was enrolled, grades and units of credit earned, citizenship and attendance records. The transcript is usually one part of the student's permanent or cumulative file which also may include birth certificate, immunization records and other information as determined by the school in possession of the record.

M. "Unit of credit" means credit awarded for courses taken consistent with this rule or upon LEA authorization or for mastery demonstrated by approved methods.

R277-705-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution, which places general control and supervision of the public schools under the Board; Section 53A-1-402(1)(b) and (c) which direct the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements; 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 provide consistent definitions, provide alternative methods for students to earn and schools to award credit, and to provide rules and procedures for the assessment of all students as required by law.

R277-705-3. Required LEA Policy Explaining Student Credit.

A. All Utah LEAs shall have a policy, approved in an open meeting by the governing board, explaining the process and standards for acceptance and reciprocity of credits earned by students in accordance with Utah state law. Policies shall provide for specific and adequate notice to students and parents of all policy requirements and limitations.

B. LEAs shall adhere to the following standards for credits or coursework from schools, supplemental education providers accredited by the Northwest Accreditation Commission, and accredited distance learning schools:

(1) Public schools shall accept credits and grades awarded to students from schools or providers accredited by the Northwest Accreditation Commission or approved by the Board without alteration.

(2) LEA policies may establish reasonable timelines and may require adequate and timely documentation of authenticity for credits and grades submitted.

C. LEA policies shall provide various methods for students to earn credit from non-accredited sources, course work or education providers. Methods, as designated by the LEA may include:

(1) Satisfaction of coursework by demonstrated competency, as evaluated at the LEA level;

(2) Assessment as proctored and determined at the school or school level;

(3) Review of student work or projects by LEA administrators; and

(4) Satisfaction of electronic or correspondence coursework, as approved at the LEA level.

D. LEAs may require documentation of compliance with Section 53A-11-102 prior to reviewing student home school or competency work, assessment or materials.

E. LEA policies for participation in extracurricular activities, awards, recognitions, and enhanced diplomas may be determined locally consistent with the law and this rule.

F. An LEA has the final decision-making authority for the awarding of credit and grades from non-accredited sources consistent with state law, due process, and this rule.

R277-705-4. Diplomas and Certificates of Completion.

A. LEAs shall award diplomas and certificates of completion.

B. LEAs shall establish criteria for students to earn a certificate of completion that may be awarded to students who have completed their senior year, are exiting the school system, and have not met all state or LEA requirements for a diploma.

R277-705-5. Students with Disabilities.

A. A student with disabilities served by special education programs shall satisfy high school completion or graduation criteria, consistent with state and federal law and the student's IEP.

B. A student may be awarded a certificate of completion consistent with state and federal law and the student's IEP or Section 504 Plan.

R277-705-6. Adult Education Students.

A. Adult education students are eligible only for an adult education secondary diploma.

B. An adult education diplomas cannot be upgraded or changed to traditional, high school-specific diplomas.

C. School districts shall establish policies:

(1) allowing or disallowing adult education student participation in graduation activities or ceremonies.

(2) establishing timelines and criteria for satisfying adult education graduation/diploma requirements.

R277-705-7. Student Rights and Responsibilities Related to Graduation, Transcripts and Receipt of Diplomas.

A. LEAs shall supervise the granting of credit and awarding of diplomas, but may delegate the responsibility to schools within the LEA.

B. An LEA may determine criteria for a student's participation in graduation activities, honors, and exercises, independent of a student's receipt of a diploma or certificate of completion.

C. Diplomas or certificates, credit or unofficial transcripts may not be withheld from students for nonpayment of school fees.

D. LEAs shall establish consistent timelines for all students for completion of graduation requirements. Timelines shall be consistent with state law and this rule.

E. LEAs shall work with enrolled military children to evaluate the students' coursework or to assist students in completing coursework to allow military children to graduate with the students' age-appropriate graduating class consistent with Section 53A-11-1404.

F. Consistent with Section 53A-11-1404(3), if a Utah school is unable to facilitate a military child's receipt of diploma by evaluating coursework in Utah schools and previous schools attended, the Utah school shall contact the military child's previous local education agency and aid, to the extent possible, the receipt of a diploma.

G. Graduation requirements are not retroactive.

KEY: curricula
November 7, 2013 **Art X Sec 3**
Notice of Continuation September 13, 2013 **53A-1-402(1)(b)**
53A-1-401(3)

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-1. Incorporation by Reference.

To meet requirements of the Federal Clean Air Act, the Utah State Implementation Plan (SIP) must be incorporated by reference into these rules. Copies of the SIP are available on the division's website.

R307-110-2. Section I, Legal Authority.

The Utah State Implementation Plan, Section I, Legal Authority, as most recently amended by the Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-3. Section II, Review of New and Modified Air Pollution Sources.

The Utah State Implementation Plan, Section II, Review of New and Modified Air Pollution Sources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-4. Section III, Source Surveillance.

The Utah State Implementation Plan, Section III, Source Surveillance, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-5. Section IV, Ambient Air Monitoring Program.

The Utah State Implementation Plan, Section IV, Ambient Air Monitoring Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-6. Section V, Resources.

The Utah State Implementation Plan, Section V, Resources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-7. Section VI, Intergovernmental Cooperation.

The Utah State Implementation Plan, Section VI, Intergovernmental Cooperation, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-8. Section VII, Prevention of Air Pollution Emergency Episodes.

The Utah State Implementation Plan, Section VII, Prevention of Air Pollution Emergency Episodes, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-9. Section VIII, Prevention of Significant Deterioration.

The Utah State Implementation Plan, Section VIII, Prevention of Significant Deterioration, as most recently amended by the Utah Air Quality Board on March 8, 2006, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter, as most recently amended by the Utah Air Quality Board on November 6, 2013, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-11. Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide, as most recently amended by the Utah Air Quality Board on January 5, 2005, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide, as most recently amended by the Utah Air Quality Board on November 3, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on January 3, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-14. Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-15. Section IX, Control Measures for Area and Point Sources, Part F, Lead.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part F, Lead, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-16. (Reserved.)

Reserved.

R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, as most recently amended by the Utah Air Quality Board on May 4, 2011, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-18. Reserved.

Reserved.

R307-110-19. Section XI, Other Control Measures for Mobile Sources.

The Utah State Implementation Plan, Section XI, Other Control Measures for Mobile Sources, as most recently amended by the Utah Air Quality Board on February 9, 2000, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-20. Section XII, Transportation Conformity Consultation.

The Utah State Implementation Plan, Section XII,

Transportation Conformity Consultation, as most recently amended by the Utah Air Quality Board on May 2, 2007, pursuant to 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-21. Section XIII, Analysis of Plan Impact.

The Utah State Implementation Plan, Section XIII, Analysis of Plan Impact, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-22. Section XIV, Comprehensive Emission Inventory.

The Utah State Implementation Plan, Section XIV, Comprehensive Emission Inventory, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-23. Section XV, Utah Code Title 19, Chapter 2, Air Conservation Act.

Section XV of the Utah State Implementation Plan contains Utah Code Title 19, Chapter 2, Air Conservation Act.

R307-110-24. Section XVI, Public Notification.

The Utah State Implementation Plan, Section XVI, Public Notification, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-25. Section XVII, Visibility Protection.

The Utah State Implementation Plan, Section XVII, Visibility Protection, as most recently amended by the Utah Air Quality Board on March 26, 1993, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-26. R307-110-26 Section XVIII, Demonstration of GEP Stack Height.

The Utah State Implementation Plan, Section XVIII, Demonstration of GEP Stack Height, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-27. Section XIX, Small Business Assistance Program.

The Utah State Implementation Plan, Section XIX, Small Business Assistance Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-28. Regional Haze.

The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on April 6, 2011, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-29. Section XXI, Diesel Inspection and Maintenance Program.

The Utah State Implementation Plan, Section XXI, Diesel Inspection and Maintenance Program, as most recently amended by the Utah Air Quality Board on July 12, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-30. Section XXII, General Conformity.

The Utah State Implementation Plan, Section XXII, General Conformity, as adopted by the Utah Air Quality Board on October 4, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-32. Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-33. Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County, as most recently amended by the Utah Air Quality Board on October 6, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-34. Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-35. Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-36. Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County, as most recently adopted by the Utah Air Quality Board on November 6, 2013, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-37. Section XXIII, Interstate Transport.

The Utah State Implementation Plan, Section XXIII, Interstate Transport, as most recently adopted by the Utah Air Quality Board on February 7, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, PM10, PM2.5, ozone
November 7, 2013 19-2-104(3)(e)
Notice of Continuation February 1, 2012

R309. Environmental Quality, Drinking Water.
R309-300. Certification Rules for Water Supply Operators.
R309-300-1. Objectives.

These certification rules are established to promote use of trained, experienced, and efficient personnel in charge of public waterworks and to establish standards whereby operating personnel can demonstrate competency to protect the public health through proficient operation of waterworks facilities.

R309-300-2. Authority.

Utah's Operator Certification Program is authorized by Section 19-4-104.

R309-300-3. Extent of Coverage - To Whom Rules Apply - Effective Date.

These rules shall apply to all community and non-transient non-community drinking water systems and all public drinking water systems that utilize treatment of the drinking water. This shall include both water treatment and distribution systems.

The certification requirements shall become effective February 1, 2001 for non-transient non-community drinking water systems and for community water systems serving less than 800 population utilizing only ground water or wholesale sources. These water systems shall have until February 1, 2003 to meet these requirements. For further information on this program, contact the Division of Drinking Water, telephone 536-4200.

R309-300-4. Definitions.

"Commission" see the definition of: Operator Certification Commission.

"Community Water System" means a public drinking water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Continuing Education Unit (CEU)" means ten contact hours of participation in, and successful completion of, an organized and approved continuing education experience under responsible sponsorship, capable direction, and qualified instruction. College credit in approved courses may be substituted for CEUs on an equivalency basis.

"Direct Employment" means that the operator is directly compensated by the drinking water system to operate that drinking water system.

"Direct Responsible Charge" means active on-site charge and performance of operation duties. A person in direct responsible charge is generally an operator of a water treatment plant or distribution system who independently makes decisions during normal operation which can affect the sanitary quality, safety, and adequacy of water delivered to customers. In cases where only one operator is employed by the system, this operator shall be considered to be in direct responsible charge.

"Director" means the Director of the Division of Drinking Water.

"Discipline" means type of certification (Distribution or Treatment).

"Distribution System" means the use of any spring or well source, distribution pipelines, appurtenances, and facilities which carry water for potable use to consumers through a public water supply. Systems which chlorinate groundwater are in this discipline.

"Distribution System Manager" means the individual responsible for all operations of a distribution system.

"Division of Drinking Water" means the Division within the Utah Department of Environmental Quality which regulates public water supplies.

"Grade" means any one of the possible steps within a certification discipline of either water distribution or water treatment. The water distribution discipline has five steps and the water treatment discipline has four steps. Treatment Grade I and Distribution Small System indicate knowledge and experience requirements for the smallest type of public water supply. Grade IV indicates knowledge and experience levels appropriate for the largest, most complex type of public water supply.

"Grandparent Certificate" means the operator has not been issued an Operator Certificate through the examination process and that a restricted certificate has been issued to the operator which is limited to his current position and system. These certificates cannot be used with any other system should the operator transfer.

"Non-Transient Non-Community Water System" means a public water system that is not a community water system and that regularly serves at least 25 of the same persons for more than six months per year. Examples are separate systems serving workers and schools.

"Operator" means a person who operates, repairs, maintains, and is directly employed by or an appointed volunteer for a public drinking water system.

"Operator Certification Commission" means the Commission appointed by the Director as an advisory Commission on certification.

"Public Drinking Water System" means any drinking water system, either publicly or privately owned, that has at least 15 connections or serves at least 25 people for at least 60 days a year.

"Regional Operator" means a certified operator who is in direct responsible charge of more than one public drinking water system.

"Restricted Certificate" means that the operator has qualified by passing an examination but is in a restricted certification status due to lack of experience as an operator.

"Secretary" means the Secretary to the Operator Certification Commission. This is an individual appointed by the Director to conduct the business of the Commission.

"Specialist" means a person who has successfully passed the written certification exam and meets the required experience, but who is not in direct employment with a Utah public drinking water system.

"Training Coordinating Committee" means the voluntary association of individuals responsible for environmental training in the state of Utah.

"Treatment Plant Manager" means the individual responsible for all operations of a treatment plant.

"Treatment Plant" means those facilities capable of delivering complete treatment to any water (the equivalent of coagulation and/or filtration) serving a public drinking water supply.

"Unrestricted Certificate" means that a certificate of competency has been issued by the Director after considering the recommendation of the Commission. This certificate acknowledges that the operator has passed the appropriate level written examination and has met all certification requirements at the discipline and grade stated on his certificate.

R309-300-5. General Policies.

1. In order to become a certified water operator or specialist, an individual shall pass an examination administered by the Division of Drinking Water or qualify for the grandparent provisions outlined in R309-300-13.

2. Any properly qualified operator (see Minimum Required Qualifications for Utah Waterworks Operators Table 5) may apply for unrestricted certification.

3. Any properly qualified person (see Minimum Required Qualifications for Water System Specialists Table 6) may apply for Specialist certification. A Specialist, regardless of discipline or grade, shall not act as a direct responsible charge operator, or be in direct operation or supervise the direct operation of, any

public drinking water system.

4. An individual who holds a current Specialist Certificate may apply for an Operator Certificate of the same discipline and grade upon verification of direct employment with a public drinking water system. An individual who holds a current Operator Certificate (Restricted and Unrestricted) may apply for a Specialist Certificate of the same discipline and grade if that operator leaves the direct employment of a drinking water system.

5. All direct responsible charge operators shall be certified at a minimum of the grade level of the water system with an appropriate certificate. Where 24-hour shift operation is used or required, one operator per shift must be certified at the classification of the system operated.

6. The Director, upon recommendation from the Commission, may waive examination of applicants holding a valid certificate or license issued in compliance with other state certification plans having equivalent standards, and grant reciprocity.

7. A grandparent certificate will require normal renewal as with other certificates and will be restricted to the existing position, person, and system for which it was issued. No further examination will be required unless the grade of the drinking water system increases or the operator seeks to change the certificate discipline or grade. At that time, all normal certification requirements must be met.

8. Every community and non-transient non-community drinking water system and all public systems that utilize treatment/filtration of the drinking water shall have at least one operator certified at the classified grade of the water system. Certification must be appropriate for the type of system operated (treatment and/or distribution).

9. An individual who is issued an Operator Certificate shall be employed by, or an appointed volunteer for, a public drinking water supply located in Utah.

10. If the Distribution Manager, Treatment Plant Manager, or Direct Responsible Charge Operator is changed or leaves a particular water system, the water system management must notify the Secretary to the Operator Certification Commission within ten days by contacting the Division of Drinking Water in writing. Within one year, the person replacing the Distribution Manager, Treatment Plant Manager or Director Responsible Charge Operator must have passed an examination of the appropriate grade and discipline. Direct responsible charge experience may be gained later, together with unrestricted certification as experience is gained.

11. The Secretary to the Commission may suspend or revoke a certificate after due notice and opportunity for a hearing. See Section R309-300-9 for further details.

12. An operator may have the opportunity to take any grade of examination higher than the rating of the system which he operates. If passed, the operator shall be issued a restricted certificate at that higher grade. This certificate can be used to demonstrate that the operator has successfully passed all knowledge requirements for that discipline and grade, but that experience is lacking. This restricted certificate will become unrestricted when the experience requirements are met with written verification for the appropriate discipline and grade, provided it is renewed at the required intervals.

13. The Commission will review on a periodic basis each system's compliance with these rules and will refer those systems in violation to the Director for appropriate action. Any requirement can be appealed as provided in R305-7.

14. An operator who is acting as the direct responsible charge operator for more than one drinking water system (regional operator) shall not be a grandparent certified operator.

15. The regional operator must have an unrestricted certificate equal to or higher than the grade and discipline of the rating applied to each system he is operating.

16. If the regional operator is operating any system(s) that have both disciplines involved in their rating, the operator must have unrestricted certificates in both disciplines and at the highest grade of the most complex system he is working with.

17. A regional operator shall be within a one hour travel time, under normal work and home conditions, of each drinking water system for which he is considered in direct responsible charge unless a longer travel time is approved by the Director based on availability of certified operators and the distance between community water systems in the area.

18. If the drinking water system has only one certified operator, with the exception of a drinking water system employing a regional operator, the operator must have a back up operator certified in the required discipline(s). The back up certified operator must be within one hour travel time of the drinking water system.

19. At no time will an uncertified operator be allowed to operate a drinking water system covered by these rules unless the operator is within the one year grace period specified in R309-300-5.10.

R309-300-6. Application for Examination.

1. Prior to taking an examination, the operator or specialist must file a written application with the Division of Drinking Water or apply for an online examination with the appropriate agency, accompanied by evidence of his qualifications for certification in accordance with provisions of this plan (see tables on minimum qualifications). Such applications shall be made on forms supplied by the Division.

2. An operator may elect to take any written examination which he believes can be successfully passed. Persons passing such an examination shall be issued restricted certificates for the appropriate discipline and grade.

R309-300-7. Examinations.

1. The time and place of the examination to qualify for a certificate shall be determined by the Commission or a proctor designated by the Commission. All examinations for certification shall be given not less than twice a year, generally at each of 12 district health department offices. All examinations will be conducted at sites designated by the Commission or designated by a proctor designated by the Commission. The written examinations will be graded, and the applicant notified of the results within 30 days. The online examinations will be graded at the site of the examination. If an operator taking the examination fails to pass, the operator may file an application for reexamination at the next available date.

2. The minimum passing grade for all certification exams shall be 70 percent correct on all questions asked.

3. An individual who has failed to pass at least two consecutive written exams, at the same grade level and discipline, may make an application for an oral exam. The oral exam will be administered by at least two Commission members or by other individuals approved by the Director. If the individual fails this exam, he will be given written notice of those areas deficient and asked to reapply for a written examination.

4. Examinations will be given in nine grades, four in water treatment and five water distribution. The examinations will cover, but not be limited to, the following areas:

(a) general water supply knowledge;

(b) control processes in water treatment or distribution;

(c) operation, maintenance, and emergency procedures in treatment or distribution;

(d) proper record keeping;

(e) laws and requirements, and water quality standards.

5. The written examination for specialist certification will be the same examination that is given for operator certification.

6. The written examination question bank and text matrix

shall be reviewed periodically by the Commission.

R309-300-8. Certificates.

1. All certificates shall indicate the discipline for which they were issued as follows:

(a) Water Treatment Plant Operator, Unrestricted;
(b) Water Treatment Plant Operator, Restricted;
(c) Water Distribution Operator, Unrestricted;
(d) Water Distribution Operator, Restricted;
(e) Water Treatment Specialist;
(f) Water Distribution Specialist;
(g) Grandparent.

2. A restricted certificate will be issued to those operators who have passed a higher grade examination than the grade for which they have qualified in the experience category. Upon accumulating the necessary experience (see R309-300-19. Table 5 and Table 6), these restricted certificates will become unrestricted with the same renewal date. Certificates issued in the restricted status will be stamped with the word RESTRICTED on the bottom left corner of the certificate.

3. Grandparent certificates will be restricted to the person, position, and water system for which they were issued. These certificates will exempt the holder from further examination but will not be transferable to other persons, drinking water systems or positions.

4. A Specialist Certificate will be issued to those persons who have met the experience requirements and have successfully passed the written examination, but who are not in direct employment with a Utah Public Drinking Water System or in the case of requested conversion (see R309-300-8(5)).

5. An individual who currently holds a valid Utah Operator Certificate and who is no longer directly employed by a Utah drinking water system may request his Operator Certificate be converted to a Specialist Certificate with the same expiration date.

6. All certificates shall continue in effect for a period of three years unless suspended or revoked prior to that time. The certificate must be renewed every three years by payment of a renewal fee and evidence of required training (see R309-300-14). Certificates will expire on December 31, three years from the year of issuance.

7. Failure to remain active in the waterworks field during the three-year life of the Operator Certificate can be cause for denial of the application renewal.

8. Requests for renewal shall be made on the forms supplied by the Division of Drinking Water.

9. A lapsed certificate may be renewed within 6 months of the expiration date by making an application for renewal. A certificate that lapsed more than 6 months earlier, but less than 18 months earlier may be renewed by making application for renewal and by payment of the reinstatement fee or by passing an examination. A certificate that has lapsed 18 months or more may not be renewed and the former certificate holder will be required to meet all requirements for issuance of a new certificate.

R309-300-9. Certificate Suspension and Revocation Procedures.

1. The Secretary shall inform a certificate holder, in writing, if the certificate is being considered for suspension or revocation of an Operator's or Specialist's certificate. The communication shall state the reasons for considering such action and allow the individual an opportunity for a hearing.

2. Grounds for suspending or revoking an Operator's or a Specialist's certificate shall be any of the following:

(a) demonstrated disregard for the public health and safety;
(b) misrepresentation or falsification of figures and reports, or both, submitted to the State;
(c) cheating on a certification exam.

3. Suspension or revocation may be imposed when the circumstances and events were under the certificate holder's control. Disasters or "acts of God" which could not be reasonably anticipated will not be grounds for a suspension or a revocation action.

4. Following an appropriate hearing on these matters, the Commission will make a recommendation to the Director. The recommendation shall include a description of the findings of fact and shall be provided to the certificate holder. The information shall also outline the procedures to reapply for certification at the end of the specified disciplinary period.

5. Any suspension or revocation may be appealed as provided in R305-7.

R309-300-10. Fees.

1. Fees for operator and specialist certification shall be submitted in accordance with Section 63-38-3.

2. Examination fees from applicants who are rejected before examination will be returned to the applicant.

3. Application fees will not be returned.

R309-300-11. Facilities Classification System.

1. All treatment plants and distribution systems shall be classified in accordance with R309-300-19.

2. Classification will be made by either the point system or on a population-served basis, whichever results in a higher classification.

3. When the classification of a system is upgraded or added to existing system ratings, the Director shall make a determination on the timing to be allowed for operators to gain certification at the higher or different level.

R309-300-12. Qualifications of Operators.

1. Minimum qualifications are outlined in Minimum Required Qualifications for Utah Waterworks Operators, Table 5, and Minimum Certification Qualifications for Water System Specialists, Table 6, included with these rules (see Section R309-300-19).

2. Approved high school equivalencies can be substituted for the high school graduation requirement.

3. Education of an operator can be substituted for experience, but no more than 50 percent of the experience may be satisfied by education. Note: The exception to this is in grades I and II, where the "one year of experience" requirement cannot be reduced by any amount of education.

4. Education of a specialist cannot be substituted for the required experience (see Minimum Certification Qualifications for Water System Specialists Table 6).

R309-300-13. Grandparent Certification.

Some community and non-transient non-community water systems that serve a population of 800 or less have operators with Grandparent Certification. Grandparent Certifications will continue to be sufficient for these operators, with the following restrictions:

1. Grandparent Certificates are valid only for the person, position, water system, and classification of water system for which they were issued;

2. A Grandparent Certification that expires and is not renewed as provided in R309-300-8(9) may not be renewed and the operator will be required to apply for certification as provided in this rule; and

3. No new Grandparent Certificates will be issued.

R309-300-14. CEUs and Approved Training.

1. CEUs will be required for renewal of all certificates (grandparent, restricted and unrestricted) according to the following schedule:

TABLE 1

CLASSIFICATION	CEUs REQUIRED IN A 3-YEAR PERIOD
Small System	2
Grade 1	2
Grade 2	2
Grade 3	3
Grade 4	3

2. Grandparent certificates are required to have 2.0 or 3.0 CEUs, as per the water system classification, for certificate renewal. Grandparent certificates issued after the calendar year of 2000 are required to obtain 0.7 CEUs of an approved pre-exam training course as part of the 2.0 CEU renewal requirement. These specific CEUs shall be obtained during the first renewal cycle of said certificate.

3. Groups that currently sponsor approved education activities in Utah are:

The Rural Water Association of Utah;
Salt Lake Community College
Utah Valley State College;
Utah State University at Logan;
Utah Department of Environmental Quality;
Manufacturer's Representatives;
American Water Works Association;
American Backflow Prevention Association.

4. A continuing education unit is defined as 10 contact hours of participation in, and successful completion of, an organized and approved training education experience under qualified instruction.

5. College level education is accepted in drinking water related disciplines upon approval of the Secretary to the Commission as to CEU credits (1 quarter credit hour will equal 1.0 CEU or 1 semester credit hour will equal 1.5 CEUs).

6. All CEUs for certificate renewal shall be subject to review for approval to insure that the training is applicable to waterworks operation and meets CEU criteria. Identification of approved training, appropriate CEU or credit assignment and verification of successful completion is the responsibility of the Secretary to the Commission. Training records will be maintained by the Division of Drinking Water.

7. All in-house or in-plant training which is intended to meet any part of the CEU requirements must be approved by the Secretary to the Commission in writing prior to the training.

8. In-house or in-plant training submitted to the Secretary of the Commission must meet the following general criteria to be approved:

(a) Instruction must be under the supervision of an approved instructor.

(b) An outline must be submitted of the subjects to be covered and the time to be allotted to each area.

(c) A list of the teacher's objectives shall be submitted which will document the essential points of the instruction ("need-to-know" information) and the methods used to illustrate these principles.

9. One CEU credit will be given for registration and attendance at the annual technical program meeting of the American Water Works Association (AWWA), the Intermountain Section of AWWA, the Rural Water Association of Utah, or the National Rural Water Association.

R309-300-15. Validation of Previously Issued Certificates.

1. All current certificates issued by the Director will remain in effect until their stated date of expiration and may be renewed at any time before this date in accordance with the rules established herein. Certificates will be issued for a three-year period.

2. Those individuals who were issued Grandparent Certificates and subsequently passed an examination within the same discipline, at the same grade, or a higher grade will be issued a new unrestricted certificate which will nullify the existing "Grandparent " certificate.

R309-300-16. Operator Certification Commission.

1. An Operator Certification Commission shall be appointed by the Director from recommendations made by the cooperating agencies. Cooperating agencies are the Utah Department of Environmental Quality, the Utah League of Cities and Towns, the Training Coordinating Committee of Utah, the Intermountain Section of the American Water Works Association, the Civil or Environmental Engineering Departments of Utah's Universities, and the Rural Water Association of Utah.

2. The Commission is charged with the responsibility of conducting all work necessary to promote the program, recommend certification of operators, and oversee the maintenance of records.

3. The Commission shall consist of seven members as follows:

(a) One member shall be a certified operator from a town having a population under 10,000 and will be nominated by the Rural Water Association of Utah.

(b) One member shall be at least a grade III unrestricted certified distribution operator and will be nominated by the American Water Works Association.

(c) One member shall be at least a grade III unrestricted certified water treatment plant operator and will be nominated by the American Water Works Association.

(d) One member shall represent municipal water supply management and will be nominated by the Utah League of Cities and Towns.

(e) One member shall represent the civil or environmental engineering department of a Utah university cooperating with the certification program.

(f) One member shall represent water supply trainers and will be nominated by the Training Coordinating Committee (TCC).

(g) One member shall be a representative for the Division of Drinking Water.

4. Each group represented shall designate its nominee to the Director for a three-year term. Nominations may be accepted or rejected by the Director. Persons may be renominated for successive three-year terms by their sponsor groups. The Director shall notify the sponsoring groups one year in advance of the termination of the Commission member that a nominee will be needed. An appointment to succeed a Commission member who is unable to serve his full term shall be only for the remainder of the unexpired term and shall be submitted by the sponsor groups and approved by the Director as mentioned above.

5. Each year the Commission shall elect from its membership a chairperson and vice-chairperson and such other officers as may be needed to conduct its business.

6. It shall be the duty of the Commission to advise in the preparation of examinations for various grades of operators and advise on the certification criteria used by the Secretary. In addition to these duties, the Commission shall also advertise and promote the program, distribute applications and notices, maintain a register of certified Operators and Specialists, set examination dates and locations, and make recommendations regarding each drinking water system's compliance with these rules.

R309-300-17. Secretary to the Commission.

The Director shall designate a non-voting member of the Commission to serve as its Secretary, who shall be a senior public health representative from the Division of Drinking Water. This Secretary shall serve to coordinate the paperwork for the Commission and to bring issues before the Commission.

His duties consist of the following:

1. acting as liaison between the Commission and the water suppliers, and generally promote the program;

2. maintaining records necessary to implement these rules;

3. classifying all water treatment plants and distribution systems in accordance with R309-300-19;

4. notifying sponsor groups of Commission nominations needed;

5. coordinating with Utah's Training Coordinating Committee (TCC) to ensure adequate operator training opportunities throughout the state;

6. serving as a source of public information for operator training opportunities and certified operators available for employment;

7. receiving applications for certification and screen, investigate, verify and evaluate all applications;

8. bringing issues to the Commission for their review;

9. developing and administering operator certification examinations.

R309-300-18. Non-compliance with Certification Program.

1. After appropriate consideration by the Commission, cases of non-compliance will be referred to the Director for appropriate enforcement action.

2. Non-compliance with the certification rules is a violation of R309-102-8. Whenever such a violation occurs, the water system management will be notified in writing by the Division of Drinking Water and will be required to correct the situation.

R309-300-19. Drinking Water System Classification.

This system applies only to those public water supplies operating coagulation and/or filtration treatment plants. This classification system does not apply to those systems operating only chlorination facilities on distribution systems.

TABLE 2

Size	Item	Points
	Maximum population served, peak day	1 pt. per 5,000 or part thereof
	Design flow (avg. day) or peak month's	1 pt. per MGD or part thereof
Water Supply Source		
	Groundwater	3
	Surface water	5
	Average raw water quality (0 to 10)	
	Little or no variation	0
	Raw water quality (other than turbidity) varies enough to require treatment changes less than 10% of the time	2
	Raw water quality including turbidity varies often enough to require frequent changes in the treatment process	5
	Raw water quality is subject to major changes and may be subject to periodic serious pollution	10
	Aeration for or with CO2	2
	pH adjustment	4
	Packed tower aeration	6
	Stability or corrosion control	4
	Taste and odor control	8
	Color control	4
Treatment		
	Iron or Iron/Mn, removal	10
	Ion exchange softening	10
	Chemical precipitation softening	20
	Coagulant addition	4
	Flocculation	6
	Sedimentation	5
	Upflow clarification	14
	Filtration	10
	Disinfection (0-10)	
	No disinfection	0
	Chlorination or comparable	5
	On-site generation of disinfectant	5
	Special processes (including reverse osmosis, electro-dialysis, etc.	15
	Sludge/backwash water disposal (0-5)	
	No disposal to raw water source	0
	Any disposal to raw water source	2
	Any disposal to plant raw water	5
	Laboratory control (0-10)	
	Biological (0-10)	
	All lab work done outside of plant	0
	Colilert process	2
	Membrane filter	3
	Multiple tube of fecal determination	5
	Biological identification	7
	Viral studies or similarly complex work done on-site	10
	Chemical/physical	
	All lab work done outside of plant	0
	Push button or colorimetric methods such as chlorine residual or pH	3
	Additional procedures such as titrations or jar tests	5
	More advanced determinations such as numerous organics	7
	Highly sophisticated instru-mentation such as atomic absorption or gas chroma-tography	10

TABLE 3
SUMMARY OF UTAH
WATER UTILITY CLASSIFICATION SYSTEM
WATER TREATMENT PLANT CLASSIFICATION

Grade	1	2	3	4
Population served	1500 or less	1501 5000	5001 15,000	over 15,000
Water plant points	0-40	41-65	66-90	91-UP

TABLE 4
SUMMARY OF UTAH
WATER UTILITY CLASSIFICATION SYSTEM
DISTRIBUTION CLASSIFICATION

Grade	Small System	1	2	3	4
Population served	500 or less	501 to 1500	1501 to 5000	5001 to 15,000	over 15,000
Distribution points	0-10	0-10	10-25	26-50	51-UP

Distribution systems are those which use groundwater sources (springs and wells) and which may or may not use chlorination. Classification will generally be made in accordance with the following five classes. The Director may change the classification of a particular distribution system when there are unusual factors affecting the complexity of transmission, mixing of sources, or potential health hazards.

TABLE 5
MINIMUM REQUIRED QUALIFICATIONS FOR
UTAH WATERWORKS OPERATORS

	EDUCATION			EXPERIENCE	
				Direct	
Certification Grade	Assoc.	High	Non High	Respon. Charge	Total

(Both Dist. and Treatment)	Degree	Degree	School	School	Years	Years
	X				2	4
		X			2	6
4			X		4	8
				X	5	10
	X				1	2
		X			1	2
3			X		2	4
				X	3	6
	X				0	2
		X			0	2
2			X		0	2
				X	0	3
	X				0	1
		X			0	1
1 and			X		0	1
Small System				X	0	1

Note:
(1) Experience requirements apply to all operators except those who have been issued "grandparent" certificates.
(2) At least one half of all experience must be gained at the grade of certification desired.

TABLE 6
Minimum Certification Qualifications
For Water System Specialists

CERTIFICATION GRADE (both Distribution and Treatment)	EXPERIENCE "Hands On" Experience (Years)	Design or Associated Experience (Years)
4	8	10
3	4	8
2	2	4
1	0	0

Note:
1. All experience must be verifiable.
2. All "hands on" experience must be in the area of operation, repair, and maintenance of a public drinking water system.
3. Associated experience may be in the design, construction, and inspection of public drinking water systems and/or direct consultation for public drinking water systems.
4. The required experience, as outlined above, must be either in the "Hands On" category or in the Design or Associated category, not in combination.
5. Persons applying for and passing the specialist exam who do not meet the minimum qualifications will be issued a restricted certificate similar to the water system operator restricted certificate.
6. Restricted Specialist Certificate shall be changed to unrestricted status upon written request of certificate holder after minimum experience qualifications have been met.

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R309. Environmental Quality, Drinking Water.
R309-305. Certification Rules for Backflow Technicians.
R309-305-1. Purpose.

These rules are established:

(1) In order to promote the use of trained, experienced professional personnel in protecting the public's health;

(2) To establish standards for training, examination, and certification of those personnel:

(a) involved with cross connection control program administration

(b) testing, maintaining and repairing backflow prevention assemblies; and

(3) To establish standards for the instruction of Backflow Technicians.

R309-305-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(4)(a) of the Utah Code and in accordance with 63G-3 of the same, known as the Administrative Rulemaking Act.

R309-305-3. Extent of Coverage.

These rules shall apply to all personnel who will be:

(1) involved with the administration or enforcement of any cross connection control program being administered by a drinking water system; or

(2) testing, maintaining and/or repairing any backflow prevention assembly; or

(3) instructors within the certification program, regardless of institution or program.

R309-305-4. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

(1) Backflow Technician - An individual who has met the requirements and successfully completed the course of instruction and certification requirements for Class I, II or III backflow technician certification as outlined herein.

(a) Class I Backflow Technician is a Cross Connection Control Program Administrator.

(b) Class II Backflow Technician is a Backflow Assembly Tester.

(c) Class III Backflow Technician is a Backflow Instructor Trainer.

(2) Class - means the level of certification for a Backflow Technician.

(3) Director - means the Director of the Division of Drinking Water.

(4) Performance Examination - means a closed book, hands on demonstration of an individual applicant's ability to conduct an accurate field test on backflow prevention assemblies.

(5) Proctor - means a Class III Backflow Technician authorized to administer the written or the performance examination.

(6) Renewal Course - means a course of instruction, approved by the Commission, which is a prerequisite to the renewal of a Backflow Technician's Certificate.

(7) Secretary to the Commission - means that individual appointed by the Director to conduct the business of the Commission and to make recommendations to the Director regarding the backflow technician certification program.

(8) Written Examination - means a closed book examination for record used to determine the competency and ability of an individual applicant's understanding of the required course of instruction.

R309-305-5. General.

(1) Certification Application: Any individual may apply for certification.

(2) Certification Classes: The classes of certificates shall be: Class I, Class II, and Class III.

(a) Class I Backflow Technician - Cross Connection Control Program Administrator: This certificate shall be issued to those individuals who are involved in administering a cross connection control program, who have demonstrated their knowledge and ability by successfully completing the approved certification examination.

(i) These individuals may NOT test, maintain or repair any backflow prevention assembly for purposes of submitting legal documentation of the operational status of a backflow prevention assembly, including performance of any record test demonstrating backflow prevention assembly compliance with required standards. These individuals may test to insure proper testing techniques are being utilized within their jurisdiction.

(ii) These individuals may conduct plan/design reviews, hazard assessment investigations, compliance inspections, and enforce local laws, codes, rules and regulations and policies within their jurisdictions, and offer technical assistance as needed.

(b) Class II Backflow Technician - Backflow Assembly Tester: This certificate shall be issued to those individuals who have demonstrated their knowledge and ability by successfully completing the approved written and performance certification examinations.

(c) Class III Backflow Technician - Backflow Instructor Trainer:

(i) This certificate shall be issued to those individuals who have successfully completed a 3 year renewal cycle as a Class II Technician and in addition have proven qualified and competent to instruct approved Backflow Technician Certification classes by participating in and successfully completing an approved Class III certification course.

(ii) In order to successfully complete a Class III certification course, the applicant shall be required to make a presentation about one or more randomly picked topics in backflow prevention, successfully demonstrating the applicant's knowledge of the subject. The applicant shall also successfully complete a performance examination in a manner that demonstrates knowledge and skill with randomly selected available testing equipment; the applicant shall identify, diagnose and document malfunctions of the backflow assembly and verify the design operating criteria are achieved.

(iii) Class III Backflow Technicians will also be required to attend additional training provided periodically by the Division to ensure knowledge of any regulatory changes and to ensure consistency in the evaluation of applicants.

(3) Certification Requirements: Those individuals seeking certification as a Backflow Technician must participate in an approved Technician's course of instruction and successfully complete the examination required per class of certification.

(4) Backflow Technician Course Instructers: All individuals who instruct Backflow Technician training courses must hold a current Class III - Backflow Technician certificate.

(5)(a) No person shall install, replace or repair a backflow prevention assembly unless that person holds a Class II or Class III Certification.

(b) This requirement shall not apply when the Backflow Technician is the assembly owner or an employee of the assembly owner.

(c) No person shall install, replace or repair a backflow prevention assembly that has not been certified as provided in R309-105-12(4).

R309-305-6. Technician Responsibilities.

(1) All technicians shall notify the Division of Drinking Water, local health department and the appropriate public water

system of any backflow incident as soon as possible, but within eight hours. The Division can be reached during business hours at 801-536-4200 or after hours at 801-536-4123;

(2) All technicians shall notify the appropriate public water system of a failing backflow prevention assembly within five days;

(3) All technicians shall ensure that acceptable and approved procedures are used for testing, repairing and maintaining any backflow prevention assembly;

(4) All technicians shall report the backflow prevention assembly test results to the appropriate public water system within 30 days;

(5) All technicians shall include, on the test report form, any materials or replacement parts used to repair or to perform maintenance on a backflow prevention assembly;

(6) All technicians shall ensure that any replacement part is equal to or greater than the quality of parts originally supplied within the backflow prevention assembly and are supplied only by the assembly manufacturer or their agent;

(7) All technicians shall not change the design, material, or operational characteristics of the assembly during any repair or maintenance;

(8) All technicians shall perform each test and shall be responsible for the competency and accuracy of all testing and reports thereof;

(9) All technicians shall ensure the status of their technician certification is current; and

(10) All technicians shall be equipped with and competent in the use of all tools, gauges, and equipment necessary to properly test, repair and maintain a backflow prevention assembly.

(11) All technicians shall be responsible for any additional licensure.

R309-305-7. Examinations.

(1) Examination Issuance:

(a) The examination recognized by the Commission for certification shall be issued through the Division of Drinking Water for both initial certification and renewal of certification.

(b) If an individual fails an examination, the individual may submit an application for reexamination on the next available scheduled test date.

(c) Examinations (both written and performance) that are used to determine competency and ability shall be approved by the Cross Connection Control Commission prior to being issued.

(2) Exam Scoring: Class I, Class II and Class III Technician's must successfully complete a written exam with a score of 70% or higher. Class II Technician's must also successfully demonstrate competence and ability in the performance examination, for the testing of a Pressure Vacuum Breaker Assembly, a Spill-Resistant Pressure Vacuum Breaker Assembly, a Double Check Valve Assembly, and a Reduced Pressure Principal Backflow Prevention Assembly.

(a) The performance examination shall be conducted by a minimum of two Class III Technicians.

(b) Each candidate must demonstrate competence. Competence shall be evaluated by a proctor and determined with a pass or fail grade in each of the following areas:

(i) Properly identify backflow assembly;

(ii) Properly identify test equipment needed;

(iii) Properly connect test equipment;

(iv) Properly test assembly;

(v) Properly identify assembly malfunctions;

(vi) Properly diagnose assembly malfunctions; and

(vii) Properly record test results.

The candidate must receive a pass grade from the proctor in all areas listed above for each assembly tested in order to successfully complete the performance examination.

(c) An individual may apply for reexamination of either portion of the examination a maximum of two times. After a third failing grade, the individual must register for and complete another technician's training course prior to any further reexamination.

(3) Class III Technicians: Class III Technicians shall participate in and successfully complete a Class III Certification course, approved by the Cross Connection Control Commission Class III Technicians shall maintain their Class II Technician certification.

R309-305-8. Certificates.

(1) Certificate Issuance: For a certificate to be issued, the individual must complete a Technician's training course and pass with a minimum score of 70% the written examination. For Class II and III certificates, successful completion of the performance examination shall also be required.

(2) Certificate Renewal: The Backflow Technician's certificate is issued by the Director and shall expire December 31, three years from the year of issuance.

(a) Backflow Technician certificates shall be issued by the Director after considering the recommendation of the Commission Secretary.

(b) The Backflow Technician's certificate may be renewed up to six months in advance of the expiration date.

(c) A Backflow Technician may retain the Technician's certification number when the Technician renews certification within twelve months after the certification's expiration date. The technician shall not test, maintain or repair any backflow prevention assembly for purposes of submitting legal documentation of the operational status of a backflow prevention assembly as described in R305-5(2)(a)(i).

(d) To renew a Class I or II Technician certificate, the Technician must register for and participate in an approved backflow prevention renewal course, and successfully complete the renewal examination (minimum score of 70%) which shall include a performance portion for Class II Certification.

(e) To renew a Class III Technician certificate, the following criteria shall be met:

(i) In the 3 year certification period a total of three events from the following list shall be obtained in any combination:

(A) Instruction at a Commission approved backflow technician certification or renewal course.

(B) Serve as a proctor for the performance examination at a Commission approved backflow technician certification or renewal course.

(ii) Attendance at a minimum of two of the annual Class III coordination meetings or receive a meeting update from the Commission Secretary.

(iii) Attendance and successful review at a Class III renewal course, as approved by the Cross Connection Control Commission.

(f) Should the applicant fail the renewal written examination (minimum score of 70%), renewal of that existing license shall not be allowed until a passing score is obtained. If the applicant fails to successfully complete the test after three attempts, the applicant shall be required to participate in an approved Backflow Technician's course before retaking the written and performance examinations. Class I Technicians only need to successfully complete the written examination.

R309-305-9. Certification Revocation.

(1) The Director may suspend or revoke a Backflow Technician's certification, for good cause, including any of the following:

(a) The certified person has acted in disregard for public health or safety;

(b) The certified person has engaged in activities beyond the scope of their certification;

(c) The certified person has misrepresented or falsified figures or reports concerning backflow prevention assembly or test results;

(d) The certified person has failed to notify proper authorities of a failing backflow prevention assembly within five days, as required by R309-305-6(2);

(e) The certified person has failed to notify proper authorities of a backflow incident for which the technician had personal knowledge, as required by R309-305-6(1);

(f) The certified person has installed or repaired a backflow prevention assembly that is not certified or has implemented a change in the design, material or operational characteristics of a certified backflow prevention assembly thereby invalidating the backflow assembly certification.

(2) Disasters or "Acts of God", which could not be reasonably anticipated or prevented, shall not be grounds for suspension or revocation actions.

(3) The Commission Secretary shall inform the technician, in writing, if the certification is being considered for suspension or revocation. The communication shall state the reasons for considering suspension or revocation, and the technician shall be given an opportunity for a hearing.

R309-305-10. Fees.

(1) Fees: The fees for certification shall be submitted in accordance with Section 63-38-3.2.

(2) All fees shall be deposited in a special account to defray the costs of administering the Cross Connection Control and Certification programs.

(3) Renewal Fees: The renewal fee for all classes of Technicians shall be in accordance with Section 63-38-3.2.

(4) All fees shall be deposited in a special account to defray the cost of the program.

(5) All fees are non-refundable.

R309-305-11. Training.

(1) Training: Minimum training course curriculum, written tests and performance tests shall be established by the Commission and implemented by the Secretary of the Commission for both the Technician Class I and Class II courses and the renewal courses.

(a) The length of the initial certification course for a Class I cross connection control program administrator shall be a minimum of 32 hours, including examination time.

(b) The length of the initial certification course for a Class II backflow assembly tester shall be a minimum of 32 hours, excluding examination time.

(c) The length of each renewal course shall be a minimum of 16 hours including the renewal examination times, for both written and performance.

R309-305-12. Cross Connection Control Commission.

(1) Appointment of Members: A Cross Connection Control Commission shall be appointed by the Director from nominations made by cooperating agencies.

(2) Responsibility: The Commission is charged with the responsibility of conducting all work necessary to promote the cross connection program as well as recommending qualified individuals for certification, and overseeing the maintenance of necessary records.

(3) Representative Agencies: The Commission shall consist of seven members:

(a) One member (nominated by the League of Cities and Towns) shall represent a community drinking water supply.

(b) One member (nominated by the Utah Pipes Trades Education Program) shall represent the plumbing trade and must be a licensed Journeyman Plumber.

(c) One member (nominated by the Utah Mechanical Contractors Association) shall represent the mechanical trade contractors.

(d) One member (nominated by the Utah Plumbing and Heating Contractors Association) shall represent the non-union plumbing and mechanical contractors and plumbers.

(e) One member (nominated by the Rural Water Association of Utah) shall represent small water systems.

(f) One member (nominated by the Utah Chapter American Backflow Prevention Association) shall represent Class II Backflow Technicians and shall be a Backflow Technician.

(g) One member (nominated by the Utah Association of Plumbing and Mechanical Officials) shall represent plumbing inspection officials and shall be a licensed plumbing inspector.

(4) Term: Each member shall serve a two year term.

(5) Nominations of Members: All nominations of Commission members shall be presented to the Director, who may refuse any nomination.

(6) Unexpired Term: An appointment to succeed a Commission member who is unable to complete his full term shall be for the unexpired term only, and shall be nominated to, and appointed by, the Director in accordance with R309-305-11(1).

(7) Quorum: At least four Commission members shall be required to constitute a quorum to conduct the Commission's business.

(8) Officers: Each year the Commission shall elect officers as needed to conduct its business.

(a) The Commission shall meet at least once a year.

(b) All actions taken by the Commission shall require a minimum of four affirmative votes.

R309-305-13. Secretary of the Commission.

(1) Appointment: The Director shall appoint, with the consent of the Commission, a staff member to function as the Secretary to the Commission. This Secretary shall serve to coordinate the business of the Commission and to bring issues before the Commission.

(2) Duties: The Secretary's duties shall be to:

(a) act as a liaison between the Commission, certified Technicians, public water suppliers, and the public at large;

(b) maintain records necessary to implement and enforce these rules;

(c) notify sponsor agencies of Commission nominations as needed;

(d) coordinate and review all cross connection control programs, certification training and the certification of Backflow Technicians;

(e) serve as a source of public information for Certified Technicians, water purveyors, and the public at large;

(f) receive and process applications for certification;

(g) investigate and verify all complaints against or concerning certified Backflow Prevention Technicians, and advise the Director regarding any enforcement actions that are being recommended by the Commission;

(h) develop and administer examinations;

(i) review and correct examinations.

(3) The Secretary to the Commission is also responsible for making recommendations to the Director regarding backflow technician certification as provided in these rules.

KEY: drinking water, cross connection control, backflow assembly tester

November 13, 2013 19-4-104(4)(a)

Notice of Continuation March 22, 2010 63G-3

R317. Environmental Quality, Water Quality.
R317-13. Approvals and Permits for a Water Reuse Project.
R317-13-1. Definitions.

1.1 "Director" means the Director Division of Water Quality.

1.2 "Domestic wastewater" means a combination of the liquid or water-carried wastes from structures with installed plumbing facilities and industrial establishments, and any groundwater, surface water, and storm water that is present with the waste.

1.3 "POTW" means a publicly owned treatment works as defined by Utah Code Annotated Section 19-5-102.

1.4 "Public agency" means a public agency as defined by Utah Code Annotated Section 11-13-103 that:

A. owns or operates a POTW;

B. collects and transports domestic wastewater;

C. holds legal title to a water right;

D. is delegated the right to the beneficial use or reuse of water by the legal title holder of the water right;

E. is a water supplier; or

F. sells wholesale or retail water.

1.5 "Reuse water" means domestic wastewater treated to a standard acceptable under rules made by the Water Quality Board under Utah Code Annotated Section 19-5-104.

1.6 "Water reuse project" means a project for the reuse of treated domestic wastewater that requires approval by the Utah Water Quality Board in accordance with Utah Code Annotated Sections 19-5-104 and 73-3c-301, and the state engineer under Section 73-3c-302.

1.7 "Water supplier" means an entity engaged in the delivery of water for municipal purposes.

R317-13-2. Administrative Requirements.

2.1 General. This rule is issued for water reuse projects.

2.2 Authority. This rule is issued pursuant to the provisions of Utah Code Annotated Sections 19-5-104(3)(f) and Utah Code Annotated Section 73-3c-301. Violation of a construction permit, operating permit, or approval including compliance with the conditions thereof, or beginning of construction, or modification without the Director's approval, is subject to the penalties provided in Utah Code Annotated Section 19-5-115.

2.3 Applicability. This rule applies to public agencies that propose a water reuse project.

2.4 Approvals and Permits Required.

A. Approval of Water Reuse Projects. The Director may approve, approve in part, approve with conditions or deny, in writing, an application for the reuse of treated domestic wastewater.

B. Construction Permit Requirements. Water reuse projects involving the construction, installation, modification or operation of any collection system, treatment works, reuse water distribution system or part thereof, or any extension or addition thereto shall obtain a construction permit in accordance with this section and the requirements of R317-3, "Design Requirements for Wastewater Collection, Treatment and Disposal Systems", prior to construction.

C. Operating Permit for a water reuse project. If a water reuse project is approved, the Director shall issue an operating permit consistent with any construction permit and the rules of the Board.

D. Limitations. The issuance of an approval, construction permit, or operating permit does not relieve the public agency of the obligation to obtain other approvals and permits, i.e., ground water discharge permit or permits and approvals from other agencies which may have jurisdiction over the project.

R317-13-3. Reuse Project Application and Technical Requirements.

3.1 Specific application requirements for a water reuse project. If a public agency intends to reuse or provide for the reuse of treated domestic wastewater for any purpose, application shall be made to the Director as required in this rule and R317-3-11, prior to construction or operation of the water reuse project.

3.2 Technical requirements for a water reuse project. The design and operation of any water reuse utilizing treated domestic wastewater shall be in accordance with the applicable requirements of R317-3-11.

KEY: water pollution, waste disposal, industrial waste, effluent standards
February 4, 2008 19-5
Notice of Continuation January 31, 2013

R317. Environmental Quality, Water Quality.
R317-14. Approval of Change in Point of Discharge of POTW.
R317-14-1. Definitions.

1.1 "Director" means the Director of the Division of Water Quality.

1.2 "POTW" means a publicly owned treatment works as defined by Utah Code Annotated Section 19-5-102.

R317-14-2. Administrative Requirements.

2.1 General. This rule is issued for changes in point of discharge from a POTW.

2.2 Authority. This rule is issued pursuant to the provisions of Utah Code Annotated Section 73-3c-304.

2.3 Approval Required. A POTW shall apply to and receive approval from the Director prior to any change in the point of discharge of water from the POTW. The Director shall issue an approval if it is determined that the change is necessary:

A. for treatment purposes;

B. to enhance environmental quality;

C. to protect public health, safety, or welfare; or

D. to comply with rules of the Board or the POTW's discharge permit.

2.4 Before approving any change in the point of discharge from a POTW, the Director shall consult with the State Engineer.

KEY: wastewater, POTW, discharge
February 4, 2008 19-5
Notice of Continuation January 31, 2013

R317. Environmental Quality, Water Quality.
R317-550. Rules for Waste Disposal By Liquid Scavenger Operations.
R317-550-1. Definition.

The following definitions shall apply in the interpretation and enforcement of this rule. The word "shall" as used herein indicates a mandatory requirement. The term "should" is intended to mean a recommended or desirable standard.

1.1 Chemical Toilet - means a nonflush device wherein the waste is deposited directly into a receptacle containing a solution of water and chemical. It may be housed in a permanent or portable structure.

1.2 Collection Vehicle - means any vehicle, tank, trailer, or combination thereof, which provides commercial collection, transportation, storage, or disposal of any waste as defined in Section 1.14.

1.3 Division - means the Utah Division of Water Quality.

1.4 Health Officer - means the Director of a local health department or his authorized representative.

1.5 Liquid Scavenger Operation - means any business activity or solicitation by which wastes are collected, transported, stored, or disposed of by a collection vehicle. This shall include, but not be limited to, the cleaning out of septic tanks, sewage holding tanks, chemical toilets, and vault privies.

1.6 Local Health Department - means a city-county or multi-county local health department established under Title 26A.

1.7 Person - means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state (Section 19-1-103).

1.8 Public Health Hazard - means, for the purpose of this rule, a condition whereby there are sufficient types and amounts of biological, chemical, or physical agents relating to wastes which are likely to cause human illness, disorders, or disability. These include, but are not limited to, pathogenic viruses and bacteria, parasites, and toxic chemicals.

1.9 Scavenger Operator - means any person who conducts the business of a liquid scavenger operation.

1.10 Septic Tanks - means a watertight receptacle which receives the discharge of a drainage system or part thereof, designed and constructed so as to retain solids, digest organic matter through a period of detention, and allow the liquids to discharge into soil outside of the tank through an underground absorption system.

1.11 Sewage Holding Tank - means a watertight receptacle which receives water-carried wastes from the discharge of a drainage system and retains such wastes until removal and subsequent disposal by scavenger operation.

1.12 Tank - means any container that when placed on a vehicle is used to transport wastes removed from a septic tank, sewage holding tank, chemical toilet. or vault privy.

1.13 Vault Privy - means any facility wherein the waste in deposited without flushing, into a permanently-installed, watertight, vault or receptacle, which is usually installed below ground.

1.14 Wastes - means, for the purpose of this rule, domestic wastewater or sewage which is normally deposited in or retained for disposal in septic tanks, sewage holding tank, chemical toilets, or vault toilets.

R317-550-2. Scope of Rule.

2.1. The collection, storage, transportation, and disposal of all wastes by liquid scavenger operators shall be accomplished in a sanitary manner which does not create a public health hazard or nuisance, or adversely affect the quality of the waters of the State.

2.2 It shall be unlawful for any person to engage in or conduct a liquid scavenger operation unless the person notifies the local health department in which the liquid scavenger operation is conducted prior to commencement of a liquid scavenger operation and thereafter on an annual basis.

2.3 Nothing in this rule shall be constructed to require a private property owner to notify the local health department prior to his removing wastes from his own septic tank, sewage holding tank, chemical toilet, or vault privy. However, all such wastes must be collected and transported in such a manner that they will not create a nuisance or public health hazard, or will adversely affect the quality of the waters of the State, and must be disposed of in accordance with the provisions of this rule.

R317-550-3. Procedures for Notification of Local Health Departments.

3.1 Prior to initiating operation of liquid scavenger services, the operator shall notify the local health department by filing a notification form. The notification form shall be provided by the local health department and shall include, but not limited to, the following:

A. Name, address, and telephone number of applicant. If a partnership, the names and addresses of the partners, and if a corporation, the name and address of the corporation.

B. Name and address of the place(s) of business if different from above.

C. Applicant shall state the number of collection vehicles to be used, description of vehicles (make, model, year, and license number), tank capacity, and any other related information required by the health officer.

D. A list of all sites shall be provided which are to used for disposal of wastes resulting from the liquid scavenger operation. Applicants may be required by the local health department to provide proof of permission to dispose of wastes at such sites.

E. Standard notification forms are available through the Division of Water Quality.

3.2 It is recommended that all applications for liquid scavenger operations be accompanied by a surety bond issued by a corporate surety company authorized to conduct business in the State of Utah, and covering the period for which the permit is issued. The bond amount should be $5000 for all scavenger operations conducting business within the State of Utah. The health officer should be the bond obligee, and the bond should be for the benefit and purpose to protect all persons damaged by faulty workmanship resulting from scavenger operation, and to guarantee payment of monies owing incident to these rules. Such bonds should be conditioned upon their performance of the services in a workmanlike and hygienic manner.

3.3 Liquid scavenger operators shall notify the local health department in writing on an annual basis before March 1st of each year of their intent to continue operation.

R317-550-4. Inspection of Scavenger Operations.

4.1 Upon receipt of a notification to conduct a liquid scavenger operation, the health officer may inspect all equipment and, if necessary, disposal sites to be used in connection with the liquid scavenger operation. Routine inspections may be made at any reasonable time by the health officer in order to insure compliance with these rules.

R317-550-5. Collection Vehicle Requirements.

5.1 Collection vehicle identification requirements shall be determined by the local health department having jurisdiction.

5.2 Each collection vehicle shall conform to the following minimum specification:

A. Tanks shall be of watertight construction, fully enclosed, strong enough for all conditions of operation, and shall be provided with suitable covers to prevent spillage during transit. The capacity of the tank on U.S. gallons shall be determined accurately by calculation, metering, or as specified

by the manufacturer, and shall be plainly, legibly, and permanently marked or stamped on the exterior of the tank.

B. The collection vehicle shall be equipped with either a positive displacement pump or other type of pump which will not allow any spillage and which will be self-priming.

C. The discharge connection of the tank shall be provided with a valve and with a threaded screw cap or other acceptable sealing device. When not in use, the valve shall be closed and the threaded screws cap or sealing device shall be in place to prevent accidental leakage or discharge.

5.3 When in use, pumping equipment shall be so operated that a public health hazard or nuisance will not be created. Each collection vehicle should at all times be supplied with a pressurized wash water tank, disinfectant, and implements needed for cleanup purposes in the event of accidental spillage of waste on the ground. The operator shall ensure that such spills are cleaned and disinfected in such a manner to render them harmless to human and animals.

5.4 Sewage hoses on collection vehicles shall be thoroughly drained, capped, and stored in such a manner that they will not create a public health hazard or nuisance.

5.5 Tanks used for collection, transportation, and storage of wastes shall be so constructed that the exterior can be easily cleaned.

5.6 All collection vehicles, when parked and not in use, shall be protected and maintained in such a manner that they will not promote an odor nuisance, the breeding of insects, the attraction of rodents, or create any other public health hazard or nuisance.

R317-550-6. Conduct of Scavenger Operations, Including Submission of Reports.

6.1 All services rendered by the scavenger operation shall be conducted in a workmanlike manner and the property where the services are rendered shall be left in a sanitary condition. After the services are rendered, the scavenger operator shall furnish the customer with a written receipt which carries the business name and address of the liquid scavenger operation.

6.2 Recommendations for the pumping and maintenance of septic tanks and sewage holding tanks may be found in the rule for Individual Wastewater Disposal Systems. All three wastewater components, scum, sludge, and liquid waste should be removed from these tanks to provide long-term benefit.

6.3 The liquid scavenger operation shall submit summary data forms of their business activity to the local health department having jurisdiction as often required by that agency. Summary data from information shall include, but not limited to:

A. Source of all waste pumped on each occurrence, including name and address of source. If necessary, this information may be provided in code and made available for inspection at the business address of the liquid scavenger operation.

B. Specific type of waste disposal; system services on each occurrence.

C. Quantity of wastes pumped on each occurrence.

D. Name and location of authorized disposal site where pumpings were deposited for disposal.

R317-550-7. Disposal of Wastes at Approved Locations.

7.1 All wastes collected shall be disposed of in accordance with the rules of the Division and the local health department having jurisdiction. Disposal shall be accomplished by one of the following methods:

A. Into a public sewer system at the place and point in the system designated and approved by the appropriate authority.

B. Into a landfill which has been approved by the Director of the Division of Solid and Hazardous Waste for disposal of such wastes and in accordance with R315-301 through R315-320, and with concurrence by the local health department.

C. Land disposal, in accordance with the provisions of R317-8-1.10(9), if approved by the Director and with the concurrence of the local health department.

7.2 No waste shall be deposited into a sewage collection system, a sewage treatment plant, or waste stabilization pond (lagoon), which will have a detrimental effect on their overall operation.

7.3 Under no circumstances shall dumping of wastes be permitted into any public or private lake, pond, stream, river, watercourse, or any other body of water, or onto any public or private land which has not been designated as an approved disposal site.

7.4 It shall be unlawful for any liquid waste scavenger to transport, treat, store, or dispose of hazardous wastes as defined by 19-6-102(7) without complying with all provisions of R315-1 through R315-301.

R317-550-8. Failure to Comply With Rules.

Any person failing to comply with these rules shall be subject to action as specified in Section 19-5-115.

KEY: dumping of wastes
August 29, 2001 **19-5-104**
Notice of Continuation June 18, 2012

R357. Governor, Economic Development.
R357-4. Government Procurement Private Proposal Program.
R357-4-1. Purpose.

The purpose of the administrative rule is to describe the required procedures for submission, review and processing of an initial proposal, fee, and a detailed proposal, and the preparation of a project agreement.

R357-4-2. Authority.

(1) These administrative rules are made pursuant to authority granted under 63M-1-2603(2)(c), 63M-1-2605(5), 63M-1-2606(1)(b), 63M-1-2608(1)(h)(i), 63M-1-2609(3)(f), and 63M-1-2610(3)(i).

R357-4-3. Definitions.

(1) Terms in these rules are used as defined in UCA 63M-1-2602.

R357-4-4. Initial and Detailed Proposal -- Protected and Public Portions.

(1) An initial proposal submitted to the Committee in accordance with UCA 63M-1-2605 is a protected record under UCA 63G-2-305, and shall be protected from all public disclosure during initial review by the Committee, the Governor's Office of Planning and Budget, the affected department and any directly affected state entity or school district.

(2) If the Committee determines to move forward with a project beyond the initial review, the following portions of an initial proposal shall be made public once the chief procurement officer initiates a procurement process in accordance with UCA 63G-6-408.5:

(a) conceptual description of the project;

(b) description of the economic benefit of the project to the state and the affected department;

(c) information concerning the products, services, and supplies currently being provided by the state, that are similar to the project;

(d) Notwithstanding the portions of an initial proposal that may be made public under this subsection, all proprietary information provided in an initial and detailed proposal shall remain a protected record under UCA 63G-2-305.

(3) Portions of an initial proposal not excepted in subsection (2) shall remain a protected record under UCA 63G-2-305. Protected portions include but are not limited to:

(a) Trade secrets as defined in UCA 13-24-2;

(b) Commercial information or non-individual financial information satisfying the requirements of UCA 63G-2-305; and

(c) Other information submitted by a private entity and not excepted in subsection (2) that, if disclosed prior to the execution of a project agreement, would adversely affect the financial interest or bargaining position of the public entity in accordance with UCA 13-24-2.

(4) A private entity requesting protection from public disclosure under this rule must satisfy the requirements of Title 63G, Chapter 2, Government Records Access and Management Act upon submission of the initial proposal or the detailed proposal, including the statement of business confidentiality required by UCA 63G-2-309.

R357-4-5. Initial Proposal - Fee.

(1) A private entity submitting an initial proposal shall pay a fee when the initial proposal is submitted.

(2) The amount of the fee shall be based on one percent of the project cost estimate submitted with an initial proposal. The minimum fee shall be $5,000 and the maximum fee shall be $50,000.

(3) Forty percent of the fee shall be allocated to reviewing the private entity's initial proposal and shall be non-refundable.

(4) Thirty percent of the fee shall be allocated to reviewing a detailed proposal and shall be refunded if for any reason the Committee does not review the private entity's detailed proposal.

(5) Thirty percent of the fee shall be allocated to preparing a project agreement and shall be refunded if for any reason the director does not prepare a project agreement for the private entity.

R357-4-6. Process and Time Requirements.

(1) A private entity may submit an initial proposal for a project to the Committee at any time. Within 30 days after receipt, the Committee shall review the initial proposal and determine, in its sole discretion, whether to move forward with a project in accordance with UCA 63M-1-2606. If the Committee determines to move forward with the project, the Committee shall immediately submit a copy of the initial proposal to any affected department, directly affected state entity, school district and the Governor's Office of Planning and Budget.

(2) Within 30 days from receipt of the initial proposal, an affected department shall provide the Committee with any comment, suggestion or modification to the initial proposal or the project. The affected department shall include any comment, suggestion or modification from any directly affected state entity or school district that receives a copy of the proposal in accordance with Section 63M-1-2606(4).

(3) Within 30 days from receipt of the initial proposal, the Governor's Office of Planning and Budget shall prepare an economic feasibility report containing the information required by Section 63M-1-2606(3)(b).

(4) Within 30 days from the receipt of the comments, suggestions or modification from the affected department and the economic feasibility report, the Committee shall determine, in its sole discretion, whether to move forward with a project to the detailed proposal stage. If the Committee determines to move forward with the project, the Committee shall immediately submit a copy of the initial proposal, including any comment, suggestion or modification adopted by the Committee and incorporated into the initial proposal, to the chief procurement officer and the Executive Appropriations Committee, in accordance with Section 63M-1-2606(5), with any protected portions of the initial proposal clearly identified.

(5) The chief procurement officer shall take action under 63G-6-408.5 to initiate and complete a procurement process within 60 days from the receipt of the initial proposal, in compliance with Tile 63G, Chapter 56, Utah Procurement Code.

(6) The chief procurement officer shall review each detailed proposal submitted pursuant to such procurement process and submit each detailed proposal that complies with UCA 63M-1-2608(1) to the Committee for review and to the Governor's Office of Planning and Budget for the purpose of updating the economic feasibility report.

(7) Within 30 days from receipt of the updated economic feasibility report, the Committee shall determine, in its sole discretion, whether to approve the detailed proposal. If approved by the Committee, the board shall determine whether to approve the detailed proposal as soon as reasonably practicable.

(8) The affected department, directly affected state entity or school district may dispute the detailed proposal and submit any comment, suggestion or modification to the Committee and the Governor's Office of Planning and Budget within 15 days following the board's final decision. Within 15 days, the Governor's Office of Planning and Budget shall determine whether to proceed with a project agreement.

(9) If an appropriation or alternative funding is necessary for a project that is the subject of a detailed proposal, the

Committee shall work with the office to submit, within 30 days following the board's final decision, a report requesting funding to the Governor's Office of Planning and Budget and the Executive Appropriations Committee detailing the position of the board, the affected department, directly affected state entity and the school district, as applicable. The filing of such report shall not interfere with the execution of the project agreement.

(10) Within 30 days from board and, if applicable, Governor's Office of Planning and Budget, approval of a detailed proposal, the director and the private entity shall, in good faith and in consultation with the affected department and a directly affected state entity or school district, prepare, negotiate and enter into a project agreement in accordance with Section 63M-1-2610.

(11) The review, processing and, if applicable, procurement of an initial proposal, a detailed proposal or a project agreement under this rule shall be subject to such time modification as the Committee may deem to be necessary to accommodate the specific needs of each project or to be in the best interests of the state.

KEY: procurment, purchasing, Private Proposal Program
November 21, 2008 63M-1-2603(2)(c)
Notice of Continuation November 19, 2013 63M-1-2605(5)
63M-1-2606(1)(b)
63M-1-2608(1)(h)(i)
63M-1-2609(3)(f)
63M-1-2610(3)(i)

R392. Health, Disease Control and Prevention, Environmental Services.
R392-103. Food Handler Training and Certificate.
R392-103-1. Purpose.

(1) This rule requires that food handler training, testing, issuing of a food handler certificate, and fees follow uniform statewide standards.

(2) The Centers for Disease Control and Prevention has identified five risk factors associated with food-borne illness outbreaks. Four of the five risk factors result from improper handling of food by food handlers or poor personal hygiene of food handlers.

(3) Proper training allows food handlers the ability to apply the knowledge gained to prevent food-borne diseases. Testing of food handlers confirms that knowledge of correct food handling techniques was gained. A food handler permit that is recognized statewide provides a tool for the Department to verify that food handlers have received state approved training and testing.

(4) State and local monitoring of this process is critical to protect the public. Coordination between this process and inspection of regulated facilities is necessary to quickly and effectively respond to identified risks. Recognizing the essential work of state and local public health officials, with accountability to state and local elected officials, maintains control and responsiveness to public health concerns.

R392-103-2. Definitions.

(1) "Department" means the Utah Department of Health.

(2) "Executive Director" means the Executive Director of the Utah Department of Health or designated representative.

(3) "Food Handler" means a person who works with unpackaged food, food equipment or utensil, or food-contact surfaces for a food service establishment as defined in R392-100.

(4) "Food Handler Permit" means a permit issued by a local health department to allow a person to work as a food handler.

(5) "Food Handler Certificate" means the documentation of a certificate of completion of food handler training indicating passing of a Department approved exam before a food handler permit is issued.

(6) "Independent Instructional Design and Testing Expert" means a person who has received training and has a graduate degree from an accredited University with a certification in psychometrics and expertise in Instructional Design.

(7) "Local Health Officer" means the director of the jurisdictional local health department as defined in 26A, Chapter 1, or his designated representative.

(8) "Approved Food Handler Training Provider" means an entity that provides a food handler training program approved by the Utah Department of Health.

R392-103-3. Food Handler Permit Issuing Procedure, Reciprocity, and Renewal.

(1) A food handler must have a valid food handler permit issued by a local health officer in the local health district where the food handler resides at the time the certificate is issued. The local health officer shall issue a food handler permit by mail or in person to a food handler that has a valid certificate indicating they have taken a course and passed an exam from an approved food handler training provider unless R392-103-4(1) (a) or (b) applies.

(2) After a food handler applicant passes a Department approved exam, an approved food handler training provider shall issue a food handler a certificate of completion and transmit electronically or by mail notification of the certificate to the local health department where the applicant resides. To inhibit fraud, each certificate issued shall be uniquely numbered by the food handler training provider using their own numbering system. The certificate shall contain the name of the person to whom the certificate is issued, the date of issuing, and also list the food handler training provider who issued the certificate. The certificate shall be valid for 30 days toward getting a food handler permit and shall be valid statewide as proof of training and testing allowing the person to work as a food handler for 30 days from the initial date of employment. The food handler applicant must have a food handler permit within 30 days of the date of initial employment.

(3) The approved food handler training provider shall send notification to the local health department where an applicant resides that a certificate has been issued. This notification must take place within 5 business days after the applicant passes the exam. The local health department may use this information at any time to verify that an applicant has received a certificate from an approved food handler training provider.

(4) Local health departments shall accept food handler permits issued under authority of this rule until the date of expiration, revocation, or suspension of the food handler permit.

(5) A person may obtain a food handler permit by providing to the local health department a valid certificate of completion of an approved food handler training program, completing a local health department approved application either through the food handler training provider or at a local health department, and paying a food handler permit fee. The fee for the permit shall be no more than $15 and shall be uniform statewide.

(6) Food handler permits issued shall contain the following information:

(a) "Utah Food Handler Permit" as the title;

(b) Name of the food handler;

(c) Expiration Date;

(d) Identification number which begins with a two letter unique identifier of the training provider and up to 8 characters following the two letter identifier;

(e) Name of health department who issued the permit;

(f) "This Permit is Not a Legal Form of Identification" stated at the bottom of the permit;

(g) Utah State seal; and

(h) On the back of the permit, the following information must be presented:

(i) Permit must be presented upon request by the health authority;

(ii) Permit may be revoked for cause; and

(iii) No other food handler permit is approved in the State of Utah.

(7) Except when Subsections R392-103-3(11) through (13) apply, a food handler must possess a valid food handler permit issued by a local health officer before being allowed to handle food served to the public.

(8) With the exception of temporary events, food service establishments shall have a copy of the food handler permit of each employee that works in the establishment available upon request of the local health department inspector. If the food handler is working at a temporary event, at least one person must have a food handler permit to show to the health authority, if asked, but does not have to have a copy of the permit in an establishment file.

(9) Food handler permits shall be valid for 3 years from the date of issuance. Food handler permits must be renewed every 3 years by completing an approved food handler training course, passing an exam administered by an approved food handler training provider, and receiving a food handler permit from the local health department.

(10) Food handlers must successfully complete a training course within 14 days after the day on which the person begins employment, unless they already have a current certificate or food handler permit, and shall not handle food until they have

received a certificate of completion qualifying them for a food handler permit.

(11) The local health officer shall accept a food handler permit issued to a back country outfitter by the United States Department of the Interior, or by a public health authority in Arizona, Colorado, Idaho, Nevada, or Wyoming. This applies only to food handling done at a back country food establishment that meets the exemption requirements of Section 26-15a-105(1)(i).

(12) A person working as a food handler for a food service establishment shall obtain a food handler permit no later than seven days after the expiration of an existing food handler permit.

(13) An individual certified as a food safety manager under R392-101 shall be exempt from the requirement of obtaining a food handler permit under this section.

R392-103-4. Suspension or Revocation of Food Handler Permits.

(1) The local health officer may revoke or suspend a food handler permit if:

(a) A food handler is ill with a disease that may be transmitted through the handling of food or,

(b) If two or more inspections within two years document that the same food handler has at least twice failed to apply the same learning objective listed in R392-103-5 or,

(c) A food handler shows willful disregard to food safety that has the potential to endanger the public.

(2) The local health department may confiscate any food handler permit which cannot be authenticated by a local health department, or that has been revoked or suspended.

(3) A food handler may re-apply to a local health department for reinstatement of a food handler permit by requesting a hearing with the local health department and demonstrating to the local health department to their satisfaction why the permit should be reinstated.

R392-103-5. Food Handler Training Requirements.

(1) A food handler training provider must receive approval from the Department before offering training to food handlers in the state. A food handler training provider must provide basic instruction focused on Utah Rule R392-100 (which incorporates the FDA national model food code standard), shall include at least 75 minutes of training time offered either in an internet based course or trainer led course or a combination of both, and shall contain basic training information regarding the Centers for Disease Control top five risk factors associated with food-borne illness outbreaks including the bulleted learning objectives as listed below (a) through (d):

(a) Proper hot or cold holding temperatures of food which requires time or temperature control for safety;

List the temperature danger zone.

Describe the correct procedure for holding cold foods and hot foods, receiving foods, and proper date and time marking.

List the appropriate temperatures for refrigerators, freezers and steam tables.

Identify the hazards of leaving potentially hazardous foods (foods that require time or temperature controls for safety, TCS) at room temperature.

Define potentially hazardous foods (foods that require time or temperature controls for safety, TCS).

List the population groups that are the most vulnerable to food-borne illness.

Discuss how bacterial growth occurs in food.

Identify the most common causes of food-borne illness.

List sources of microbes.

(b) Proper cooking, reheating, and cooling temperatures of food;

List the required final cook temperatures for foods.

List the final temperature for reheating leftovers.

Describe the relationship between cooking time and temperature in killing microorganisms.

Describe the steps used to cool food rapidly.

Describe the proper procedure to thaw frozen foods.

(c) Control of dirty or contaminated utensils and equipment including prevention of cross contamination and proper ware washing and sanitizing;

Discuss how a food handler might contaminate food.

Define cross-contamination.

List the possible sources of cross-contamination when handling food.

Identify the steps to prevent cross-contamination.

Stress the importance of eliminating bare-hand contact with ready-to-eat food through utensils or gloving.

Define cleaning and sanitizing and correct procedures for each.

Identify the chemicals that can be used to clean and sanitize food-contact surfaces.

Describe the correct concentration of cleaning and sanitizing solutions used on food-contact surfaces and how to test the concentrations.

Identify when surfaces should be cleaned and sanitized.

Describe the correct procedures to use and store chemicals.

Describe the 3-sink method of cleaning and sanitizing pots and pans and how to correctly dry dishes.

Describe the correct procedure for cleaning and sanitizing using a dish machine.

Proper cleaning and sanitizing steps.

Describe the correct procedures for storing dishes and utensils.

Describe the correct procedures to handle trash and garbage.

(d) Employee health and hygiene requirements including food-borne illness prevention training, and using food from only approved sources;

List the personal hygiene practices that the food handler can take to prevent food contamination.

Describe the steps necessary for proper hand washing and when a double hand wash is required.

Describe how hands become contaminated and when and where hand washing should occur.

List appropriate clothing and hair restraints.

List the five major food borne illness diseases and symptoms that must be reported to the manager.

Describe the correct procedures to prevent food-borne illness from a cut, burn or other wound.

Describe under what conditions an employee may eat, drink or use any form of tobacco and the precautions to take after these activities.

Define a food-borne illness.

State how often a food handler permit has to be renewed.

Define approved source of food and what sources are and are not approved.

(2) An approved food handler training provider shall add training objectives and topics which the Department identifies by rule as being a cause of a food-borne illness outbreak or serious threat to the health of food service facility patrons.

(3) Each time a food handler permit is renewed, the food handler must take a training course from an approved food handler training provider before they may take a food handler exam.

(4) A person may not serve as an instructor of an approved food handler training program unless the person is registered with a local health department as an instructor.

(5) An approved food handler training provider must maintain a list of past and current trainers registered with a local health department denoting the dates the trainer taught food handler courses. The trainer list must be available for audit by

the Department. On-line trainers must maintain a list of which course version is taught on-line by date.

(6) An approved food handler training provider must maintain a system to verify a certificate of completion upon request of the Department, or local health department, or food service establishment where the food handler is employed.

(7) An approved food handler training provider may charge a reasonable fee. An approved food handler training provider may collect both the training fee and food handler permit fee at the same time from the applicant when the applicant initially pays for the training course.

(8) A food handler training provider may not advertise to the public or represent to the public that they offer approved food handler training programs which will allow individuals to obtain a food handler permit in the state if they are not approved by the Department.

R392-103-6. Examination Requirements.

(1) An approved food handler training provider shall use the bank of food handler exam questions issued by the Department and obtained through application to the Department, or a Department approved set of questions as approved in R392-103-6(2). Exams must contain 40 multiple choice questions with 10 randomly selected questions from each category listed in R392-103-5 (a) through (d). An approved food handler training provider must routinely rotate exam questions from the exam question bank, the order of exam questions, and the answer order of the multiple choice questions.

(2) If a food handler training provider elects not to use the Department issued questions, the food handler training provider may request approval of a different bank of exam questions. For approval, the food handler training provider shall pay to the Department a fee to review the exam questions. The fee shall reflect actual costs, but shall not exceed $500. The food handler training provider shall also submit to the Department the proposed bank of at least 200 exam questions organized by the required learning objectives listed in this rule with at least 25 questions from each objective. In addition, the food handler training provider shall contract, at their own expense, with a Department approved independent instructional design and testing expert to evaluate the proposed bank of exam questions. The independent instructional design and testing expert shall analyze a food handler training provider's bank of exam questions to determine if the exam questions effectively measure the applicant's knowledge of the learning objectives outlined in this rule and meet the appropriate testing standards for question structure. To be approved, the independent instructional design and testing expert must provide the Department with a positive recommendation based on their analysis. The Department must approve any change in the provider offered bank of exam questions before implementation. Exam approval is good for three years, after which a provider must re-apply for exam approval.

(3) The Department may require changes to the exam questions if the Department finds that the questions inadequately test the learning objectives. An approved food handler training provider shall update the exam questions used within thirty (30) days of written notice of the change.

(4) A person taking a food handler exam must answer at least 75% of the questions correctly to pass the examination to be eligible to receive a food handler permit.

(5) A food handler examination offered by an approved food handler training provider may be written, oral, or on-line. Oral exams may be conducted individually when circumstances require it such as when an applicant's language or reading abilities interfere with taking a written or an on-line exam.

(6) An approved food handler training provider shall implement procedures to ensure that cheating on examinations does not take place. An approved food handler training provider shall ensure that exams are protected from being compromised, protected from unauthorized access, and available to candidates only during exam time.

(7) An approved food handler training provider shall routinely randomize the exam question order.

(8) An approved food handler training provider shall inform persons taking a food handler course, at the beginning of the course, that downloading exams onto a flash drive or other portable electronic devices or distribution of any exam by the individual in any way to other persons is strictly prohibited. An approved food handler training provider shall also notify persons taking a food handler exam that note taking, use of a cell phone or other recording device, talking to or receiving aid to answer questions from another person during the exam process is strictly prohibited. Violation of the exam security requirements shall invalidate the certificates of completion of all those involved, and a training provider shall report violations to the local health department. A provider shall not issue a certificate of completion to those involved in violation of on-line exam security unless the next successfully completed exam is proctored.

(9) An approved food handler training provider must maintain records of each candidate's name, address of residence including street, city, county and zip code, date of birth, gender, date of examination, pass or fail certificate status, and name of instructor for at least three years and provide this to the local health department within the jurisdiction that the applicant resides. The provider shall send this information to the local health department within whose jurisdiction the applicant resides within 5 business days as required in R392-103-3(3).

(10) An approved food handler training provider shall offer a course evaluation to persons taking approved courses and exams.

(11) An approved food handler training provider must implement procedures to prevent the duplication of certificates of completion.

(12) An approved food handler training provider who offers exams in person either written or on a computer at the facility must proctor the exam. An approved food handler training provider shall require a person taking a course and exam to provide a signature attesting that the person has complied with exam requirements.

(13) An approved food handler training provider who offers exams on line must implement procedures to reasonably inhibit fraudulent attempts to circumvent the food handler training and exam requirements in this rule such as a person taking an exam in place of another person, and procedures to reasonably ensure an individual taking an approved course and exam is focused on training materials and actively engaged throughout the training period.

(14) An approved internet based food handler training provider's exam offered over the internet shall meet the following exam protocols:

(a) An approved internet based food handler training provider shall submit documentation to the Department on initial approval, audit, or by request regarding the security measures taken to inhibit fraud. Exam protocols will be evaluated by the Department or local health department during the approval process and may be audited by the Department at any time to determine if the protocols are preventing fraudulent activities.

(b) An approved internet based food handler training provider shall require a food handler applicant to provide all applicant information required by this rule and shall electronically link the information to the exam before the exam may be offered. An approved internet based food handler training provider administrator shall document any repeat taking of the exam and shall require a food handler applicant to retake a food handler training course after no more than three failed

attempts to pass the exam.

(c) The start and end time of the exam shall be logged.

(d) An approved internet based food handler training provider shall track the Internet Protocol address or similar electronic location of an individual who takes an on-line course and exam.

(e) An approved internet based food handler training provider shall present pre-exams at the end of each learning section and at a minimum of four pre-exams per course. The pre-exams must be completed at a 75% correct rate before allowing a person to the next section. All pre-exams must contain a minimum of four questions and be completed before allowing the exam to be provided to a person.

(f) An approved internet based food handler training provider shall provide technical support to users by way of the internet, phone, or other method in case technical difficulties occur.

(g) An approved internet based food handler training provider shall require persons taking a course and exam to provide an electronic signature attesting that the person has complied with exam requirements.

(15) An approved internet based food handler training provider must monitor exam protocols and periodically (at a minimum of monthly), perform a self-review to assess that the system is working and to ensure that each exam meets exam protocols before issuing a certificate of completion. Any instance of suspected violation of exam protocols must be reported to the local health department where the applicant resides.

R392-103-7. Food Handler Training Provider Approval, and Auditing.

(1) An approved food handler training provider must offer both training and testing to be approved by the Department in consultation with the local health department before they may offer food handler training and testing in the state.

(2) An approved food handler training provider that has been approved by the Department or a local health department before the effective date of this rule may continue to provide food handler training and testing for 90 days from the effective date of this rule. After 90 days, all food handler training providers must be re-approved by the Department according to the requirements of this rule to continue operating in the state.

(3) As part of the approval process, the Department or local health department designee shall provide prospective food handler training providers a copy of this rule. Food handler training providers must sign an affidavit provided by the Department that states the provider will comply with the requirements of this rule and shall abide by confidentiality agreements if the provider chooses to use the Department provided exam. A food handler provider must present to the Department a summary of how the training program meets the training objectives contained in R392-103-5.

(4) A food handler training provider shall be open to audit during the initial approval process and also during any subsequent audits to Department authentication of the following information:

(a) Any documents used in the food handler training, and

(b) Identity of instructors and providers.

(5) A food handler training provider must submit an application for re-approval to the Department every three years. The food handler training provider shall follow the requirements of R392-103-7 to apply for re-approval.

(6) A food handler training provider is subject to Department audit to determine compliance with this rule. A food handler training provider shall allow the Department unrestricted access to provider course training and testing materials, provide unrestricted on-line access to training sites, and unrestricted access to classroom training sessions. The Department may conduct audits either at random or on a complaint basis to determine compliance with the requirements of this rule.

(7) If the Department finds that an approved food handler training provider is non-compliant during an audit, the Department shall revoke the registration and the food handler training provider shall cease offering training classes and food handler certificates until the Department mandated corrective action is taken to correct the violation. Until the violation is corrected, certificates issued by this food handler training provider shall not be accepted for the issuing of food handler permits by the local health officer from the date the food handler training provider was found to be non-compliant.

(8) An approved food handler training provider shall comply with the Americans with Disability Act (ADA) access requirements irrespective of the size of the training operation.

KEY: food handler training, food handler certificates, food handler permits, food handler testing

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26A-1-114(1)(h)

R392. Health, Disease Control and Prevention, Environmental Services.
R392-510. Utah Indoor Clean Air Act.
R392-510-1. Authority.

(1) This rule is authorized by Sections 26-1-30(2), 26-15-12, and Title 26 Chapter 38.

(2) This rule does not preempt other restrictions on smoking that are otherwise allowed by law.

R392-510-2. Definitions.

The definitions in Section 26-38-2 apply to this rule in addition to the following:

(1) "Agent" means the person to whom a building owner has delegated the maintenance and care of the building.

(2) "Area" means a three dimensional space.

(3) "Building" means an entire free standing structure enclosed by exterior walls.

(4) "Building owner" means the person(s) who has an ownership interest in any public or private building.

(5) "E-cigarette" means any electronic oral device that provides a vapor of nicotine or other substance and which simulates smoking through its use or through inhalation of the vapor through the device; and includes an oral device that is composed of a heating element, battery, or electronic circuit and marketed, manufactured, distributed, or sold as an e-cigarette, e-cigar, e-pipe, or any other product name or descriptor, if the function of the product meets the definition of an electronic oral device.

(6) "Employer" means any individual, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons.

(7) "Enclosed" means space between a floor and ceiling which is designed to be surrounded on all sides at any time by solid walls, screens, windows or similar structures (exclusive of doors and passageways) which extend from the floor to the ceiling.

(8) "Executive Director" means the Executive Director of the Utah Department of Health or his designee.

(9) "Facility" means any part of a building, or an entire building.

(10) "HVAC system" means the collective components of a heating, ventilation and air conditioning system.

(11) "Lighted Tobacco" means both tobacco that is under self sustained combustion and tobacco that is heated to a point of smoking or vaporizing.

(12) "Local Health Officer" means the director of the jurisdictional local health department as defined in Title 26A, Chapter 1, or his designee.

(13) "Nonsmoker" means a person who has not smoked a tobacco product in the preceding 30 days.

(14) "Operator" means a person who leases a place from a building owner or controls, operates or supervises a place.

(15) "Place" means any "place of public access", or "publicly owned building or office", as defined in Title 26, Chapter 38.

(16) "Smoking" means the possession of any lighted or heated tobacco product in any form; inhaling, exhaling, burning, or heating a substance containing tobacco or nicotine intended for inhalation through a cigar, cigarette, pipe, or hookah.

(17) "Workplace" means any enclosed space, including a vehicle, in which one or more individuals perform any type of service or labor for consideration of payment under any type of employment relationship. This includes such places wherein individuals gratuitously perform services for which individuals are ordinarily paid.

R392-510-3. Responsibility for Compliance.

Where this rule imposes a duty on a building owner, agent, or operator, each is independently responsible to assure compliance and each may be held liable for noncompliance.

R392-510-4. Proprietor Right to Prohibit Smoking.

(1) The owner, agent or operator of a place may prohibit smoking anywhere on the premises.

(2) The owner, agent or operator of a place may also prohibit smoking anywhere outdoors on the premises.

R392-510-5. Smoking Prohibited Entirely in Places of Public Access and Publicly Owned Buildings and Offices.

(1) Places listed in Section 26-38-2(2)(a) through (p) are places of public access and smoking is prohibited in them except as provided for in Section 26-38-3(2).

(2) It is the responsibility of the owner or operator to provide evidence to the local health department upon request that the facility is in compliance with this rule.

R392-510-6. Requirements for Smoking Permitted Areas.

(1) Any enclosed area where smoking is permitted must be designed and operated to prevent exposure of persons outside the area to tobacco smoke generated in the area.

(2) If a lodging facility permits smoking as provided in Section 26-38-3(2)(b) in designated smoking-allowed guest rooms, or if a nursing home, assisted living facility, small health care facility, or hospital with a certified swing-bed program permits smoking as provided in Section 26-38-3(2)(b) in designated smoking-allowed private residential sleeping rooms, the facility's air handling system or systems must not allow air from any smoking-allowed area to mix with air in or to be used in:

(a) any part of the facility defined as a place of public access in Section 26-38-2(1);

(b) another room designated as a non-smoking room; or

(c) common areas of the facility, including dining areas, lobby areas and hallways.

(d) If an operator of a lodging facility chooses to modify the status of a room from a smoking to a non- smoking room, then the operator shall perform a full deep cleaning of the room. The deep cleaning shall include cleaning of carpets, bedding, drapes, walls, and any other object in the room which absorbs smoking particles or smoking fumes.

R392-510-7. HVAC System Documentation.

(1) If a building has a smoking-permitted area under Section 26-38-3(2), the building owner must obtain and keep on file a signed statement from an air balancing firm certified by the Associated Air Balance Council or the National Environmental Balancing Bureau, or an industrial hygienist certified by the American Board of Industrial Hygiene that the smoking permitted area meets the requirements of Subsections R392-510-6(1). If a building's HVAC System is altered in any way, the building owner must obtain new certification on the system.

(2) The building owner must provide the information required in Subsection R392-510-7(1) within three working days upon request from the operator, executive director or local health officer.

(3) The operator must provide the information required in Subsection R392-510-7(1) within five working days upon the request of the executive director or local health officer.

(4) The building owner must provide the HVAC operation specifications and maintenance guidelines to the HVAC operation and maintenance personnel or contractor. The maintenance guidelines must include the manufacturer's recommended procedures and time lines for maintenance of HVAC system components. If the manufacturer's recommended

procedures for operation and maintenance of the HVAC system are not available, the building owner must obtain and use guidelines developed by a mechanical engineer licensed by the State of Utah who has expertise in the design and evaluation of HVAC systems or by a mechanical contractor licensed by the State of Utah who has expertise in the repair and maintenance of HVAC systems.

(5) The building owner must maintain HVAC inspection and maintenance records or logs for the three previous years and must make them available to the operator, executive director or local health officer within three working days of a request.

(6) The operator must make the record or logs required in Subsection R392-510-7(5) available to the executive director or local health officer within five working days of a request.

(7) The records or logs required in Subsection R392-510-7(5) must include:

(a) The specific maintenance and repair action taken, and reasons for actions taken;

(b) The name and affiliation of the individual performing the work; and

(c) The date of the inspection or maintenance activity.

R392-510-8. Operation and Maintenance of HVAC Systems.

(1) The building owner, agent, or operator of a place where smoking is permitted under Section 26-38-3(2) shall identify a person responsible for the operation and maintenance of the HVAC system.

(2) The building owner, agent, or operator of a place where smoking is permitted under Section 26-38-3(2) must maintain and operate the HVAC system to meet the requirements of Subsections R392-510-6.

(3) The building owner, agent, or operator of a place where smoking is permitted under Section 26-38-3(2) must cause the HVAC system components to be inspected, adjusted, cleaned, and calibrated according to the manufacturer's recommendations, or replaced as specified in the maintenance guidelines required in Subsection R392-510-7(4). The building owner, agent, or operator's experience with the HVAC system may establish that more frequent maintenance activities are required.

(4) Visual or olfactory observation is sufficient to determine whether a smoking-permitted area meets the requirements of Section R392-510-6.

R392-510-9. Protection of Air Used for Ventilation.

(1) Smoking is not permitted within 25 feet of any entrance-way, exit, open window, or air intake of a building where smoking is prohibited.

(2) Ashtrays may be placed near entrances only if they have durable and easily readable signage indicating that the ashtray is provided for convenience only and the area around it is not a smoking area. The sign shall include a reference to the 25 foot prohibition.

(3) An employer shall establish a policy to prohibit employee smoking within 25 feet of any entrance-way, exit, open window, or air intake of a building where smoking is prohibited.

R392-510-10. Educational and Cultural Activities Not Exempted.

(1) Educational facilities, as used in the Utah Indoor Clean Air Act, means any facility used for instruction of people, including preschools, elementary and middle schools, junior and senior high schools.

(2) Smoking is prohibited in facilities used by, vocational schools, colleges and universities, and any other facility or educational institution operated by a commercial enterprise or nonprofit entity, including hotel, motel, and convention center rooms, for the purpose of providing academic classroom instruction, trade, craft, computer or other technical or professional training, or instruction in dancing, artistic, musical or other cultural skills as well as all areas supportive of instruction including classrooms, lounges, lecture halls, study areas and libraries.

R392-510-11. Private Dwellings Which Are Places of Employment.

(1) A private dwelling is subject to these rules while an individual who does not reside in the dwelling is engaged to perform services in the dwelling on a regular basis is present. This includes situations where an individual performs services such as, but not limited to:

(a) domestic services;

(b) secretarial services for a home-based business; or

(c) bookkeeping services for a home-based business.

(2) In a private dwelling in which a business or service is operated and into which the public enters for purposes related to the business or service smoking is prohibited in the business or service area during hours when the dwelling is open to the public.

(3) A private dwelling in which an individual is employed on a nonregular basis only is not subject to these rules. This includes situations where individuals perform services such as:

(a) baby-sitting services;

(b) trade services for the owner of the dwelling or individuals residing in the dwelling such as those services performed by plumbers, electricians and remodelers;

(c) emergency medical services;

(d) home health services; and

(e) part-time housekeeping services.

R392-510-12. Signs and Public Announcements.

Signs required in this section must be easily readable and must not be obscured in any way. The words "No Smoking" must be not less than 1.5 inches in height. If the international "No Smoking" symbol is used alone, it must be at least 4 inches in diameter.

(1) In a place where smoking is prohibited entirely, the building owner, agent, or operator must conspicuously post a sign using the words, "No smoking is permitted in this establishment" or a similar statement, which shall also include the international no-smoking symbol, on all entrances or in a position clearly visible on entry into the place.

(2) In a place where smoking is partially allowed, the building owner, agent, or operator must conspicuously post a sign using the words, "No smoking is permitted except in designated areas" or a similar statement, which shall also include the international no-smoking symbol, on all entrances or in a position clearly visible on entry into the place.

(3) In a place where smoking is allowed in its entirety, the building owner, agent, or operator must conspicuously post a sign using the words, "This establishment is a smoking area in its entirety" or similar statement.

(4) The building owner, agent, or operator must post a sign at all smoking-permitted areas provided for under Section 26-38-3(2)(a), (b), and (c). The sign must have the words, "smoking permitted" or similar wording and include the international smoking symbol.

(5) The building owner, agent, or operator must post a sign inside the exit of all smoking-permitted areas, if the exit leads to a smoking-prohibited area. The sign must have the words, "smoking not permitted beyond this point" or similar wording and include the international no-smoking symbol.

(6) In public lodging facilities that designate guest rooms as smoking allowed, the building owner, agent, or operator must conspicuously post a permanent sign on the smoking-allowed guest room door and meet the requirements of R392-510-6(1) and (2).

(7) In nursing homes, assisted living facilities, small health care facilities and hospitals with a certified swing-bed program that designate private residential sleeping rooms as "smoking allowed," the building owner, agent, or operator must conspicuously post a permanent sign on the door and meet the requirements of R392-510-6(1) and (2).

(8) The building owner, agent, or operator of an airport terminal, bus station, train station, or similar place must provide announcements on a public address system as often as necessary but not less than four times per hour during the hours that the place is open to the public, as follows:

(a) If smoking is not permitted, the announcements shall convey that the Utah Indoor Clean Air Act prohibits smoking in the place.

(b) If smoking is partially permitted, the announcements shall convey that the Utah Indoor Clean Air Act requires smokers to smoke only in those areas specifically designated for smoking.

(9) The building owner, agent, or operator of a sports arena, convention center, special events center, concert hall or other similar place must provide announcements on a public address system prior to the beginning of any event, at intermissions, at the conclusion of the event and any other break in the program or event, as follows:

(a) If smoking is not permitted, the announcements shall convey that the Utah Indoor Clean Air Act prohibits smoking in the place.

(b) If smoking is partially permitted, the announcements shall convey that the Utah Indoor Clean Air Act requires smokers to smoke only in those areas specifically designated for smoking.

(10) The building owner, agent, or operator of a large place, such as an airport, university, hotel or motel, or sports arena may, in writing, request the assistance of the local health officer to establish an effective signage and public announcements plan. The local health officer may cause the plan to be modified at any time to protect nonsmokers from being exposed to tobacco smoke.

(11) Buildings that are places of worship operated by a religious organization are not required to post signs.

(12) In a place of public access where the smoking of non-tobacco products is allowed and smoking of tobacco is prohibited, a sign shall be posted indicating that tobacco products may not be smoked.

R392-510-13. Discrimination.

An employer may not discriminate or take any adverse action against an employee or applicant because that person has sought enforcement of the provisions of Title 26, Chapter 38, Rule R392-510, the smoking policy of the workplace or otherwise protests the smoking of others.

R392-510-14. Temporary Exemption.

(1) The definition of smoking, which prohibits heated tobacco inhaled or exhaled through a hookah does not apply to a place of public access if it meets the requirements outlined by statute in 26-38-2.5, and action was required prior to July 1, 2012. The department or local health department shall certify that the exemption requirements are met as directed by 26-38-2.5 and a reasonable fee may be imposed to recover the cost of certification of exemption. In addition, penalties may be imposed for violation of the exemption as defined in 26-23-6. The exemption will sunset, in accordance with 63I-1-226, July 1, 2017. Additionally, as required by statute, the place of public access must provide through written notice on menus, or conspicuously located signage that only tobacco products sold at this place of public access may be heated, inhaled, and exhaled and that only those 21 years of age and older may be admitted. Any change in exemption status must be reported to the local health department.

(2) The place of public access shall allow the local health department and State Health Department to inspect the facility to verify ongoing compliance with the rule and statute during the 5 year exemption period. To maintain the exemption, the place of public access must:

(a) Maintain its class C or D liquor license.

(b) Admit only individuals 21 years of age and older into the place of public access.

(c) Prominently display signs on the premises and in advertisements that disclose the dangers of second hand smoke and inhaling tobacco.

(d) Require that only tobacco products sold by the place of public access may be heated, inhaled, and exhaled in the place of public access.

(e) Not sell a product for use in a hookah that contains more than 30% tobacco or more than .05% nicotine.

(f) Sell a mixture of tobacco and other flavors for the purpose of heating, inhaling, and exhaling the tobacco mixture through a hookah pipe

(g) Be able to demonstrate that the sale of the mixture of tobacco and other flavors for use in a hookah pipe in the place of public access constitutes at least 10% of the establishment's gross annual sales (January 1 to December 31 during the exemption period).

(3) If the place of public access does not meet the requirements of the exemption as determined by inspection of the local health department and/or State Health Department, the certification of exemption shall be suspended, and the place of public access shall go through the appeals process as outlined in 26a-1-121 (2) to determine if the permit should be permanently revoked or if corrections have been made, renewed for the balance of the 5 year period.

R392-510-15. Signs Required for Temporary Exemption.

(1) The building owner, agent or operator must conspicuously post signs that are easily readable and not obscured in any way as outlined in R392-510-12. The words must not be less than 1.5 inches in height. The signs shall state "WARNING: There is no risk-free level of inhaling tobacco smoke or exposure to secondhand tobacco smoke. -U.S. Surgeon General".

(2) The sign shall be posted at all entrances or in a position clearly visible on entry into the place.

(3) Any advertisements to the public must include the statement "WARNING: There is no risk-free level of inhaling tobacco smoke or exposure to secondhand tobacco smoke. -U.S Surgeon General".

R392-510-16. Restriction on Use of e-Cigarette in Place of Public Access.

The prohibition against the use of an e-cigarette in a place of public access does not apply if:

(1) the use of the e-cigarette occurs in the place of public access that is a retail establishment that sells e-cigarettes and the use is for the purpose of:

(a) the retailer of an e-cigarette demonstrating to the purchaser of the e-cigarette how to use the e-cigarette; or

(b) the customer sampling a product sold by the retailer for use in an e-cigarette; and the retailer of e-cigarettes:

(i) has all required licenses for the possession and sale of e-cigarettes in a place of business;

(ii) does not permit a person under the age of 19 to enter any part of the premises of the retail establishment in which the e-cigarettes are sold; and

(iii) the sale of e-cigarettes and substances for use in e-cigarettes constitutes at least 75% of the establishment's gross sales.

(2) this section sunsets, in accordance with 63I-1-226, July

1, 2017.

R392-510-17. Enforcement action by Proprietors.

An owner, agent, or employee of the owner of a place where smoking is prohibited by this rule who observes a person smoking in apparent violation of this rule shall request the person to stop smoking. If the person fails to comply, the proprietor, agent, or employee shall ask the person to leave the premises.

KEY: public health, indoor air pollution, smoking, ventilation

July 1, 2013	**26-1-30(2)**
Notice of Continuation April 2, 2012	**26-15-1 et seq.**
	26-38-1

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-1. Utah Medicaid Program.
R414-1-1. Introduction and Authority.

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

(1) "Act" means the federal Social Security Act.

(2) "Applicant" means any person who requests assistance under the medical programs available through the Division.

(3) "Categorically needy" means aged, blind or disabled individuals or families and children:

(a) who are otherwise eligible for Medicaid; and

(i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or

(ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or

(iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or

(iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or

(v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or

(vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or

(vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or

(viii) who is a child for whom an adoption assistance agreement with the state is in effect.

(b) whose categorical eligibility is protected by statute.

(4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.

(5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.

(6) "CMS" means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the State Children's Health Insurance Program.

(7) "Department" means the Department of Health.

(8) "Director" means the director of the Division.

(9) "Division" means the Division of Health Care Financing within the Department.

(10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(a) placing the patient's health in serious jeopardy;

(b) serious impairment to bodily functions;

(c) serious dysfunction of any bodily organ or part; or

(d) death.

(11) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of diagnosis.

(12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(13) "Executive Director" means the executive director of the Department.

(14) "InterQual" means the McKesson Criteria for Inpatient Reviews, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.

(15) "Medicaid agency" means the Department of Health.

(16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18.

(17) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(18) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(19) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(20) "Medical standards," as applied in this rule, means that an individual may receive reasonable and necessary medical services up until the time a physician makes an official determination of death.

(21) "Prior authorization" means the required approval for provision of a service that the provider must obtain from the Department before providing the service. Details for obtaining prior authorization are found in Section I of the Utah Medicaid Provider Manual.

(22) "Provider" means any person, individual or corporation, institution or organization that provides medical, behavioral or dental care services under the Medicaid program and who has entered into a written contract with the Medicaid program.

(23) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(24) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

(25) "Utilization review" means the Department provides for review and evaluation of the utilization of inpatient Medicaid services provided in acute care general hospitals to patients entitled to benefits under the Medicaid plan.

(26) "Utilization Control" means the Department has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services, safeguards against excess payments, and assesses the quality of services available under the plan. The program meets the requirements of 42 CFR, Part 456.

R414-1-3. Single State Agency.

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

R414-1-5. Incorporations by Reference.

The Department incorporates the October 1, 2013 versions of the following by reference:

(1) Utah State Plan, including any approved amendments, under Title XIX of the Social Security Act Medical Assistance Program;

(2) Medical Supplies Utah Medicaid Provider Manual, Section 2, Medical Supplies, as applied in Rule R414-70;

(3) Hospital Services Utah Medicaid Provider Manual with its attachments;

(4) Definitions found in the Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid;

(5) Speech-Language Services Utah Medicaid Provider Manual;

(6) Audiology Services Utah Medicaid Provider Manual;

(7) Hospice Care Utah Medicaid Provider Manual;

(8) Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments;

(9) Personal Care Utah Medicaid Provider Manual with its attachments;

(10) Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual;

(11) Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Utah Medicaid Provider Manual;

(12) Utah Home and Community-Based Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual;

(13) Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual;

(14) Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual;

(15) Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual;

(16) Utah Home and Community-Based Waiver Services Autism Waiver Utah Medicaid Provider Manual;

(17) Office of Inspector General Administrative Hearings Procedures Manual;

(18) Pharmacy Services Utah Medicaid Provider Manual with its attachments;

(19) Coverage and Reimbursement Code Look-up Tool found at http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php;

(20) Certified Nurse - Midwife Services Utah Medicaid Provider Manual;

(21) CHEC Services Utah Medicaid Provider Manual with its attachments;

(22) Chiropractic Medicine Utah Medicaid Provider Manual;

(23) Dental Services Utah Medicaid Provider Manual;

(24) General Attachments for the Utah Medicaid Provider Manual;

(25) Indian Health Utah Medicaid Provider Manual;

(26) Laboratory Services Utah Medicaid Provider Manual with its attachments;

(27) Medical Transportation Utah Medicaid Provider Manual;

(28) Mental Health Centers/Prepaid Mental Health Plans Utah Medicaid Provider Manual;

(29) Non-Traditional Medicaid Health Plan Utah Medicaid Provider Manual with its attachments;

(30) Certified Family Nurse Practitioner and Pediatric Nurse Practitioner Utah Medicaid Provider Manual;

(31) Oral Maxillofacial Surgeon Services Utah Medicaid Provider Manual;

(32) Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual;

(33) Physician Services and Anesthesiology Utah Medicaid Provider Manual with its attachments;

(34) Podiatric Services Utah Medicaid Provider Manual;

(35) Primary Care Network Utah Medicaid Provider Manual with its attachments;

(36) Psychology Services Utah Medicaid Provider Manual;

(37) Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual;

(38) Rehabilitative Mental Health Services for Children Under Authority of Department of Human Services, Division of Child and Family Services or Division of Juvenile Justice Services Utah Medicaid Provider Manual;

(39) Rural Health Clinic Services Utah Medicaid Provider Manual with its attachments;

(40) School-Based Skills Development Services Utah Medicaid Provider Manual;

(41) Section I: General Information of the Utah Medicaid Provider Manual;

(42) Services for Pregnant Women Utah Medicaid Provider Manual;

(43) Substance Abuse Treatment Services and Targeted Case Management Services for Substance Abuse Utah Medicaid Provider Manual;

(44) Targeted Case Management for CHEC Medicaid Eligible Children Utah Medicaid Provider Manual;

(45) Targeted Case Management for the Chronically Mentally Ill Utah Medicaid Provider Manual;

(46) Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual; and

(47) Vision Care Services Utah Medicaid Provider Manual.

R414-1-6. Services Available.

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;

(b) outpatient hospital services and rural health clinic services;

(c) other laboratory and x-ray services;

(d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;

(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;

(f) family planning services and supplies for individuals of child-bearing age;

(g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;

(h) podiatrist's services;

(i) optometrist's services;

(j) psychologist's services;

(k) interpreter's services;

(l) home health services:

(i) intermittent or part-time nursing services provided by a home health agency;

(ii) home health aide services by a home health agency; and

(iii) medical supplies, equipment, and appliances 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 age 65 or older in institutions for mental diseases;

(u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

(v) inpatient psychiatric facility services for individuals under 22 years of age;

(w) nurse-midwife services;

(x) family or pediatric nurse practitioner services;

(y) hospice care in accordance with section 1905(o) of the Social Security Act;

(z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;

(aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;

(bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and

(cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:

(i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;

(ii) transportation services;

(iii) skilled nursing facility services for patients under 21 years of age;

(iv) emergency hospital services; and

(v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.

(dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:

(i) it is medically necessary and more appropriate than any Medicaid covered service; and

(ii) it is more cost effective than any Medicaid covered service.

R414-1-7. Aliens.

(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 non-emergency 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.

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

November 7, 2013 26-1-5

Notice of Continuation March 2, 2012 26-18-3

26-34-2

R501. Human Services, Administration, Administrative Services, Licensing.
R501-7. Child Placing Adoption Agencies.
R501-7-1. Authority and Purpose.

A. This rule is authorized under Section 62A-2-106.

B. This rule establishes standards for licensing agencies to provide child placing adoption services.

R501-7-2. Definitions.

A. "Adoption" is defined in Section 78B-6-103.

B. "Child placing adoption agency" means an individual, agency, firm, corporation, association or group children's home that engages in child placing.

C. "Adoption Services" means evaluating, advising, or counseling children, birth parents or adoptive families, placing children for adoption; monitoring or supervising placements until the adoption is finalized; conducting adoption studies or preparing adoption reports; or arranging for foster care.

D. "Birth Parent" is defined in Section 78B-6-103.

E. "Child placing" means receiving, accepting, or providing custody or care for a child for the purpose of finding a person to adopt the child or placing a child in a home for adoption.

F. "Confinement" means the time period when a woman is hospitalized or medically restricted due to her pregnancy and childbirth.

G. "Disruption" means the termination of an adoptive placement prior to the issuance of a final decree of adoption.

H. "Foster Care" means family care in the residence of a foster parent who is licensed or certified pursuant to R501-12.

I. "Genetic and Social History" is defined in Section 78B-6-103.

J. "Health History" is defined in Section 78B-6-103.

K. "Intercountry Adoption" means the adoption of a child from a foreign country, whether the adoption is completed in the child's native country or in this State.

L. "Legal risk placement" means at the time the placement is made, one or more of the child's biological parents or putative legal parents has not executed a legal relinquishment or consent to the adoption, their parental rights have not been lawfully terminated, or they have expressed their intention to exercise parental rights or contest the adoption.

M. "Mental Health Therapist" is defined in Section 58-60-102.

N. "Sliding Scale" means an established fee schedule that varies according to an individual's annual income.

O. "Special needs" is defined in Section 62a-4a-902(2).

P. "Unmarried biological father" is defined in Section 78B-6-103(17).

R501-7-3. Legal Requirements.

A. In addition to this rule, all child placing adoption agencies shall comply with R495-876, R501-1, R501-2-1 through 501-2-5, R501-2-8 through R501-2-14, R501-14; Title 58, Chapter 60; title 62A, Chapters 2 and 4a; Section 76-7-203; 78A-6; 78B-6 and 78B-13; and other applicable local, State and Federal laws.

B. Child placing adoption agencies that do not provide housing for birth mothers are exempt from R501-2-5, 10, 11, and 12.

C. A child placing adoption agency shall not:

a. delay or deny the placement of a child or the opportunity to become an adoptive parent on the basis of race, color, ethnicity, cultural heritage, or national origin. A child placing adoption agency shall comply with all State and Federal laws regarding discrimination.

D. A child placing adoption agency shall be legally responsible for the child following relinquishment of the child to the adoption agency until the adoption is finalized, unless a court of competent jurisdiction places legal responsibility with another party, in accordance with Section 78B-6-134.

E. A child placing adoption agency which serves Indian children shall comply with the Indian Child Welfare Act.

F. A child placing adoption agency that provides foster care shall comply with R501-12.

H. A child placing adoption agency shall comply with the Interstate Compact for Placement of Children, in accordance with Section 62A-4a-701 et seq.

I. A child placing adoption agency shall ensure that its employees, contractors, volunteers and agents comply with all laws relating to adoption services.

R501-7-4. Administrative Requirements.

A. A child placing adoption agency shall have at least one social work supervisor responsible for directly supervising all staff and volunteers who provide adoption services to clients.

1. Each social work supervisor shall be licensed in this state as a mental health therapist, shall comply with the Utah Mental Health Professional Practice Act, and shall have at least one year of full time, paid, professional experience in a licensed child placing adoption agency.

2. A social work supervisor may not supervise more than eight staff and volunteers who provide adoption services to clients.

3. An Executive Director who is licensed in this state as a mental health therapist, complies with the Utah Mental Health Professional Practice Act, and has at least one year of full time, paid, professional experience in a licensed child placing agency may serve as a social work supervisor, but may not supervise more than four staff and volunteers who provide adoption services to clients.

B. Individuals who provide adoption services to birth parents, children, or adoptive applicants shall maintain a current professional license as required by the Utah Mental Health Professional Practice Act and shall comply with the Utah Mental Health Professional Practice Act.

C. A child placing adoption agency shall notify the Office Of Licensing of any changes it makes to its policies or procedures and shall provide a written copy of any changes no later than five business days after the change.

D. A child placing adoption agency shall provide at least 30 days' prior written notice to the Office of Licensing that the agency is:

1. dissolving or ceasing to provide child placing services,

2. adding or eliminating in-state, out-of-state, special needs, or international services, or

3. changing ownership or name.

R501-7-5. Ethical Conduct.

A. A child placing adoption agency shall:

1. not give preferential treatment to its board members, employees, volunteers, agents, consultants, independent contractors, donors, or their respective families with regard to child placing decisions;

2. not provide or accept any payment or other considerations for any referral;

3. work only with agencies, entities or individuals that are authorized to provide child placing adoption services by the laws of this state or the jurisdiction in which that agency, entity or individual performs child placing adoption services;

4. not permit its employees, volunteers, agents, consultants, or independent contractors to provide adoption services to both the birth parents and the adoptive parents unless all parties are made aware of potential conflicts of interest and sign a voluntary consent;

5. not require its clients to use or pay for specified attorneys or other service providers, shall inform clients that they are free to select independent attorneys and other service

providers, and shall not charge clients fees for services that clients obtain independently;

6. not refer or steer any individual to any private practice in which the agency's board members, volunteers, employees, agents, consultants, independent contractors, or their respective families are engaged, without first disclosing any potential conflicts of interest and informing said individuals that they are free to select independent service providers; and

7. not misrepresent or withhold any facts or information relating to its services, any individual, or the applicable law.

B. The members of the governing body of a child placing adoption agency shall disclose, in writing, to the chairperson of the governing body, any direct or indirect financial interest in the agency.

C. The child placing adoption agency, its board members, volunteers, employees, or agents shall not solicit donations from an adoptive family that is under consideration for placement of a child. A generalized mass solicitation through newsletters or the media shall not constitute a violation under this rule.

D. The child placing adoption agency, its board members, volunteers, employees, or agents shall not accept donations from an adoptive family that is under consideration for placement of a child.

R501-7-6. Fees.

A. A child placing adoption agency shall provide a written disclosure of all fees and expenses prospective adoptive parents may incur before the agency accepts any payments or processes any application from, or enters any agreement with, the prospective adoptive parents.

1. The disclosure shall identify the services associated with each fee, and specify both the average cost for that service for the preceding two fiscal years, and the maximum fee that may be charged for each service.

2. A child placing adoption agency shall not charge adoptive parents for any fees or expenses that exceed or were not included in the written disclosure.

3. A child placing adoption agency shall identify which fees may be non-refundable.

B. A child placing adoption agency may charge adoptive parents an agency fee, which shall include all administrative and professional services provided on behalf of the adoptive parents, including but not limited to pre-adoption evaluations, home studies, personnel, counseling, overhead, and training.

C. A child placing adoption agency may charge adoptive parents for the actual and reasonable costs of maternity, medical, and necessary pre-natal living expenses of the birth mother in accordance with Section 76-7-203.

1. The agency shall retain receipts documenting the actual costs of goods and services provided which exceed twenty-five dollars.

2. A child placing adoption agency shall not charge adoptive parents for the travel expenses of any person other than the birth mother.

3. A child placing adoption agency shall not charge the adoptive parents for the living expenses of any person other than the birth parents.

4. A child placing adoption agency shall not charge the adoptive parents for the birth parents' post-confinement living expenses.

D. The agency shall maintain an itemized accounting of the actual expenditures made on behalf of a birth mother. The accounting shall be verified and signed by the agency and adoptive parents, and filed with the court and the Office of Licensing in accordance with Section 78B-6-140.

1. The agency shall utilize an affidavit form provided by the Office of Licensing or a substantially similar form including the same information.

2. The agency shall require the birth mother to verify that she received all of the itemized goods and services by signing a file copy of the accounting.

E. The agency may delegate the responsibility for a child's care, maintenance, and support to the adoptive applicant only when the applicant has received the child into the applicant's home, in accordance with Section 78B-6-134.

F. A birth mother who decides not to place her child shall not be responsible for reimbursing the costs of any goods or services provided to her by the prospective adoptive parents or the child placing adoption agency during her pregnancy unless she is first convicted of fraud.

R501-7-7. Documentation.

A. A child placing adoption agency shall maintain a policy and procedure manual describing how it shall comply with all licensing rules and local, state and federal laws applicable to the type of services offered.

B. A child placing adoption agency shall maintain a policy and procedure manual demonstrating how it shall:

1. train and supervise employees and volunteers;

2. identify a child who may be available for adoption;

3. identify or refer a person who is considering relinquishing a child for adoption;

4. provide services in cases where the agency does not obtain legal custody of a child;

5. verify the credentials of other individuals and agencies it works with to obtain relinquishments and place a child;

6. offer counseling services by a licensed mental health therapist to a person who is considering relinquishing a child for adoption or adopting a child;

7. inform birth parents and adoptive parents of their rights and responsibilities in writing;

8. monitor who has legal and physical responsibility for the child at all times;

9. secure the necessary relinquishments and facilitate the termination of parental rights;

10. recruit and assist adoptive families to meet the needs of available children, including but not limited to special needs children;

11. obtain a background study on a child or a home study on a prospective adoptive parent;

12. evaluate prospective adoptive parents;

13. process appeals of home study denials;

14. assess the best interests of a child and the appropriate adoptive placement for the child;

15. monitor a case post-placement until the adoption is final;

16. ensure the child is receiving all necessary services prior to finalization of adoption;

17. assume custody and provide any needed services for the child when necessary because of disruption;

18. arrange to provide foster care prior to placing the child in an adoptive home;

19. preserve the confidentiality of client files;

20. respond to requests for information from birth families, adoptees, adoptive families, and others;

21. preserve client records when a case is closed and in the event that the agency changes ownership or ceases to provide child placement adoption services, and notify the Office of Licensing and each client where the records shall be stored; and

22. enable record retrieval by individuals with a right to access them.

C. A child placing adoption agency shall provide documentation demonstrating its compliance with each subsection in R501-7-7(B).

D. A child placing adoption agency shall maintain a case file for the birth parents, and the prospective adoptive parents, and for each child who is more than 90 days old at the time of placement or who has been in the legal custody of someone

other than the birth mother. Each case file shall cross-reference related files. Each case file shall include:

1. application for service;

2. all studies and evaluations, whether or not finalized, including but not limited to those required by Section 78B-6-128;

3. needs assessment;

4. case notes describing services provided;

5. the individual's adjustments, interactions and relationships;

6. original or certified copies of government and religious birth records;

7. original or certified copies of relinquishment or transfer of birth mother's and birth father's rights;

8. original or certified copies of decree of termination of birth mother's and birth father's rights;

9. certified copies of marriage certificates, divorce papers, custody and visitation orders, if any;

10. certified copies of death certificates, if any, of birth parents;

11. original or certified copy of affidavit that birth mother's husband is not the child's father, if applicable;

12. waiver of confidentiality or release of information authorization, if applicable;

13. statements of birth and adoptive parents regarding any agreements to exchange information or maintain contact;

14. current and historical physical, psychological, genetic and developmental health information;

15. original or certified copy of the order of adoption; and

16. in the event that any records identified in this rule are not obtained, the child placing adoption agency shall provide documentation of its efforts to obtain those records.

E. A child placing adoption agency shall maintain current health, fire, zoning, business, and other permits, certificates, or licenses at each facility it operates, as required by state or local law;

F. All case files shall be retained for a minimum of 100 years from the date the case is closed.

G. All adoption records shall be confidential and shall be maintained in a locked file when not in active use. Adoption records shall be accessible only by authorized agency employees. No information shall be shared with any person without the appropriate consent forms, except as required by law.

H. A child placing adoption agency shall maintain and provide accurate annual statistics describing the number of applications received, services provided, the number of children, birth parents, and adoptive parents served, and the number of adoptions and disruptions, and the number of children in agency custody.

R501-7-8. Services for Birth Parents.

A. Child placing adoption agencies shall offer counseling sessions prior to consent or relinquishment. Prior to consent or relinquishment, the agency shall inform birth parents that:

1. their decision to sign the consent or relinquishment must be voluntary; and

2. their decision is permanent and may not be revoked after the consent or relinquishment is signed.

B. Birth parents shall be provided complete and accurate information and their decision to consent or relinquish, or not to consent or relinquish their child shall be supported.

1. Child placing adoption agencies shall not induce or persuade a birth parent to consent to adoption or to relinquish a child through duress, undue influence, misrepresentation, or deception.

C. A child placing adoption agency shall wait at least 24 hours after the birth of a child before taking the birth mother's relinquishment of parental rights or legal consent to the adoption of her child, in accordance with Section 78B-6-125.

D. Birth parents shall be assisted in considering whether they want to disclose their identity to the adoptee or the adoptive family, or hear about or from the child, directly or indirectly, in the future.

E. Birth parents shall be offered non-identifying information on the potential adoptive parents, such as age, physical characteristics, educational achievement, family members, profession, nationality, health, and reason for adopting.

F. A child placing adoption agency shall inform birth parents that a detailed, non-identifying health history and a genetic and social history of the child shall be provided to the adoptive parents in accordance with Section 78B-6-143, and shall inform birth parents of Utah's Mutual Consent Voluntary Adoption Registry, Section 78B-6-144.

G. A child placing adoption agency's policies regarding the consideration of religion and marital status in the selection of adoptive families shall be clearly stated in its initial consultation with birth parents and shall also be clearly stated in writing on the birth parents' application for services forms.

H. A child who has already established some identification with a particular religious faith shall have the right to have such identification respected in any adoptive placement. Efforts shall be made to place the child within that religious faith. This information shall be documented.

I. A child placing adoption agency shall initiate proceedings to terminate or determine parental rights when required by Utah law.

J. Child placing adoption agencies that provide housing for expectant birth mothers shall assure that such housing complies with the following minimum standards:

1. housing is in compliance with health, fire, zoning, and other applicable laws and regulations;

2. housing is clean, well-maintained and adequately furnished;

3. birth mothers shall have private bedrooms;

4. laundry equipment and supplies shall be available; and

5. adequate nutritious food, or resources to obtain food, is available.

K. Child placing adoption agencies that provide or pay for birth mothers' transportation to the State of Utah shall also ensure that the birth mothers' return transportation to their home state is provided, regardless of whether the birth mother decides to relinquish parental rights.

L. The placement decision shall be in writing, signed by the child placing adoption agency and the birth parents, and a copy shall be maintained in the case record of the birth parents, the adoptive parents, and the child.

R501-7-9. Services for Children.

A. After the birth parents determine that adoption is the best plan for their child, an assessment shall be made within 30 days, or within the timeframe ordered by the court, to obtain information to assist in the placement process.

B. A determination shall be made regarding what kind of adoptive family should be selected for the child. The selection of the adoptive family for a specific child shall be based on the family's ability to meet the individual needs of the child. The wishes of the birth parents, the adoptive parents, and when applicable, the child, shall be considered.

C. The assessment shall be used to assist prospective adoptive families to make their decision about the child and birth family.

D. A complete developmental history of the child shall be obtained from the birth parent. If the child has been in an out-of-home placement prior to being placed in an adoptive home, information obtained from caseworker observation, pediatrician, foster parents, nurses, psychologists, and other consultants shall

be included. The developmental history shall include:

1. birth and health history, and all evaluations;

2. descriptions of fine and gross motor skills, social, emotional, and cognitive development;

3. the child's adaptation to previous living experiences and situations;

4. the child's experience prior to adoptive placement, particularly maternal attitudes during the pregnancy and early infancy, continuity of care and affection, foster placements, description of the child's behavior and separation experiences;

5. a description of the child's cultural and ethnic background;

6. the child's language skills, educational records, talents and interests.

E. A medical examination by a qualified physician shall be conducted to determine the state of the child's health, and any known or potentially significant factors that may interfere with normal development or may signal any potential medical problems. At a minimum, the following shall be documented and shared with parents, potential adoptive parents, and the assigned agency caseworker prior to placement:

1. evaluation of the child that includes a correlation and interpretation of all available information, including but not limited to genetic and laboratory test results;

2. the medical care and immunizations received to date;

3. the nature and degree of any disability;

4. treatment and support programs that should be provided to the child and adoptive parents, extra costs of medical care that can be anticipated, and plans to subsidize the health care.

F. Psychological testing for children should be used selectively and as a tool for observation and diagnosis.

G. A child placing adoption agency shall obtain information about the birth parents and their family backgrounds to:

1. provide the adoptive family with the birth family's medical, genetic, social, and mental health history;

2. provide the adoptive family with information about the talents, interests, and education of the birth parents;

3. provide the adoptive family with non-identifying information about other children born to either of the birth parents; and

4. identify characteristics which should be given consideration in selecting and preparing a child for an adoptive family.

H. An interdisciplinary approach based upon the needs of the child is to be used in the selection of a placement either by asking other professionals to submit written recommendations or by inviting them to participate as a member of the placement committee. A child placing adoption agency shall attempt to place siblings together.

I. A child shall be placed with the adoptive family at the earliest time possible after being freed for adoption.

J. A child's needs shall be assessed and a written plan shall be developed to ensure that the adoptive parents are prepared to meet the child's needs and necessary services are provided.

K. A child awaiting placement with an adoptive family shall be placed in a licensed foster or residential home or facility.

1. A child placing adoption agency shall contract with a licensed foster care program or obtain a license to provide foster care services for children in its custody, in accordance with R501-12.

2. A child awaiting adoptive placement shall be placed in a licensed group or residential treatment program when the child's needs can be met only in such a setting.

3. A child placing adoption agency shall obtain a copy of the foster home or facility license prior to placing a child, and shall retain the license in the child's case file.

L. A child placing adoption agency shall have an individualized written adoptive placement plan for each child, which shall include:

1. providing the family and child services or service referrals after the adoption is finalized; and

2. the financial and social service responsibilities of each agency and individual.

M. A social worker shall supervise the child's placement until finalization of the adoption to assist with the transition and assist the family in obtaining any needed services.

1. A minimum of one supervisory visit shall be made prior to finalization of the adoption.

N. A child placing adoption agency having a child available for adoption who has not been placed within 60 days after relinquishment or after being determined to be available for adoption by the court shall document its efforts to screen the child with other child placing agencies and shall list the child with local, regional, and inter-state adoption exchanges.

O. The needs of the child shall determine the amount of time taken to prepare the child for placement. The child shall be counseled regarding the adoptive placement and shall be protected from emotional disturbances associated with sudden separation from a known situation.

P. A child placing adoption agency shall develop a written plan with the child's current caregivers, the adoptive parents, and the child, to facilitate the child's transition into the adoptive family. The child's stated preferences shall be considered and if possible, honored.

R501-7-10. Services to Adoptive Parents.

A. Child placing adoption agencies shall provide prospective adoptive parents with a written description of their services, policies and procedures.

B. A child placing adoption agency shall explain the adoption process and the birth parents' rights, including the status of the putative father, to the prospective adoptive parents.

C. A child placing adoption agency shall provide all available non-identifying information on children who may be available for adoptive placement and their birth families, including but not limited to physical descriptions, special abilities, developmental and behavioral history, personality and temperament, medical and genetic history, ethnic and cultural background, and prior placement history.

D. A child placing adoption agency shall inform prospective adoptive parents of the availability of non-identifying health, genetic and social histories in accordance with Section 78B-6-143, and Utah's Mutual Consent Voluntary Adoption Registry, Section 78B-6-144.

E. A child placing adoption agency shall provide individual or group counseling to help the prospective adoptive parents evaluate and develop their capacities to meet the ongoing needs of the child.

F. A child placing adoption agency shall review all available information about the birth parents and child with the prospective adoptive parents and encourage the selection of a child whose needs the adoptive parents will be able to meet.

G. A child placing adoption agency shall prepare the child and adoptive family for the placement of the child in the home.

H. A child placing adoption agency shall inform each prospective adoptive parent that information about individual children in the custody of the state who are available for adoption may be obtained by contacting the Division of Child and Family Services or its internet site and shall provide a pamphlet prepared by the Division of Child and Family Services regarding adoption of children in the State's custody. The agency shall inform each prospective adoptive parent that assistance may be available when adopting children in the custody of the state, including:

1. Medicaid coverage for medical, dental, and mental health services;

2. tax benefits, adoption subsidies, or other financial assistance to defray the costs of adoption; and

3. training and ongoing support for the adoptive parents.

I. A child placing adoption agency shall inform adoptive parents when a child may be eligible for an adoption subsidy or benefit, including but not limited to SSI, and shall coordinate with Division of Child and Family Services to apply for the subsidy or benefit.

J. A child placing adoption agency shall have written procedures and standards for the evaluation and approval or denial of applications from prospective adoptive parents.

K. The home study shall include:

1. interviews with the adoptive applicants, their children, and other individuals living in the home;

2. criminal background and child abuse screening of adoptive applicants and other adults living in the home in accordance with R501-14, R501-18, and Sections 53-10-108(4) and 78B-6-128;

3. written statements from references identified by the applicants. The applicants shall supply names of at least two non-related and one related individuals who shall provide information directly to the agency regarding the applicant's qualifications for parenting an adoptive child;

4. a medical history and a doctor's report, based upon a doctor's physical examination of each applicant, made within six months prior to the date of the application; and

5. inspections of the home, to determine whether sufficient space and facilities to meet the needs of the child exist and whether basic health and safety standards are maintained.

L. The adoptive applicants shall be informed, in writing, and within five business days after the decision is made, as to the acceptance or the reasons for the denial of their home study. The agency shall provide applicants with a written copy of the agency's appeal process, which shall include the right to submit a written appeal and request for reconsideration, and the right to request an additional evaluation, upon order of the court in accordance with Section 78B-6-128.

M. A child placing adoption agency shall select applicants who:

1. are able to provide the continuity of a caring relationship;

2. are informed with regard to a child's ethnic, religious, cultural, and racial heritage; and

3. understand the needs of a child at various developmental stages.

N. A child placing adoption agency's policies regarding the consideration of religion and marital status in the selection of adoptive families shall be clearly stated in its initial consultation with prospective adoptive parents. This disclosure shall also be clearly stated in writing on the adoptive parents' application for services forms.

O. A child placing adoption agency shall verify that an applicant's income is sufficient to provide for a child's needs.

P. A child placing adoption agency shall not reject an applicant solely based upon the applicant's choice to work outside the home. Applicants who work outside the home shall provide a written plan describing how they shall provide security and responsible child care to meet the individual child's needs.

Q. A child placing adoption agency shall not make a legal risk placement unless the prospective adoptive parents have first given their written consent, indicating that they have been fully informed of the specific risks involved.

R. Except when authorized by court order pursuant to Section 78B-6-128, a child placing adoption agency shall not place a child in an adoptive home until the home study and each adult's criminal and abuse background screenings have been approved.

S. A child placing adoption agency shall provide continuing support to the child and the adoptive family after placement and before finalization of the adoption, including but not limited to:

1. providing or making referrals to services such as counseling, crisis intervention, respite care, and support groups;

2. monitoring the child's adjustment and development;

3. assisting the family in helping the child, friends, family members, extended family members, neighbors, schools, and others understand the adoption process; and

4. assisting the family in understanding their feelings, understanding the child, and adjusting to the family composition.

T. The frequency of home visits, office contacts, telephone calls, and other contacts by the child placing adoption agency shall depend on the needs of the child and the adoptive family and may vary depending whether the child is an infant, an older child, or a child with medical or other difficulties, and whether the adoptive parents are faced with unanticipated problems.

1. The first contact after placement shall take place within two weeks of placement.

2. A minimum of one face-to-face supervisory home visit shall take place before finalization.

U. A child placing adoption agency shall provide assistance in finalizing the adoption, unless the agency removes the child due to circumstances that may impair the child's security in the family or jeopardize the child's physical and emotional development, including but not limited to incompatibility; mental illness; seriously incapacitating illness; the death of one of the adoptive parents; the separation or divorce of the adoptive parents; the abuse, neglect, or rejection of the child; the lack of attachment to the child; or a request by the adopting parents to remove the child.

1. If a child is removed from an adoptive home by a child placing adoption agency, the adoptive parents shall be entitled to appeal the removal decision. The agency shall provide the adoptive parents written notice of their right to appeal and the procedure for appeal.

R501-7-11. Intercountry Adoptions.

A. In addition to complying with all other rules regarding adoption, a child placing adoption agency that provides inter-country adoption services shall document that it has complied with all applicable laws and regulations of the United States and the child's country of origin, and shall document that:

1. the child is legally freed for adoption in the country of origin;

2. information was provided to the adopting parents about naturalization proceedings.

B. A child placing adoption agency that provides intercountry adoption services shall:

1. establish an official and recorded method of fund transfers to avoid, when possible, the use of direct cash transactions to pay for adoption services in other countries;

2. identify, in writing and in advance of accepting any payment or signing any agreement, the total cost of providing adoption services in the child's country, including but not limited to the cost of care for the child, personnel, overhead, training, communication, obtaining any necessary documents, translation, the child's passport, notarizations and certifications, with disclosure of whether the prospective adoptive parents shall pay such costs directly in the child's country or indirectly through the child placing adoption agency;

3. itemize the costs, if any, of mandatory payments to child protection or child welfare programs in the child's country of origin, including but not limited to a description of:

a. a fixed contribution amount identified in advance and in writing to the prospective adoptive parents;

b. the intended use of the payment; and

c. the manner in which the transaction will be recorded

and accounted for;

4. provide all applicants with written policies governing refunds.

C. A child placing adoption agency that provides intercountry adoption services shall notify adoptive applicants within ten business days when information is received that a foreign country is suspending its adoption program.

D. A child placing adoption agency that provides intercountry adoption services shall verify and maintain documentation regarding the credentials and qualifications of agents working in their behalf in foreign countries.

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R510. Human Services, Aging and Adult Services.
R510-401. Utah Caregiver Support Program (UCSP).
R510-401-1. Utah Caregiver Support Program Purpose.

The Utah Caregiver Support Program is created under authority of the Older Americans Act of 1965 as amended in 2000 (PL 89-73) Part E - National Family Caregiver Support Program (NFCSP) and 2006 (PL 109-365) Subpart 1 - Caregiver Support Program.

The purpose of the program is to provide support services including information and assistance, counseling, support groups, respite and other home and community-based services to family caregivers of frail older individuals. The program also recognizes the needs of grandparents and other relatives (not biological or adoptive parents) 55 years of age and older providing care to children under the age of 18 years as well as to grandparents and other relatives (not biological or adoptive parents) 55 years of age and older providing care to adults, age 18 to 59 years, with disabilities. Adult family members (age 18 years of older) or other adult informal caregivers providing care to individuals of any age with Alzheimer's disease and related disorders are also served under this program|.

Operation of the program is a joint responsibility of the State Division of Aging and Adult Services and local Area Agencies on Aging (AAA). Funds are distributed by formula (R510-100-1) to local AAAs.

R510-401-2. Authority.

This Rule is authorized by 62A-3-104; 42 USC Section 3001.

R510-401-3. Definitions.

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency or Area Agency on Aging (AAA)" means the agency designated by the Division of Aging and Adult Services (DAAS) to coordinate and provide services for a defined geographical area.

(3) "Agency Director" means the director of the Agency.

(4) "Caregiver or Family Caregiver" means an adult family member, or another adult individual, who is an informal provider of in-home and community care to an older individual who is:

(a) 60 years of age or older; or is a

(b) caregiver 60 years of age or older who is caring for persons with mental retardation or related developmental disabilities; or is an

(c) adult family member (age 18 years or older) or other adult informal caregiver providing care to individuals of any age with Alzheimer's disease and related disorders; or is a

(d) grandparent 55 years of age or older individual who is a relative caregiver (not biological or adoptive parents) of a child not more than 18 years of age ; or is a

(e) grandparent and other relatives (not biological or adoptive parents) 55 years of age and older providing care to adults, age 18 to 59 years, with disabilities.

(f) This definition excludes agency and privately-paid supportive service providers.

(5) "Care Receiver" means an adult 60 years of age or older who receives assistance from, or is dependent upon, another for care and is:

(a) unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing, or supervision; or

(b) due to a cognitive or other mental impairment, requires substantial supervision; or

(6) "Child" means an individual who is not more than 18 years of age or who is an individual with a disability.

(7) "Companion Services" means non-medical, basic supervisory services which are provided to the eligible care receiver in his home on a short-term, intermittent basis. Companion Services provide respite to a caregiver who is caring for eligible care receivers who do not require any personal care assistance, medical assistance, or housekeeping services during the time when companion services are provided.

(8) "Counseling, Support Groups, or Caregiver Training" means provision of advice, guidance, and education about options and methods of caregiving to provide support to caregivers in an individual or group setting.

(9) "Director" means the director of the Division of Aging and Adult Services (DAAS), Utah Department of Human Services).

(10) "Disability" means a disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that results in substantial functional limitation in 1 or more of the following areas of major life activity:

(a) self care,
(b) receptive and expressive language,
(c) learning,
(d) mobility,
(e) self-direction,
(f) capacity for independent living,
(g) economic self-sufficiency,
(h) cognitive functions, and
(i) emotional adjustment.

(11) "Division" means the Division of Aging and Adult Services (DAAS), Utah Department of Human Services.

(12) "Formal Resources" means an entity or individual that provides services for a fee or reimbursement.

(13) "Grandparent or Older Individual who is a Relative Caregiver" means a grandparent or step- grandparent of a child, or a relative of a child by blood, marriage, or adoption who is 55 years of age or older and:

(a) lives with the child;

(b) is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregiver of the child; and,

(c) has a legal relationship to the child, such as legal custody or guardianship, or is raising the child informally.

(14) "Informal Resources" means family, friends, neighbors, community organizations or others who offer resources and support and are not assigned by formal agencies or organizations, irrespective of any payment received.

(15) "Multifaceted Systems" means a variety of systems of support for the caregiver including but not limited to those described in the required five service categories of the (NFCSP), Title III E of the Older Americans Act, as amended in 2000.

(16) "National Family Caregiver Support Program or NFCSP" is the federal program enacted as P. L. 106-501, Title IIIE of the Older Americans Act, P. L. 89-73, 42 USC Section 3001 et seq., as amended in 2000.

(17) "Relief means ease from or lessening of discomfort, anxiety, fear, stress, or burden.

(18) "Respite or Respite Care" is temporary, substitute supports or living arrangements to provide a brief period of relief or rest for caregivers as outlined in the service plan developed by a case manager following a formal assessment. It can be in the form of in-home respite, adult day care respite, or institutional respite for an overnight stay on an intermittent, occasional, or emergency basis. Respite can be provided for a caregiver for no more than 12 consecutive months from the date of enrollment and shall not exceed the annual service expenditure limit per client, as established by the Division in consultation the Area Agencies on Aging annually. If either condition is met, the caregiver must come off of the program and then may reapply on the anniversary of the start of services. Temporary respite may not be provided by the twenty percent (20%) maximum supplemental services funds.

(19) "Severe Disability" means a severe, chronic disability

attributable to mental or physical impairment, or a combination of mental and physical impairments, that:

(a) is likely to continue indefinitely; and

(b) results in substantial functional limitation in 3 or more of the following major life activities:

(i) self care,

(ii) receptive and expressive language,

(iii) learning,

(iv) mobility,

(v) self-direction,

(vi) capacity for independent living, and

(vii) economic self-sufficiency.

(20) "Service Plan" means a written plan which contains a description of the needs of the caregiver, the care recipient, and the services and goals necessary to meet those needs.

(21) "Supplemental Services" means other services to complement the care of caregivers, on a limited basis as determined by a case manager through the assessment process and included in a service plan. Supplemental services shall serve to maximize the support of caregivers and shall be flexible, adaptable, and responsive to the needs of the individual caregiver or care receiver wherever they reside in the State of Utah. Services provided under supplemental services shall not fall into other categories defined in the UCSP or the NFCSP.

(a) Expenditures for Supplemental Services are not included in the annual established service expenditure limit for Respite.

(b) Necessity for Supplemental Services shall be specified in the service plan goals. Reimbursement shall include the purchase and/or rental, installation, removal, replacement, or repair of approved items or services for the twelve months that the caregiver is on the program. The case manager will document in the caregiver file all funding resources explored and reasons alternative funding cannot be accessed. Items or services exceeding $250 per purchase must be prior approved by the Agency Director, or designee, based on a formal written request by the case manager or designee documenting the determination of need and estimated cost. The original approved waiver request will be placed and maintained by the Agency in the caregiver file and a copy sent in writing to the Division.

(c) "Supplies or Equipment" means durable and non-durable goods purchased and/or rented under supplemental services to provide support and assistance to caregivers in their caregiving responsibilities. Reimbursement shall include the purchase of supplies, and the purchase, and/or rental.installation, removal, replacement or repair of approved equipment.

(d) "Modifications or durable adaptive aids and devices" purchased as supplemental services shall be one-time purchases to provide support and assistance to caregivers in their caregiving responsibilities. Minor modifications of homes shall facilitate the ability of older individuals to remain at home or provide for the safety of the care receiver. Adaptive aids and devices shall assist the caregivers helping care receivers to perform normal living activities, and shall include the cost of any necessary installation fitting, adjustment, repair, and training. Adaptive aids and devices may be fabricated by a professional if the care receiver needs specialized aids and devices.

(e) "Legal, Financial, or Placement Services" purchased as supplemental services shall provide support and assistance to caregivers in their caregiving responsibilities. Services will provide the caregiver with legal, financial, and placement advice, counseling, and representation by an attorney, certified financial advisor, or other person acting under the supervision of an attorney, certified financial advisor, or placement professional.

(f) "Miscellaneous" services shall provide support and assistance to caregivers in their caregiving responsibilities. Miscellaneous services will facilitate the ability to provide services to caregivers that arise from unusual circumstances and shall assist the caregiver in performing their caregiving responsibilities.

(22) "Waiver" means an intentional release in writing by the Agency Director or designee, as authorized in the rules, from a program limitation included in these rules.

R510-401-4. Eligibility for Services.

(1) Services listed in Section R510-4O6-5 are available to caregivers, grandparents and older individuals who are relative caregivers.

(2) Priority to receive services shall be given in the order below:

(a) caregivers who are older individuals with greatest social need, and older individuals with greatest economic need (with particular attention to low-income older individuals); and

(b) family caregivers who provide care for individuals with Alzheimer's disease and related disorders with neurological and organic brain dysfunction; and

(c) older individuals providing care to individuals with severe disabilities, including children with severe disabilities; and

(d) grandparents or older individuals who are relative caregivers who provide care for children with severe disabilities.

(3) Respite care and Supplemental Services are available to caregivers who are:

(a) caregivers of adults 60 years of age or older; or are

(b) adult family members (age 18 years or older) or other adult informal caregivers providing care to individuals of any age with Alzheimer's disease and related disorders; or are

(c) caregivers 60 years of age or older caring for persons with mental retardation or related developmental disabilities; or are

(d) grandparents or older individuals (not biological or adoptive parents) 55 years of age or older who are a relative caregiver of a child not more than 18 years of age. ; or are

(e) grandparents and other relatives (not biological or adoptive parents) 55 years of age and older providing care to adults, age 18 to 59 years, with disabilities.

(4) To provide Respite and Supplemental Services to eligible the care receiver must be:

(a) Functionally impaired because the individual is unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing or supervision; or

(b) Due to a cognitive or other mental impairment, requires substantial supervision because the individual behaves in a manner that poses a serious health or safety hazard to the individual or to another individual; or

(c) A child physically or mentally impaired because the individual is unable to perform at least two areas of major life activity.

(d) The caregiver must demonstrate a medium-to-high risk score according to the DAAS Approved Demographic Intake and Screening tool and complete the DAAS-approved Assessment and DAAS-approved Burden score.

(5) In the event that there is insufficient funds to bring an individual on the program the Agency shall maintain a list of potential applicants. All potential applicants will be served in turn by using the DAAS-approved Demographic Intake and Risk Screening tool, and a Caregiver Burden score to determine eligibility for services.

R510-401-5. Responsibilities of the Division.

(1) Pursuant to UCA 62A-3-1O4, the Division shall:

(a) establish a funding formula for the distribution of the funds as approved by the Board;

(b) monitor, and at the request of the Area Agency on

Aging, consult and assist in UCSP;

(c) provide training opportunities;

(d) define minimal documentation and client assessment standards; and

(e) approve or disapprove waivers and exceptions.

R510-401-6. Program Content.

(1) Each Area Agency on Aging shall provide a multifaceted system of caregiver support services for caregivers and for grandparents or older individuals who are relative caregivers to include:

(a) information to caregivers about available services;

(b) individual, one-on-one assistance to caregivers in gaining access to services in the form of information and assistance or case management. Assistance may include but is not limited to such activities as phone contact and home visits;

(c) individual counseling, support groups, and caregiver training to assist the caregivers in making decisions and solving problems relating to their caregiving roles;

(d) respite care to enable caregivers to be temporarily relieved from their caregiving responsibilities; and

(e) Supplemental Services, on a limited basis, to complement the care provided by caregivers.

(2) The Area Agency on Aging shall use the DAAS-approved Demographic Intake and Risk Screening form and assessment tool to determine eligibility for respite and supplemental services and said tools shall be kept in the client file.

(3) Prior to receiving respite or supplemental services the Area Agency on Aging shall develop a written service plan for the caregiver, which shall be kept in the client file.

(4) The Area Agency on Aging shall ensure the provision of the full range of caregiver support services in the community by coordinating its activities with the activities of other community agencies and voluntary organizations providing supportive services to family caregivers and grandparents or older individuals who are relative caregivers of children.

(5) Older Americans Act information and services shall be provided to family caregivers in a direct and helpful manner. In cases where caregiver support programs already exist within the community, coordination of these programs and the UCSP is essential to maximize the dollars available for family caregivers and avoid duplication of services.

(6) To assure coordination of caregiver services in the planning and service area, the Area Agency on Aging shall convene a minimum of one joint planning meeting annually with other local providers who currently provide support services to family caregivers. As practical, the Area Agency on Aging shall coordinate the activities under this program with other community agencies and voluntary organizations providing services to caregivers.

(7) Funds allocated on an annual basis under the UCSP for services provided by an Area Agency on Aging shall be expended as follows:

(a) Information to caregivers about available services: the Area Agency on Aging may not use less than three percent of the funds allocated under the UCSP to provide these services.

(b) Assistance to caregivers in gaining access to the services: the Area Agency on Aging may not use less than five percent of the funds allocated under the UCSP to provide these services.

(c) Individual counseling, organization of support groups, and caregiver training to caregivers to assist the caregivers in the areas of health, nutrition and financial literacy and in making decisions and solving problems relating to their caregiving roles. The Area Agency on Aging may not use less than five percent of the funds allocated under the UCSP to provide these services.

(d) Respite care to enable caregivers to be temporarily relieved from their caregiving responsibilities: The Area Agency on Aging may not use less than five percent of the funds allocated under the UCSP to provide these services.

(e) Supplemental Services, on a limited basis, to complement the care provided by caregivers: The Area Agency on Aging may not use more than twenty percent of the funds allocated under the UCSP to provide these services.

(f) The Area Agency on Aging shall spend no more than ten percent of funds on services provided to grandparents and other individuals who are relative caregivers of a child not more than 18 years of age.

(8) If a customer discontinues Respite and/or Supplemental Services before the end of the twelve- month period and before the annual established service expenditure limit per client is reached, the case shall be closed.

(a) If funds are available, the caregiver may be readmitted to the program subsequent to the case closing but shall do so within twelve months from the original date of enrollment.

(b) If no funds are available, the person will be placed at the top of the list to be the first person to be admitted to the program if the person still has time left on the program.

(c) If funds become available, but there is no time remaining based on the original admission, then the caregiver needs to reapply and be considered for admission to the program with all other applicants.

(9) The Area Agency on Aging shall make use of trained volunteers to expand the provision of available resources and, if possible, work in coordination with organizations that have experience in providing training, placement, and stipends for volunteers or participants (such as organizations carrying out Federal service programs administered by the Corporation for National and Community Service), in community settings.

R510-401-7. Caregiver Advisory Council.

(1) The Area Agency on Aging shall develop and maintain a Caregiver Advisory Council.

(2) The Caregiver Advisory Council may be a subgroup of the Area Agency on Aging Advisory Council providing they meet the requirements set forth in the rule.

(a) The Caregiver Advisory Council may be comprised of no less than five members, some of who shall be caregivers.

(3) The Caregiver Advisory Council shall meet no less than semiannually, and meetings shall be scheduled by each Area Agency on Aging.

(4) The primary duty of the Caregiver Advisory Council shall include but not be limited to conducting an annual caregiver satisfaction survey for the caregiver program.

(5) The Caregiver Advisory Council shall advise the Area Agency on Aging in determining service needs and developing action plans. When there is a concern over the use of limited resources for Respite Care and Supplemental Services, the Area Agencies on Aging, in consultation with their Caregiver Advisory Council, may further limit the amount of services provided to an individual caregiver. This local policy decision shall be in writing and shall be uniform for all caregivers for the current fiscal year.

R510-401-8. Voluntary Contributions.

(1) Individuals receiving services from this program may be encouraged to participate in voluntary contributions for services, provided that the method of solicitation is non-coercive.

(2) Voluntary contributions shall in no way be based on a means test of an individual client's income.

(3) Each Area Agency on Aging shall implement procedures for voluntary contributions in the UCSP, and shall comply, at a minimum, with the following:

(a) provide each recipient with an opportunity to voluntarily contribute to the cost of the services;

(b) clearly inform each recipient that there is no obligation

to contribute and that the contribution is purely voluntary;

(c) protect the privacy and confidentiality of each recipient with respect to the recipient's contribution or lack of contribution; and

(d) establish appropriate procedures to safeguard and account for voluntary contributions.

(4) Use all collected voluntary contributions to expand the service for which such contributions were given.

(5) In no instance shall services be denied if individuals do not participate in voluntary contributions.

(6) Area Agencies on Aging will consult with relevant service providers and older individuals in their planning and service area to determine the best method for accepting voluntary contributions.

R510-401-9. Reporting.

(1) The Area Agency on Aging shall collect data and maintain records relating to the UCSP in the format specified by the Division.

(2) The Area Agency on Aging shall furnish the records to the DAAS as specified.

(3) The Area Agency on Aging shall report to DAAS, as specified, the activities and determinations of the Caregiver Advisory Council.

(4) The Area Agency on Aging shall report to DAAS any mechanisms used with caregivers regarding information about and access to various services so that the persons can better carry out their caregiver responsibilities.

R510-401-10. Waiver Requests for Respite and Supplemental Services.

(1) An Area Agency on Aging may request in writing a waiver for Respite and Supplemental Services in order to enable the caregiver to carry out their duties in assisting the care receiver. In requesting a waiver, the Area Agency on Aging must demonstrate that effort has been made to access other sources of services or funds. The Agency Director, or designee, may grant a waiver for Supplemental Services or Respite on a case-by-case basis provided that such waiver is consistent with the law. A copy of the approved waiver request must be placed in the client file and a copy sent in writing to the Division.

KEY: caregiver, care receiver, elderly, respite
January 19, 2010 63A-3-104(4)
Notice of Continuation January 26, 2011 62A-3-104(5)

R525. Human Services, Substance Abuse and Mental Health, State Hospital.
R525-4. Visitors.
R525-4-1. Authority and Purpose.

(1) This rule is adopted under the authority of Section 62A-15-105.

(2) The purpose of this rule is to provide guidance on the visitation of patients at the Utah State Hospital.

R525-4-2. Patients May Have Visitors.

With the approval of the patients and their clinical treatment team, the patient's family, friends, and others may visit patients at the Utah State Hospital (USH).

R525-4-3. Clergy and Legal Counsel.

With respect to clergy and/or legal counsel visiting patients, the hospital abides by Subsection 62A-15-641(3).

R525-4-4. Visits May Be Denied or Limited.

A physician may deny or limit a visit for safety, security, and/or therapeutic reasons.

R525-4-5. Visiting Minors.

Persons desiring to visit minors must obtain approval from the parent/legal guardian and the unit clinical staff.

R525-4-6. Visiting Hours Are Posted.

Each treatment unit shall post their visiting hours in an area that is accessible by the public.

R525-4-7. Visitor Slip.

Upon arrival at USH, visitors must obtain a "visitor slip" from the switchboard located in the Heninger Administration Building.

R525-4-8. Visitor Slips Are Presented Upon Arrival at Unit.

The visitor presents the visitor slip and proper identification upon arrival to the unit.

R525-4-9. Visitors Bringing Gifts.

Visitors desiring to bring gift/items are required to obtain clearance from the patient's treatment team prior to bringing the gift/item on the unit.

KEY: visitors
November 7, 2013 62A-15-105
Notice of Continuation January 23, 2013 62A-15-641(3)

R590. Insurance, Administration.
R590-267. Personal Injury Protection Relative Value Study Rule.
R590-267-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Sections 31A-2-201(3), and 31A-22-307(2).

R590-267-2. Purpose.

(1) The purpose of this rule is to establish a reasonable value of services and accommodations for the diagnosis, care, recovery, or rehabilitation of an injured person under automobile personal injury protection coverage as described in 31A-22-307(1)(a).

(2) As required by 31A-22-307(2), the reasonable value is based on the 75th percentile of medical, dental, and chiropractic charges, as they presently exist in the most populous county in this State.

R590-267-3. Scope.

This rule applies to services and accommodations:

(1) provided under automobile personal injury protection coverage as described in 31A-22-307(1)(a); and

(2) provided on or after January 1, 2014.

R590-267-4. Definitions.

(1) As used in this rule "Conversion Factor" means a multiplier used to convert the relative value unit or units of a service or a procedure to a reimbursement rate.

(2) As used in this rule "RVD" means 2013 Edition of the Relative Values for Dentists published by Relative Values Studies, Inc., 12301 N. Grant St., Suite 230, Thornton, CO, 80241; phone: (866) 310-7874; email: info@rvsdata.com; website: www.rvsdata.com.

(3) As used in this rule "RVP" means 2013 Edition of the Relative Values for Physicians published by OptumInsight, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; email: customerassistance@optum.com; website: www.optum.com.

(4) As used in this rule "Relative Value Unit" means a numerical value assigned to a medical or dental procedure as published in RVP and RVD respectively.

(5) The publications identified in Subsections R590-267-4.(2) and (3) are hereby incorporated by reference within this rule.

R590-267-5. Conversion Factors.

(1) The following conversion factors shall be used to determine the reasonable value of medical services or accommodations:

(a) anesthesia, 91.57;
(b) surgery, 180.00;
(c) radiology, 35.18;
(d) pathology, 23.85;
(e) medicine, 10.87;
(f) evaluation and management, 11.85.

(2) The conversion factor used to determine the reasonable value of dental services or accommodations shall be 55.00.

R590-267-6. Fee Schedule.

The reasonable value of any service or accommodation shall be calculated by multiplying the relative value unit assign to the service or accommodation by the applicable conversion factor prescribed in R590-267-5.

R590-267-7. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-267-8. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule on January 1, 2014.

R590-267-9. Severability.

If any provision of this rule or its application to any person or situation is held to be 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.

KEY: relative value study
November 18, 2013 **31A-2-201(3)**
31A-22-307(2)

R602. Labor Commission, Adjudication.
R602-4. Procedures for Termination of Temporary Total Disability Compensation Pursuant to Reemployment Under Section 34A-2-410.5.
R602-4-1. Purpose, Authority and Scope.

Section 34A-2-410.5 allows an employer or its insurance carrier ("employer" hereafter) to request Labor Commission permission to reduce or terminate an employee's temporary disability compensation. Under authority of section 34A-2-410.5(7), the Commission establishes these rules to govern the adjudication of such requests. This rule supersedes the provisions of R602-2, R602-3, and R602-5 as to any actions brought pursuant to section 34A-2-410.5.

R602-4-2. Commission Permission Required.

An employer shall not terminate or reduce an employee's temporary disability compensation pursuant to section 34A-2-410.5 prior to issuance of a final order by the Commission ordering the reduction or termination.

R602-4-3. Mediation.

Prior to filing a request to terminate or reduce temporary disability compensation pursuant to section 34A-2-410.5, the parties are encouraged to request assistance from the Mediation Unit of the Commission's Industrial Accidents Division.

R602-4-4. Pleadings and Discovery.

A. Definitions.

1. "Application" means an Application for Hearing for Termination or Reduction of Compensation (Adjudication Form 402), all supporting documents, proof of service and Notice of Request for Termination or Reduction of Compensation (Adjudication Form 404) which together constitute the request for agency action regarding termination or reduction of benefits pursuant to Section 34A-2-410.5.

2. "Supporting medical documentation" means any medical provider's report or treatment note that addresses the employee's medical condition or functional restrictions.

3. "Supporting documents" means supporting medical documentation. Persons with Knowledge List (Adjudication Form 403), any documents related to reasons for the requested termination or reduction, and any documents describing the employee's work duties.

4. "Proof of Service" means any of the following: 1) the employee's signed and dated acceptance of service of the Application and all supporting documents; 2) a certificate of service of the Application and all supporting documents signed by the employer or insurer's counsel and accompanied by a return receipt signed by the employee; or 3) a return of service showing personal service of the Application and all supporting documents on the employee according to Utah Rule of Civil Procedure 4(d)(1).

5. "persons with Knowledge List" (Adjudication Form 403) means a party's list of all persons who have material knowledge regarding the reasons for the request to terminate or reduce compensation. The list must specify the full name of the person, a summary of the knowledge possessed by the person, and a statement whether the party will produce the person as a witness at hearing.

6. "Notice of Request for Termination or Reduction of Compensation" means Adjudication Form 404.

7. "Petitioner" means the employer who has filed an Application for Hearing.

8. "Respondent" means the employee against whom the Application for Hearing was filed.

B. Application for Hearing.

1. An employer may request Commission approval to terminate or reduce an employee's temporary disability compensation under section 34A-2-410.5 by filing an Application with the Commission' Adjudication Division.

2. An Application is not deemed filed with the Division until the employer submits a completed Application with all required documentation.

C. Discovery.

1. At least 15 days prior to a hearing on an Application, each party shall mail or otherwise serve on the opposing party a list of all witnesses that party will produce at the hearing. Because it is presumed that the employee will appear at the hearing, the employee is not required to list himself or herself on the list. The employer will also mail to or otherwise serve on the employee a copy of all exhibits the employer intends to submit at the hearing.

2. Testimony of witnesses and exhibits not disclosed as required by this Rule shall not be admitted into evidence at the hearing. A party's failure to subpoena or otherwise produce an individual previously identified by that party as an intended witness may give rise to an inference that the individual's testimony would have been adverse to the party failing to produce the witness.

3. Other than disclosures required by this rule and voluntary exchanges of information, the parties may not engage in any other discovery procedures.

4. Subpoenas may be used only to compel attendance of witnesses at hearing, and not for obtaining documents or compelling attendance at depositions. All subpoenas shall be signed by an administrative law judge.

D. Defaults and Motions.

1. Defaults in proceedings under Section 34A-2-410.5 shall only be issued at the time of hearing based on nonattendance of a party at the hearing.

2. Motions will only be considered at the time of hearing.

E. Hearings.

1. Scheduling and Notice.

A hearing will be held within 30 days after an Application is filed with the Commission's Adjudication Division. The Division will send notice of hearings to the addresses of the employer and employee set forth on the Application. A party must immediately notify the Division of any change or correction of the addresses listed on the Application. The Division will also mail notice to the address of any party's attorney as disclosed on the Application or by an Appearance of counsel filed with the Division. Notice by the Division to a party's attorney is considered notice to the party itself.

2. Hearings.

Each hearing pursuant to section 34A-2-410.5 shall be conducted by an administrative law judge as a formal evidentiary hearing. The evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted thereafter. After hearing, the administrative law judge shall issue a decision within 45 days from the date the Application was filed.

F. Motions for Review.

Commission review of an administrative law judge's decision is subject to the provisions of section 63G-4-301, section 34A-1-1-303, and R602-2-1(M).

KEY: workers' compensation, administrative procedures, hearings, settlements
June 22, 2011 34A-1-104(1) et seq.
Notice of Continuation November 8, 2013 34A-2-410.5

R602. Labor Commission, Adjudication.
R602-5. Procedures for Resolving Disputes Regarding "Cooperation" and "Diligent Pursuit" Under Subsection 34A-2-413(6)(e)(iii) and Subsection 34A-2-413(9) Consistent with Utah Administrative Code Subsection R612-1-10(D)(4).
R602-5-1. Purpose, Authority and Scope.

Section 34A-2-413(6)(e)(iii) states an administrative law judge shall make a final decision of permanent total disability based on an employer's failure to diligently pursue an approved reemployment plan. Section 34A-2-413(9) states that an administrative law judge shall dismiss a claim for benefits based on an employee's failure to fully cooperate with an approved reemployment plan. Under authority of section 34A-1-104, the Commission establishes these rules to govern hearings under this section. The provisions of R602-5 pertaining to applications for hearing pursuant to Section 34A-2-413(6)(e)(iii) and Section 34A-2-413(9) supersede the Administrative Rules contained in R602-2, R602-3, and R602-4 as to any actions brought pursuant to Section 34A-2-413(6)(e)(iii) and Section 34A-2-413(9).

R602-5-2. Mediation in Section 34A-2-413(6)(e)(iii) Cases.

Prior to filing an application for a final determination of permanent total disability based on an employer's failure to diligently pursue the reemployment plan pursuant to Section 34A-2-413(6)(e)(iii) the parties are encouraged to request assistance from the Mediation Unit of the Commission's Industrial Accidents Division.

R602-5-3. Pleadings and Discovery in Section 34A-2-413(6)(e)(iii) Cases.

A. Definitions.

1. "Application for Hearing" means the Application for Hearing for Final Determination of Permanent Total Disability form (Adjudication Form 502), all supporting documents, and proof of service which together constitute the request for agency action for final determination of permanent total disability based on an employer's failure to diligently pursue the reemployment plan pursuant to Section 34A-2-413(6)(e)(iii).

2. "Supporting medical documentation" means any medical report or treatment note completed by a medical provider or physician that references, describes or otherwise sets forth the employee's medical or functional capacities, restrictions and/or abilities.

3. "Supporting documents" means supporting medical documentation, Persons with Knowledge List (Adjudication Form 403), an outline of the specific instances of lack of diligence as required by R612-1-10.D.4. and all documents in any way related to reasons identified for the requested final determination of permanent total disability whether tending to prove or disprove the same.

4. "Proof of Service" means any of the following: 1) the respondent(s)'s signed and dated acceptance of service of the Application and all supporting documents; 2) a certificate of service of the Application and all supporting documents signed by the employee and accompanied by a return receipt signed by the respondent(s); or 3) a return of service showing personal service of the Application and all supporting documents on the respondent(s) according to Utah Rule of Civil Procedure 4(d)(1).

5. "Persons with Knowledge List" (Adjudication Form 403) means a party's list of all persons who have material knowledge regarding the employer's alleged failure to diligently pursue the reemployment plan pursuant to Section 34A-2-413(6)(e)(iii). The list must specify the full name of the person, a summary of the knowledge possessed by the person, and a statement whether the employee will produce the person as a witness at hearing.

6. "Petitioner" means the petitioner in the original case determining permanent total disability.

7. "Respondent" means the respondent(s) in the original case determining permanent total disability.

B. Application for Hearing.

1. Whenever a final determination of permanent total disability is requested by petitioner pursuant to Section 34A-2-413(6)(e)(iii), the burden rests with the petitioner to initiate agency action by filing a Application for Hearing with the Division.

2. An Application for Hearing is not deemed filed pursuant to Section 34A-2-413(6)(e)(iii) until the petitioner files with the Division a completed Application for Hearing (Adjudication Form 502) together with all supporting documents and proof of service.

C. Discovery.

1. At least 15 days prior to a hearing on an Application, each party shall mail or otherwise serve on the opposing party a list of all witnesses that party will produce at the hearing. Because it is presumed that the employee will appear at the hearing, the employee is not required to list himself or herself on the list. The respondent will also mail to or otherwise serve on the employee a copy of all exhibits the respondent intends to submit at the hearing.

2. Testimony of the witnesses and exhibits not disclosed as required by this Rule shall not be admitted into evidence at the hearing. A party's failure to subpoena or otherwise produce an individual previously identified by that party as an intended witness may give rise to an inference that the individual's testimony would have been adverse to the party failing to produce the witness.

3. Other than disclosures required by this rule and voluntary exchanges of information, the parties may not engage in any other discovery procedures.

4. Subpoenas may be used only to compel attendance of witnesses at hearing, and not for obtaining documents or compelling attendance at depositions. All subpoenas shall be signed by an administrative law judge.

D. Defaults and Motions.

Defaults in proceedings under Section 34A-2-413(6)(e)(iii) and as set forth in R612-1-10.D.4. shall only be ordered at the time of hearing based on nonattendance of a party at the hearing. Motions will only be considered at the time of hearing.

R602-5-4. Hearings in Section 34A-2-413(6)(e)(iii) Cases.

A. Scheduling and Notice.

A hearing on an Application for Hearing filed pursuant to Section 34A-2-413(6)(e)(iii) and as set forth in R612-1-10.D.4. will be set within 30 days of the date the Application for Hearing is filed with the Division. The Division will send notice of hearings by regular mail to the addresses of the parties as set forth on the Application. A party must immediately notify the Division of any change or correction of the addresses listed on the Application. The Division will also mail notice to the address of any party's attorney as disclosed on the Application or by an Appearance of Counsel filed with the Division. Notice by the Division to a party's attorney is considered notice to the party itself.

B. Hearings.

Each hearing pursuant to Section 34A-2-413(6)(e)(iii) and as set forth in R612-1-10.D4. shall be conducted by an administrative law judge as a formal evidentiary hearing. The evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted thereafter. After hearing, the administrative law judge shall issue a decision within 45 days from the date the Application was filed.

R602-5-5. Mediation in Section 34A-2-413(9) Cases.

Prior to filing an application for hearing for dismissal of

claim for benefits pursuant to Section 34A-2-413(9) the parties are encouraged to request assistance from the Mediation Unit of the Commission's Industrial Accidents Division.

R602-5-6. Pleadings and Discovery in Section 34A-2-413(9) Cases.

A. Definitions.

1. "Application for Hearing" means the Application for Hearing for Termination or Reduction of Compensation form (Adjudication form 602), with all supporting documents and proof of service which together constitute the request for agency action regarding termination or reduction of benefits pursuant to Section 34A-2-413(9).

2. "Supporting medical documentation" means any medical report or treatment note completed by a medical provider or physician that references, describes or otherwise sets forth the employee's medical or functional capacities, restrictions and/or abilities.

3. "Support documents" means supporting medical documentation, Persons with Knowledge List (Adjudication Form 403), an outline of the specific instances of non-cooperation as required by R612-1-10.D.4. and all documents in any way related to reasons identified for the requested termination whether tending to prove or disprove the same and all documents describing the employee's work duties during his or her employment with respondent employer.

4. "Proof of Service" means any of the following: 1) the employee's signed and dated acceptance of service of the Application and all supporting documents; 2) a certificate of service of the Application and all supporting documents signed by the respondent's counsel and accompanied by a return receipt signed by the employee; or 3) a return of service showing personal service of the Application and all supporting documents on the employee according to Utah Rule of Civil Procedure 4(d)(1).

5. "Persons with Knowledge List" (Adjudication Form 403) means a list of any person who may have knowledge of the events and/or circumstances relating to the reasons for the request to terminate or reduce compensation whether tending to prove or disprove the reason(s) set forth in the Application for Hearing. The Persons with Knowledge list must specify the full name, address and phone number of the person if know, a short statement of the knowledge believed possessed by the person and a statement as to whether or not the respondent will actually produce the person with knowledge as a witness at the evidentiary hearing.

6. "Petitioner" means the petitioner in the original case determining permanent total disability.

7. "Respondent" means the respondent(s) in the original case determining permanent total disability.

B. Application for Hearing.

1. Respondent may request a dismissal of claim for permanent total disability compensation pursuant to Section 34A-2-413(9) by filing an Application with the Commission's Adjudication Division.

2. An Application is not deemed filed with the Division until the respondent submits a completed Application with all required documents.

C. Discovery.

1. At least 15 days prior to a hearing on an Application , each party shall mail or otherwise serve on the opposing party a list of all witnesses that party will produce at the hearing. Because it is presumed that the employee will appear at the hearing, the employee is not required to list himself or herself on the list. The employee will also mail to or otherwise serve on the employer a copy of all exhibits the employee intends to submit at the hearing.

2. Testimony of witnesses and exhibits not disclosed as required by this Rule shall not be admitted into evidence at the hearing. A party's failure to subpoena or otherwise produce an individual previously identified by that party as an intended witness may give rise to an inference that the individual's testimony would have been adverse to the party failing to produce the witness.

3. Other than disclosures required by this rule and voluntary exchanges of information, the parties may not engage in any other discovery procedures.

4. Subpoenas may be used only to compel attendance of witnesses at hearing, and not for obtaining documents or compelling attendance at depositions. All subpoenas shall be signed by an administrative law judge.

D. Defaults and Motions.

Defaults shall only be issued at the time of hearing based on nonattendance of a party. Motions will only be considered at the time of hearing.

R602-5-7. Hearings in Section 34A-2-413(9) Cases.

A. Scheduling and Notice.

A hearing will be held within 30 days after an Application is filed with the Commission's Adjudication Division. The Division will send notice of hearing by regular mail to the addresses of parties as set forth on the Application. A party must immediately notify the Division of any change or correction of the addresses listed on the Application. The Division will also mail notice to the address of any party's attorney as disclosed on the Application or by an Appearance of Counsel filed with the Division. Notice by the Division to a party's attorney is considered notice to the party itself.

B. Hearings.

Each hearing pursuant to Section 34A-2-413(9) shall be conducted by an administrative law judge as a formal evidentiary hearing. The evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted thereafter. After hearing, the administrative law judge shall issue a decision within 45 days from the date the Application was filed.

R602-5-8. Motions for Review.

Commission review of an administrative law judge's decision is subject to the provisions of section 63G-4-301, section 34A-1-303, and R602-2.1(M).

KEY: workers' compensation, administrative procedures, hearings

December 8, 2008 34A-1-104(1) et seq.

Notice of Continuation November 8, 2013 34A-2-413(6)(e)(iii)

34A-2-413(9)

R602. Labor Commission, Adjudication.
R602-6. Procedures Applicable for Approval of Settlement Agreements in Workers' Compensation.
R602-6-1. Statutory Authority.

Section 34A-2-420 requires the Commission to review all agreements for the settlement or commutation of claims for workers' compensation or occupational disease benefits and grants the Commission discretion to approve such agreements. The Commission's authority under Section 34A-2-420 applies to all claims arising under the Utah Workers' Compensation Act or Occupational Disease Act, regardless of the date of accident or occupational disease. This rule sets forth the requirements for Commission approval of such agreements.

R602-6-2. Applicability of Rule.

This Rule applies to settlements of all claims under the Workers' Compensation Act.

R602-6-3. General Considerations.

Settlement agreements may be appropriate in claims of disputed validity or when the parties' interests are served by payment of benefits in a manner different than otherwise prescribed by the workers' compensation laws. However, settlement agreements must also fulfill the underlying purposes of the workers' compensation laws. Once approved by the Commission, settlement agreements are permanently binding on the parties. The Commission will not approve any proposed settlement that is manifestly unjust.

R602-6-4. Procedure.

A. Parties interested in a present or potential workers' compensation claim, whether or not an application for hearing has been filed, may submit their settlement agreement to the Commission for review and approval. The Commission may delegate its authority to review and approve such agreements.

B. Each settlement agreement shall be in writing, executed by each party and such party's attorney, if any, and shall include a proposed order for Commission approval of the agreement.

C. Each settlement agreement shall set forth the nature of the claim being settled and what claims are in dispute, if any.

D. Each settlement agreement shall contain a statement that each party understands that the agreement is permanent, binding and constitutes full and final settlement of any right the claimant may otherwise have to future benefits, including medical benefits. The Commission may establish an approved form for complying with the foregoing disclosure requirement.

E. Attorney's fees shall be allowed as provided by Rule R602-2-4. Each settlement agreement shall describe the amount to be paid to claimant's counsel as attorney's fees and costs, the manner in which such amounts are computed and the method of payment thereof.

F. The settlement agreement may provide for payment of benefits through insurance contract or by other third parties if the Commission determines: a) such payment provisions are secure, and b) such payment provisions do not relieve the parties of their underlying liability for payments required by the agreement.

G. Upon receipt of a proposed settlement agreement meeting the requirements of this rule, the Commission shall review such proposed agreement.

H. As needed, the Commission may contact the parties and others to obtain further information about the proposed settlement.

I. If the Commission determines that a proposed settlement agreement conforms with this rule, the Commission shall approve such agreement and notify the parties in writing.

J. If the Commission determines that a proposed settlement agreement does not comply with this rule, the Commission shall notify the parties in writing of its reasons for rejecting the proposed agreement.

K. The Commission shall retain a record of its action on all settlement agreements submitted to it for approval.

KEY: workers' compensation, administrative procedures, hearings, settlements
December 8, 2008 34A-2-420
Notice of Continuation November 8, 2013

R612. Labor Commission, Industrial Accidents.
R612-300. Workers' Compensation Rules - Medical Care.
R612-300-1. Purpose, Scope and Definitions.

A. Purpose and scope. Pursuant to authority granted the Utah Labor Commission under Section 34A-2-407(9) and Section 34A-2-407.5(1) of the Utah Workers' Compensation Act, these rules establish:

1. Reasonable fees for medical care necessary to treat workplace injuries;

2. Standards for disclosure of medical records;

3. Reporting requirements; and

4. Treatment protocols and quality care guidelines.

B. Definitions. The following definitions apply within Rule R612-300:

1. "Heath care provider" is defined by Section 34A-2-111(1)(a) as "a person who furnishes treatment or care to persons who have suffered bodily injury" and includes hospitals, clinics, emergency care centers, physicians, nurses and nurse practitioners, physician's assistants, paramedics and emergency medical technicians.

2. "Injured worker" is an individual claiming workers' compensation medical benefits for a work-related injury or disease.

3. "Payor" is the entity responsible for payment of an injured worker's medical expenses';

4. "Physician" is defined by Section 34A-2-111(1)(b) to included any licensed podiatrist, physical therapist, physician, osteopath, dentist or dental hygienist, physician's assistant, naturopath, acupuncturist, or advance practice registered nurse.

5. "Workplace injury" is an injury or disease compensable under either the Utah Workers' Compensation Act or the Utah Occupational Disease Act.

R612-300-2. Obtaining Medical Care for Injured Workers.

A. Right of payor to designate initial health care provider.

1. A Payor may adopt managed health care programs. Such programs may designate specific health care providers as "preferred providers" for providing initial medical care for injured workers.

2. A preferred provider program must allow an injured worker to select from two or more providers to obtain necessary medical care. At the time a preferred provider program is established, the payor must notify employees of the requirements of the program.

3. If the requirement of subsection A.2. are met, an injured worker subject to a preferred provider program must seek initial medical care from a preferred provider unless:

a. No preferred provider is available;

b. The injured worker believes in good faith that his or her medical condition in not a workplace injury; or

c. Travel to a preferred provider is unduly burdensome.

4. If an injured worker who is subject to a preferred provider program fails to obtain initial medical care from a preferred provider, the payor's liability for the cost of such initial medical care is limited to the amount the payor would have paid a preferred provider. The injured worker may be held personally liable for the remaining balance.

B. Liability for medical expense incurred at payor's direction. If a payor directs an employee to obtain an initial medical assessment of a possible work injury, the payor is liable for the cost of such assessment.

1. A medical provider performing an initial assessment must obtain the payor's preauthorization for any diagnostic studies beyond plain x-rays.

C. Injured worker's right to select provider after initial medical care. After an injured worker has received initial care from a preferred provider, the employee may obtain subsequent medical care from a qualified provider of his or her choice. The payor is liable for the expense of such medical care.

1. An employee's right to select medical providers is subject to subsection D. of this rule, "Limitations to Injured Worker's Right to Change Physicians."

D. Limitations on injured worker's right to change physicians.

1. An injured worker may change health care providers one time without obtaining permission from the payor. The following circumstances DO NOT constitute a change of health care provider:

a. A treating physician's referral of the injured worker to another health care provider for treatment or consultation;

b. Transfer of treatment from an emergency room to a private physician, unless the emergency room was designated as the payor's preferred provider;

c. Necessary emergency treatment;

d. A change of physician necessitated by the treating physician's failure or refusal to rate a permanent partial impairment.

2. The injured employee shall promptly report any change of provider to the payor.

3. After an injured worker has exercised his or her one-time right to change health care providers, the worker must request payor approval of any subsequent change of provider. If the payor denies or fails to respond to the request, the injured worker may request approval from the Director of the Division on Industrial Accidents. The Director will authorize a change of provider if necessary for the adequate medical treatment of the injured worker or for other reasonable cause.

4. An injured worker who changes health care providers without payor or Division approval may be held personally liable for the non-approved provider's fees.

E. Hospital or surgery pre-authorization. Except when immediate surgery or hospitalization is medically necessary on an emergency basis, surgery or hospitalization must be pre-authorized by the payor.

1. Within two working days of receipt of a request for authorization, the payor shall notify the physician and injured worker that the request is either approved or denied, or is undergoing medical review.

2. Any medical review of a pending request for authorization must be conducted promptly.

F. Notification required from injured employees leaving Utah. Section 34A-2-604 of the Workers' Compensation Act requires injured workers receiving medical care for a workplace injury to notify the Industrial Accidents Division before leaving the state or locality. Division forms 043 and Form 044 are to be used to provide such notice.

G. Injured worker's right to privacy. No agent of the payor may be present during an injured worker's medical care without the consent of the injured worker. However, if the payor's agent is excluded from a medical visit, the physician and the injured worker shall meet with the agent at the conclusion of the visit or at some other reasonable time so as to communicate regarding medical care and return-to-work issues.

H. Payor's right of medical examination. The payor may arrange for the medical examination of an injured worker at any reasonable time and place. A copy of the medical examination report shall be made available to the Commission upon request.

R612-300-3. Required Reports.

A. Form 123, Physician's Initial Report. Within one week after providing initial medical care to an injured worker, a health care provider shall complete "Form 123 - Physicians' Initial Report." The provider shall fully complete Form 123 according to its instructions. The provider shall then file Form 123 with the Division and payor.

1. Form 123 must be completed and filed for every initial visit for which a bill is generated, including first aid, when the worker reports that his or her medical condition is work related.

2. If initial medical care is provided by any health care provider other than a physician, Form 123 must be countersigned by the supervising physician.

B. Form 221, Restorative Services Authorization. Form 221, "Restorative Services Authorization Form" required by Rule 612-300-5. C. 7. shall be filed with both the payor and the Division.

C. Forms 043, Employee's Intent to Leave State, and Form 044, Attending Physician's Statement. These forms are to be submitted to the Division before an injured worker leaves Utah.

D. Form 110, Release to Return to Work. Form 110 shall be mailed by either the health care provider or payor to the injured worker and Division within five calendar days after the health care provider releases the injured worker to return to work.

R612-300-4. General Method For Computing Medical Fees.

A. Adoption of "CPT" and "RBRVS." The Labor Commission hereby adopts and by this reference incorporates:

1. "Optum 2013 Current Procedural Coding Expert, CPT codes with Medicare essentials enhanced for accuracy," ("CPT" hereafter); and

2. "Optum 2013 The Essential RBRVS, 2013 1st Quarter Emergency Update," designated as 1761/RBRCU/U1771R--RBRC13/RBRC/U1771R, ("RBRVS" hereafter).

B. Medical fees calculated according to CPT and RBRVS. Unless some other provision of these rules specifies a different method, the CPT and RBRVS are to be used in conjunction with the "conversion factors" established in subsection C. of this rule to calculate payments for medical care provided to injured workers.

C. Conversion Factors. Fees for medical care of injured workers shall be computed by determining the relative value unit ("RVU") assigned by the RBRVS to a CPT code and then multiplying that RVU by the following conversion factors for specific medical specialties:

1. Anesthesiology (1 unit per 15 minutes of anesthesia): $50.00;

2. Medicine (Evaluation and Medicine Codes 99201 - 99204 and 99211): $46.00;

3. Pathology and Laboratory: $52.00;

4. Radiology: $53.00;

5. Restorative Services: $46.00;

6. Surgery (all 20000 codes, codes 49505 thru 49525, and all 60000 codes): $58.00;

7. Other Surgery: $37.00.

D. Fees for Medical care not addressed by CPT/RBRVS, or requiring unusual treatment.

1. The payor and medical provider may establish and agree to a reasonable fee for medical care of an injured worker if:

a. neither the CPT/RBRVS or any other provision of these rules address the medical care in question; or

b. application of CPT/RBRVS or other provisions of these rules would result in an inadequate fee due to extraordinary difficulty of treatment.

2. If the medical provider and payor cannot agree to a reasonable fee in such cases, the provider can request a hearing before the Commission's Adjudication Division to establish a reasonable fee.

R612-300-5. Fees for Specific Procedures.

A. Needle procedures: Trigger point injections are reported per muscle. Payment under CPT code 20553 for injections of up to three muscles is the maximum allowed for any one treatment session, regardless of the number of muscles treated.

B. Radiology.

1. The cost of radioisotopes, gadolinium and comparable materials may be charged at the provider's cost plus 15%.

2. When x-rays are reviewed as part of an independent evaluation of the patient, a consultation, or other office visit, the review is included as a part of the basic service to the patient and may not be billed separately.

C. Restorative Services.

1. The following criteria must be met before payment is allowed for restorative services:

a. The patient's condition must have the potential for restoration of function;

b. The treatment must be prescribed by the treating physician;

c. The treatment must be specifically targeted to the patient's condition; and

d. The provider must be in constant attendance during the providing of treatment.

2. No payment is allowed for CPT codes 97024, diathermy; 97026, infrared therapy; 97028, ultraviolet therapy/cold laser therapy; 97005, athletic training evaluations; 97006, athletic training reevaluation.

3. All restorative services provided must be itemized even if not billed.

4. Medical providers billing under CPT codes 97001 through 97703 are limited to payment for a maximum of three procedures/units per visit, or six procedures if different sites are treated. Services billed under CPT codes 97545, 97546 and 97150 require preauthorization and are limited to 4 units per injury. The payer shall pay the three highest valued procedures for each treatment site for the visit.

5. Patient education is to be billed using CPT code 97535 rather than codes 98960 through 98962, and is limited to 4 units per injury claim.

6. The entire spine is considered to be a single body part or unit. For that reason, CPT codes 98941 through 98943 and 98926 through 98929 may not be used for billing purposes.

7. When a change in treatment or a new RSA is required, physicians and physical therapists may bill for one evaluation and up to 2 modalities/procedures. Without an evaluation, they may bill for up to 3 modalities/procedures. With prior authorization from the payor, physicians and physical therapists may make additional billing when justified by special circumstances.

8. Any medical provider billing for restorative services shall file the appropriate version of Form 221, "Restorative Services Authorization (RSA) form" with the payor and the Division within ten days of the initial evaluation. Subjective/objective/ assessment/plan ("SOAP") notes are to be sent to the payor in addition to the RSA form. SOAP notes are not to be sent to the Division unless requested.

a. Upon receipt of the provider's RSA form and SOAP notes, the payor shall respond within ten days by authorizing a specified number of treatments or denying the request. No more than eight treatments may be provided during this ten-day authorization period.

b. A payor may deny the requested treatments for the following reasons:

i. The injury or disease being treated is not work related; or

ii. The payor has received written medical opinion or other medical information indicating the treatment is not necessary. A copy of such written opinion or information must be provided to the injured worker, the medical provider, and the Division.

c. In cases where approval is received for initial treatment, the provider shall submit updated RSA forms and SOAP notes to the payor for approval or denial at least every six treatments.

d. An injured worker or provider may request a hearing before the Division of Adjudication to resolve issues of compensability, necessity of treatment, and compliance with this subsection's time limits.

D. Functional Capacity Evaluations. The following

functional capacity evaluations require payor preauthorization and are billed in 15 minute increments under CPT code 97750:

1. A limited functional capacity evaluation to determine an injured worker's dynamic maximal repetitive lifting, walking, standing and sitting tolerance. Billing for this type of evaluation is limited to a maximum of 45 minutes.

2. A full functional capacity evaluation to determine an injured worker's maximum and repetitive lifting, walking, standing, sitting, range of motion, predicted maximal oxygen uptake, as well as ability to stoop, bend, crawl or perform work in an overhead or bent position. In addition, this evaluation includes reliability and validity measures concerning the individual's performance. Billing for this type of evaluation is limited to a maximum of 2.5 hours.

3. A work capacity evaluation to determine an injured worker's capabilities based on the physical aspects of a specific job description. Billing for this type of evaluation is limited to a maximum of 2 hours.

4. A job analysis to determine the physical aspects of a particular job. Billing is not subject to a maximum time limit due to the variability of factors involved in the analysis.

E. Impairment Ratings and Insurance Medical Examinations.

1. Impairment Rating by Treating Physician. Treating physicians shall bill for preparation of impairment ratings under CPT code 99455, with 2.0 RVU assigned/30 minutes.

2. Impairment Rating by Non-Treating Physician. Non-treating physicians may bill for preparation of impairment ratings under CPT code 99456, with 2.65 RVU assigned/30 minutes.

3. Medical Evaluations Commissioned by Payors. The Labor Commission does not regulate fees for medical evaluations requested by payors.

F. Transcutaneous Electrical Nerve Simulators (TENS). No fee is allowed for TENS unless it is prescribed by a physician and supported by prior diagnostic testing showing the efficacy of TENS in control of the patient's chronic pain. TENS testing and training is limited to four (4) sessions and a 30-day trial period but may be extended with written documentation of medical necessity.

G. Electophysiologic Testing. A physician who is legally authorized by his or her medical practice act to diagnose injury or disease is entitled to the full fee for electrophysiologic testing. Physical therapists and physicians who are qualified to perform such testing but who are not legally authorized to diagnose injury or disease are entitled to payment of 75% of the full fee.

H. Dental Injuries.

1. Initial Treatment.

a. If an employer maintains a medical staff or designates a company doctor, an employee requiring treatment for a workplace dental injury shall report to such medical staff or doctor and follow their directions for obtaining the necessary dental treatment.

b. If an employer does not maintain a medical staff or designate a company doctor, or if such medical staff or doctor is unavailable, the injured worker may obtain the necessary dental care from a dentist of his or her choice. The payor shall pay the dentist at 70% of UCR for services rendered.

2. Subsequent treatment.

a. If additional dental care is necessary, the dentist who provided initial treatment may submit to the payor a request for authorization to continue treatment. The transmission date of the request must be verifiable. The request itself must include a description of the injury, the additional treatment required, and the fee to be charged for the additional treatment.

i. The payor shall respond to the request for authorization within 10 working days of the request's transmission. This 10-day period can be extended with written approval of the Director of the Industrial Accidents Division.

ii. If the payor does not respond to the dentist's request for authorization within 10 working days, the dentist may proceed with treatment and the payor shall pay the cost of treatment as contained in the request for authorization.

iii. If the payor approves the proposed treatment, the payor shall send written authorization to the dentist and injured worker. This authorization shall include the amount the payor agrees to pay for the treatment. If the dentist accepts the payor's payment offer, the dentist may proceed to provide the approved services and shall be paid the agreed upon amount.

iv. If the dentist proceeds with treatment without authorization, the dentist's fee is limited to 70% of UCR.

b. If the dentist who provided initial treatment is unwilling to provide subsequent treatment under the terms outlined in subsection 2.a., above, the payor shall within 20 calendar days direct the injured worker to a dentist located within a reasonable travel distance who will accept the payor's payment offer.

i. If, after receiving notice that the payor has arranged for the services of a dentist, the injured worker chooses to obtain treatment from a different dentist, the payor shall only be liable for payment at 70% of UCR. The treating dentist may bill the injured worker for the difference between the dentist's charges and the amount paid by the insurer.

c. If the payor is unable to locate another dentist to provide the necessary services, the payor shall attempt to negotiate a satisfactory reimbursement with the dentist who provided initial treatment.

J. Procedures for which no fee is allowed. Due to a lack of evidence of medical efficacy, no payment is authorized for the following:

1. Muscle Testing, CPT codes 95832 through 95857;

2. Computer based Motion Analysis, CPT codes 96000 through 96004;

3. Athletic Training Evaluation, CPT codes 97005 and 97006;

4. Acupuncture, CPT codes 97810 through 97814;

5. Analysis of Data, now BR, CPT code 99090;

6. Patient Education, CPT codes 98960 through 98962;

7. Educational supplies, CPT code 99071; or

8. Thermograms, artificial discs, percutaneous diskectomies, endoscopic diskectomies, IDEPT, platelet rich plasma injections, thermo-rhizotomies and other heat or chemical treatments for discs.

R612-300-6. Limitations on Fees for Specific Medical Providers and Non-Physicians.

A. Physician Assistants, Nurse Practitioners, Medical Social Workers, Nurse Anesthetists, and Physical Therapy Assistants. Fees for services performed by physician assistants, nurse practitioners, medical social workers, nurse anesthetists, and physical therapy assistants are set at 75% of the amount that would otherwise be allowed by these rules and shall be billed using an 83 modifier.

B. Assistant Surgeons. Fees for assistant surgeons are limited as follows:

1. Medical doctors, osteopaths and podiatrists, designated with an -80 modifier, are to be paid 20% of the primary surgeon's fee;

2. Minimum paramedicals, designated with an -81 modifier, are to be paid 15% of the primary surgeon's value or 75% of the amount allowed under subsection B. 1., above.

3. When a qualified resident surgeon is not available, 20% of the primary surgeon's fee;

4. Other paramedical assistants, such as surgical assistants, are not billed separately.

C. Home health care. The following fees, which include mileage and travel time, are payable for Home Health Codes 99500 through 99602:

1. RN: $100/ 2 hours

2. LPN: $75 / 2 hours
3. Home Health Aide: $25 / hour + $6 additional 30 min.
4. Speech Therapists: $80 / visit
5. Physical Therapy: $125/ hour
6. Occupational Therapy: $125/ hour
7. Home Infusion Providers are to be paid according to contract between the payor and home infusion provider. In no contract is established, the payor shall pay the amount specified in Days Guidelines and pay UCR or Cost + 15% for the drugs and supplies.

D. Acupuncturists, naturopathic providers and massage therapy. Payor preauthorization is required for any services provided by acupuncturists and naturopaths. Payment for massage therapy is only allowed when administered by a medical provider and billed according to the requirements of R612-300. 5. C, "Restorative Services."

E. Ambulance. Ambulance charges are limited to the rates set by the State Emergency Medical Service Commission.

R612-300-7. Billing and Payment.

A. Billing Limitations.

1. Except as otherwise provided by a specific provision of the Workers' Compensation Act or these rules, an injured worker may not be billed for the cost of medical care necessary to treat his or her workplace injuries.

2. A health care provider may not submit a bill for medical care of an injured worker to both the employer and the insurance carrier.

B. Discounting and down-coding.

1. Discounting or reducing the fees established by these rules is permitted only pursuant to a specific contract between the medical provider and payor.

2. A payor may change the CPT code submitted by a health care provider under the following circumstances:

a. The submitted code is incorrect;

b. Another code more closely identifies the medical care;

c. The medical provider has not submitted the documentation necessary to support the code; or

d. The medical care is part of a larger procedure and included in the fee for that procedure.

3. If a payor changes a code number, the payor shall explain the reason for the change and provide the name and phone number of the payor's claims processor to the medical provider in order to allow further discussion.

C. Place of Treatment. A medical provider's billing for a medical procedure must identify the setting where a procedure was performed.

1. In an office or clinic: Fees for procedures performed in an office or clinic are to be computed using the Non-Facility Total RVU.

2. In a facility setting: Fees for physician services for procedures performed in a facility are to be computed using the "Facility Total RVU," as the facility will be billing for the direct and indirect costs related to the service.

D. Separate Bills. Separate bills must be presented by each medical provider within 30 days of treatment on a HCFA 1500 billing form. All bills must contain the federal ID number of the provider submitting the bill.

E. Hospital Fees.

1. The Labor Commission does not have authority to set fees for hospital care of injured workers. However, hospitals are subject to the Commission's reporting requirements, and fees charged by health care providers for services performed in a hospital are subject to the Commission's fee regulations.

2. Fees covering hospital care shall be separate from those for professional services and shall not extend beyond the actual necessary hospital care.

3. All billings must be submitted on a UB92 form, properly itemized and coded, and shall include all documentation, including discharge summary, necessary to support the billing. No separate fee may be charged for billing or documentation of hospital services.

F. Charges for Supplies, Materials, or Drugs.

1. Ordinary supplies, materials or drugs used in treatment shall not be charged separately but shall be included in the amount allowed for the underlying medical care.

2. Special or unusual supplies, materials, or drugs not included as a normal and usual part of the service or procedure may be billed at cost plus 15% restocking fees and any taxes paid.

G. Miscellaneous.

1. A physician may bill the new patient E and M code when seeing an established patient for a new work injury.

2. Payment for hospital care is limited to the bed rate for semi-private room unless a private room is medically necessary.

3. Non-facility RVS total unit values apply, except that procedures provided in a facility setting shall be reimbursed at the facility total unit value and the facility may bill a separate facility charge.

4. Items that are a portion of an overall procedure are NOT to be itemized or billed separately.

5. Payors may round charges to the nearest dollar. If this is done on some charges, it must be done with all charges.

H. Prompt Payment and Interest.

1. All bills for medical care of injured workers must be paid within 45 days of submission to the payor unless the bill or some portion of the bill is in dispute. Any portion of the bill not in dispute; remains payable within 45 days of billing.

2. As required by Section 34A-2-420 of the Utah Workers' Compensation Act, any award for medical care made by the Commission shall include interest at 8% per annum from the date of billing for such the medical care.

I. Billing Disputes. Payors and health care providers shall use the following procedures to resolve billing disputes.

1. The provider shall submit a bill for services with supporting documentation to the payor within one year of the date of service.

2. The payor shall evaluate the bill and pay the appropriate fee as established by these rules.

3. If the provider believes the payor has improperly computed the fee, the provider may submit a written request for reevaluation to the payor. The request shall describe the specific areas of disagreement and include all appropriate documentation. Any such request for re-evaluation must be submitted to the payor within one year of the date of the original payment.

4. Within 30 days of receipt of the request for re-evaluation, the payor shall either pay the additional fee due the provider or respond with a specific written explanation of the basis for its denial of additional fees. The payor shall maintain proof of transmittal of its response.

5. A payor seeking reimbursement from a provider for overpayment of a bill shall, within one year of the overpayment, submit to the provider a written request for repayment that explains the basis for request. Within 90 days of receipt of the request, the provider shall either make appropriate repayment or respond with a specific written denial of the request.

6. If the provider and payor continue to disagree regarding the proper fee, either party may request informal review of the matter by the Division. Any party may also file a request for hearing on the dispute with the Adjudication Division.

R612-300-8. Travel Allowance for Injured Workers.

A. Payment for Travel to Obtain Medical Care. An injured worker who must travel outside his or her community to obtain necessary medical care is entitled to payment of meals, lodging and other travel expense. Payors shall reimburse injured workers for these expenses according to the standards

set forth in State of Utah Accounting Policies and Procedures, Section FIACCT 10-02.00, "Travel Reimbursement".

1. All travel must be by the most direct route and to the nearest location where adequate treatment is reasonably available.

2. Travel may not be required between the hours of 10:00 p.m. and 6:00 a.m., unless approved by the Commission.

B. Time Limits for Requesting and Paying Travel Expenses.

1. Requests for travel reimbursement must be submitted to the payor for payment within one year after the subject travel expenses were incurred;

2. The payor must pay an injured employee's travel expenses at the earlier of:

a. Every three months;

b. Upon accrual of $100 in such expense; or

c. At closure of the injured worker's claim.

R612-300-9. Permanent Impairment Ratings.

A. Utah's 2006 Impairment Guides. The "Utah 2006 Impairment Guides" are incorporated by reference and are to be used to rate a permanent impairment not expressly listed in Section 34A-2-412 of the Utah Workers' Compensation Act.

B. American Medical Association's "Guides to the Evaluation of Permanent Impairment, Fifth Edition." For those permanent impairments not addressed in either Section 34A-2-412 or the "Utah 2006 Impairment Guides," impairment ratings are to be established according to the American Medical Association's "Guides to the Evaluation of Permanent Impairment, Fifth Edition."

R612-300-10. Medical Records.

A. Relationship between HIPAA and Workers' Compensation Disclosure Requirements. Workers' compensation insurers, employers and the Utah Labor Commission need access to health information of individuals who are injured on the job or who have a work-related illness in order to process or adjudicate claims, or to coordinate care under Utah's workers' compensation system. Generally, this health information is obtained from health care providers who treat these individuals and who may be covered by federal "HIPAA" privacy rules.

The HIPAA Privacy Rule specifically recognizes the legitimate need of the workers' compensation system to have access to individuals' health information to the extend authorized by State law. See 45 CFR 164.512(1). The Privacy Rule also recognizes the importance of permitting disclosures required by other laws. See 45 CFR 164.512(a). Therefore, disclosures permitted by this rule for workers' compensation purposes or otherwise required by this rule do not conflict with and are not prohibited by the HIPAA Privacy Rule.

B. Disclosures Permitted Without Authorization. A medical provider, without authorization from the injured workers, shall:

1. For purposes of substantiating a bill submitted for payment or filing required Labor Commission forms, such as the "Physician's Initial Report of Injury/Illness" or the "Restorative Services Authorization," disclose medical records necessary to substantiate the billing, including drug and alcohol testing, to:

a. An employer's workers' compensation insurance carrier or third party administrator;

b. A self-insured employer who administers its own workers' claims.

c. The Uninsured Employers' Fund;

d. The Employers' Reinsurance Fund; or

e. The Labor Commission as required by Labor Commission rules.

2. Disclose medical records pertaining to treatment of an injured worker who makes a claim for workers' compensation benefits, to another physician for specialized treatment, to a new treating physician chosen by the claimant, or for a consultation regarding the claimed work related injury or illness.

C. Disclosures Requiring Authorization.

1. Except as limited in C(3), a medical provider, whose medical records are relevant to a worker's compensation claim, shall, upon receipt of a Labor Commission medical records release from, or an authorization form that conforms to HIPAA requirements, disclose his/her medical records to:

a. An employer's insurance carrier or third party administrator;

b. A self-insured employer who administers its own workers' compensation claims;

c. An agent of an entity listed in B(1)(a through e), which includes, but is not limited to a case manager or reviewing physician;

d. The Uninsured Employers Fund;

e. The Employers' Reinsurance Fund;

f. The Labor Commission;

g. The injured workers;

h. An injured workers' personal representative;

i. An attorney representing any of the entities listed above in an industrial injury or occupational disease claim.

2. Medical records are relevant to a workers' compensation claim if;

a. The records were created after the reported date of the accident or onset of the illness for which workers' compensation benefits have been claimed; or

b. the records were created in the past ten years (15 years if permanent total disability is claimed) and:

i. There is a specific reason to suspect that the medical condition existed prior to the reported date of the claimed work related injury or illness or;

ii. The claim is being adjudicated by the Labor Commission.

3. Medical records related to care provided by a psychiatrist, psychologist, obstetrician, or care related to the reproductive organs may not be disclosed by a medical provider unless a claim has been made for a mental condition, a condition related to the reproductive organs, or the claimant has signed a separate, specific release for these records.

D. Disclosure Regarding Return to Work. A medical provider, who has treated an injured worker for a work related injury or illness, shall disclose information to an injured workers' employer as to when and what restrictions an injured worker may return to work.

E. Additional Disclosures Requiring Specific Approval. Requests for medical records beyond what sections B, C, and D permit require a signed approval by the director, the medical director, a designated person(s) within the Industrial Accidents Division or an administrative law judge if the claim is being adjudicated.

F. Appeals. A party affected by the decision made by a person in section E may appeal that decision to the Adjudication Division of the Labor Commission.

G. Injured Worker's Duty to Disclose Medical Treatment and Providers. Upon receipt and within the scope of this rule, an injured worker shall provide those entities or persons listed in C(1) the names, address, and dates of medical treatment (if known) of the medical providers who have provided medical care within the past 10 years (15 years for permanent total disability claim) except for those medical providers names in C(3). Labor commission form number 307 "Medical Treatment Provider List" must be used for this purpose. Parties listed in C(1) of this rule must provide each medical provider identified on form 307 with a signed authorization for access to medical records. A copy of the signed authorization may be sent to the medical providers listed on form 307.

H. Injured Worker's Right to Contest Requests for Pre-

Injury Medical Records. An injured worker may contest, for good reason, a request for medical records created prior to the reported date of the accident or illness for which the injured worker has made a claim for benefits by filing a complaint with the Labor Commission. Good reason is defined as the request has gone beyond the scope of this rule or sensitive medical information is contained in a particular medical record.

I. Limitations on Use and Re-disclosure of Medical Information.

1. Any party obtaining medical records under authority of this rule may not disclose those medical records, without a valid authorization, except as required by law.

2. An employer may only use medical records obtained under the authority of this rule to:

a. Pay or adjudicate workers' compensation claims if the employer is self-insured;

b. To assess and facilitate an injured workers' return to work;

c. As otherwise authorized by the injured worker.

3. An employer obtaining medical records under authority of this rule must maintain the medical records separately from the employee's personnel file.

4. Any medical records obtained under the authority of this rule to make a determination regarding the acceptance of liability or for treatment of a condition related to a workers' compensation claim shall only be used for workers' compensation purposes and shall not be released, without a signed release by the injured worker or his/her personal representative, to any other party. An employer shall make decisions related only to the workers' compensation claim based on any medical information received under this rule.

K. Permissible Fees for Providing Medical Records. When any medical provider provides copies of medical records, other than the records required when submitting a bill for payment or as required by the Labor Commission rules, the following charges are presumed reasonable:

1. A search fee of $15 payable in advance of the search;

2. Copies at $.50 per page, including copies of microfilm, payable after the records have been prepared and

3. Actual costs of postage payable after the records have been prepared and sent. Actual cost of postage are deemed to be the cost of regular mail unless the requesting party has requested the delivery of the records by special mail or method.

4. The Labor Commission will release its records per the above charges to parties/entities with a signed and notarized release from the injured worker unless the information is classified and controlled under the Government Records Access and Management Act (GRAMA).

5. No fee shall be charged when the RBRVS or the Commission's Medical Fee Guidelines require specific documentation for a procedure or when medical providers are required to report by statute or rule.

6. An injured worker or his/her personal representative may obtain one copy of each of the following records related to the industrial injury or occupational disease claim, at no cost, when the injured worker or his/her personal representative have signed a form by the Industrial Accidents Division to substantiate his/her industrial injury/illness claim;

a. History and physical;

b. Operative reports of surgery;

c. Hospital discharge summary;

d. Emergency room records;

e. Radiological reports;

f. Specialized test results; and

g. Physician SOAP notes, progress notes, or specialized reports.

h. Alternatively, a summary of the patients records may be made available to the injured worker or his/her personal representative at the discretion of the physician.

R612-300-11. Utilization Review Standards.

A. Purpose of Utilization Review and Definitions.

1. "Utilization Review" is used to manage medical costs, improve patient care and enhance decision-making. Utilization review includes, but is not limited to, the review of requests for authorization and the review of medical bills to determine whether the medical services were or are necessary to treat a workplace injury. Utilization review does not include:

a. bill review for the purpose of determining whether the medical services rendered were accurately billed, or

b. any system, program, or activity used to determine whether an individual has sustained a workplace injury.

2. Any utilization review system shall incorporate a two-level review process that meets the criteria set forth in subsections B and C of this rule.

3. Definitions. As used in this rule:

a. "Request for Authorization" means any request by a physician for assurance that appropriate payment will be made for a course of proposed medical treatment.

b. "Reasonable Attempt" requires at least two phone calls and a fax, or three phone calls, within five business days from date of the payor's receipt of the physician's request for review.

B. Level I - Initial Request and Review.

1. A health care provider may use Form 223 to request authorization and payment for proposed medical treatment. The provider shall attach all documentation necessary for the payor to make a decision regarding the proposed treatment.

a. Requests for approval of restorative services are governed by the provisions of Rule R612-300.5. C. 7. which requires submission of the appropriate RSA form and documentation.

2. Upon receipt of the provider's request for authorization, the payor may use medical or non-medical personnel to apply medically-based criteria to determine whether to approve the request. The payor must:

a. Within 5 business days after receiving the request and documentation, transmit Form 223 back to the physician, in a verifiable manner, advising of the payor's approval or denial of the proposed treatment.

i. If approval is denied, the payor must include with its denial a statement of the criteria it used to make its determination. A copy of the denial must also be mailed to the injured worker.

C. Level II - Review.

1. A health care provider who has been denied authorization or has received no timely response may request a physician's review by completing and sending the applicable portion of Commission Form 223 to the payor.

a. The provider must include the times and days that he/she is available to discuss the case with the reviewing physician, and must be reasonably available during normal business hours.

b. This request for review may be used by a health care provider who has been denied authorization for restorative services pursuant to Rule R612-300-5. C.7.

2. The payor's physician representative must complete the review within five business days of the treating physician's request for review. Additional time may be requested from the Commission to accommodate highly unusual circumstances or particularly difficult cases.

a. The insurer's physician representative must make a reasonable effort to contact the requesting provider to discuss the request for treatment. The payor shall notify the Commission if an additional five days is needed in order to contact the treating physician or to review the case.

b. If the payor again denies approval of the recommended treatment, the payor must complete the appropriate portion of Commission Form 223, and shall included:

i. the criteria used by the payor in making the decision to

deny authorization; and

ii. the name and specialty of the payor's reviewing physician;

iii. appeals information.

c. The denial to authorize payment for treatment must then be sent to the physician, the injured worker and the Commission.

3. The payor's failure to respond to the review request within five business days, by a method which provides certification of transmission, shall constitute authorization for payment of the treatment.

C. Mediation and Adjudication. Upon receipt of denial of authorization for payment for medical treatment at Level II, the Commission will facilitate, upon the request of the injured worker, the final disposition of the case.

1. If the parties agree, the medical dispute will be referred to Commission staff for mediation.

2. If the parties do not agree to mediation, the matter will be referred to the Division of Adjudication for hearing and decision.

D. Reduction of Fee for Failure to Follow Utilization Review Standards.

1. In cases in which a health care provider has received notice of this rule but proceeds with non-emergency medical treatment without obtaining payor authorization, the following shall apply:

a. If the medical treatment is ultimately determined to be necessary to treat a workplace injury, the fee otherwise due the health care provider shall be reduced by 25%.

b. If the medical treatment is ultimately determined to be unnecessary to treat a workplace injury, the payor is not liable for payment for such treatment. The injured worker may be liable for the cost of treatment.

2. The penalty provision in D. 1. shall not apply if the medical treatment in question has been preauthorized by some other non-worker's compensation insurance company or other payor.

R612-300-12. Commission Approval of Health Care Treatment Protocols.

A. Authority. Pursuant to authority granted by Section 34A-2-111(2)(c)(i)(B)(VII) of the Utah Workers' Compensation Act, the Utah Labor Commission establishes the following standards and procedures for Commission approval of medical treatment and quality care guidelines.

B. Standards

1. Scientifically based: Section 34A-2-111(2)(c)(i)(B)(VII)(Aa) of the Act requires that guidelines be scientifically based. The Commission will consider a guideline to be "scientifically based" when it is supported by medical studies and/or research.

2. Peer reviewed: Section 34A-2-111(2)(c)(i)(B)(VII)(Bb) of the Act requires that guidelines be peer reviewed. The Commission will consider a guideline to be "peer reviewed" when the medical study's content, methodology, and results have been reviewed and approved prior to publication by an editorial board of qualified experts".

3. Other standards: Pursuant to its rulemaking authority under Section 34A-2-111(2)(c)(i)(B)(VII), the Utah Labor Commission establishes the following additional standards for medical treatment and quality care guidelines.

a. The guidelines must be periodically updated and, subject to Commission discretion, may not be approved for use unless updated in whole or in part at least biannually;

b. Guideline sources must be identified;

c. The guidelines must be reasonably priced;

d. The guidelines must be easily accessible in print and electronic versions.

C. Procedure: Pursuant to Section 34A-2-111(2)(c)(i)(B)(VII) of the Utah Workers' Compensation Act, a party seeking Commission action to approve or disapprove a guideline shall file a petition for such action with the Labor Commission.

R612-300-13. HIV, Hepatitis B and C Testing and Reporting for Emergency Medical Service Providers.

A. Purpose and Authority. This rule, established pursuant to U.C.A. Section 78B-8-404, establishes procedures for testing and reporting following a significant exposure of an emergency medical services provider to infectious diseases.

B. Definitions. In addition to the terms defined in Section 78B-8-401, the following definitions apply for purposes of this rule.

1. Contact means designated person(s) within the emergency medical services agency or the employer of the emergency medical services provider.

2. Emergency medical services (EMS) agency means an agency, entity, or organization that employs or utilizes emergency medical services providers as defined in (4) as employees or volunteers.

3. Source Patient means any individual cared for by a pre-hospital emergency medical services provider, including but not limited to victims of accidents or injury, deceased persons, and prisoners or persons in the custody of the Department of Corrections.

4. Receiving facility means a hospital, health care or other facility where the patient is delivered by the emergency medical services provider for care.

C. Emergency Medical Services Provider Responsibility.

1. The EMS provider shall document and report all significant exposures to the receiving facility and contact as defined in C.2.

2. The reporting process is as follows:

a. The exposed EMS provider shall complete the Exposure Report Form (ERF) at the time the patient is delivered to the receiving facility and provide a copy to the person at the receiving facility authorized by the facility to receive the form. In the event the exposed EMS provider does not accompany the source patient to the receiving facility, he/she may report the exposure incident, with information requested on the ERF, by telephone to a person authorized by the facility to receive the form. In this event, the exposed EMS provider shall nevertheless submit a written copy of the ERF within three days to an authorized person of the receiving facility.

b. The exposed EMS provider shall, within three days of the incident, submit a copy of the ERF to the contact as defined in C.2.

D. Receiving Facility Responsibility.

1. The receiving facility shall establish a system to receive ERFs as well as telephoned reports from exposed EMS providers on a 24-hour per day basis. The facility shall also have available or on call, trained pre-test counselors for the purpose of obtaining consent and counseling of source patients when HIV testing has been requested by EMS providers. The receiving facility shall contact the source patient prior to release from the facility to provide the individual with counseling or, if unable to provide counseling, provide the source patient with phone numbers for a trained counselor to provide the counseling within 24 hours.

2. Upon notification of exposure, the receiving facility shall request permission from the source patient to draw a blood sample for disease testing, as defined in C.3. In conjunction with this request, the source patient must be advised of his/her right to refuse testing and be advised that if he/she refuses to be tested that fact will be forwarded to the EMS agency or employer of EMS provider. The source patient shall also be advised that if he/she refuses to be tested, the EMS agency or provider may seek a court order to compel the source patient to

submit to a blood draw for the disease testing.

Testing is authorized only when the source patient, his/her next of kin or legal guardian consents to testing, with the exception that consent is not required from an individual who has been convicted of a crime and is in the custody or under the jurisdiction of the Department of Corrections, or if the source patient is dead. If consent is denied, the receiving facility shall complete the ERF and send it to the EMS agency or employer of the EMS provider. If consent is received, the receiving facility shall draw a sample of the source patient's blood and send it, along with the ERF, to a qualified laboratory for testing.

3. The laboratory that the receiving facility has sent source patient's blood draw to shall send the disease test results, by Case ID number, to the EMS agency or employer of the EMS provider.

F. EMS Agency/Employer Responsibility:

1. The EMS agency/employer, upon receipt of the disease tests, from the receiving facility laboratory, shall immediately report the result, by case number, not name, to the exposed EMS provider.

2. The EMS agency/employer, upon the receipt of refusal of testing by the source, shall report that refusal to the EMS provider.

3. The agency/employer or its insurance carrier shall pay for the EMS provider and the source patient testing for the covered diseases per the Labor Commission fee schedule.

4. The EMS agency/employer shall maintain the records of any disease exposures contained in this rule per the OSHA Blood Borne Pathogen standards.

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R657. Natural Resources, Wildlife Resources.
R657-9. Taking Waterfowl, Common Snipe and Coot.
R657-9-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Common snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "Baiting" means the direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for migratory games birds to, on, or over any areas where hunters are attempting to take them.

(c) "CFR" means the Code of Federal Regulations.

(d) "Daily Bag Limit" means the maximum number of migratory games birds of a single species or combination (aggregate) of species permitted to be taken by one person in any one day during the open season in any one specified geographic area for which a daily bag limit is prescribed.

(e) "Dark geese" means the following species: cackling, Canada, white-fronted and brant.

(f) "Light geese" means the following species: snow, blue and Ross'.

(g) "Live decoys" means tame or captive ducks, geese or other live birds.

(h) "Off-highway vehicle" means any motor vehicle designed for or capable of travel over unimproved terrain.

(i) "Permanent waterfowl blind" means any waterfowl blind that is left unattended overnight and that is not a portable structure capable of immediate relocation.

(j) "Possession limit" the maximum number of migratory game birds of a single species or a combination of species permitted to be possessed by any one person when lawfully taken in the United States in any one specified geographic area for which a possession limit is prescribed.

(k) "Sinkbox" means any type of low floating device, having a depression, affording the hunter a means of concealment beneath the surface of the water.

(l) "Transport" means to ship, export, import or receive or deliver for shipment.

(m) "Waterfowl" means ducks, mergansers, geese, brant and swans.

(n) "Waterfowl blind" means any manufactured place of concealment, including boats, rafts, tents, excavated pits, or similar structures, which have been designed to partially or completely conceal a person while hunting waterfowl.

R657-9-3. Stamp Requirements.

(1) Any person 16 years of age or older may not hunt waterfowl without first obtaining a federal migratory bird hunting and conservation stamp, and having the stamp in possession.

(2) The stamp must be validated by the hunter's signature in ink across the face of the stamp.

(3) A federal migratory bird hunting and conservation stamp is not required for any person under the age of 16.

R657-9-4. Permit Applications for Swan.

(1) Swan permits will be issued pursuant to R657-62-23.

R657-9-5. Tagging Swans.

(1) The carcass of a swan must be tagged before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a swan after the notches have been removed from the tag or the tag has been detached from the permit.

R657-9-6. Return of Swan Harvest and Hunt Information.

(1) Swan permit holders who do not hunt or are unsuccessful in taking a swan must respond to the swan questionnaire through the division's Internet address, or by telephone, within 30 calendar days of the conclusion of the prescribed swan hunting season.

(2) Within three days of harvest, swan permit holders successful in taking a swan must personally present the swan or its head for measurement to the division or the Bear River Migratory Bird Refuge and further provide all harvest information requested by the division or Refuge.

(3) Hunters who fail to comply with the requirements of Subsections (1) or (2) shall be ineligible to:

(a) obtain a swan permit the following season; and

(b) obtain a swan permit after the first season of ineligibility until the swan orientation course is retaken.

(4) late swan questionnaires may be accepted pursuant to Rule R657-42-9(3). Swan permit holders are still required to present the swan or its head for measurement to a division office.

R657-9-7. Firearms.

(1) Migratory game birds may be taken with a shotgun or archery tackle.

(2) Migratory game birds may not be taken with a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, crossbow, except as provided in Rule R657-12, poison, drug, explosive or stupefying substance.

(3) Migratory game birds may not be taken with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells, except as authorized by the Wildlife Board and specified in the guidebook of the Wildlife Board for taking Waterfowl, Common snipe and Coot.

R657-9-8. Nontoxic Shot.

(1) Only nontoxic shot may be in possession or used while hunting waterfowl and coot.

(2) A person may not possess or use lead shot:

(a) while hunting waterfowl or coot in any area of the state;

(b) on federal refuges;

(c) on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadow, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, Timpie Springs; or

(d) on the Scott M. Matheson wetland preserve.

R657-9-9. Use of Firearms on State Waterfowl Management Areas.

(1) A person may not possess a firearm or archery tackle on the following waterfowl management areas any time of the year except during the specified waterfowl hunting seasons or as authorized by the division:

(a) Box Elder County - Harold S. Crane, Locomotive

Springs, Public Shooting Grounds, and Salt Creek;
(b) Daggett County - Brown's Park;
(c) Davis County - Farmington Bay, Howard Slough, and Ogden Bay;
(d) Emery County - Desert Lake;
(e) Juab County - Mills Meadow;
(f) Millard County - Clear Lake, Topaz Slough;
(g) Sanpete County - Manti Meadows;
(h) Tooele County - Blue Lake and Timpie Springs;
(i) Uintah County - Stewart Lake;
(j) Utah County - Powell Slough;
(k) Wayne County - Bicknell Bottoms; and
(l) Weber County - Ogden Bay and Harold S. Crane.
(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be in possession, except as provided in Rule R657-12.
(3) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-9-10. Airborne, Terrestrial, and Aquatic Vehicles.
Migratory game birds may not be taken:
(1) from or by means of any motorboat or other craft having a motor attached, or sailboat unless the motor has been completely shut off or sails furled and its progress has ceased: provided, that a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power; or
(2) by means or aid of any motor driven land, water or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying or stirring up of any migratory bird.

R657-9-11. Airboats.
(1) Air-thrust or air-propelled boats and personal watercraft are not allowed in designated parts of the following waterfowl management or federal refuge areas:
(a) Box Elder County: Box Elder Lake, Bear River, that part of Harold S. Crane within one-half mile of all dikes and levees, Locomotive Springs, Public Shooting Grounds and Salt Creek, that part of Bear River Migratory Bird Refuge north of "D" line dike, and outside Units 1, 3, 4 and 5 as posted.
(b) Daggett County: Brown's Park
(c) Davis County: Howard Slough, Ogden Bay and Farmington Bay within diked units or as posted
(d) Emery County: Desert Lake
(e) Millard County: Clear Lake, Topaz Slough
(f) Tooele County: Timpie Springs
(g) Uintah County: Stewart Lake
(h) Utah County: Powell Slough
(i) Wayne County: Bicknell Bottoms
(j) Weber County: Ogden Bay within diked units or as posted and the portion of Harold S. Crane Waterfowl Management Area that falls within the county line.
(2) "Personal watercraft" means a motorboat that is:
(a) less than 16 feet in length;
(b) propelled by a water jet pump; and
(c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

R657-9-12. Motorized Vehicle Access.
(1) Motorized vehicle travel is restricted to county roads, improved roads and parking areas.
(2) Off-highway vehicles are not permitted on state waterfowl management areas, except as marked and posted open.
(3) Off-highway vehicles are not permitted on Bear River Migratory Bird Refuge.
(4) Motorized boat use is restricted on waterfowl management areas as specified in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-13. Sinkbox.
A person may not take migratory game birds from or by means, aid, or use of any type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water.

R657-9-14. Live Decoys.
A person may not take migratory game birds with the use of live birds as decoys or from an area where tame or captive live ducks or geese are present unless such birds are and have been, for a period of ten consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl.

R657-9-15. Amplified Bird Calls.
A person may not use recorded or electrically amplified bird calls or sounds or recorded or electronically amplified imitations of bird calls or sounds except as authorized by the Wildlife Board and specified in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-16. Baiting.
(1) A person may not take migratory game birds by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:
(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:
(i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;
(ii) from a blind or other place of concealment camouflaged with natural vegetation;
(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or
(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.
(b) The taking of any migratory game bird, except waterfowl, coots and cranes, is legal on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

R657-9-17. Possession During Closed Season.
No person shall possess any freshly killed migratory game birds during the closed season.

R657-9-18. Live Birds.
(1) Every migratory game bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become part of the daily bag limit.
(2) No person shall at any time, or by any means possess or transport live migratory game birds.

R657-9-19. Waste of Migratory Game Birds.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or any part of them.

(2) No person shall kill or cripple any migratory game bird pursuant to this rule without making a reasonable effort to immediately retrieve the bird and include it in that person's daily bag limit.

R657-9-20. Termination of Possession.

Subject to all other requirements of this part, the possession of birds taken by any hunter shall be deemed to have ceased when the birds have been delivered by the hunter to another person as a gift; to a post office, a common carrier, or a migratory bird preservation facility and consigned for transport by the Postal Service or common carrier to some person other than the hunter.

R657-9-21. Tagging Requirement.

(1) No person shall put or leave any migratory game bird at any place other than at that person's personal abode, or in the custody of another person for picking, cleaning, processing, shipping, transporting or storing, including temporary storage, or for the purpose of having taxidermy services performed unless there is attached to the birds a disposal receipt, donation receipt or transportation slip signed by the hunter stating the hunter's address, the total number and species of birds, the date such birds were killed and the Utah hunting license number under which they were taken.

(2) Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

R657-9-22. Donation or Gift.

No person may receive, possess or give to another, any freshly killed migratory game birds as a gift, except at the personal abodes of the donor or donee, unless such birds have a tag attached, signed by the hunter who took the birds, stating such hunter's address, the total number and species of birds taken, the date such birds were taken and the Utah hunting license number under which taken.

R657-9-23. Custody of Birds of Another.

No person may receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required by Section R657-9-23.

R657-9-24. Species Identification Requirement.

No person shall transport within the United States any migratory game birds unless the head or one fully feathered wing remains attached to each bird while being transported from the place where taken until they have arrived at the personal abode of the possessor or a migratory bird preservation facility.

R657-9-25. Marking Package or Container.

(1) No person shall transport by the Postal Service or a common carrier migratory game birds unless the package or container in which such birds are transported has the name and address of the shipper and the consignee and an accurate statement of the numbers and kinds of species of birds contained therein clearly and conspicuously marked on the outside thereof.

(2) A Utah shipping permit obtained from the division must accompany each package shipped within or from Utah.

R657-9-26. Migratory Bird Preservation Facilities.

(1) Migratory bird preservation facility means:

(i) Any person who, at their residence or place of business and for hire or other consideration; or

(ii) Any taxidermist, cold-storage facility or locker plant which, for hire or other consideration; or

(iii) Any hunting club which, in the normal course of operations; receives, possesses, or has in custody any migratory game birds belonging to another person for purposes of picking, cleaning, freezing, processing, storage or shipment.

(2) No migratory bird preservation facility shall:

(a) receive or have in custody any migratory game bird unless accurate records are maintained that can identify each bird received by, or in the custody of, the facility by the name of the person from whom the bird was obtained, and show:

(i) the number of each species;

(ii) the location where taken;

(iii) the date such birds were received;

(iv) the name and address of the person from whom such birds were received;

(v) the date such birds were disposed of; and

(vi) the name and address of the person to whom such birds were delivered; or

(b) destroy any records required to be maintained under this section for a period of one year following the last entry on record.

(3) Record keeping as required by this section will not be necessary at hunting clubs that do not fully process migratory birds by removal of the head and wings.

(4) No migratory bird preservation facility shall prevent any person authorized to enforce this part from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried out.

R657-9-27. Importation.

A person may not:

(1) import migratory game birds belonging to another person; or

(2) import migratory game birds in excess of the following importation limits:

(a) From any country except Canada and Mexico, during any one calendar week beginning on Sunday, not to exceed 10 ducks, singly or in the aggregate of all species, and five geese including brant, singly or in the aggregate of all species;

(b) From Canada, not to exceed the maximum number to be exported by Canadian authorities;

(c) From Mexico, not to exceed the maximum number permitted by Mexican authorities in any one day: provided that if the importer has his Mexican hunting permit date-stamped by appropriate Mexican wildlife authorities on the first day he hunts in Mexico, he may import the applicable Mexican possession limit corresponding to the days actually hunted during that particular trip.

R657-9-28. Use of Dogs.

(1) Dogs may be used to locate and retrieve migratory game birds during open hunting seasons.

(2) Dogs are not allowed on state wildlife management or waterfowl management areas, except during open hunting seasons or as posted by the division.

R657-9-29. Season Dates and Bag and Possession Limits.

(1) Season dates and bag and possession limits are specified in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

(2) A youth duck hunting day may be allowed for any person 15 years of age or younger as provided in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-30. Closed Areas.

(1) A person may not trespass on state waterfowl management areas except during prescribed seasons, or for other activities as posted without prior permission from the division.

(2) A person may not participate in activities that are

posted as prohibited.

(3) A person may not trespass, take, hunt, shoot at, or rally any waterfowl, snipe, or coot in the following specified areas:

(a) Antelope Island causeway - within 600 feet of either the north or south side.

(b) Brown's Park - That part adjacent to headquarters.

(c) Clear Lake - Spring Lake.

(d) Desert Lake - That part known as "Desert Lake."

(e) Farmington Bay - Headquarters and Learning center area, within 600 feet of dikes and roads accessible by motorized vehicles and the waterfowl rest area in the northwest quarter of unit one as posted.

(f) Ogden Bay - Headquarters area.

(g) Public Shooting Grounds - That part as posted lying above and adjacent to the Hull Lake Diversion Dike known as "Duck Lake."

(h) Salt Creek - That part as posted known as "Rest Lake."

(i) Bear River Migratory Bird Refuge - For information contact the refuge manager, U.S. Fish and Wildlife Service, at (435) 723-5887. The entire refuge is closed to the hunting of snipe.

(j) Fish Springs and Ouray National Wildlife Refuges - Waterfowl hunters must register at Fish Springs refuge headquarters prior to hunting. Both refuges are closed to the hunting of swans, and Fish Springs is closed to the hunting of geese.

(k) State Parks

Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated open by appropriate signing as provided in Rule R651-614-4.

(l) Great Salt Lake Marina and adjacent areas as posted.

(m) Millard County

Gunnison Bend Reservoir and the inflow upstream to the Southerland Bridge.

(n) Salt Lake International Airport - Hunting and shooting prohibited as posted.

R657-9-31. Shooting Hours.

(1) A person may not hunt, pursue, or take wildlife, or discharge any firearm or archery tackle on state-owned lands adjacent to the Great Salt Lake, on division-controlled waterfowl management areas, or on federal refuges between official sunset and one-half hour before official sunrise.

(2) Legal shooting hours for taking or attempting to take waterfowl, Common snipe, and coot are provided in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-32. Falconry.

(1) Falconers must obtain a valid hunting or combination license, a federal migratory bird stamp and a falconry certificate of registration to hunt waterfowl.

(2) Areas open and bag and possession limits for falconry are specified in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-33. Migratory Game Bird Harvest Information Program (HIP).

(1) A person must obtain an annual Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.

(2)(a) A person must call the telephone number published in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot, or register online at the address published in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot to obtain their HIP registration number.

(b) A person must write their HIP registration number on their current year's hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

(a) hunting license number;

(b) hunting license type;

(c) name;

(d) address;

(e) phone number;

(f) birth date; and

(g) information about the previous year's migratory bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory birds will be required, while in the field, to prove that they have registered and provided information for the HIP program.

R657-9-34. Waterfowl Blinds on Waterfowl Management Areas.

(1) Waterfowl blinds on division waterfowl management areas may be constructed or used as provided in Subsection (a) through Subsection (e).

(a) Waterfowl blinds may not be left unattended overnight, except for blinds constructed entirely of non-woody, vegetative materials that naturally occur where the blind is located.

(b) Trees and shrubs on waterfowl management areas that are live or dead standing may not be cut or damaged except as expressly authorized in writing by the division.

(c) Excavating soil or rock on waterfowl management areas above or below water surface is strictly prohibited, except as expressly authorized in writing by the division.

(d) Rock and soil material may not be transported to waterfowl management areas for purposes of constructing a blind.

(e) Waterfowl blinds may not be constructed or used in any area or manner, which obstructs vehicular or pedestrian travel on dikes.

(2) The restrictions set forth in Subsection (1)(a) through Subsection (1)(c) do not apply to the following waterfowl management areas:

(a) Farmington Bay Waterfowl Management Area - West and North of Unit 1, Turpin Unit and Crystal Unit.

(b) Howard Slough Waterfowl Management Area - West and South of the exterior dike separating the waterfowl management area's fresh water impoundments from the Great Salt Lake.

(c) Ogden Bay Waterfowl Management Area - West of Unit 1, Unit 2, and Unit 3.

(d) Harold Crane Waterfowl Management Area - one half mile North and West of the exterior dike separating the waterfowl management area's fresh water impoundments from Willard Spur.

(3) Waterfowl blinds constructed or maintained on waterfowl management areas in violation of this section may be removed or destroyed by the division without notice.

(4) Any unoccupied, permanent waterfowl blind located on state land open to public access for hunting may be used by any person without priority to the person that constructed the blind. It being the intent of this rule to make such blinds available to any person on a first-come, first-serve basis.

(5) Waterfowl blinds or decoys cannot be left unattended overnight on state land open to public access for hunting in an effort to reserve the particular location where the blinds or decoys are placed.

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R657. Natural Resources, Wildlife Resources.
R657-10. Taking Cougar.
R657-10-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking and pursuing cougar.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking cougar.

R657-10-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Canned hunt" means that a cougar is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the cougar.

(b) "Compensation" means anything of economic value in excess of $100 that is paid, loaned, granted, given, donated, or transferred to a dog handler for or in consideration of pursuing cougar for any purpose.

(c) "Cougar" means Puma concolor, commonly known as mountain lion, lion, puma, panther or catamount.

(d) "Cougar pursuit permit" means a permit that authorizes a person to pursue cougar during designated seasons.

(e) "Cougar Management Area" means a group of units under the same cougar harvest quota.

(f) "Dog handler" means the person in the field that is responsible for transporting, releasing, tracking, controlling, managing, training, commanding and retrieving the dogs involved in the pursuit. The owner of the dogs is presumed the dog handler when the owner is in the field during pursuit.

(g) "Evidence of sex" means the sex organs of a cougar, including a penis, scrotum or vulva.

(h) "Green pelt" means the untanned hide or skin of any cougar.

(i) "Harvest-objective hunt" means any hunt that is identified as harvest-objective in the hunt table of the guidebook for taking cougar.

(j) "Harvest-objective permit" means any permit valid on harvest-objective units, including limited-entry permits for split units after the split-unit transition date.

(k) "Kitten" means a cougar less than one year of age.

(l) "Kitten with spots" means a cougar that has obvious spots on its sides or its back.

(m) "Limited entry hunt" means any hunt listed in the hunt tables of the guidebook of the Wildlife Board for taking cougar, which is identified as limited entry and does not include harvest objective hunts.

(n) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits and sportsman permits.

(o) "Private lands" means any lands that are not public lands, excluding Indian trust lands.

(p) "Public lands" means any lands owned by the state, a political subdivision or independent entity of the state, or the United States, excluding Indian trust lands, that are open to the public for purposes of engaging in pursuit.

(q) "Pursue" means to chase, tree, corner or hold a cougar at bay.

(r) "Split unit" means a cougar hunting unit that begins as a limited entry unit then transitions into a harvest objective unit.

(s) "Waiting period" means a specified period of time that a person who has obtained a cougar permit must wait before applying for any other cougar permit.

(t) "Written permission" means written authorization from the owner or person in charge to enter upon private lands and must include:

(i) the name and signature of the owner or person in charge;

(ii) the address and phone number of the owner or person in charge;

(iii) the name of the dog handler given permission to enter the private lands;

(iv) a brief description of the pursuit activity authorized;

(v) the appropriate dates; and

(vi) a general description of the property.

R657-10-3. Permits for Taking Cougar.

(1)(a) To harvest a cougar, a person must first obtain a valid limited entry cougar permit or a harvest objective cougar permit for the specified management units as provided in the guidebook of the Wildlife Board for taking cougar.

(b) Any person who obtains a limited entry cougar permit or a harvest objective cougar permit may pursue cougar on the unit for which the permit is valid.

(2) A person may not apply for or obtain more than one cougar permit for the same season, except:

(a) as provided in Subsection R657-10-25(3); or

(b) if the person is unsuccessful in the limited entry drawing, the person may purchase a harvest objective permit.

(3) Any cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(4) To obtain a cougar limited entry permit, harvest objective permit, or pursuit permit, a person must possess a Utah hunting or combination license.

R657-10-4. Permits for Pursuing Cougar.

(1)(a) To pursue cougar without a limited entry cougar permit, the dog handler must:

(i) obtain a valid cougar pursuit permit from a division office; or

(ii) possess the documentation and certifications required in R657-10-25(2) to pursue cougar for compensation.

(b) A cougar pursuit permit or exemption therefrom does not allow a person to kill a cougar.

(2) Residents and nonresidents may purchase cougar pursuit permits consistent with the requirements of this rule and the guidebooks of the Wildlife Board.

(3) To obtain a cougar pursuit permit, a person must possess a Utah hunting or combination license.

R657-10-5. Hunting Hours.

Cougar may be taken or pursued only between one-half hour before official sunrise through one-half hour after official sunset.

R657-10-6. Firearms and Archery Tackle.

A person may use the following to take cougar:

(1) any firearm not capable of being fired fully automatic;

(2) a bow and arrows; and

(3) a crossbow as provided in Rule R657-12.

R657-10-7. Traps and Trapping Devices.

(1) Cougar may not be taken with a trap, snare or any other trapping device, except as authorized by the Division of Wildlife.

(2) Cougar accidentally caught in any trapping device must be released unharmed, and must not be pursued or taken.

(3)(a) Written permission must be obtained from a division representative to remove the carcass of a cougar from any trapping device.

(b) The carcass shall remain the property of the state of Utah and must be surrendered to the division.

R657-10-8. State Parks.

(1) Hunting of any wildlife is prohibited within the

boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614-4.

(2) Hunting with a rifle, handgun or muzzleloader in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches.

(3) Hunting with shotguns and archery tackle is prohibited within one quarter mile of the above stated areas.

R657-10-9. Prohibited Methods.

(1) Cougar may be taken or pursued only during open seasons and using methods prescribed in this rule and the guidebook of the Wildlife Board for taking cougar. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare or in any way harm or transport cougar.

(2) After a cougar has been pursued, chased, treed, cornered or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

(5) Electronic locating equipment may not be used to locate cougars wearing electronic radio devices.

R657-10-10. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

R657-10-11. Party Hunting.

A person may not take a cougar for another person.

R657-10-12. Use of Dogs.

(1) Dogs may be used to take or pursue cougar only during open seasons as provided in the guidebook of the Wildlife Board for taking cougar.

(2) A dog handler may pursue cougar provided he or she possesses:

(a) a valid limited entry cougar permit issued to the dog handler;

(b) a valid cougar pursuit permit; or

(c) the documentation and certifications required in R657-10-25(2) to pursue cougar for compensation.

(3) When dogs are used in the pursuit of a cougar, the licensed hunter intending to take the cougar must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take a cougar and there is not an open pursuit season, the dog handler must have:

(a) a limited entry cougar permit issued to the dog handler for the unit being hunted;

(b)(i) a valid cougar pursuit permit; and

(ii) be accompanied, as provided in Subsection (3), by a hunter possessing a limited entry cougar permit for the area; or

(c)(i) the documentation and certifications required in R657-10-25(2) to pursue cougar for compensation and

(ii) be accompanied, as provided in Subsection (3), by a paying client possessing a limited entry cougar permit for the area.

(5) A dog handler may pursue cougar under:

(a) a cougar pursuit permit only during the season and in the areas designated by the Wildlife Board in guidebook open to pursuit;

(b) a limited entry cougar permit only during the season and in the area designated by the Wildlife Board in guidebook for that permit; or

(c) the pursuit for compensation provisions in this rule only during the seasons and in the areas designated by the Wildlife Board in guidebook open to pursuit.

(6) When dogs are used to take cougar and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Subsection (3), or have a cougar permit.

R657-10-13. Tagging Requirements.

(1) The carcass of a cougar must be tagged with a temporary possession tag before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a cougar after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The temporary possession tag:

(a) must remain attached to the pelt or unskinned carcass until the permanent possession tag is attached; and

(b) is only valid for 48 hours after the date of kill.

(4) A person may not possess a cougar pelt or unskinned carcass without a valid permanent possession tag affixed to the pelt or unskinned carcass. This provision does not apply to a person in possession of a properly tagged carcass or pelt within 48 hours after the kill, provided the person was issued and is in possession of a valid permit.

R657-10-14. Evidence of Sex and Age.

(1) Evidence of sex must remain attached to the carcass or pelt of each cougar until a permanent tag has been attached by the division.

(2) The pelt and skull must be presented to the division in an unfrozen condition to allow the division to gather management data.

(3) It is mandatory that a tooth (PM1) be removed by the division at the time of permanent tagging to be used for aging purposes.

(4) The division may seize any pelt not accompanied by its skull or not having sufficient evidence of biological sex designation attached.

R657-10-15. Permanent Tag.

(1)(a) Each cougar must be taken by the permit holder to a conservation officer or division office within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass and for the removal of a tooth.

(b) After regular business hours, on weekends, or on holidays, a conservation officer may be reached by contacting the local police dispatch office.

(2) A person may not possess a green pelt after the 48-hour check-in period, or ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

R657-10-16. Transporting Cougar.

Cougar that have been legally taken may be transported by the permit holder provided the cougar is properly tagged and the permittee possesses the appropriate permit.

R657-10-17. Exporting Cougar from Utah.

(1) A person may export a legally taken cougar or its parts if that person has a valid permit and the cougar is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from Utah, a cougar pelt without first obtaining a shipping permit issued by an authorized division representative.

R657-10-18. Donating.

(1) A person may donate protected wildlife or their parts to another person as provided in Section 23-20-9.

(2) A green pelt of any cougar donated to another person must have a permanent possession tag affixed.

(3) The written statement of donation must be retained with the pelt.

R657-10-19. Purchasing or Selling.

(1) Legally obtained, tanned cougar hides may be purchased or sold.

(2) A person may not purchase, sell, offer for sale, or barter a tooth, claw, paw, or skull of any cougar.

R657-10-20. Waste of Wildlife.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts.

(2) The skinned carcass of a cougar may be left in the field and does not constitute waste of wildlife.

R657-10-21. Livestock Depredation and Human Health and Safety.

(1) If a cougar is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 72 hours:

(a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take cougar, may kill the cougar;

(b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, who shall authorize a local hunter to take the offending cougar or notify a USDA, Wildlife Services specialist; or

(c) the livestock owner may notify a USDA, Wildlife Services specialist of the depredation who may take the depredating cougar.

(2) Depredating cougar may be taken at any time by a USDA, Wildlife Services specialist, supervised by the Wildlife Services program, while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3) A depredating cougar may be taken by those persons authorized in Subsection (1)(a) with:

(a) any weapon authorized for taking cougar; or

(b) with the use of snares only with written authorization from the director of the division and subject to all the conditions and restrictions set out in the written authorization.

(i) The option in Subsection (3)(b) may only be authorized in the case of a chronic depredation situation where numerous livestock have been killed by a depredating cougar and must be verified by Wildlife Services or division personnel.

(4)(a) Any cougar taken pursuant to this section must be delivered to a division office or employee within 72 hours.

(b) In accordance with Subsection (1)(a) the cougar shall remain the property of the state, except the division may issue a cougar damage permit to a person who has killed a depredating cougar in accordance with this section, if that person wishes to maintain possession of the cougar.

(c) A person may acquire only one cougar annually.

(5)(a) Hunters interested in taking depredating cougar as provided in Subsection (1)(b) may contact the division.

(b) Hunters will be contacted by the division to take depredating cougar as needed.

R657-10-22. Survey.

Each permittee who is contacted for a survey about their cougar hunting experience should participate in the survey regardless of success. Participation in the survey helps the division evaluate population trends, harvest success and collect other valuable information.

R657-10-23. Taking Cougar.

(1)(a) A person may take only one cougar during the season and from the area specified on the permit.

(b) Limited entry permits may be obtained by following the application procedures provided in this rule and the guidebook of the Wildlife Board for taking cougar.

(c) Harvest objective permits may be purchased on a first-come, first-served basis as provided in guidebook of the Wildlife Board for taking cougar.

(2) A person may not:

(a) take or pursue a female cougar with kittens or kittens with spots; or

(b) repeatedly pursue, chase, tree, corner, or hold at bay, the same cougar during the same day after the cougar has been released.

(3) Any cougar may be taken during the prescribed seasons, except a kitten with spots, or any cougar accompanied by kittens, or any cougar accompanied by an adult.

(4) A person may not take a cougar wearing a radio collar from any areas that are published in the guidebook of the Wildlife Board for taking cougar.

(5) The division may authorize hunters who have obtained a limited entry cougar permit to take cougar in a specified area of the state in the interest of protecting wildlife from depredation.

(6) Season dates, closed areas, harvest objective permit areas and limited entry permit areas are published in the guidebook of the Wildlife Board for taking cougar.

(7)(a) A person who obtains a limited entry cougar permit on a split unit may hunt on all harvest objective units after the date split units transition into harvest objective units. The split unit transition date is provided in the guidebook of the Wildlife Board for taking cougar.

(b) A person who obtains a limited entry cougar permit on a split unit and chooses to hunt on any harvest objective unit after the transition date is subject to all harvest objective unit closure requirements provided in Sections R657-10-34 and 657-10-35.

R657-10-24. Extended and Preseason Hunts.

(1) An extended or preseason hunt may be authorized by the division on selected cougar management units to control depredation or nuisance problems.

R657-10-25. Cougar Pursuit.

(1)(a) Except as provided in rule R657-10-3(1)(b) and Subsection (2), cougar may be pursued only by persons who have obtained a cougar pursuit permit.

(b) The cougar pursuit permit does not allow a person to:

(i) kill a cougar; or

(ii) pursue cougar for compensation.

(c) A person may pursue cougar for compensation only as provided in Subsection (2).

(d) To obtain a cougar pursuit permit, a person must possess a Utah hunting or combination license.

(2)(a) A person may pursue cougar on public lands for compensation, provided the dog handler:

(i) receives compensation from a client or customer to pursue cougar;

(ii) is a licensed hunting guide or outfitter under Title 58, Chapter 79 of the Utah Code and authorized to pursue cougar;

(iii) possesses on his or her person the Utah hunting guide or outfitter license;

(iv) possesses on his or her person all permits and authorizations required by the applicable public lands managing authority to pursue cougar for compensation; and

(v) is accompanied by the client or customer at all times during pursuit.

(b) A person may pursue cougar on private lands for compensation, provided the dog handler:

(i) receives compensation from a client or customer to pursue cougar;

(ii) is accompanied by the client or customer at all times during pursuit; and

(iii) possesses on his or her person written permission from all private landowners on whose property pursuit takes place.

(c) A person who is an employee or agent of the Division of Wildlife Services may pursue cougar on public lands and private lands while acting within the scope of their employment.

(3) A pursuit permit is not required to pursue cougar under Subsection (2).

(4)(a) A person pursuing cougar for compensation under subsections (2)(a) and (2)(b) shall comply with all other requirements and restrictions in statute, rule and the guidebooks of the Wildlife Board regulating the pursuit and take of cougar.

(b) Any violation of, or failure to comply with the provisions of Title 23 of the Utah Code, this rule, or the guidebooks of the Wildlife Board may be grounds for suspension of the privilege to pursue cougar for compensation under this subsection, as determined by a division hearing officer.

(5) A cougar pursuit permit authorizes the holder to pursue cougar with dogs on any unit open to pursuing cougar during the seasons and under the conditions prescribed by the Wildlife Board in guidebook.

(6) A person may not:

(a) take or pursue a female cougar with kittens or kittens with spots;

(b) repeatedly pursue, chase, tree, corner or hold at bay, the same cougar during the same day; or

(c) possess a firearm or any device that could be used to kill a cougar while pursuing cougar.

(i) The weapon restrictions set forth in the subsection do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill cougar.

(7) If eligible, a person who has obtained a cougar pursuit permit may also obtain a limited entry cougar permit or harvest objective cougar permit.

(8) Cougar may be pursued only on limited entry units or harvest objective units during the dates provided in the guidebook of the Wildlife Board for taking cougar.

(9) A cougar pursuit permit is valid on a calendar year basis.

(10) A person must possess a valid hunting or combination license to obtain a cougar pursuit permit.

R657-10-26. Limited Entry Cougar Permit Application Information.

(1) Limited entry cougar permits are issued pursuant to R657-62-24.

R657-10-27. Harvest Objective General Information.

(1) Harvest objective permits are valid only for the open harvest objective management units and for the specified seasons published in the guidebook of the Wildlife Board for taking cougar.

(2) Harvest objective permits are not valid in a specified management unit after the harvest objective has been met for that specified Cougar Management Area.

R657-10-28. Harvest Objective Permit Sales.

(1) Harvest objective permits are available on a first-come, first-served basis beginning on the date published in the guidebook of the Wildlife Board for taking cougar.

(2) Any cougar permit purchased after the season opens is not valid until three days after the date of purchase unless specifically authorized by the division.

(3) A person must possess a valid hunting or combination license to obtain a Harvest objective permit.

R657-10-29. Harvest Objective Unit Closures.

(1) To hunt in a harvest objective unit, a hunter must call 1-888-668-LION or visit the division's website to verify that the cougar management area is still open. The phone line and website will be updated each day by 12 noon. Updates become effective the following day thirty minutes before official sunrise.

(2) Harvest objective units are open to hunting until:

(a) the cougar harvest objective for that cougar management area is met and the division closes the area; or

(b) the end of the hunting season as provided in the guidebook of the Wildlife Board for taking cougar.

(3) Upon closure of a harvest objective unit, a hunter may not take or pursue cougar except as provided in Section R657-10-25.

R657-10-30. Harvest Objective Unit Reporting.

(1) Any person taking a cougar with a harvest objective permit must report to the division, within 48 hours, where the cougar was taken and have a permanent tag affixed pursuant to Section R657-10-15.

(2) Failure to accurately report the correct harvest objective management unit where the cougar was killed is unlawful.

(3) Any conviction for failure to accurately report, or aiding or assisting in the failure to accurately report as required in Subsection (1) shall be considered prima facie evidence of a knowing, intentional or reckless violation for purposes of permit suspension.

R657-10-31. Wildlife Management Areas.

(1) A person may not use motor vehicles on division-owned wildlife management areas closed to motor vehicle use during the winter without first obtaining written authorization from the appropriate division regional office.

(2) The division may, in its sole discretion, authorize limited motor vehicle access to its wildlife management areas closed to such use during the winter provided:

(a) the person seeking access possesses a valid cougar permit for the area;

(b) motor vehicle access is necessary to effectively utilize the cougar permit; and

(c) motor vehicle access will not interfere with wintering wildlife or wildlife habitat.

R657-10-32. Poaching-Reported Reward Permits.

(1) For purposes of this section, "successful prosecution" means the screening and filing of charges for the poaching incident.

(2) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a cougar on a limited entry cougar unit, under

Section 23-20-4, may receive a permit from the division to hunt cougar on the same limited-entry cougar unit where the reported violation occurred, as provided in Subsection (3).

(3)(a) The division may issue poaching-reported reward permits only in limited-entry cougar units that have more than 10 total permits allocated.

(b) The division may issue only one poaching-reported reward permit per limited-entry cougar unit per year.

(4)(a) The division may issue only one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit shall be issued to any one person per successful prosecution.

(c) No more than one cougar poaching-reported reward permit shall be issued to any one person in any one cougar season.

(5)(a) Poaching-reported reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the poaching-reported reward permit.

(6) Any person who receives a poaching-reported reward permit must possess a Utah hunting or combination license and otherwise be eligible to hunt and obtain cougar permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

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R657. Natural Resources, Wildlife Resources.
R657-11. Taking Furbearers.
R657-11-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking furbearers.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking furbearers.

R657-11-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Artificial cubby set" means any artificially manufactured container with an opening on one end that houses a trapping device. Bait must be placed inside the artificial cubby set at least eight inches from the opening. Artificial cubby sets must be placed with the top of the opening even with or below the bottom of the bait so that the bait is not visible from above.

(b) "Bait" means any lure containing animal parts larger than one cubic inch, or eight cubic inches if used in an artificial cubby set, with the exception of white-bleached bones with no hide or flesh attached.

(c) "Exposed bait" means bait which is visible from any angle, except when used in an artificial cubby set.

(d) "Fur dealer" means any individual engaged in, wholly or in part, the business of buying, selling, or trading skins or pelts of furbearers within Utah.

(e) "Fur dealer's agent" means any person who is employed by a resident or nonresident fur dealer as a buyer.

(f) "Green pelt" means the untanned hide or skin of any furbearer.

(g) "Pursue" means to chase, tree, corner, or hold a furbearer at bay.

(h) "Scent" means any lure composed of material of less than one cubic inch that has a smell intended to attract animals.

R657-11-3. License, Permit and Tag Requirements.

(1) A person who has a valid, current furbearer license may take furbearers during the established furbearer seasons published in the guidebook of the Wildlife Board for taking furbearers.

(2) A person who has a valid, current furbearer license and valid bobcat permits may take bobcat during the established bobcat season published in the guidebook of the Wildlife Board for taking furbearers.

(3) A person who has a valid, current furbearer license and valid marten trapping permit may take marten during the established marten season published in the guidebook of the Wildlife Board for taking furbearers.

(4) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing furbearers.

R657-11-4. Bobcat Permits.

(1) Bobcat permits can only be obtained and are only valid with a valid, current furbearer license.

(2) A person may obtain up to the number of bobcat permits authorized each year by the Wildlife Board. Permit numbers shall be published in the guidebook of the Wildlife Board for taking furbearers.

(3) Bobcat permits will be available during the dates published in the guidebook of the Wildlife Board for taking furbearers and may be obtained by submitting an application through the division's Internet address.

(4) Bobcat permits are valid for the entire bobcat season.

R657-11-5. Tagging Bobcats.

(1) The pelt or unskinned carcass of any bobcat must be tagged in accordance with Section 23-20-30.

(2) The tag must remain with the pelt or unskinned carcass until a permanent tag has been affixed.

(3) Possession of an untagged green pelt or unskinned carcass is prima facie evidence of unlawful taking and possession.

(4) The lower jaw of each bobcat taken must be removed and tagged with the numbered jaw tag corresponding to the number of the temporary possession tag affixed to the hide.

R657-11-6. Marten Permits.

(1) A person may not trap marten or have marten in possession without having a valid, current furbearer license and a marten trapping permit in possession.

(2) Marten trapping permits are available free of charge from any division office.

(3)(a) Applications for marten permits must contain the applicant's full name, mailing address, phone number, and valid, current furbearer license number.

(b) Permit applications are accepted by mail or in person at any regional division office.

R657-11-7. Permanent Possession Tags for Bobcat and Marten.

(1) A person may not:

(a) possess a green pelt or unskinned carcass from a bobcat or marten that does not have a permanent tag affixed after the Saturday following the close of the bobcat trapping season and marten seasons;

(b) possess a green pelt or the unskinned carcass of a bobcat with an affixed temporary bobcat possession tag issued to another person, except as provided in Subsections (5) and (6); or

(b) buy, sell, trade, or barter a green pelt from a bobcat or marten that does not have a permanent tag affixed.

(2) Bobcat and marten pelts must be delivered to a division representative to have a permanent tag affixed and to surrender the lower jaw.

(3) Bobcat and marten pelts may be delivered to the following division offices, by appointment only, during the dates published in the guidebook of the Wildlife Board for taking furbearers:

(a) Cedar City - Regional Office;
(b) Ogden - Regional Office;
(c) Price - Regional Office;
(d) Salt Lake City - Salt Lake Office;
(e) Springville - Regional Office; and
(f) Vernal - Regional Office.

(4) There is no fee for permanent tags.

(5) Bobcat and marten which have been legally taken may be transported from an individual's place of residence by an individual other than the fur harvester to have the permanent tag affixed; bobcats must be tagged with a temporary possession tag and accompanied by a valid furbearer license belonging to the fur harvester.

(6) Any individual transporting a bobcat or marten for another person must have written authorization stating the following:

(a) date of kill;
(b) location of kill;
(c) species and sex of animal being transported;
(d) origin and destination of such transportation;
(e) the name, address, signature and furbearer license number of the fur harvester;
(f) the name of the individual transporting the bobcat or marten; and
(g) the fur harvester's marten permit number if marten is

being transported.

(7) Green pelts of bobcats and marten legally taken from outside the state may not be possessed, bought, sold, traded, or bartered in Utah unless a permanent tag has been affixed or the pelts are accompanied by a shipping permit issued by the wildlife agency of the state where the animal was taken.

(8)(a) Fur harvesters taking marten are requested to present the entire skinned carcass intact, including the lower jaw, to the division in good condition when the pelt is presented for tagging.

(b) "Good condition" means the carcass is fresh or frozen and securely wrapped to prevent decomposition so that the tissue remains suitable for lab analysis.

R657-11-8. Purchase of License by Mail.

A person may purchase a license by mail by sending the following information to a division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, Social Security number, driver license number (if available), proof of furharvester education certification, and fees.

R657-11-9. Trap Registration Numbers.

(1) For the purposes of this section, "owner" means the person who has been issued a trap registration number, which is permanently marked or affixed to the trapping device.

(2) Each trapping device used to take furbearers must be permanently marked or tagged with the trap registered number of the owner.

(3) No more than one trap registration number may be on a trapping device.

(4) Trap registration numbers must be legible.

(5) Trap registration numbers are permanent and may be obtained by mail or in person from any division office.

(6) Applicants must include their full name, including middle initial, and complete home address.

(7) A registration fee of $10 must accompany the request. This fee is payable only once.

(8) Each individual is issued only one trap registration number.

(9) Any person who has obtained a trap registration number must notify the division within 30 days of any change in address or the theft of traps.

R657-11-10. Traps.

(1) All long spring, jump, or coil spring traps must have spacers on the jaws which leave an opening of at least 3/16 of an inch when the jaws are closed, except;

(a) rubber-padded jaw traps,

(b) traps with jaw spreads less than 4.25 inches, and

(c) traps that are not completely submerged under water when set.

(2) All cable devices (ie snares), except those set in water or with a loop size less than 3 inches in diameter, must be equipped with a breakaway lock device that will release when any force greater than 300 lbs. is applied to the loop. Breakaway cable devices must be fastened to an immovable object solidly secured to the ground. The use of drags is prohibited.

(3) On the middle section of the Provo River, between Jordanelle Dam and Deer Creek Reservoir, the Green River, between Flaming Gorge Dam and the Utah Colorado state line; and the Colorado River, between the Utah Colorado state line and Lake Powell; and the Escalante River, between Escalante and Lake Powell, trapping within 100 yards of either side of these rivers, including their tributaries from the confluences upstream 1/2 mile, is restricted to the following devices:

(a) Nonlethal-set foot hold traps with a jaw spread less than 5 1/8 inches, and nonlethal-set padded foot hold traps. Drowning sets with these traps are prohibited.

(b) Body-gripping, killing-type traps with body-gripping area less than 30 square inches (i.e., 110 Conibear).

(c) Nonlethal dry land cable devices equipped with a stop-lock device that prevents it from closing to less than a six-inch diameter.

(d) Size 330, body-gripping, killing-type traps (i.e. Conibear) modified by replacing the standard V-trigger assembly with one top side parallel trigger assembly, with the trigger placed within one inch of the side, or butted against the vertical turn in the Canadian bend.

(4) A person may not disturb or remove any trapping device, except:

(a) a person who possesses a valid, current furbearer license, the appropriate permits or tags, and who has been issued a trapper registration number, which is permanently marked or affixed to the trapping device; or

(b) peace officers in the performance of their duties; or

(c) as provided in Subsection (6).

(5) A person may not kill or remove wildlife caught in any trapping device, except:

(a) a person who possesses a valid, current furbearer license, the appropriate permits or tags, and who has been issued a trapper registration number, which is permanently marked or affixed to the trapping device; or

(b) as provided in Subsection (6).

(6) For the purposes of this section, "owner" means the person who has been issued a trap registration number, which is permanently marked or affixed to the trapping device.

(7) A person, other than the owner, may possess, disturb or remove a trapping device; or possess, kill or remove wildlife caught in a trapping device provided:

(a) the person possesses a valid, current furbearer license, the appropriate permits or tags; and

(b) has obtained written authorization from the owner of the trapping device stating the following:

(i) date written authorization was obtained;

(ii) name and address of the owner;

(iii) owner's trap registration number;

(iv) the name of the individual being given authorization;

(v) signature of owner.

(8) The owner of any trapping device, providing written authorization to another person under Subsection (6), shall be strictly liable for any violations of this guidebook resulting from the use of the trapping device by the authorized person.

(9) The owner of any trapping device, providing written authorization to another person under Subsection (6), must keep a record of all persons obtaining written authorization and furnish a copy of the record upon request from a conservation officer.

(10)(a) A person may not set any trap or trapping device on posted private property without the landowner's permission.

(b) Any trap or trapping device set on posted property without the owner's permission may be sprung by the landowner.

(c) Wildlife officers should be informed as soon as possible of any illegally set traps or trapping devices.

(11) Peace officers in the performance of their duties may seize all traps, trapping devices, and wildlife used or held in violation of this rule.

(12) A person may not possess any trapping device that is not permanently marked or tagged with that person's registered trap number while engaged in taking wildlife.

(13) All traps and trapping devices must be checked and animals removed at least once every 48 hours, except;

(a) killing traps striking dorso-ventrally,

(b) drowning sets, and

(c) lethal cable devices that are set to capture on the neck, that have a nonrelaxing lock, without a stop, and are anchored

to an immoveable object; which must be checked every 96 hours.

(14) A person may not transport or possess live protected wildlife. Any animal found in a trap or trapping device must be killed or released immediately by the trapper.

R657-11-11. Use of Bait.

(1) A person may not use any protected wildlife or their parts, except for white-bleached bones with no hide or flesh attached, as bait or scent; however, parts of legally taken furbearers and nonprotected wildlife may be used as bait.

(2) Traps or trapping devices may not be set within 30 feet of any exposed bait.

(3) A person using bait is responsible if it becomes exposed for any reason.

(4) White-bleached bones with no hide or flesh attached may be set within 30 feet of traps.

R657-11-12. Accidental Trapping.

(1)(a) Any bear, bobcat, cougar, marten, otter, wolverine, any furbearer trapped out of season, or other protected wildlife accidentally caught in a trap must be released unharmed.

(b) Written permission must be obtained from a division representative to remove the carcass of any of these species from a trap.

(c) The carcass remains the property of the state and must be turned over to the division.

(2) All incidents of accidental trapping of any of these animals must be reported to the division within 48 hours.

(3) Black-footed ferret, lynx and wolf are protected species under the Endangered Species Act. Accidental trapping or capture of these species must be reported to the division within 48 hours.

R657-11-13. Methods of Take and Shooting Hours.

(1) Furbearers, except bobcats and marten, may be taken by any means, excluding explosives, poisons, and crossbows, or as otherwise provided in Section 23-13-17.

(2) Bobcats may be taken only by shooting, trapping, or with the aid of dogs as provided in Section R657-11-26.

(3) Marten may be taken only with an elevated, covered set in which the maximum trap size shall not exceed 1 1/2 foothold or 160 Conibear.

(4) Taking furbearers by shooting or with the aid of dogs is restricted to one-half hour before sunrise to one-half hour after sunset, except as provided in Section 23-13-17.

(5) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

R657-11-14. Spotlighting.

(1) Except as provided in Subsection (3):

(a) a person may not use or cast the rays of any spotlight, headlight, or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland, or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

(3) The provisions of this section do not apply to the use of an artificial light when used by a trapper to illuminate his path and trap sites for the purpose of conducting the required trap checks, provided that:

(a) any artificial light must be carried by the trapper;

(b) a motor vehicle headlight or light attached to or powered by a motor vehicle may not be used; and

(c) while checking traps with the use of an artificial light, the trapper may not occupy or operate any motor vehicle.

(4) Spotlighting may be used to hunt coyote, red fox, striped skunk, or raccoon where allowed by a county ordinance enacted pursuant to Section 23-13-17.

(5) The ordinance shall provide that:

(a) any artificial light used to spotlight coyote, red fox, striped skunk, or raccoon must be carried by the hunter;

(b) a motor vehicle headlight or light attached to or powered by a motor vehicle may not be used to spotlight the animal; and

(c) while hunting with the use of an artificial light, the hunter may not occupy or operate any motor vehicle.

(6) For purposes of the county ordinance, "motor vehicle" shall have the meaning as defined in Section 41-6-1.

(7) The ordinance may specify:

(a) the time of day and seasons when spotlighting is permitted;

(b) areas closed or open to spotlighting within the unincorporated area of the county;

(c) safety zones within which spotlighting is prohibited;

(d) the weapons permitted; and

(e) penalties for violation of the ordinance.

(8)(a) A county may restrict the number of hunters engaging in spotlighting by requiring a permit to spotlight and issuing a limited number of permits.

(b) A fee may be charged for a spotlighting permit.

(9) A county may require hunters to notify the county sheriff of the time and place they will be engaged in spotlighting.

(10) The requirement that a county ordinance must be enacted before a person may use spotlighting to hunt coyote, red fox, striped skunk, or raccoon does not apply to:

(a) a person or his agent who is lawfully acting to protect his crops or domestic animals from predation by those animals; or

(b) an animal damage control agent acting in his official capacity under a memorandum of agreement with the division.

R657-11-15. Use of Dogs.

(1) Dogs may be used to take furbearers only from one-half hour before sunrise to one-half hour after sunset and only during the prescribed open seasons.

(2) The owner and handler of dogs used to take or pursue a furbearer must have a valid, current furbearer license in possession while engaged in taking furbearers.

(3) When dogs are used in the pursuit of furbearers, the licensed hunter intending to take the furbearer must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

R657-11-16. State Parks.

(1) Taking any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614-4.

(2) Hunting with a rifle, handgun, or muzzleloader on park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns and archery equipment is prohibited within one quarter mile of the above stated areas.

R657-11-17. Transporting Furbearers.

(1)(a) A person who has obtained the appropriate license and permit may transport green pelts of furbearers. Additional restrictions apply for taking bobcat and marten as provided in Section R657-11-6.

(b) A registered Utah fur dealer or that person's agent may transport or ship green pelts of furbearers within Utah.

(2) A furbearer license is not required to transport red fox or striped skunk.

R657-11-18. Exporting Furbearers from Utah.

(1) A person may not export or ship the green pelt of any furbearer from Utah without first obtaining a valid shipping permit from a division representative.

(2) A furbearer license is not required to export red fox or striped skunk from Utah.

R657-11-19. Sales.

(1) A person with a valid furbearer license may sell, offer for sale, barter, or exchange only those species that person is licensed to take, and which were legally taken.

(2) Any person who has obtained a valid fur dealer or fur dealer's agent certificate of registration may engage in, wholly or in part, the business of buying, selling, or trading green pelts or parts of furbearers within Utah.

(3) Fur dealers or their agents and taxidermists must keep records of all transactions dealing with green pelts of furbearers.

(4) Records must state the following:

(a) the transaction date; and

(b) the name, address, license number, and tag number of each seller.

(5) A receipt containing the information specified in Subsection (4) must be issued whenever the ownership of a pelt changes.

(6)(a) A person may possess furbearers and tanned hides legally acquired without possessing a license, provided proof of legal ownership or possession can be furnished.

(b) A furbearer license is not required to sell or possess red fox or striped skunk or their parts.

R657-11-20. Wasting Wildlife.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts as provided in Section 23-20-8.

(2) The skinned carcass of a furbearer may be left in the field and does not constitute waste of wildlife.

R657-11-21. Depredation by Badger, Weasel, and Spotted Skunk.

(1) Badger, weasel, and spotted skunk may be taken anytime without a license when creating a nuisance or causing damage, provided the animal or its parts are not sold or traded.

(2) Red fox and striped skunk may be taken any time without a license.

R657-11-22. Depredation by Bobcat.

(1) Depredating bobcats may be taken at any time by duly appointed animal damage control agents, supervised by the animal damage control program, while acting in the performance of their assigned duties and in accordance with procedures approved by the division.

(2) A livestock owner or his employee, on a regular payroll and not hired specifically to take furbearers, may take bobcats that are molesting livestock.

(3) Any bobcat taken by a livestock owner or his employee must be surrendered to the division within 72 hours.

R657-11-23. Depredation by Nuisance Beaver.

(1) Beaver doing damage or other nuisance behaviors may be taken or removed during open and closed seasons with either a valid furbearer license or a nuisance permit.

(2) A nuisance permit to remove beaver must first be obtained from a division office or conservation officer.

R657-11-24. Survey.

Each permittee who is contacted for a survey about their furbearer harvesting experience should participate in the survey regardless of success. Participation in the survey helps the division evaluate population trends, harvest success and collect other valuable information.

R657-11-25. Prohibited Species.

(1)(a) A person may not take black-footed ferret, fisher, lynx, otter, wolf, or wolverine.

(b) Accidental trapping or capture of any of these species must be reported to the division within 48 hours.

R657-11-26. Season Dates and Bag Limits.

Season dates, bag limits, and areas with special restrictions are published annually in the guidebook of the Wildlife Board for taking furbearers.

R657-11-27. Applications for Trapping on State Waterfowl Management Areas.

(1)(a) Applications for trapping on state waterfowl management areas are available at the division's internet address, and must be completed and submitted online by the date prescribed in the respective guidebook of the Wildlife Board.

(i) Applicants submitting more than one application per calendar year will be rejected.

(b) Applicants must meet all age requirements, proof of hunter education and furharvester requirements, and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(c) Applicants may select up to two WMA choices on the application.

(d) Hunt choices must be listed in order of preference.

(e) Up to three trappers may apply as a group for a single permit.

(f) A person who applies for or obtains a permit must notify the division of any change in mailing address, residency, telephone number, email address, and physical description.

(g) If the number of applications received for a WMA exceeds the number of permits available, a drawing will be held. This drawing will determine successful or unsuccessful applicants.

(i) each application will be assigned a computerized random drawing number.

(ii) a drawing order will be established by arranging applications beginning with the lowest random drawing number.

(iii) in sequence of the drawing order, the applicant's first selection will be considered. If a permit is not available for that selection, that applicant's second selection will be considered.

(iv) remaining permits will be offered to the alternate list beginning with the first eligible alternate.

(A) the alternate list is comprised of unsuccessful applicants.

(B) the alternate list is arranged in order beginning with the lowest drawing number.

(2) Permits, trapping dates and boundaries

(a) Open areas, trapping dates, allowable species, fees, and number of permits shall be determined by the waterfowl management area superintendent.

(b) Superintendents of waterfowl management areas offering more than one trapping permit will determine the trapping boundaries of each permit.

(c) Only the trapper or trappers listed on the permit may

trap on the waterfowl management area.

(d) All trappers must trap under the supervision of the waterfowl management area superintendent. Permits are not valid until signed by the superintendent in charge of the area to be trapped.

(e) Violation of this section is cause for forfeiture of all trapping privileges on management areas for that trapping year.

(f) Applicants may be notified of drawing results by the date prescribed in the respective guidebook of the Wildlife Board.

R657-11-28. Fees.

(1) Upon verified payment of trapping fees, permits will be mailed to successful applicants are granted trapping rights for management areas.

(2) If a successful applicant fails to make full payment within 14 days of the results posting date, an alternate trapper will be selected.

(3) Permits are not valid until signed by the superintendent in charge of the area to be trapped.

R657-11-29. Vehicle Travel.

Vehicle travel is restricted to developed roads. However, written permission for other travel may be obtained from the waterfowl management area superintendent.

R657-11-30. Trapping Hours.

On waterfowl management areas traps may be checked only between one-half hour before official sunrise to one-half hour after official sunset.

R657-11-31. Responsibility of Trappers.

(1) All trappers are directly responsible to the waterfowl management area superintendent.

(2) Violation of management or trapping rules, including failure to return a trapping permit within five days of cessation of trapping activities, or failure to properly trap an area, as determined and recommended by the superintendent, may be cause for cancellation of trapping privileges, existing and future, on all waterfowl management areas.

R657-11-32. Closed Area.

Davis County - Trapping is allowed only on the dates published in the guidebook of the Wildlife Board for taking furbearers, on those lands administered by the state lying along the eastern shore of the Great Salt Lake, commonly known as the Layton-Kaysville marshes. In addition, there may be a portion of the above stated area that is closed to trapping. This area will be posted and marked.

R657-11-33. Wildlife Management Areas.

(1) A person may not use motor vehicles on division-owned wildlife management areas closed to motor vehicle use without first obtaining written authorization from the appropriate division regional office.

(2) For purposes of coyote trapping, the division may, in its sole discretion, authorize limited motor vehicle access to its wildlife management areas closed to such use provided the motor vehicle access will not interfere with wildlife or wildlife habitat.

KEY: wildlife, furbearers, game laws, wildlife law

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Notice of Continuation August 16, 2010	**23-14-19**
	23-13-17

R657. Natural Resources, Wildlife Resources.
R657-52. Commercial Harvesting of Brine Shrimp and Brine Shrimp Eggs.
R657-52-1. Purpose and Authority.

(1) Under authority of Sections 23-14-3, 23-14-18, 23-14-19, Sections 23-15-7 through 23-15-9, and 23-19-1(2), this rule provides the procedures, standards, and requirements for commercially harvesting brine shrimp and brine shrimp eggs.

(2) The objective of this rule is to protect, manage, and conserve the brine shrimp resource based upon the best available data and information and adequately preserve the Great Salt Lake ecosystem while recognizing the economic value of allowing the harvest of brine shrimp and brine shrimp eggs and maintaining a sustainable brine shrimp population.

R657-52-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Alternate seiner" means the person in charge of and responsible for supervising a crew of helpers harvesting brine shrimp and brine shrimp eggs in the absence of the primary seiner.

(b) "Certificate of registration marker" means a floating or mounted marker conforming to the specifications set forth in Subsection R657-52-16(2) and (3), which must be displayed at a harvest location before harvest activity commences.

(c) "Harvest" means to gather or collect brine shrimp or brine shrimp eggs and reduce it to possession.

(d) "Harvest location" means the location where the gathering or harvesting of brine shrimp or brine shrimp eggs takes place. A harvest location is a 300 yard radius from the location of the Certificate of Registration marker as required under Subsection R657-52-16(8).

(e) "Helper" means a person aiding a certificate of registration holder in the harvesting, transporting, or selling of brine shrimp or brine shrimp eggs, including any employee, agent, family member, or volunteer.

(f) "Helper card" means a card authorizing a person to act as a helper.

(g) "Primary seiner" means the person in charge of and responsible for supervising a crew of helpers harvesting brine shrimp and brine shrimp eggs.

(h) "Purchase" means to buy, acquire, or obtain from sale, exchange, barter, or trade brine shrimp or brine shrimp eggs for pecuniary consideration or advantage.

(i) "Wildlife registration office" means the division office in Salt Lake responsible for processing applications and issuing certificates of registration.

R657-52-3. Certificate of Registration Required.

(1) A person may not harvest, possess, or transport brine shrimp or brine shrimp eggs without first obtaining a certificate of registration and a helper card for each individual assisting that person.

(2)(a) The division may issue a certificate of registration authorizing a person to harvest brine shrimp and brine shrimp eggs.

(b) A separate certificate of registration and the corresponding certificate of registration marker is required for each harvest location.

(c) The original copy of the certificate of registration must be present at the harvest location while harvesting brine shrimp or brine shrimp eggs.

(3) A certificate of registration under this rule is not required:

(a) to harvest 200 pounds or less of brine shrimp or brine shrimp eggs, during a single calendar year, for culturing ornamental fish, provided the brine shrimp eggs are not sold, bartered, or traded;

(i) a certificate of registration is required, however, under Rule R657-3 for the activities described in Subsection (a);

(b) for the retail sale of brine shrimp or brine shrimp eggs imported into Utah, provided the product is clearly labeled as to its out-of-state origin;

(c) to process lawfully acquired brine shrimp or brine shrimp eggs;

(d) to sell brine shrimp or brine shrimp eggs, provided the brine shrimp or brine shrimp eggs were taken in accordance with the provisions of this rule by a person who has obtained a certificate of registration or as provided in rule R657-3; or

(e) to collect, transport or possess brine shrimp and brine shrimp eggs for personal use, provided:

(i) the brine shrimp and brine shrimp eggs are collected, transported and possessed together with water in a container no larger than one gallon;

(ii) no more than a one gallon container of brine shrimp and brine shrimp eggs, including water, is collected during any consecutive seven day period; and

(iii) the brine shrimp or brine shrimp eggs are not released live into the Great Salt Lake, Sevier River or any of their tributary waters.

(4) Certificates of registration are not transferable, except as provided in Section R657-52-7.

(5) Any certificate of registration issued to a business or any other commercial organization shall be void upon the termination of the business or organization or upon bankruptcy.

(6) Certificates of registration that may become available for issuance through revocation, expiration, nonrenewal, or surrender may either be retired by the division or reallocated to eligible persons and entities through random drawings conducted at the Division of Wildlife Resources, Salt Lake City office.

(7) All persons or entities applying for a certificate of registration to harvest brine shrimp and brine shrimp eggs made available for issuance through Subsection (6) shall satisfy the following requirements:

(a) submit a certificate of registration application to the wildlife registration office consistent with the requirements set forth in R657-52-5; and

(b) submit a cashiers check to the division in the established fee amount for each certificate of registration applied for.

(8)(a) The issuance of a certificate of registration automatically incorporates within its terms the conditions and requirements of this rule specifically governing the activity for which the certificate of registration is issued.

(b) Any person accepting a certificate of registration under this rule acknowledges the necessity for close regulation and monitoring by the division.

(9) Any certificate of registration issued or renewed by the division under this rule to harvest brine shrimp or brine shrimp eggs is a privilege and not a right. The certificate of registration authorizes the holder to harvest brine shrimp or brine shrimp eggs subject to all present and future conditions, restrictions, and regulations imposed on such activities by the division, the Wildlife Board, the state of Utah, or the United States.

(10) A certificate of registration to harvest brine shrimp or brine shrimp eggs does not guarantee or otherwise legally entitle the holder to any of the following:

(a) a minimum harvest quota in any given season or seasons;

(b) a quota or percentage of the harvestable surplus as determined by the division;

(c) a particular harvesting or processing method;

(d) a particular harvest season duration, commencement date, or termination date;

(e) access to any particular area or site on the Great Salt Lake or on other waters in the state, regardless of historical

authorization or use;

(f) marina access on the Great Salt Lake or elsewhere in the state, regardless of historical authorization or use;

(g) an increase, stabilization, or reduction in the number of certificates of registration issued by the division to harvest brine shrimp and brine shrimp eggs;

(h) an exclusive opportunity to harvest;

(i) a particular quantity or quality of brine shrimp or brine shrimp eggs;

(j) a particular water condition or salinity level conducive to brine shrimp production, brine shrimp egg production, or harvest success;

(k) any particular level of protection for brine shrimp or brine shrimp eggs from disease, pesticides, or predators; or

(l) any other right or management philosophy beneficial to harvesting or production of brine shrimp and brine shrimp eggs.

(11) The procedures and processes outlined in this rule regulating the harvest of brine shrimp and brine shrimp eggs are all subject to change as the division and the Wildlife Board gather greater information and data on the impact current harvest regulations have on the sustainability of brine shrimp populations, the Great Salt Lake ecosystem, and the economic viability of the industry.

R657-52-4. Certificate of Registration Availability.

(1) The Wildlife Board, after considering the best available biological data and other information received from the division and the public, has determined that:

(a) a limitation on the number of certificates of registration issued by the division to harvest brine shrimp and brine shrimp eggs is currently necessary to protect the brine shrimp resource and the Great Salt Lake ecosystem;

(b) additional research and scientific data is necessary to adequately understand the dynamics of the brine shrimp populations, the Great Salt Lake ecosystem, and the impact harvesting has on the sustainability of the resource;

(c) given the current number of certificates of registration, the need for additional scientific data, and the increasing efficiency in the industry's ability to harvest large quantities of brine shrimp and brine shrimp eggs in short periods, the issuance of additional certificates at this point in time may compromise the division's ability to effectively regulate the harvest to avoid jeopardizing resource sustainability; and

(d) given these factors and the harvest restrictions adopted in this rule, a total of 79 certificates of registration may be issued.

R657-52-5. Application for Certificate of Registration.

(1) Applications for certificates of registration to harvest brine shrimp and brine shrimp eggs are available at division offices and must be submitted to the division between May 1 through May 31. Applications may be submitted by mail if postmarked no later than midnight on the last day of the application period.

(2)(a) If an application for a certificate of registration is made in the name of a commercial organization, the applicant must specify the person responsible for that entity.

(b) All commercial organization applicants shall provide with the application a written statement designating the responsible person as its legal agent in all matters before the division relating to brine shrimp and brine shrimp egg harvesting.

(3)(a) Completed applications must be submitted to the wildlife registration office.

(b) The division may return any application that is incomplete or completed incorrectly.

(4) The application review process may require up to 45 days.

(5) The division may deny issuing a certificate of registration to any applicant for any of the following reasons:

(a) the applicant has previously been issued a certificate of registration and has failed to submit any report required by this rule, the division, or the Wildlife Board;

(b) the applicant has been found guilty, pleaded guilty or pleaded no contest in an administrative proceeding to violating any rule, statute, proclamation, or Wildlife Board order relating to the harvest, possession, or sale of protected aquatic wildlife; or

(c) the applicant has been found guilty, pleaded guilty or pleaded no contest in a criminal proceeding to violating any rule, statute, proclamation, or Wildlife Board order relating to the harvest, possession, or sale of protected aquatic wildlife.

(6) The division may limit the number of certificates of registration issued or deny any application in the interest of wildlife, wildlife habitat, serving the public, or public safety.

(7) If an application is approved, the division shall issue the applicant a certificate of registration that specifies, among other things:

(a) the name, address and phone number of the applicant;

(b) the name, address and phone number of the responsible person;

(c) the water and locations where brine shrimp and brine shrimp eggs may be harvested;

(d) the certificate of registration's expiration date; and

(e) any restriction imposed on the applicant in addition to the provisions of this rule.

(8) Certificates of registration for harvesting brine shrimp and brine shrimp eggs are valid only during the harvest season as provided in Sections R657-52-12 and R657-52-13.

R657-52-6. Certificate of Registration Renewal.

(1) Each certificate of registration to harvest brine shrimp and brine shrimp eggs issued under this rule may be renewed by the division on an annual basis consistent with the provisions in this section.

(2) Persons or business entities issued certificates of registration by the division in the harvest year immediately preceding the harvest year for which renewal is sought will have a preference for the same number of certificates of registration, provided the applicant satisfies the renewal criteria for each certificate of registration.

(3) The annual expiration date of a certificate of registration shall be shown on the certificate of registration. A certificate of registration that is not renewed prior to the expiration date shown on the certificate of registration automatically expires.

(a) A certificate of registration automatically expires prior to the expiration date shown on the certificate of registration upon the dissolution of a holder that is a partnership, corporation, or other business entity.

(b) Upon the death of a certificate of registration holder that is a natural person, the estate may attempt to sell the harvest operation and petition the division, under Section R657-52-7, to transfer the certificate of registration to the respective buyer.

(c)(i) Failure to annually renew a certificate of registration by satisfying all the renewal criteria outlined in this rule prior to the expiration date shown on the certificate of registration shall automatically deprive the prospective holder of a renewal preference in succeeding years.

(ii) Preference forfeiture results whether unsuccessful renewal is the consequence of automatic expiration, applicant neglect, or division denial.

(iii) Failure to renew in years where the harvest of brine shrimp or brine shrimp eggs is closed for regulatory or management purposes will result in preference forfeiture.

(d) Expiration of a certificate of registration is not an adjudicative proceeding under Title 63G, Chapter 4 of the Utah Administrative Procedures Act.

(4) Renewal applications for certificates of registration to harvest brine shrimp and brine shrimp eggs are available at the division's wildlife registration office in Salt Lake City.

(a) Completed renewal applications shall be submitted to the wildlife registration office between May 1 and May 31 of each year. Applications are considered "submitted" for purposes of this rule when hand delivered to the wildlife registration office on or before the application deadline, or when mailed to the wildlife registration office and postmarked no later than midnight on the last day of the application period.

(b) Where a certificate of registration renewal application is submitted in the name of a commercial organization, the applicant must specify the person responsible for that entity.

(c) The commercial organization applicant must provide, on or with the renewal application, a written statement designating the responsible person as its legal agent in all matters before the division relating to brine shrimp and brine shrimp egg harvesting.

(d) The division may return any application that is incomplete or completed incorrectly.

(e) Applications for renewal that are filed within the prescribed time period set in this rule but returned as incomplete or completed incorrectly may be granted where the errors are corrected and the application resubmitted to the wildlife registration office within 30 days from the date the initial application was rejected.

(f) The application review process may require up to 45 days.

(5) The criteria for certificate of registration renewal are as follows:

(a) the applicant was issued a certificate of registration to harvest brine shrimp and brine shrimp eggs in the immediate harvest season preceding the application for renewal;

(b) the applicant has accurately and completely filled out the division's renewal application and submitted it to the division within the time period prescribed in this rule;

(c) the applicant has submitted with the renewal application a cashiers check for the established fee amount for each certificate of registration; and

(d) the applicant satisfies all other requirements prerequisite to receiving an initial certificate of registration to harvest brine shrimp or brine shrimp eggs as found in R657-52-5.

(6) The division may refuse to renew a certificate of registration for any of the following reasons:

(a) the applicant has failed to submit any report required by the division in writing, or any report required by this rule or the Wildlife Board;

(b) the applicant has been found guilty, pleaded guilty or pleaded no contest in an administrative proceeding to violating any rule, statute, proclamation, or Wildlife Board Order relating to the harvest, possession, or sale of protected aquatic wildlife;

(c) the applicant has been found guilty, pleaded guilty or pleaded no contest in a criminal proceeding to violating any rule, statute, proclamation, or Wildlife Board Order relating to the harvest, possession, or sale of protected aquatic wildlife; or

(d) where the division determines that renewal may significantly damage or is not in the interest of wildlife, wildlife habitat, serving the public, or public safety.

(7) If an application for renewal is approved, the Division shall issue the applicant a new certificate of registration that may specify:

(a) the species and amounts of protected aquatic wildlife that may be harvested or sold;

(b) the water and locations where protected aquatic wildlife may be harvested;

(c) the equipment that may be used;

(d) the hours during which protected aquatic wildlife may be harvested; and

(e) any restriction imposed on the applicant in addition to the provisions of this rule.

(8) Any applicant who has been refused renewal of a certificate of registration may submit a request for agency action to the Wildlife Board, in care of the Division of Wildlife Resources, within 30 days following notification of the refusal to renew. The format and content of the request for agency action and any subsequent proceedings initiated thereunder shall comply with Rule R657-2.

(9) Certificates of registration for harvesting brine shrimp and brine shrimp eggs are valid only during the harvest season as provided in Subsections R657-52-12 and R657-52-13.

R657-52-7. Certificate of Registration Transfers.

(1) Pursuant to Section 23-19-1(2), a person may not lend, transfer, sell, give or assign a certificate of registration to harvest brine shrimp and brine shrimp eggs belonging to the person or the rights granted thereby, except as authorized hereafter.

(2) "Business entity" for purposes of this section means any person, proprietorship, partnership, corporation, or other commercial organization that has been issued a certificate of registration by the division to harvest brine shrimp and brine shrimp eggs.

(3)(a) The division may authorize, consistent with the requirements of this section, the transfer of a valid certificate of registration to harvest brine shrimp and brine shrimp eggs from the lawful holder to an other person or entity in the following instances:

(i) where any transaction or occurrence will cause the name of the business entity recorded as the certificate of registration holder to change from that specifically identified on the certificate of registration;

(ii) where any transaction or occurrence will cause the business entity recorded as the certificate of registration holder to permanently reorganize, dissolve, lapse, or otherwise cease to exist as a legal business entity under the laws of the State of Utah or the jurisdiction where the business entity was organized; or

(iii) where any transaction or occurrence effectively transfers a certificate of registration to harvest brine shrimp and brine shrimp eggs in violation of Section 23-19-1(2).

(b) written approval from the division for any certificate of registration transfer permitted under this rule shall be obtained prior to any transfer of the certificate of registration or the rights granted thereunder.

(c) Transferring or selling an ownership interest in a business entity holding a certificate of registration to harvest brine shrimp and brine shrimp eggs does not require division approval provided the transfer of ownership does not cause the business entity to temporarily or permanently change its name, reorganize, dissolve, lapse, or otherwise cease to exist as a legally recognized business entity under the laws of the State of Utah.

(4) Obtaining division approval to transfer a certificate of registration to harvest brine shrimp and brine shrimp eggs shall be initiated by application to the division, as provided in Subsections (a) through (e).

(a) Complete the application prescribed by the division and submit it to the division's wildlife registration office.

(b) Applications may be submitted any time during the year.

(c) Annual applications and fees for certificates of registration renewal shall be submitted between May 1 and May 31, regardless whether a transfer application is contemplated or pending.

(d) If an application to transfer a certificate of registration identifies a business entity as the transferee, the transferee must designate a person responsible for that entity.

(i) The transferee shall provide on or with the application a written statement designating the responsible person as its legal agent in all matters before the division relating to brine shrimp and brine shrimp egg harvesting.

(e) The division may return any application that is incomplete or completed incorrectly.

(5) The division shall respond to the application to transfer a certificate of registration within 20 days of receipt in one of the following forms:

(a) a letter approving the application;

(b) a letter denying the application and identifying the reasons for denial;

(c) a letter identifying deficiencies in the application and requesting additional information from the applicant; or

(d) a letter notifying the applicant that the division requires additional time to process and consider the application with an explanation of the extenuating circumstances necessitating the extension.

(6) The division shall deny an application to transfer a certificate of registration where any of the following exists:

(a) the proposed transferee fails to satisfy all the requirements necessary to obtain an original certificate of registration; or

(b) the applicant transferor fails to demonstrate that the certificate of registration will be transferred in connection with the sale or transfer of the entire brine shrimp harvest operation or the harvesting equipment ordinarily required to effectively utilize a certificate of registration.

(i) Business entities holding no harvesting equipment may be approved for a certificate of registration transfer only where the entire business entity and brine shrimp harvest operation is transferred along with all certificates of registration held by the business entity.

(ii) Business entities changing the official name maintained on division records as the certificate of registration holder shall simply establish that the entity's ownership and business structure will not materially differ under the new business name.

(7) The division may deny authorizing a certificate of registration transfer to any proposed transferee for any of the following reasons:

(a) the applicant transferee has previously been issued a certificate of registration and has failed to submit any report required by this rule, the division, or the Wildlife Board;

(b) the applicant transferee has been found guilty, pleaded guilty or pleaded no contest in an administrative proceeding to violating any rule, statute, proclamation, or Wildlife Board order relating to the harvest, possession, or sale of protected aquatic wildlife; or

(c) the applicant transferee has been found guilty, pleaded guilty or pleaded no contest in a criminal proceeding to violating any rule, statute, proclamation, or Wildlife Board order relating to the harvest, possession, or sale of protected aquatic wildlife.

(8)(a) If a transfer application is approved, the division shall accept the surrender of the transferor's certificate of registration and reissue it to the proposed transferee within 10 business days of the surrender consistent with the requirements prescribed in this rule.

(b) The proposed transferee may not begin harvesting brine shrimp or brine shrimp eggs until it has received a certificate of registration from the division issued in its name, and only then in conformance with all applicable laws, rules, and orders of the Wildlife Board and division.

(c) In receiving a certificate of registration transferred under this section, the transferee assumes no additional privileges or opportunities with respect to harvesting brine shrimp and brine shrimp eggs than those formerly possessed by the transferor.

R657-52-8. Primary and Alternate Seiners.

(1)(a) A primary seiner or an alternate seiner must be present at each harvest location and directly supervise the harvest activity.

(b) A primary or alternate seiner does not have to be present while transporting brine shrimp or brine shrimp eggs from the harvest location.

(c) A primary seiner and an alternate seiner card are issued with the certificate of registration and are transferable within the entity holding the certificate of registration.

(d) The primary or alternate seiner must have a primary or alternate seiner card in possession at the harvest location.

R657-52-9. Use of Helpers.

(1)(a) Except as hereafter provided in Subsection (2), any person aiding the certificate of registration holder, a primary seiner, or alternate seiner in harvesting brine shrimp and brine shrimp eggs shall be in possession of a helper card.

(b) Three individual helper cards are issued with the certificate of registration.

(c) A helper card shall be deemed to be in possession if it is on the person or on the boat or at the harvest location from which the person is working.

(2)(a) A helper card is not required of any person engaged only in the retail sale or transportation of brine shrimp or brine shrimp eggs.

(b) A person directing harvest operations from a plane for a certificate of registration holder does not have to have a helper card.

(c) The driver of a truck transporting brine shrimp or brine shrimp eggs from the lake to a storage or processing plant does not have to have a helper card. Any crew member loading brine shrimp and brine shrimp eggs into a truck does not need to have a helper card in possession.

(3) Helper cards are issued in the name of the certificate of registration holder and are transferable among individuals assisting the certificate of registration holder.

(4)(a) A helper may assist in the harvest of brine shrimp and brine shrimp eggs only while working under the direct supervision of a primary or alternate seiner.

(b) For purposes of this rule, "direct supervision" means to be physically present, either on a boat with the helper or within close proximity so as to be able to provide direct instructions to the helper.

(5) Twelve additional helper cards for each certificate of registration may be obtained from the wildlife registration office at any time during the year.

R657-52-10. Records - Report of Activities.

(1) Any person or business entity issued a certificate of registration to harvest brine shrimp and brine shrimp eggs shall keep accurate records of the weight harvested and to whom the product is sold.

(2) The records required under Subsection (1) shall be retained for at least five years and must be available for inspection upon division request.

(3) Certificate of registration holders shall submit the following reports to the Great Salt Lake Ecosystem Project office for each certificate of registration:

(a) A weekly harvest report documenting the total amount of brine shrimp and brine shrimp eggs, by raw weight, harvested each day of the reporting week. The reports must be prepared by a person working for the reporting company, and the reports must be received or postmarked by Monday of each week.

(b) A daily harvest report documenting the total amount of brine shrimp and brine shrimp eggs, by raw weight, harvested each day. The report shall be filed no later than 12 hours after the end of the previous calendar day. The report shall be filed utilizing an electronic communication medium approved by the

Division after consultation with the certificate of registration holders. The report must be prepared or given by a person working for the reporting company.

(i) In the event the approved electronic communication medium malfunctions or is inoperable, daily harvest reports shall be filed no later than six hours after being notified that the system is operational.

(c) A weekly report of all landing receipts prepared pursuant to Section R657-52-14 during the reporting week. The report must be prepared or given by a person working for the reporting company, and must be received by the division or postmarked by Monday of each week.

(4) Report forms may be obtained from the division.

R657-52-11. Species of Protected Aquatic Wildlife That May Be Harvested.

(1) A certificate of registration issued under this rule may authorize the holder to commercially harvest only brine shrimp and brine shrimp eggs.

(2) Any species of protected aquatic wildlife caught other than brine shrimp and brine shrimp eggs must be immediately returned alive and unharmed to the water from which it was harvested.

R657-52-12. Harvest Season and Hours.

(1)(a) Except as provided in Subsections R657-52-13(4) and (5), a certificate of registration is valid for harvesting brine shrimp and brine shrimp eggs only during the harvest season beginning October 1 and ending January 31. If October 1 falls on a Sunday, the harvest season shall begin on the following Monday.

(b) In the interest of the wildlife resources of the Great Salt Lake, the harvest season may be delayed up to 10 days provided the harvesting companies are notified seven days in advance of the delay.

(c) After the season has opened, harvesting may be suspended two times during the season, for up to seven days each time, in the interest of the wildlife resources of the Great Salt Lake, provided the harvesting companies are notified at least 24 hours in advance of the suspension date.

(2) Brine shrimp and brine shrimp eggs may be harvested 24 hours a day during any open harvest season by those possessing a valid certificate of registration for such activities.

(3) When the harvest season is suspended or closed, all harvest activity shall cease at official sunset on the designated date of closure.

R657-52-13. Areas of Harvest and Special Season Dates.

(1) The division may authorize the harvest of brine shrimp and brine shrimp eggs from:

(a) the Great Salt Lake and surrounding areas, including ponds operated in a normal manner for mineral extraction; and

(b) the Sevier River.

(2) The area east of the north-south line from the tip of Promontory Point south along the east shore of Fremont and Antelope Islands and along the dike extending from the south end of Antelope Island to the south shore of the Great Salt Lake is closed to the commercial harvesting of brine shrimp and brine shrimp eggs.

(3) Except as provided in Subsections (4) and (5), brine shrimp and brine shrimp eggs may be harvested only during the harvest season as described in Section R657-52-12.

(4)(a) Any person who has a valid certificate of registration may cumulatively collect up to 25 pounds of brine shrimp eggs between March 1 and the official opening date of the brine shrimp harvest season, as declared by rule or the division, for purposes of conducting research.

(b) For the purpose of conducting research, a person may not collect more than one pound of brine shrimp eggs during a single day regardless of the number of certificates of registration issued to that person.

(c) Brine shrimp and brine shrimp eggs collected for research under the authority of this section may not be sold, traded, or bartered.

(5)(a) Any person possessing a valid certificate of registration to harvest brine shrimp and brine shrimp eggs may do so from mineral extraction ponds located along the shores of the Great Salt Lake any time during the year.

(b) A pond may not be built or manipulated for the purpose of culturing or harvesting brine shrimp or brine shrimp eggs.

(c) Brine shrimp or brine shrimp eggs may not be introduced into the Great Salt Lake or any pond. Brine shrimp and brine shrimp eggs must enter into the pond during normal mineral extraction processes.

(6) All brine shrimp and brine shrimp eggs which have been harvested and placed in containers shall be transported from the lake or lakeshore not later than 21 days after the close of the harvest season. No brine shrimp or brine shrimp eggs may be removed from the surface of the beach or water and placed in a container after the season is closed. Containers filled prior to the close of the harvest season with brine shrimp or brine shrimp eggs may be transported from the lake or lakeshore after the close of the harvest season, provided transportation occurs no later than 21 days following the closure.

R657-52-14. Transportation.

(1) When brine shrimp and brine shrimp eggs are transported away from the lakeshore to a processing plant, a landing receipt form must be prepared and be in possession of the transport driver before leaving the loading site.

(a) The landing receipt shall include:

(i) the harvesters' certificate of registration numbers;

(ii) the certificate of registration holder's name;

(iii) the harvest dates;

(iv) the harvest areas;

(v) the landing dates;

(vi) the container numbers and weights as determined by certified scales for lake harvested brine shrimp and brine shrimp eggs;

(vii) the container numbers and weight estimates for shore harvested brine shrimp and brine shrimp eggs; and

(viii) the names of the individuals who landed and weighed the product.

(2) The driver of a truck transporting brine shrimp product away from the lakeshore is not required to possess a helper card while engaged in that activity.

(3) Any person loading brine shrimp product into a truck to transport from the lakeshore shall possess a helper card.

R657-52-15. Identification of Equipment.

(1)(a) Any boat used for harvesting operations must be identifiable from the air, water and land with either the company name, company initials or certificate of registration number. A camp or base of operations located on or near the shoreline must be marked so it is visible from the air and land with either the company name, company initials, or certificate of registration number. Boat markings denoting the company name, company initials or certificate of registration number, must be visible from a distance of 500 yards when on the lake.

(b) The letters or numbers shall be visible at all times, written clearly and shall meet the following requirements:

(i) letters or numbers on the top of a boat shall be at least 36 inches in height;

(ii) letters or numbers used on the sides of a boat shall be at least 24 inches in height, except that boats with inflatable hulls may use letters and numbers that are 12 inches in height;

(iii) letters or numbers used on a camp or base of operations sign shall be at least 24 inches in height; and

(iv) all letters and numbers used for identification purposes shall be of reflective white tape with a solid black background.

(c) Identification may be done with a magnetic sign placed on top of and the sides of the vehicle or boat.

(d) Each continuous segment of boom that may be coupled together shall be marked to denote the company's name, initials, or certificate of registration number. The markings shall consist of letters or numbers at least three inches in height.

(e) All containers filled or partially filled with brine shrimp or brine shrimp eggs and left unattended on the shore or in a vehicle parked on the shore shall be individually marked with the harvest dates and either the company name, company initials or certificate of registration number under which the product was harvested. Each container shall be marked as follows:

(i) the company name, company initials or the certificate of registration number shall be permanently and legibly marked at a visible location on the exterior surface of the container; and

(A) the harvest dates marked on a durable, waterproof tag securely and visibly attached to the exterior surface of the container; or

(ii) the harvest dates and the company name, company initials or the certificate of registration number shall be permanently and legibly marked on a durable, waterproof tag securely and visibly attached to the exterior surface of the container.

(f) "Shore" for purposes of this section, shall include all lands within one mile of the body of water where the product was harvested. "Shore" does not include permanent structures affixed to the land and operated for purposes of storing or processing brine shrimp and brine shrimp eggs, provided the name of the structure's current owner or tenant is visibly marked on the exterior of the structure.

R657-52-16. Certificate of Registration Markers.

(1)(a) One certificate of registration marker corresponding to each certificate of registration shall be displayed at each harvest location as follows:

(i) on the boat with the certificate of registration on board;

(ii) on the harvest boat or attached to the boom;

(iii) in the water at the harvest location; or

(iv) on the shore while harvesting brine shrimp or brine shrimp eggs from shore.

(b) No more than one certificate of registration marker shall be displayed at each harvest location without permission from the company that first began harvesting at that location.

(c) An original certificate of registration shall be present at the harvest location where the corresponding certificate of registration marker is displayed.

(2) A certificate of registration marker shall consist of a piece of equipment, furnished by the harvesters, constructed in accordance with the following specifications:

(a) A six foot long piece of tubing with a weight at one end.

(b) This piece of tubing shall have a fluorescent orange ball that is a minimum of eighteen inches in diameter, mounted in the approximate center of the length of tubing. The fluorescent orange ball shall have the certificate of registration number, corresponding to the certificate of registration decal attached to the marker pursuant Subsection R657-52-16(2)(c), marked in two places with indelible black paint. The painted certificate of registration numbers shall be a minimum of twelve inches in height.

(c) Mounted above the orange ball towards the un-weighted end of the tubing shall be a decal issued by the division which denotes the certificate of registration in use and corresponding to the certificate of registration marker device.

(d) Mounted on the tubing between the orange ball and the un-weighted end of the tubing, shall be an aluminum radar reflector that is a minimum of fifteen inches square.

(e) Mounted above the radar reflector shall be a three-inch wide band of silver reflective tape.

(f) Mounted on the un-weighted end of this tubing shall be an amber light that at night is visible for up to one-half mile and flashes 30 times per minute, minimum.

(3) The certificate of registration marker must be displayed in a manner that is:

(a) visible in all directions at a distance of 500 yards; or

(b) displayed above the superstructure of any vessel that a certificate of registration is being used from.

(4) The amber light on a displayed marker device must be operating at all times between sunset and sunrise.

(5) A brine shrimp harvester shall not display an amber light at night, or an orange ball or other device which simulates the certificate of registration marker device, without having the corresponding, original certificate of registration at the harvest location.

(6) Brine shrimp or brine shrimp eggs may not be harvested in any manner, nor may a harvest location be claimed unless and until an original copy of the certificate of registration is at the harvest location and the corresponding certificate of registration marker is properly displayed as required in this section.

(7) The certificate of registration and corresponding certificate of registration marker shall not be transported to the harvest location by aircraft.

(a) "Aircraft" for purposes of this section, means any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.

(8) A person may not harvest any brine shrimp or brine shrimp eggs within a 300 yard radius of a certificate of registration marker displayed at a harvest location without permission from the company that first began harvesting in that location.

R657-52-17. Use of Booms.

(1)(a) A primary seiner, alternate seiner, or helper must remain within one mile of any boom attached to the shore, whether open or closed, 24 hours a day so that an officer may easily locate the person tending the boom.

(b) A boom may be left unattended in the open water during the legal harvest season if:

(i) the boom is properly identified as provided in Subsection R657-52-15(1)(d);

(ii) the boom is closed;

(iii) the boom is marked with a certificate of registration marker as described in Subsections R657-52-16(2) and (3); and

(iv) the certificate of registration marker is lighted as described in Subsections R657-52-16(2)(f)and (4).

(2) On a causeway or dike where camping is not allowed, a primary seiner, alternate seiner, or helper must be stationed at the closest possible camping site, not more than 10 miles away, and that location must be clearly identified on a tag securely attached to the shore end of the boom.

(3)(a) A person may not harvest any brine shrimp or brine shrimp eggs within 300 yards of any certificate of registration marker displayed at a harvest location as provided in Subsection R657-52-16(8) without permission from the company that first began harvesting in that location.

(b) Notwithstanding Subsections (1) and (2), a primary seiner, alternate seiner, or helper must be located within 300 yards of the certificate of registration marker deployed as provided in Section R657-52-16 to receive the 300 yard encroachment protection.

(c) The 300 yard encroachment protection radius is enforceable when the COR marker is properly deployed,

regardless of the presence or level of actual harvest activity.

(4) Brine shrimp and brine shrimp eggs may be removed from another person's boom only with written permission from the person who owns the boom.

(5) A person may not deploy more than one continuous length of boom for each certificate of registration.

R657-52-18. Use of Equipment.

(1) A person may not intentionally drive a boat through or create a wake through the 300 yard encroachment protection area of a streak of brine shrimp eggs that another person is harvesting.

(2)(a) A person or business entity possessing a valid certificate of registration may test the equipment to be used in harvesting brine shrimp from March 1 through the official opening date of the brine shrimp harvest season, as declared by rule or the division.

(b) At least 48 hours before testing the equipment, the person must notify the division's Northern Regional Office.

(c) Any brine shrimp or brine shrimp eggs collected while testing the equipment must be immediately returned to the water, if collected from the water, or returned to the beach, if collected from the beach, within 1/4 mile of the location in which they were collected.

(3) Brine shrimp and brine shrimp eggs may not be taken to a storage facility, test site located greater than 1/4 mile from the location in which they were collected, or to shore, except as provided in Section R657-52-13(4).

R657-52-19. Violations.

(1) The penalty for any violation of this rule is a class C misdemeanor as provided in Section 23-13-11(2).

(2) Any violation of, or failure to comply with the provisions of this rule, any requirement contained in a certificate of registration issued pursuant to this rule, any Wildlife Board Order, or any statute related to the harvesting, possession or transfer of brine shrimp or brine shrimp eggs may be grounds for revocation, suspension or denial of future certificates of registration as determined by a division hearing officer.

KEY: brine shrimp, commercialization
November 7, 2013 **23-14-3**
Notice of Continuation October 1, 2012 **23-14-18**
23-14-19
23-15-7
23-15-8
23-15-9
23-19-1(2)

R657. Natural Resources, Wildlife Resources.
R657-60. Aquatic Invasive Species Interdiction.
R657-60-1. Purpose and Authority.

(1) The purpose of this rule is to define procedures and regulations designed to prevent and control the spread of aquatic invasive species within the State of Utah.

(2) This rule is promulgated pursuant to authority granted to the Wildlife Board in Sections 23-27-401, 23-14-18, and 23-14-19.

R657-60-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and 23-27-101.

(2) In addition:

(a) "Conveyance" means a terrestrial or aquatic vehicle, including a vessel, or a vehicle part that may carry or contain a Dreissena mussel.

(b) "Decontaminate" means to:

(i) Self-decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) removing all plants, fish, mussels and mud from the equipment or conveyance;

(B) draining all water from the equipment or conveyance, including water held in ballast tanks, bilges, livewells, and motors; and

(C) drying the equipment or conveyance for no less than 7 days in June, July and August;18 days in September, October, November, March, April and May; 30 days in December, January and February; or expose the equipment or conveyance to sub-freezing temperatures for 72 consecutive hours; or

(ii) Professionally decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) Using a professional decontamination service approved by the division to apply scalding water (140 degrees Fahrenheit) to completely wash the equipment or conveyance and flush any areas where water is held, including ballast tanks, bilges, livewells, and motors.

(c) "Detects or suspects" means visually identifying:

(i) a veliger Dreissena mussel through microscopy and confirming the identity of the organism as a Dreissena mussel through two independent polymerase chain reaction (PCR) tests; or

(ii) a juvenile or adult Dreissena mussel.

(d) "Dreissena mussel" means a mussel of the genus Dreissena at any life stage, including a zebra mussel, a quagga mussel and a Conrad's false mussel.

(e) "Controlling entity" means the owner, operator, or manager of a water body, facility, or a water supply system.

(f) "Equipment" means an article, tool, implement, or device capable of carrying or containing water or Dreissena mussel.

(g) "Facility" means a structure that is located within or adjacent to a water body.

(h) "Infested water" includes all the following:

(i) all coastal and inland waters in:

(A) Colorado;

(B) California;

(C) Nevada;

(D) Arizona;

(E) all states east of Montana, Wyoming, Colorado, and New Mexico;

(F) the provinces of Ontario and Quebec Canada; and

(G) Mexico;

(ii) Sand Hollow Reservoir in Washington County, Utah;

(iii) Lake Powell and that portion of the:

(A) Colorado River between Lake Powell and Spanish Bottom in Canyonlands National Park;

(B) Escalante River between Lake Powell and the Coyote Creek confluence;

(C) Dirty Devil River between Lake Powell and the Highway 95 bridge; and

(D) San Juan River between Lake Powell and Clay Hills Crossing.

(iv) other waters established by the Wildlife Board and published on the DWR website.

(i) "Juvenile or adult Dreissena mussel" means a macroscopic Dreissena mussel that is not a veliger.

(j) "Veliger" means a microscopic, planktonic larva of Dreissena mussel.

(k) "Vessel" means every type of watercraft used or capable of being used as a means of transportation on water.

(l) "Water body" means natural or impounded surface water, including a stream, river, spring, lake, reservoir, pond, wetland, tank, and fountain.

(m) "Water supply system" means a system that treats, conveys, or distributes water for irrigation, industrial, wastewater treatment, or culinary use, including a pump, canal, ditch or, pipeline.

(n) "Water supply system" does not included a water body.

R657-60-3. Possession of Dreissena Mussels.

(1) Except as provided in Subsections R657-60-3(2) and R657-60-5(2), a person may not possess, import, ship, or transport any Dreissena mussel.

(2) Dreissena mussels may be imported into and possessed within the state of Utah with prior written approval of the Director of the Division of Wildlife Resources or a designee.

R657-60-4. Reporting of Invasive Species Required.

(1) A person who discovers a Dreissena mussel within this state or has reason to believe a Dreissena mussel may exist at a specific location shall immediately report the discovery to the division.

(2) The report shall include the following information:

(a) location of the Driessena mussels;

(b) date of discovery;

(c) identification of any conveyance or equipment in which mussels may be held or attached; and

(d) identification of the reporting party with their contact information.

(3) The report shall be made in person or in writing:

(a) at any division regional or headquarters office or;

(b) to the division's toll free hotline at 1-800-662-3337; or

(c) on the division's website at www.wildlife.utah.gov/law/hsp/pf.php.

R657-60-5. Transportation of Equipment and Conveyances That Have Been in Infested Waters.

(1) The owner, operator, or possessor of any equipment or conveyance that has been in an infested water or in any other water subject to a closure order under R657-60-8 or control plan under R657-60-9 that requires decontamination of conveyances and equipment upon leaving the water shall:

(a) immediately drain all water from the equipment or conveyance at the take out site, including water held in ballast tanks, bilges, livewells, motors, and other areas of containment; and

(b) immediately inspect the interior and exterior of the equipment or conveyance at the take out site for the presence of Dreissena mussels.

(2) If all water in the equipment or conveyance is drained and the inspection undertaken pursuant to Subsection (1)(b) reveals the equipment and conveyance are free from mussels or shelled organisms, fish, plants and mud, the equipment and conveyance may be transported in or through the state directly from the take out site to the location where it will be:

(a)(i) professionally decontaminated;

(ii) stored and self-decontaminated; or

(b) temporarily stored and subsequently returned to the same water body and take out site as provided in Subsection (5).

(3) If all the water in the equipment or conveyance is not drained or the inspection undertaken pursuant to Subsection (1)(b) reveals the equipment or conveyance has attached mussels or shelled organisms, fish, plants, or mud, the equipment and conveyance shall not be moved from the take out site until the division is contacted and written or electronic authorization received to move the equipment or conveyance to a designated location for professional decontamination.

(4) Except as provided in Subsection (5), a person shall not place any equipment or conveyance into a water body or water supply system in the state without first decontaminating the equipment and conveyance when the equipment or conveyance in the previous 30 days has been in:

(a) an infested water; or

(b) other water body or water supply system subject to a closure order under R657-60-8 or control plan under R657-60-9 that requires decontamination of conveyances and equipment upon leaving the water.

(5) Decontamination is not required when a conveyance or equipment is removed from an infested water or other water body subject to decontamination requirements, provided the conveyance and equipment is;

(a) inspected and drained at the take out site, and is free from attached mussels, shelled organisms, fish, plants, and mud as required in Subsections (1) and (2);

(b) returned to the same water body and launched at the same take out site; and

(c) not placed in or on any other Utah water body in the interim without first being decontaminated.

R657-60-6. Certification of Decontamination.

(1) The owner, operator or possessor of a vessel desiring to launch on a water body in Utah must:

(a) verify the vessel and any launching device, in the previous 30 days, have not been in an infested water or in any other water subject to closure order under R657-60-8 or control plan under R656-60-9 that requires decontamination of conveyances and equipment upon leaving the water; or

(b) certify the vessel and launching device have been decontaminated.

(2) Certification of decontamination is satisfied by:

(a) previously completing self-decontamination since the vessel and launching device were last in a water described in Subsection (1)(a) and completely filling out and dating a decontamination certification form which can be obtained from the division; or

(b) providing a signed and dated certificate by a division approved professional decontamination service verifying the vessel and launching device were professionally decontaminated since the vessel and launching device were last in a water described in Subsection (1)(a).

(3) Both the decontamination certification form and the professional decontamination certificate, where applicable, must be signed and placed in open view in the window of the launching vehicle prior to launching or placing the vessel in a body of water.

(4) It is unlawful under Section 76-8-504 to knowing falsify a decontamination certification form.

R657-60-7. Wildlife Board Designations of Infested Waters.

(1) The Wildlife Board may designate a geographic area, water body, facility, or water supply system as infested with Dreissena mussels pursuant to Section 23-27-102 and 23-27-401 without taking the proposal to or receiving recommendations from the regional advisory councils.

(a) The Wildlife Board may designate a particular water body, facility, or water supply system within the state as infested with Dreissena mussels when a juvenile or adult mussel from the subject water is visually identified as a Dreissena mussel and that identity is confirmed by two independent positive polymerase chain reaction (PCR) tests.

(b) The Wildlife Board may designate a particular water body, facility, or water supply system outside the state as infested with Dreissena mussels when a veliger, juvenile or adult Dreissena mussel is detected by the state having jurisdiction over the water or when the Wildlife Board has credible evidence suggesting the presence of a Dreissna mussel.

(c) Where the number of infested waters in a particular area is numerous or growing, or where surveillance activities or infestation containment actions are deficient, the Wildlife Board may designate geographic areas as infested with Dreissena mussels.

R657-60-8. Closure Order for a Water Body, Facility, or Water Supply System.

(1)(a) If the division detects or suspects a Dreissena mussel is present in a water body, facility, or water supply system in the state, the division director or designee may, with the concurrence of the executive director, issue an order closing the water body, facility, or water supply system to the introduction or removal of conveyances or equipment.

(b) The director shall consult with the controlling entity of the water body, facility, or water supply system when determining the scope, duration, level and type of closure that will be imposed in order to avoid or minimize disruption of economic and recreational activities.

(c) A closure order may;

(i) close the water entirely to conveyances and equipment;

(ii) authorize the introduction and removal of conveyances and equipment subject to the decontamination requirements in R657-60-2(2)(b) and R657-60-5; or

(iii) impose any other condition or restriction necessary to prevent the movement of Dreissena mussels into or out of the subject water.

(iv) a closure order may not restrict the flow of water without the approval of the controlling entity.

(2)(a) A closure order issued pursuant to Subsection (1) shall be in writing and identify the:

(i) water body, facility, or water supply system subject to the closure order;

(ii) nature and scope of the closure or restrictions;

(iii) reasons for the closure or restrictions;

(iv) conditions upon which the order may be terminated or modified; and

(v) sources for receiving updated information on the status of infestation and closure order.

(b) The closure order shall be mailed, electronically transmitted, or hand delivered to:

(i) the controlling entity of the water body, facility, or water supply system; and

(ii) any governmental agency or private entity known to have economic, political, or recreational interests significantly impacted by the closure order; and

(iii) any person or entity requesting a copy of the order.

(c) The closure order or its substance shall further be:

(i) posted on the division's web page; and

(ii) published in a newspaper of general circulation in the state of Utah or the affected area.

(3) If a closure order lasts longer than seven days, the division shall provide the controlling entity and post on its web page a written update every 10 days on its efforts to address the Dreissena mussel infestation.

(a) The 10 day update notice cycle will continue for the duration of the closure order.

(4)(a) Notwithstanding the closure authority in Subsection

(1), the division may not unilaterally close or restrict a water supply system infested with Dreissena mussels where the controlling entity has prepared and implemented a control plan in cooperation with the division that effectively eradicates or controls the spread of Dreissena mussels from the water supply system.

(b) The control plan shall comply with the requirements in R657-60-9.

(5) Except as authorized by the Division in writing, a person may not violate any provision of a closure order.

R657-60-9. Control Plan Required.

(1) The controlling entity of a water body, facility, or water supply system may develop and implement a control plan in cooperation with the division prior to infestation designed to:

(a) avoid the infestation of Dreissena mussels; and

(b) control or eradicate an infestation of Dreissena mussels that might occur in the future.

(2) A pre-infestation control plan developed consistent with the requirements in Subsection (3) and approved by the division will eliminate or minimize the duration and impact of a closure order issued pursuant to Section 23-27-303 and R657-60-8.

(3) If the division detects or suspects a Dreissena mussel is present in a water body, facility, or water supply system in the state that does not have an approved control plan and issues a closure order, the controlling entity shall cooperate with the division in developing and implementing a control plan to address the:

(a) scope and extent of the infestation;

(b) actions proposed to control the pathways of spread of the infestation;

(c) actions proposed to control or eradicate the infestation;

(d) methods to decontaminate the water body, facility, or water supply system, if possible;

(e) actions required to systematically monitor the level and extent of the infestation; and

(f) requirements and methods to update and revise the plan with scientific advances.

(4) Any post-infestation control plan prepared pursuant to Subsection (3) shall be approved by the Division before implementation.

(5) A control plan prepared pursuant to this Section may require that all conveyances and equipment entering or leaving the subject water to comply with the decontamination requirements in R657-60-2(2)(b) and R657-60-5.

(6) Except as authorized by the Division and the controlling entity in writing, a person may not violate any provision of a control plan.

R657-60-10. Procedure for Establishing a Memorandum of Understanding with the Utah Department of Transportation.

(1) The division director or designee shall negotiate an agreement with the Utah Department of Transportation for use of ports of entry for detection and interdiction of Dreissena Mussels illegally transported into and within the state. Both the Division of Wildlife Resources and the Department of Transportation must agree upon all aspects of Dreissena Mussel interdiction at ports of entry.

(2) The Memorandum shall include the following:

(a) methods and protocols for reimbursing the department for costs associated with Dreissena Mussel interdiction;

(b) identification of ports of entry suitable for interdiction operations;

(c) identification of locations at a specific port of entry suitable for interdiction operations;

(d) methods and protocols for disposing of wastewater associated with decontamination of equipment and conveyances;

(e) dates and time periods suitable for interdiction efforts at specific ports of entry;

(f) signage notifying motorists of the vehicles that must stop at the port of entry for inspection;

(g) priorities of use during congested periods between the department's port responsibilities and the division's interdiction activities;

(h) methods for determining the length, location and dates of interdiction;

(i) training responsibilities for personnel involved in interdiction activities; and

(j) methods for division regional personnel to establish interdiction efforts at ports within each region.

R657-60-11. Conveyance or Equipment Detainment.

(1) To eradicate and prevent the infestation of a Dreissena mussel, the division may:

(a) temporary stop, detain, inspect, and impound a conveyance or equipment that the division reasonably believes is in violation of Section 23-27-201 or R657-60-5;

(b) order a person to decontaminate a conveyance or equipment that the division reasonably believes is in violation of Section 23-227-201 or R657-60-5.

(2) The division, a port-of-entry agent or a peace officer may detain or impound a conveyance or equipment if;

(a) the division, agent, or peace officer reasonably believes that the person transporting the conveyance or equipment is in violation of Section 23-27-201 or R657-60-5.

(3) The detainment or impoundment authorized by Subsection (2) may continue for;

(a) up to five days; or

(b) the period of time necessary to:

(i) decontaminate the conveyance or equipment; and

(ii) ensure that a Dreissena mussel is not living on or in the conveyance or equipment.

R657-60-12. Penalty for Violation.

(1) A violation of any provision of this rule is punishable as provided in Section 23-13-11.

(2) A violation of any provision of a closure order issued under R657-60-8 or a control plan created under R657-60-9 is punishable as a criminal infraction as provided in Section 23-13-11.

KEY: fish, wildlife, wildlife law

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Notice of Continuation August 5, 2013	**23-14-18**
	23-14-19

R657. Natural Resources, Wildlife Resources.
R657-61. Valuation of Real Property Interests for Purposes of Acquisition or Disposal.
R657-61-1. Purpose and Authority.

(1) Pursuant to Utah Code Sections 63-34-21, 23-14-8, and Section 23-21-1, this rule defines the process by which the value of real property is determined for purposes of acquisition or disposal by the Division.

R657-61-2. Definitions.

(1) For purposes of this rule:

(a) "Appraisal" means an independent analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, an identified parcel of real property, and conducted by a state certified general appraiser.

(b) "Value" means as an opinion on the worth of an identified parcel of real property or interest therein at a specific time and may be comprised of one or more of the following values, as commonly understood within the real estate and appraisal services business communities: assessed value, insurable value, use value, investment value, going-concern value, business enterprise value, market value, and public interest value.

R657-61-3. Obtaining an Opinion of Value.

(1) When purchasing or disposing real property interests, the Division shall obtain a written opinion on the value of the property interest in the form of an appraisal.

(a) The division will keep and maintain the written opinion of value in its real property acquisition and disposal files.

(2) An appraisal is not required under the following circumstances:

(a) The market value of the subject property interest is less than One-Hundred Thousand Dollars ($100,000), as estimated by the Division;

(b) The asking price for the property interest is considerably below prevailing market conditions, as estimated by the Division;

(c) The asking price for the property interest is reasonable based upon prevailing market conditions, but the Division will lose the opportunity to purchase the property if time is taken to conduct an appraisal prior to making an offer;

(d) An appraisal has been conducted on the subject property interest within the past twelve months;

(e) The real property interest is a gift, contribution, or donation to the division; or

(f) The real property interest is a right-of-way, lease, or other less-than-fee interest that is not perpetual.

(3) A written opinion of value shall be rendered by a state certified general appraiser conducting an appraisal.

(4) When values other than market value are considered in addition to or in place of an appraisal rendered by a state certified general appraiser the Division shall create and keep a memo-to-file describing:

(a) the Division's consideration of said value(s);

(b) the Division's rationale in said consideration relative to the proposed price and other terms of the purchase, sale, or exchange; and

(c) the acquisition or disposal decision made by the Division.

R657-61-4. Congruency in Value.

(1) Based on the written opinion of value, the Division shall consider and weigh the various economic and social values associated with the real property in an effort to maintain a level of congruency between the compensation for the property and its values.

KEY: wildlife, land sales, property values

February 9, 2009 **23-21-1**
Notice of Continuation November 18, 2013

R657. Natural Resources, Wildlife Resources.
R657-66. Military Installation Permit Program.
R657-66-1. Purpose and Authority.

Under the authority of Sections 23-14-1, 23-14-3, 23-14-18, and 23-14-19, this rule establishes the standards and procedures for providing hunting opportunity on military installations to military installation personnel and to members of the public.

R657-66-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Military Installation" means real property in excess of 10,000 contiguous acres that is:

(i) Owned and managed by a military branch of the Department of Defense, including the Utah National Guard;

(ii) Located within the State of Utah

(iii) Closed to the public for hunting access;

(iv) Has a clearly discernible and described property boundary; and

(v) Supports a huntable population of wildlife.

(b) "Commander" means base commander of a Military Installation.

(c) "Military Installation Unit" or "MIU" means a contiguous area of land located on a Military Installation that is open to hunting because of the Installation's participation in the Military Installation Permit Program.

(d) "Permit voucher" means a document issued by the Division to the Commander which may be assigned to qualifying military installation personnel authorizing that individual to purchase a permit to hunt wildlife on the military installation.

R657-66-3. Creation of a Military Installation Unit.

(1) The Commander may request to create an MIU by submitting a written request to the Division.

(2) If the Division determines that the creation of an MIU will not endanger the wildlife resource and is otherwise in the best interest of the Division and its constituents, the Division and the Commander may enter into a cooperative agreement describing the procedures and restrictions for the creation of the MIU.

(3) The cooperative agreement shall define the following items:

(a) the boundaries of the MIU;

(b) the species which may be hunted;

(c) a description of how Division input and guidance will be used in establishing the requested number of MIU permits;

(d) the weapon types allowed;

(e) the season dates during which the MIU will be open to hunting;

(f) a description of eligibility requirements for military personnel to receive a permit voucher;

(g) the means by which the Commander will distribute permit vouchers;

(h) measures necessary to ensure security of the Military Installation during the hunt; and

(i) other measures necessary deemed appropriate by the Division and the Commander.

(4) An MIU may not be established without the guarantee of public hunting opportunity on the MIU.

(5) The Military Installation, Commander, and agents, employees, personnel and contractors of the same shall not profit off of the creation or operation of an MIU.

R657-66-4. Military Installation Permit Numbers, Permit Boundaries, Season Lengths, and Legal Weapons.

(1) The Commander shall submit requested permit allocations to the Wildlife Board by September 1 annually.

(2) The Wildlife Board shall have authority to approve, reduce, or deny the number of MIU permits available from the number requested by the Commander, consistent with the following:

(a) The number of permit vouchers available shall be based on the species population trend, size, and distribution to protect the long-term health of the population; and

(b) For each MIU having permit vouchers approved by the Wildlife Board, at least one (1) permit per approved species, or 20% of the total number of permits approved per species rounded up to the nearest whole number, whichever is greater, shall be made available to members of the general public via the Division's permit drawing.

(3) The boundaries of the MIU dictated in the cooperative agreement shall be clearly described and discernible on the ground of the military installation and shall be considered the general permit boundaries for hunting permits issued pursuant to this Rule.

(4) The season dates for hunting under a Military Installation Permit shall include a maximum of September 1 to October 31 annually.

(5) Season dates may be shortened and boundaries of the MIU may be modified by definition in the cooperative agreement or by written declaration of the Commander prior to issuance of a Military Installation Permit for the season date in question.

(6) The Commander may further restrict the weapon types allowed on the MIU from what is identified in the cooperative agreement prior to the distribution of the permit vouchers.

(7) All weapons allowed for a Military Installation hunt shall conform to the rules and regulations describing legal weapons used in the taking of protected wildlife.

(8) The Commander is responsible for communicating all modifications of season dates, MIU boundaries, and legal weapon choices to the Division and those participating in an MIU hunt.

R657-66-5. Distribution of Military Installation Permit Vouchers and Permits.

(1) The Division shall distribute permit vouchers approved by the Wildlife Board to the Commander, retaining the number of permits as defined in Utah Administrative Rule R657-66-4(2)(b) to distribute via the Division's annual permit drawing.

(2) The Commander shall assign permit vouchers received from the Division using the scheme described in the cooperative agreement outlining the creation of the MIU.

(3) The distribution scheme used by the Commander shall be fair and equitable and shall comply with state and federal laws.

(4) Neither the Commander nor the Military Installation may sell or receive compensation of any kind for a permit voucher or for allowing hunting access on the Military Installation under this Rule.

(5) MIU permits and permit vouchers may not be donated, auctioned, sold, traded, or otherwise transferred to third parties, except as provided for by state law, administrative rule, or proclamation of the Wildlife Board.

(6) An individual receiving a Military Installation Permit Voucher may redeem the voucher for a Military Installation Permit by:

(a) Paying the appropriate permit fee to the Division;

(b) Possessing a valid Utah hunting or combination license; and

(c) Being otherwise legally qualified to hunt in Utah.

(7) An individual may apply for a Military Installation Permit made available to the public by:

(a) Submitting an application in the permit drawing administered by the Division; and

(b) paying the associated application fee.

(8) An individual who successfully draws a Military Installation Permit in the permit drawing may redeem their permit by:

(a) Paying the appropriate permit fee to the Division;

(b) Possessing a valid Utah hunting or combination license; and

(c) Being otherwise legally qualified to hunt in Utah.

(9) As a condition of being issued an Military Installation Permit, the hunter recognizes the inherent risks associated with Military Installations, and agrees to comply with the terms and conditions established in the cooperative agreement, those issued by the Commander, and the laws and regulations pertaining to hunting in the state of Utah.

(10) Waiting periods and bonus points do not apply to military personnel participating in the distribution scheme administered by the Commander, nor are waiting periods incurred or existing points lost upon obtaining a permit.

(11) Waiting periods and bonus points apply to military personnel and members of the public who apply for a Military Installation Permit through the permit drawing.

(12) A member of the military who may otherwise qualify to receive a Military Installation Permit voucher may apply for a Military Installation Permit through the permit drawing, but becomes subject to the rules and regulations applicable to a member of the general public in the event that they successfully draw a permit.

(13) An individual who harvests an animal during a Military Installation hunt may not harvest another animal of the same species during that license year, except as described in the cooperative agreement establishing the MIU or as provided for by the Wildlife Board.

(14) Either the Division or the Commander can discontinue participation in the Military Installation Permit Program by providing prior written notice to the other party.

R657-66-6. Replacement Vouchers and Permits; Refunds.

(1) Military Installation Permits shall be considered limited entry permits for the purposes of variances, permit surrender, refunds, and accommodations for people with disabilities in the event that a designated recipient of a voucher or permit is unable to participate in the hunting activity.

(2) The Division may reissue an assigned permit voucher to the Commander for issuance to another qualifying person, provided:

(a) The original recipient surrenders to the Division the permit voucher and any corresponding hunting permit; and

(b) The surrender is made prior to the permit holder undertaking any hunting activity.

(3) The Division shall not be responsible for interference with the public's hunt on the MIU by members of the military or other third parties.

(4) In the event that the individual receiving a permit voucher and/or permit under this Rule cannot participate in the hunt due to military service obligations, that individual may pursue a refund for fees paid consistent with Utah Code Ann. Section 23-19-38.2.

R657-66-7. Administrative Access During Hunting Seasons; Collection of Harvest Data.

(1) Division law enforcement officers may access the military installation to regulate hunting related activities thereon.

(2) Those participating in the military installation permit program shall complete a harvest report within 30 days after the hunt ends.

(3) Harvest reporting is required even if an animal is not harvested.

KEY: wildlife, military installations

November 7, 2013

23-14-1
23-14-3
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23-14-19

R686. Professional Practices Advisory Commission, Administration.

R686-100. Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions.

R686-100-1. Definitions.

A. "Action" as used in 53A-6-306 and as applied in this rule means a disciplinary action taken by UPPAC or the Board adversely affecting an educator's license, and which, pursuant to 53A-6-306, may not be taken without giving the educator an opportunity for a fair hearing to contest the allegations upon which the action would be based. Actions include:

(1) probation

(2) suspension

(3) revocation.

B. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional or criminal conduct; is unfit for duty; has lost his license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in R277-515.

C. "Applicant for a license" means a person seeking a new license or seeking reinstatement of an expired, surrendered, suspended, or revoked license.

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

E. "Chair" means the Chair of UPPAC.

F. "Complaint" means a written allegation or charge against an educator filed by USOE against the educator.

G. "Complainant" means the Utah State Office of Education.

H. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file owned and maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;

(2) education background;

(3) endorsements;

(4) employment history; and

(5) a record of disciplinary action taken against the educator's license.

I. "Days": in calculating any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included; the last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. Saturdays, Sundays and legal holidays shall not be included in calculating the period of time if the period prescribed or allowed is less than seven days, but shall be included in calculating periods of seven or more days.

J. "Disciplinary letter " means a letter issued to respondent by UPPAC as a result of an investigation into allegations of educator misconduct. Disciplinary letters include:

(1) letters of admonishment;

(2) letters of warning;

(3) letters of reprimand; and

(3) any other action that UPPAC or the Board takes to discipline an educator for educator misconduct that does not rise to the level of an action as defined in 686-100-1A.

K. "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.

L. "Educator Misconduct" means unprofessional or criminal conduct; conduct that renders the educator unfit for duty; or conduct that is a violation of standards of ethical conduct, performance, or professional competence as provided in R277-515.

M. "Educator paper licensing file" means the file maintained securely by UPPAC on an educator. The file is opened following UPPAC's direction to investigate alleged misconduct. The file contains the original notification of misconduct, subsequent correspondence, the investigative report, and the final disposition of the case.

N. "Executive Committee" means a subcommittee of UPPAC consisting of the Executive Secretary, Chair, Vice-Chair, and one member of UPPAC at large. All Executive Committee members, excluding the Executive Secretary, shall be selected by UPPAC. Substitutes may be appointed from within UPPAC by the Executive Secretary as needed.

O. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, of UPPAC.

P. "Final action" means any action by UPPAC or the Board which concludes an investigation of an allegation of misconduct against a licensed educator.

Q. "Hearing" means an administrative proceeding held pursuant to Section 53A-6-601, is a formal adjudication in which allegations made in a complaint are examined before a hearing officer and UPPAC hearing panel, where each party has the opportunity to present witnesses and evidence relevant to the complaint and respond to witnesses or evidence presented by the other party. At the conclusion of a hearing, the hearing officer, after consulting with members of the UPPAC hearing panel, prepares a hearing report and submits it to the Executive Secretary.

R. "Informant" means a person who submits information to UPPAC concerning alleged misconduct of an educator.

S. "Investigator" means an employee of the USOE who is assigned by UPPAC to investigate allegations of educator misconduct and to offer recommendations of educator discipline to UPPAC at the conclusion of the investigation. The investigator works independently of the Executive Secretary and provides an investigative report for UPPAC. The investigator may also be the prosecutor but does not have to be. The investigator may be called on by the prosecutor, if not the same person, to testify at a hearing about the investigator's findings during the course of an investigation.

T. "Investigative report" means a written report of an investigation into allegations of educator misconduct, prepared by a UPPAC investigator. The report includes a brief summary of the allegations, a recommendation for UPPAC, and a summary of witness interviews conducted during the course of the investigation. The investigative report may include a rationale for the recommendation, and mitigating and aggravating circumstances, but does not have to. The investigative report is maintained in the educator's licensing file.

U. "Jurisdiction" means the legal authority to hear and rule on a complaint.

V. "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.

W. "License" means a teaching or administrative credential, including endorsements, which is issued by a state to signify authorization for the person holding the license to provide professional services in the state's public schools.

X. "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for its members regarding persons whose licenses have been suspended or revoked.

Y. "Notification of Alleged Educator Misconduct" means the official UPPAC form that can be accessed on UPPAC's internet website, and can be submitted by any person, school, or

district that alleges educator misconduct.

Z. "Party" means the complainant or the respondent.

AA. "Prosecutor" means the attorney designated by the USOE to represent the complainant and present evidence in support of the complaint. The prosecutor may also be the investigator, but does not have to be.

BB. "Recommended disposition" means a recommendation provided by a UPPAC investigator for resolution of an allegation.

CC. "Revocation" means a permanent invalidation of a Utah educator license consistent with R277-517.

DD. "Respondent" means the party against whom a complaint is filed or an investigation is undertaken.

EE. "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, electronic correspondence, or by other means reasonably calculated, under all of the circumstances, to notify the interested person or persons to the extent reasonably practical or practicable of the information contained in the document.

FF. "Stipulated agreement" means an agreement between a respondent/educator and the USOE/Board or between a respondent/educator and UPPAC under which disciplinary action against an educator's license status shall be taken, in lieu of a hearing. At any time after an investigative letter has been sent, a stipulated agreement may be negotiated between the parties and becomes binding when approved by the Board, if necessary, or UPPAC if Board approval is not necessary.

GG. "Suspension" means an invalidation of a Utah educator license. A suspension may include specific conditions that an educator shall satisfy and may identify a minimum time period that shall elapse before the educator can request a reinstatement hearing before UPPAC.

HH. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established under Section 53A-6-301.

II. "UPPAC investigative letter" means a letter sent by UPPAC to an educator notifying the educator that an allegation of misconduct has been received against him and UPPAC has directed that an investigation of the educator's alleged actions take place.

JJ. "UPPAC disciplinary letters or action" means letters sent or action taken by UPPAC informing the educator of licensing disciplinary action not rising to the level of license suspension. Disciplinary letters and action include the following:

(1) Letter of admonishment is a letter sent by UPPAC to the educator cautioning the educator to avoid or take specific actions in the future;

(2) Letter of warning is a letter sent by UPPAC to an educator for misconduct that was inappropriate or unethical that does not warrant longer term or more serious discipline;

(3) Letter of reprimand is a letter sent by UPPAC to an educator for misconduct that was longer term or more seriously unethical or inappropriate than conduct warranting a letter of warning, but not warranting more serious discipline; a letter of reprimand may provide specific directives to the educator as a condition for removal of the letter, and shall appear as a notation on the educator's CACTUS file;

(4) Probation is an action directed by UPPAC that involves some monitoring or supervision for an indefinite or designated time period usually accompanied by a disciplinary letter. In this time period, the educator may be subject to additional monitoring by an identified person or entity and the educator may be asked to satisfy certain conditions in order to have the probation lifted. This discipline usually, but not always, is accompanied by a letter of warning or a letter of reprimand and shall appear as a notation on the educator's CACTUS file. Unless otherwise specified, the probationary period is at least two years and must be terminated through a formal petition by respondent.

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

LL. "USOE administrative action" means an administrative investigation into allegations of educator misconduct, opened under the authority of 53A-3-306.

R686-100-2. Authority and Purpose.

A. This rule is authorized by Section 53A-6-306(1)(a) directing UPPAC to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to provide procedures regarding:

(1) notification of alleged educator misconduct;

(2) review of notification by UPPAC; and

(3) complaints, stipulated agreement and defaults.

The provisions of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d). UPPAC may invoke and use sections or provisions of the Utah Administrative Procedures Act as found in Section 63G-4 as necessary to adjudicate an issue.

R686-100-3. Initiating Proceedings Against Educators.

A. The Executive Secretary may initiate proceedings against an educator upon receiving a notification of alleged educator misconduct or upon the Executive Secretary's own initiative.

(1) An informant may be asked to submit information in writing, including the following:

(a) name, position (such as administrator, teacher, parent, student), telephone number, address, and contact information of the informant;

(b) name, position (such as administrator, teacher, candidate), and if known, the address and telephone number of the educator against whom the allegations are made;

(c) the facts on which the allegations are based and supporting information;

(d) signature of the informant and date.

(2) If an informant submits a written allegation of misconduct as provided in Section R686-100-3A(1), the informant may be told of final actions taken by UPPAC or the Board regarding the allegations.

(3) Proceedings initiated upon the Executive Secretary's own initiative are based on information received through telephone calls, letters, newspaper articles, media information, notices from other states or other means; UPPAC shall not investigate anonymous allegations.

B. All notifications of alleged educator misconduct shall be directed to UPPAC for initial review.

C. All written allegations, subsequent dismissals, or action or disciplinary letter of a case against an educator shall be maintained permanently in UPPAC's paper licensing files.

R686-100-4. Review of Notification of Alleged Educator Misconduct.

A. Initial Review: On reviewing the notification of alleged educator misconduct, the Executive Secretary or the Executive Committee or both shall recommend one of the following to UPPAC:

(1) Dismiss: If UPPAC determines that UPPAC lacks jurisdiction or that the request for agency action does not state a cause of action that UPPAC should address, UPPAC shall dismiss the request.

(2) Initiate an investigation: If UPPAC determines that UPPAC has jurisdiction and that the notification states a cause of action which may be appropriately addressed by UPPAC or the Board, the Executive Secretary shall direct a UPPAC

investigator to gather evidence relating to the allegations.

(a) Prior to a UPPAC investigator's initiation of any investigation, the Executive Secretary shall send a letter to the educator to be investigated, to the LEA of current employment, and to the LEA where the alleged activity occurred, with information that an investigation has been initiated. The letter shall inform the educator and the LEA(s) that an investigation shall take place and is not evidence of unprofessional conduct. UPPAC may also notify an LEA that formerly employed the educator or the LEA that currently employs the educator or both, as appropriate.

(b) The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations.

(c) The investigator shall prepare an investigative report of the findings of the investigation and a recommendation for appropriate action or disciplinary letter.

(d) If the investigator discovers additional evidence of unprofessional conduct which could have been included in the original notification of alleged educator misconduct, it may be included in the investigative report.

(e) The report shall be submitted to the Executive Secretary, who shall review the report with UPPAC.

(f) The investigative report shall become part of the permanent case file.

B. Secondary Review: UPPAC shall review the investigative report and, based on the recommendation by the investigator, shall direct one of the following:

(1) Dismiss: If UPPAC determines no further action should be taken, it shall dismiss the case as provided in Section R686-100-4A(1), above; or

(2) Prepare and serve complaint: If the investigator determines that allegations are sufficiently supported by evidence discovered in the investigation, UPPAC, through the Executive Secretary, shall direct the prosecutor to prepare and serve a complaint and a copy of these rules upon the respondent pursuant to R686-100-5; or

(3) Approve a Stipulated Agreement: At any time after UPPAC has directed that a case be investigated, an educator may accept the recommendation of the UPPAC investigator, rather than request a hearing, by entering into a stipulated agreement.

(a) The stipulated agreement shall conform to the requirements set forth in R686-100-6.

(b) Pursuant to 686-100-6B, an educator may stipulate to any recommended disposition for an action as defined in R686-100-1A.

(4) Upon receipt of an investigative report, including a stipulated agreement, or a hearing report as defined in R686-101, UPPAC may direct the Executive Secretary to carry out the recommendation or recommend suspension or revocation to the Board for consideration.

(5) If so directed by UPPAC, documentation of the disciplinary letter or action shall be sent to the respondent's employing LEA or to an LEA where the respondent finds employment.

(6) UPPAC may direct an additional investigation or other action as appropriate.

R686-100-5. Complaints.

A. Filing a complaint: If UPPAC determines that the allegations are sufficiently supported by evidence discovered in the investigation, UPPAC, through the Executive Secretary, may direct the prosecutor to serve a complaint upon the educator being investigated, along with a copy of these rules.

B. Elements of a complaint: At a minimum, the complaint shall include:

(1) a statement of legal authority and jurisdiction under which the action is being taken;

(2) a statement of the facts and allegations upon which the complaint is based;

(3) other information which the investigator believes to be necessary to enable respondent to understand and address the allegations;

(4) a statement of the potential consequences should the allegations be found to be true or substantially true;

(5) a statement that the respondent shall answer the complaint, request a hearing, or discuss a stipulated agreement, within 30 days of the date the complaint was mailed to the respondent, by filing a written answer addressed to the Executive Secretary, at the mailing address for the Office. The statement shall advise the respondent that if he fails to respond in 30 days, a default judgment for a suspension term of not less than five years shall be entered;

(6) a statement that, if a hearing is requested, the hearing shall be scheduled not less than 25 days, nor more than 180 days, after receipt of the respondent's answer, unless a different date is agreed to by both parties in writing. On his own motion, the Executive Secretary, or designee with notice to the parties, may reschedule a hearing date.

C. Answer to the complaint: An answer to the complaint shall be made by filing a written response signed by the respondent or his representative with the Executive Secretary within 30 days after the complaint was mailed. The answer shall include a request for a hearing or a stipulated agreement, and shall include:

(1) the file number of the complaint;

(2) the names of the parties;

(3) a statement of the relief that the respondent seeks, which may include a request for a hearing or a stipulated agreement; and

(4) if not requesting a hearing or a stipulated agreement, a statement of the reasons that the relief requested should be granted.

D. Response to answer. As soon as reasonably practicable after receiving the answer, or no more than 30 days after receipt of the answer at the USOE, the Executive Secretary shall do one of the following:

(1) Dismiss the complaint: If the Executive Secretary and the Executive Committee determines upon review of respondent's answer that there are insufficient grounds to proceed with the complaint, the Executive Committee shall recommend to UPPAC that the complaint be dismissed. If UPPAC votes to uphold the dismissal, the informant and the respondent shall each be served with notice of the dismissal. If UPPAC does not uphold the dismissal, the complaint shall proceed in accordance with the rules set forth in R686-100.

(2) Schedule a hearing: If the respondent requests a hearing, UPPAC shall direct the Executive Secretary to schedule a hearing as provided in R686-101.

(3) Direct investigator to negotiate a stipulated agreement: If the respondent requests a stipulated agreement, the Executive Secretary shall direct the investigator to negotiate a stipulated agreement with respondent.

E. Default: If respondent does not respond to the complaint within 30 days, the Executive Secretary may issue a default in accordance with the procedures set forth in R686-100-7.

(1) Except as provided in R686-100-5E(2), a default judgment shall result in a recommendation to the Board for a suspension of five years before the educator may request a reinstatement hearing; a default may include conditions that an educator shall satisfy to have any possibility for a reinstatement hearing.

(2) A default judgment shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Section 53A-6-501(2).

R686-100-6. Stipulated Agreements.

A. Pursuant to R686-100-4B(3),at any time after UPPAC has directed that a case be investigated, a respondent may accept the recommendation of the UPPAC investigator, rather than request a hearing, by entering into a stipulated agreement.

B. By entering into a stipulated agreement, a respondent waives his right to a hearing to contest the recommended disposition. A respondent has a right to a hearing for any action as defined in R686-100-1A that adversely affects the respondent's license, including:

(1) revocations;

(2) suspensions; and

(3) probations.

C. A respondent may request a hearing to contest a recommended disposition for a letter of reprimand or deny respondent a hearing, but UPPAC has discretion to grant a hearing or deny respondent a hearing because letters of reprimand do not adversely affect an educator's license.

D. A respondent shall not have a right to a hearing for recommended dispositions that are lesser disciplinary actions, such as letters of warning and letters of admonishment.

E. Elements of a stipulated agreement: At minimum, a stipulated agreement shall include:

(1) a summary of the facts, the allegations, the evidence relied upon by UPPAC in its recommendation, and a summary of the respondent's response, if any;

(2) a statement that the respondent accepts the facts recited in the stipulated agreement as true for purposes of the USOE administrative action;

(3) a statement that the respondent waives his right to a hearing to contest the allegations that gave rise to the investigation, and agrees to limitations on his license or surrenders his license rather than contest the allegations;

(4) a statement that the respondent agrees to the terms of the stipulated agreement and other provisions applicable to the case, such as remediation, counseling, restitution, rehabilitation, and conditions, if any, under which the respondent may request a reinstatement hearing or a removal of the letter of reprimand or termination of probation;

(5) if for suspension, a statement that the respondent:

(a) shall not seek or provide professional services in a public school in Utah; or

(b) otherwise seek to obtain or use a license in Utah; or

(c) work or volunteer in a public K-12 setting in any capacity without express authorization from UPPAC Executive Secretary, unless or until the respondent:

(i) first obtains a valid educator license or authorization from the Board to obtain such a license; or

(ii) satisfies other provisions provided in the stipulated agreement.

(6) a statement that the action and the stipulated agreement shall be reported to other states through the NASDTEC Educator Information Clearinghouse and any attempt to present to any other state a valid Utah license shall result in further licensing action in Utah;

(7) a statement that respondent waives any right to contest the facts stated in the stipulated agreement at a subsequent reinstatement hearing, if any;

(8) a statement that all records related to the stipulated agreement shall remain permanently in the educator's licensing file at the USOE.

F. Violations of the terms of a valid stipulated agreement may result in an additional disciplinary action.

G. The stipulated agreement shall be forwarded to UPPAC for consideration.

(1) If UPPAC rejects the stipulated agreement, the respondent shall be informed of the decision, which shall be final, and the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if the agreement had not been submitted.

(2) If UPPAC accepts a stipulated agreement for probation or a letter of reprimand, this is a final USOE administrative action, and UPPAC Executive Secretary shall notify the parties of the decision and shall direct the letter of reprimand to be sent or probation to begin.

(3) If UPPAC accepts a stipulated agreement for suspension or revocation of an educator's license, the agreement shall be forwarded to the Board for consideration.

(4) If the Board rejects the agreement, the Executive Secretary shall notify the parties of the decision and the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if the agreement had not been submitted.

E. If, after negotiating a stipulated agreement, a respondent fails to sign or respond to a proffered agreement within 30 days after the agreement is mailed, UPPAC or the Executive Secretary shall direct the prosecutor to prepare findings in default consistent with Section R686-100-7.

F. The terms and conditions of a stipulated agreement are protected under Section 63G-2-304(9) and (24), unless waived by the educator. The disposition (such as suspension for a minimum of two years, revocation, probation) of the stipulated agreement is public information, upon request consistent with Section 63G-2-204.

R686-100-7. Default Procedures.

A. If a respondent does not respond to a complaint or a stipulated agreement within 30 days from the date the complaint or stipulated agreement was served, the Executive Secretary may issue an order of default against respondent consistent with the following:

(1) The prosecutor shall prepare and serve on respondent an order of default including a statement of the grounds for default, and a recommended disposition if respondent fails to file a response to a complaint or respond to a proffered stipulated agreement.

(2) Ten (10) days following service of the order of default, the prosecutor shall attempt to contact respondent by telephone or electronically. UPPAC shall maintain documentation of attempts toward written, telephonic or electronic contact.

(2) Respondent has 20 days following service of the order of default to respond to UPPAC. If UPPAC receives a response from respondent to a default order before the end of the 20 day default period, UPPAC shall allow respondent a final 10 day period to respond to a complaint or stipulated agreement.

C. Except as provided in R686-100-7D, a default judgment shall result in a recommendation to the Board for a suspension of no less than five years.

D. A default judgment shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in 53A-6-501(2).

KEY: teacher licensing, conduct, hearings
November 7, 2013 53A-6-306(1)(a)
Notice of Continuation February 1, 2013

R686. Professional Practices Advisory Commission, Administration.
R686-101. UPPAC Hearing Procedures and Reports.
R686-101-1. Definitions.

A. "Administrative hearing" means a formal adjudicative proceeding consistent with 53A-6-601. The Utah State Board of Education and Utah State Office of Education licensing process is not governed by the Utah Administrative Procedures Act, Title 63G, Chapter 4.

B. "Answer" means a written response to a complaint filed by USOE alleging educator misconduct. An answer must be filed within 30 days of receipt of a complaint. Failure to file an answer to a complaint shall result in a default, consistent with R686-100-5E.

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

D. "Complaint" means a written allegation or charge against an educator filed by USOE against the educator.

E. "Complainant" means the Utah State Office of Education.

F. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file owned and maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history; and

(5) a record of disciplinary action taken against the educator's license.

G. "Days": in calculating any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included; the last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. Saturdays, Sundays and legal holidays shall not be included in calculating the period of time if the period prescribed or allowed is less than seven days, but shall be included in calculating periods of seven or more days.

H. "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.

I. "Educator paper licensing file" means the file maintained securely by UPPAC on an educator. The file is opened following UPPAC's direction to investigate alleged misconduct. The file contains the original notification of misconduct, subsequent correspondence, the investigative report, and the final disposition of the case.

J. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, of UPPAC.

K. "Final action" means any action by UPPAC or the Board which concludes an investigation of an allegation of misconduct against a licensed educator.

L. "Hearing" means an administrative proceeding held pursuant to Section 53A-6-601, is a formal adjudication in which allegations made in a complaint are examined before a hearing officer and UPPAC hearing panel, where each party has the opportunity to present witnesses and evidence relevant to the complaint and respond to witnesses or evidence presented by the other party. At the conclusion of a hearing, the hearing officer, after consulting with members of the UPPAC hearing panel, prepares a hearing report and submits it to the Executive Secretary.

M. "Hearing officer" means a person who is experienced in matters relating to administrative procedures, education and education law and is either a member of the Utah State Bar Association or a person not a member of the bar who has received specialized training in conducting administrative hearings, and is appointed by the Executive Secretary at the request of UPPAC to manage the proceedings of a hearing. The hearing officer may not be an acting member of UPPAC. The hearing officer has broad authority to regulate the course of the hearing and dispose of procedural requests but shall not have a vote as to the recommended disposition of a case.

N. "Hearing panel" means a hearing officer and three or more members of UPPAC agreed upon by UPPAC to assist the hearing officer in conjunction with the hearing panel in conducting a hearing and preparing a hearing report.

O. "Hearing report" means a report prepared by the hearing officer consistent with the recommendations of the hearing panel at the conclusion of a hearing. The report includes a recommended disposition, detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent, and applicable law and rule.

P. "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.

Q. "License" means a teaching or administrative credential, including endorsements, which is issued by a state to signify authorization for the person holding the license to provide professional services in the state's public schools.

R. "Party" means the complainant or the respondent.

S. "Prosecutor" means the attorney designated by the USOE to represent the complainant and present evidence in support of the complaint. The prosecutor may also be the investigator, but does not have to be.

T. "Recommended disposition" means a recommendation provided by a UPPAC investigator for resolution of an allegation.

U. "Revocation" means a permanent invalidation of a Utah educator license consistent with R277-517.

V. "Respondent" means the party against whom a complaint is filed or an investigation is undertaken.

W. "Stipulated agreement" means an agreement between a respondent/educator and the USOE/Board or between a respondent/educator and UPPAC under which disciplinary action against an educator's license status shall be taken, in lieu of a hearing. At any time after an investigative letter has been sent, a stipulated agreement may be negotiated between the parties and becomes binding when approved by the Board, if necessary, or UPPAC if Board approval is not necessary.

X. "Suspension" means an invalidation of a Utah educator license. A suspension may include specific conditions that an educator shall satisfy and may identify a minimum time period that shall elapse before the educator can request a reinstatement hearing before UPPAC.

Y. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established under Section 53A-6-301.

Z. "UPPAC disciplinary letters or action" means letters sent or action taken by UPPAC informing the educator of licensing disciplinary action not rising to the level of license suspension. Disciplinary letters and action include the following:

(1) Letter of admonishment is a letter sent by UPPAC to the educator cautioning the educator to avoid or take specific actions in the future;

(2) Letter of warning is a letter sent by UPPAC to an educator for misconduct that was inappropriate or unethical that does not warrant longer term or more serious discipline;

(3) Letter of reprimand is a letter sent by UPPAC to an educator for misconduct that was longer term or more seriously unethical or inappropriate than conduct warranting a letter of

warning, but not warranting more serious discipline; a letter of reprimand may provide specific directives to the educator as a condition for removal of the letter, and shall appear as a notation on the educator's CACTUS file;

(4) Probation is an action directed by UPPAC that involves some monitoring or supervision for an indefinite or designated time period usually accompanied by a disciplinary letter. In this time period, the educator may be subject to additional monitoring by an identified person or entity and the educator may be asked to satisfy certain conditions in order to have the probation lifted. This discipline usually, but not always, is accompanied by a letter of warning or a letter of reprimand and shall appear as a notation on the educator's CACTUS file. Unless otherwise specified, the probationary period is at least two years and must be terminated through a formal petition by respondent.

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

R686-101-2. Authority and Purpose.

A. This rule is authorized by Section 53A-6-306(1)(a) which directs UPPAC to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to establish procedures regarding UPPAC hearings and hearing reports.

R686-101-3. Scheduling a Hearing.

A. Scheduling the hearing: Following receipt of an answer by respondent requesting a hearing:

(1) UPPAC shall select panel members.

(2) The Executive Secretary shall appoint a hearing officer from among a list of hearing officers identified by the state procurement process and approved by UPPAC.

(3) UPPAC shall schedule the date, time, and place for the hearing.

(4) The date for the hearing shall be scheduled not less than 25 days nor more than 180 days from the date the answer is received by the Executive Secretary. The required scheduling periods may be waived by mutual written consent of the parties or by UPPAC for good cause shown.

B. Change of hearing date:

(1) A request for change of hearing date by any party shall be submitted in writing, include a statement of the reasons for the request, and be received by the Executive Secretary at least five days prior to the scheduled date of the hearing.

(2) The Executive Secretary shall determine whether the cause stated in the request is sufficient to warrant a change.

(a) If the cause is found to be sufficient, the Executive Secretary shall promptly notify all parties of the new time, date, and place for the hearing.

(b) If the cause is found to be insufficient, the Executive Secretary shall immediately notify the parties that the request has been denied.

(c) The Executive Secretary and the parties may waive the time period required for requesting a change of hearing date for compelling circumstances.

R686-101-4. Appointment and Duties of the Hearing Officer and Hearing Panel.

A. Hearing officer: The Executive Secretary shall appoint a hearing officer at the request of UPPAC to chair the hearing panel and conduct the hearing.

(1) The selection of hearing officers shall be on a rotating basis, to the extent practicable, from the list of available hearing officers.

(2) The selection of a hearing officer shall be made based on availability of individual hearing officers and whether any financial or personal interest or prior relationship with parties might affect the hearing officer's impartiality or otherwise constitute a conflict of interest.

(3) The Executive Secretary shall provide such information about the case as necessary to determine whether the hearing officer has a conflict of interest and shall disqualify any hearing officer that cannot serve under the Utah Rules of Professional Conduct.

(4) Duties of a hearing officer. A hearing officer:

(a) may require the parties to submit briefs and lists of witnesses prior to the hearing;

(b) presides at the hearing and regulates the course of the proceedings;

(c) administers oaths to witnesses as follows: "Do you swear or affirm that the testimony you will give is the truth?";

(d) may take testimony, rule on questions of evidence, and ask questions of witnesses to clarify specific issues;

(e) prepares and submits a hearing report at the conclusion of the proceedings in consultation with panel members and the timelines of this rule.

B. UPPAC panel members: UPPAC shall agree upon three or more UPPAC members to serve as members of the hearing panel. As directed by UPPAC, former UPPAC members who have served on UPPAC within the three years prior to the date set for the hearing may be used as panel members. The majority of panel members shall be current UPPAC members.

(1) The selection of panel members shall be on a rotating basis to the extent practicable. However, the selection shall also accommodate the availability of panel members.

(2) If the respondent is a teacher, at least one panel member shall be a teacher. If the respondent is a non-teacher educator, at least one panel member shall be a non-teacher educator unless the respondent accepts a different configuration.

(3) Duties of UPPAC panel members include:

(a) assisting the hearing officer by providing information concerning professional standards and practices of educators in the respondent's particular field of practice and in the situations alleged;

(b) asking questions of all witnesses to clarify specific issues;

(c) reviewing all evidence and briefs, if any, presented at the hearing;

(d) assisting the hearing officer in preparing the hearing report.

(4) The panel members may receive documents or information no more than 30 minutes prior to the hearing, including the complaint and response, and a list of witnesses who shall participate in the hearing, other materials as directed by the hearing officer, or additional materials agreed to by the parties.

(5) The Executive Secretary may make an emergency substitution of a panel member for cause with the consent of the parties. The agreement should be in writing. Parties may agree to a two-member UPPAC panel in an emergency situation. If parties do not agree, the hearing shall be rescheduled.

C. Disqualification of the hearing officer or a panel member:

(1) Hearing officer:

(a) A party may seek disqualification of a hearing officer by submitting a written request for disqualification to the Executive Secretary, which request must be received not less than 15 days before a scheduled hearing. The Executive Secretary shall review the request and supporting evidence and, upon a finding that the reasons for the request are substantial and sufficient, shall appoint a new hearing officer and, if necessary, reschedule the hearing. A hearing officer may recuse himself from a hearing if, in the hearing officer's opinion, his participation would violate any of the Utah Rules of Professional Conduct consistent with the Supreme Court Rules of Professional Practice.

(b) If the Executive Secretary denies the request, the party

requesting the disqualification shall be notified not less than ten days prior to the date of the hearing. The requesting party may submit a written appeal of the denial to the State Superintendent, which request must be received not less than five days prior to the hearing date. If the State Superintendent finds that the appeal is justified, the State Superintendent shall direct the Executive Secretary to appoint a new hearing officer and, if necessary, reschedule the hearing.

(c) The decision of the State Superintendent is final.

(d) Failure of a party to meet the time requirements of R686-101-4C(1)(b) shall result in denial of the request or appeal; if the Executive Secretary fails to meet the time requirements, the request or appeal shall be approved.

(2) UPPAC panel member:

(a) A UPPAC member shall disqualify himself as a panel member due to any known financial or personal interest, prior relationship, personal and independent knowledge of the persons or issues in the case, or other association that the panel member believes would compromise the panel member's ability to make an impartial decision.

(b) A party may seek disqualification of a UPPAC panel member by submitting a written request for disqualification to the hearing officer, or the Executive Secretary if there is no hearing officer; the request shall be received not less than 15 days before a scheduled hearing. The hearing officer, or the Executive Secretary, if there is no hearing officer, shall review the request and supporting evidence and, upon a finding that the reasons for the request are substantial and compelling, shall disqualify the panel member. If the disqualification leaves the hearing panel with fewer than three UPPAC panel members, UPPAC shall appoint a replacement and the Executive Secretary shall, if necessary, reschedule the hearing.

(c) If the request is denied, the party requesting the disqualification shall be notified not less than ten days prior to the date of the hearing. The requesting party may file a written appeal of the denial to the State Superintendent, which request shall be received not less than five days prior to the hearing date. If the State Superintendent finds that the appeal is justified, he shall direct the hearing officer, or the Executive Secretary if there is no hearing officer, to replace the panel member.

(d) If a disqualification leaves the hearing panel with fewer than three UPPAC panel members, UPPAC shall agree upon a replacement and the Executive Secretary shall, if necessary, reschedule the hearing.

(e) The decision of the State Superintendent is final.

(f) Failure of a party to meet the time requirements of R686-101-4C(2)(c) shall result in denial of the request or appeal; if the hearing officer fails to meet the time requirements, the request or appeal shall be approved.

D. The Executive Secretary may, at the time he selects the hearing officer or panel members, select alternative hearing officers or panel members following the process for selecting those individuals. Substitution of alternative panel members requires only notice to both parties.

R686-101-5. Preliminary Instructions to Parties to a Hearing.

A. Not less than 25 days before the date of a hearing the Executive Secretary shall provide the parties with the following information:

(1) Date, time, and location of the hearing;

(2) Names and LEA affiliations of the panel members, and the name of the hearing officer;

(3) Procedures for objecting to any member of the hearing panel; and

(4) Procedures for requesting a change in the hearing date.

B. Not less than 20 days before the date of the hearing, the respondent and the complainant shall provide the following to the other party and to the hearing officer:

(1) A brief, if requested by the hearing officer, containing any procedural and evidentiary motions along with that party's position regarding the allegations. Submitted briefs shall include relevant laws, rules, and precedent;

(2) The name of the person who shall represent the party at the hearing, a list of witnesses expected to be called, a summary of the testimony which each witness is expected to present, and a summary of documentary evidence which shall be submitted.

(3) Following receipt of each party's witness list, each party may provide a list of anticipated rebuttal witnesses and evidence no later than 10 days prior to the hearing.

(4) No witness or evidence may be presented at the hearing if the opposing party has requested to be notified of such information and has not been fairly apprised at least 20 days prior to the hearing, or 10 days prior to the hearing if the witness or evidence is to be used for rebuttal purposes. The timeliness requirement may be waived by agreement of the parties or by the hearing officer upon a showing of good cause or by the hearing officer's determination that no prejudice has occurred to the opposing party. This restriction shall not apply to rebuttal witnesses whose testimony cannot reasonably be anticipated before the time of the hearing.

C. Not less than 10 days before the date of the hearing, the respondent and the complainant shall provide to the other party and the hearing officer the documents referenced on the summary of documentary evidence previously provided, to be entered as evidence in the hearing.

D. If a party fails to comply in good faith with a directive of the hearing officer, including time requirements, the hearing officer may prohibit introduction of the testimony or evidence or take other steps reasonably appropriate under the circumstances including, in extreme cases of noncompliance, entry of a default against the offending party. Nothing in this Section prevents the use of rebuttal witnesses.

E. Parties shall provide materials to the hearing officer, panel members and UPPAC as directed by the hearing officer.

R686-101-6. Hearing Parties' Representation.

A. Complainant: The complainant shall be represented by a person appointed by the USOE prosecutor.

B. Respondent: A respondent may represent himself or be represented, at his own cost, by another person.

C. The informant has no right to individual representation at the hearing or to be present or heard at the hearing unless called as a witness.

D. The Executive Secretary shall receive timely notice in writing of representation by anyone other than the respondent.

R686-101-7. Discovery Prior to a Hearing.

A. Discovery is permitted to the extent necessary to obtain relevant information necessary to support claims or defenses, as determined by the appointed hearing officer.

B. Discovery, especially burdensome or unduly legalistic discovery, may not be used to delay a hearing.

C. Discovery may be limited by the hearing officer at his discretion or upon a motion by either party. The hearing officer rules on all discovery requests and motions.

D. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence shall be issued pursuant to Section 53A-6-306(2)(c) if requested by either party at least five working days prior to the hearing.

E. No expert witness report or testimony may be presented at the hearing unless the requirements of R686-101-11 have been met.

R686-101-8. Burden and Standard of Proof for UPPAC Proceedings.

A. In matters other than those involving applicants for licensing, and excepting the presumptions under R686-101-12F, the complainant shall have the burden of proving that action against the license is appropriate.

B. An applicant for licensing has the burden of proving that licensing is appropriate.

C. Standard of proof: The standard of proof in all UPPAC hearings is a preponderance of the evidence.

D. Evidence: The Utah Rules of Evidence are not applicable to UPPAC proceedings. The criteria to decide evidentiary questions shall be:

(1) reasonable reliability of the offered evidence;

(2) fairness to both parties; and

(3) usefulness to UPPAC in reaching a decision.

E. The hearing officer has the sole responsibility to determine the application of the hearing rules and the admissibility of evidence.

R686-101-9. Deportment.

A. Parties, their representatives, witnesses, and other persons present during a hearing shall conduct themselves in an appropriate manner during hearings, giving due respect to members of the hearing panel and complying with the instructions of the hearing officer. The hearing officer may exclude persons from the hearing room who fail to conduct themselves in an appropriate manner and may, in response to extreme instances of noncompliance, disallow testimony or declare an offending party to be in default.

B. Parties, attorneys for parties, or other participants in the professional practices investigation and hearing process shall not harass, intimidate or pressure witnesses or other hearing participants, nor shall they direct others to harass, intimidate or pressure witnesses or participants.

R686-101-10. Hearing Record.

A. The hearing shall be recorded at UPPAC's expense, and the recording shall become part of the permanent case record, unless otherwise agreed upon by all parties.

B. Individual parties may, at their own expense, make recordings or transcripts of the proceedings with notice to the Executive Secretary.

C. If an exhibit is admitted as evidence, the record shall reflect the contents of the exhibit.

D. All evidence and statements presented at a hearing shall become part of the permanent case file and shall not be removed except by direction of the hearing officer or order of the Board.

E. The USOE record of the proceedings may be reviewed upon request of a party under supervision of the Executive Secretary and only at the USOE.

R686-101-11. Expert Witnesses in UPPAC Proceedings.

A. A party may call an expert witness at its own expense. Notice of intent of a party to call an expert witness, the identity and qualifications of such expert witness and the purpose for which the expert witness is to be called shall be provided to the hearing officer and the opposing party at least 15 days prior to the hearing date.

B. The hearing officer may appoint any expert witness agreed upon by the parties or of the hearing officer's own selection. An expert so appointed shall be informed of his duties by the hearing officer in writing, a copy of which shall become part of the permanent case file. The expert shall advise the hearing panel and the parties of his findings and may thereafter be called to testify by the hearing panel or by any party. He may be examined by each party or by any of the hearing panel members.

C. Defects in the qualifications of expert witnesses, once a minimum threshold of expertise is established, go to the weight to be given the testimony and not to its admissibility.

D. Experts who are members of the complainant's staff or an LEA staff may testify and have their testimony considered as part of the record along with that of any other expert.

E. Any report of an expert witness which a party intends to introduce into evidence shall be provided to the opposing party at least 15 days prior to the hearing date.

F. The hearing officer may allow testimony by expert witnesses by mutual agreement of the parties or if the hearing officer allows the testimony.

R686-101-12. Evidence and Participation in UPPAC Proceedings.

A. The hearing officer may not exclude evidence solely because it is hearsay.

B. Each party has the right to call witnesses, present evidence, argue, respond, cross-examine witnesses who testify in person at the hearing, and submit rebuttal evidence.

C. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

D. If a case involves allegations of child abuse or of a sexual offense against a child, either party or a member of the hearing panel, the hearing officer may request that a minor be allowed to testify outside of the respondent's presence. If the hearing officer determines that the minor would suffer serious emotional or mental harm or that the minor's testimony in the presence of the respondent would be unreliable, the minor's testimony may be admitted in one of the following ways:

(1) An oral statement of a victim or witness younger than 18 years of age which is recorded prior to the filing of a complaint shall be admissible as evidence in a hearing regarding the offense if:

(a) No attorney for either party is in the minor's presence when the statement is recorded;

(b) The recording is visual and aural and is recorded;

(c) The recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered; and

(d) Each voice in the recording is identified.

(2) The testimony of any witness or victim younger than 18 years of age may be taken in a room other than the hearing room, and be transmitted by closed circuit equipment to another room where it can be viewed by the respondent. All of the following conditions shall be observed:

(a) Only the hearing panel members, attorneys for each party, persons necessary to operate equipment, and a person approved by the hearing officer whose presence contributes to the welfare and emotional well-being of the minor may be with the minor during the testimony.

(b) The respondent may not be present during the minor's testimony;

(c) The hearing officer shall ensure that the minor cannot hear or see the respondent;

(d) The respondent shall be permitted to observe and hear, but not communicate with the minor; and

(e) Only hearing panel members, the hearing officer and the attorneys may question the minor.

(3) If the hearing officer determines that the testimony of a minor shall be taken consistent with R686-101-12D, the child may not be required to testify in any proceeding where the recorded testimony is used.

E. On his own motion or upon objection by a party, the hearing officer:

(1) May exclude evidence that the hearing officer determines to be irrelevant, immaterial, or unduly repetitious;

(2) Shall exclude evidence that is privileged under law applicable to administrative proceedings in Utah unless waived;

(3) May receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent

portions of the original document;

(4) May take official notice of any facts that could be judicially noticed under judicial or administrative laws of Utah, or from the record of other proceedings before the agency.

F. Presumptions:

(1) A rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor if the person has:

(a) Been found, pursuant to a criminal, civil, or administrative action to have committed a sexual offense against a minor;

(b) Failed to defend himself against such a charge when given a reasonable opportunity to do so; or

(c) Voluntarily surrendered a license or allowed a license to lapse in the face of a charge of having committed a sexual offense against a minor.

(2) A rebuttable evidentiary presumption exists that a person is unfit to serve as an educator if the person has been found pursuant to a criminal, civil, or administrative action to have exhibited behavior evidencing unfitness for duty, including immoral, unprofessional, or incompetent conduct, or other violation of standards of ethical conduct, performance, or professional competence. Evidence of such behavior may include:

(a) conviction of a felony;

(b) a felony charge and subsequent conviction for a lesser related charge pursuant to a plea bargain or plea in abeyance;

(c) an investigation of an educator's license, certificate or authorization in another state; or

(d) the expiration, surrender, suspension, revocation, or invalidation for any reasons of an educator license.

R686-101-13. Hearing Report.

A. Within 20 days after the hearing, or within 20 days after the deadline imposed for the filing of any post-hearing materials permitted by the hearing officer, the hearing officer shall sign and issue a hearing report consistent with the recommendations of the panel that includes:

(1) A detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted. Findings of fact may not be based solely upon hearsay, and conclusions shall be based upon competent evidence;

(2) A statement of relevant precedent, if available;

(3) A statement of applicable law and rule;

(4) A recommended disposition of UPPAC panel members which shall be one or an appropriate combination of the following:

(a) Dismissal of the complaint: The hearing report shall indicate that the complaint should be dismissed and that no further action should be taken.

(b) Letter of admonishment: the hearing report shall indicate that respondent's conduct is of concern and shall direct the Executive Secretary to write a letter of admonishment, consistent with R277-517, to the respondent.

(c) Letter of warning: the hearing report shall indicate that respondent's conduct is deemed unprofessional and shall direct the Executive Secretary to write a letter of warning, consistent with R277-517, to the respondent.

(d) Letter of reprimand: the hearing report shall indicate that respondent's conduct is deemed unprofessional and shall direct the Executive Secretary to write a letter of reprimand, consistent with R277-517, to the respondent.

(e) Probation: The hearing report shall determine whether the respondent's conduct was unprofessional, that the respondent shall not lose his license, but that a probationary period is appropriate. If the report recommends probation, the report shall designate:

(i) it is the respondent's responsibility to petition UPPAC for removal of probation and letter of reprimand from the respondent's active licensing and CACTUS files;

(ii) a probationary time period or specifically designate an indefinite period;

(iii) conditions that can be monitored;

(iv) if recommended by the panel, a person or entity to monitor a respondent's probation;

(v) a statement providing for costs of probation.

(vi) whether or not the respondent may work in any capacity in public education during the probationary period.

(vii) a probation may be imposed substantially in the form of a plea in abeyance. The respondent's penalty is stayed subject to the satisfactory completion of probationary conditions. The decision shall provide for appropriate or presumed discipline should the probationary conditions not be fully satisfied.

(f) Suspension: The hearing report shall recommend to the Board that the license of the respondent be suspended for a specific or indefinite period of time and until specified reinstatement conditions have been met before respondent may petition for reinstatement of his license.

(g) Revocation: The hearing report may recommend to the State Board of Education that the license of the respondent be revoked.

(5) Notice of the right to appeal; and

(6) Time limits applicable to appeal.

B. Processing the hearing report:

(1) The hearing officer shall circulate the draft report to hearing panel members prior to the 20 day completion deadline of the hearing report.

(2) Hearing panel members shall notify the hearing officer of any changes to the report as soon as possible after receiving the report and prior to the 20 day completion deadline of the hearing report.

(3) The hearing officer shall file the completed hearing report with the Executive Secretary, who shall review the report with UPPAC.

(4) The Executive Secretary may participate in UPPAC's deliberation as a resource to UPPAC in explaining the hearing report and answering any procedural questions raised by UPPAC members.

(5) The hearing officer may confer with the Executive Secretary or the panel members or both while preparing the hearing report. The hearing officer may request the Executive Secretary to confer with the hearing officer and panel following the hearing.

(6) The Executive Secretary may return a hearing report to a hearing officer if the Report is incomplete, unclear, or unreadable, or missing essential components or information.

(7) If UPPAC finds that there have not been significant procedural errors, that recommendations are based upon a reasonable interpretation of the evidence presented at the hearing, and that all issues explained in the hearing report are adequately addressed in the conclusions of the report, UPPAC shall vote to uphold the hearing officer's and panel's report and do one of the following:

(a) If the recommendation is for final action to be taken by UPPAC, UPPAC shall direct the Executive Secretary to prepare a corresponding final order and provide all parties with a copy of the order and hearing report. A copy of the order and the hearing report shall be placed in and become part of the permanent case file. The order shall be effective upon approval by UPPAC.

(b) If the recommendation is for final action to be taken by the Board, the Executive Secretary shall forward a copy of the hearing report to the Board for its further action. A copy of the hearing report shall also be placed in and become part of the permanent case file.

(8) If UPPAC determines that:

(a) the hearing process had procedural errors;

(b) the hearing officer's report is not based upon a reasonable interpretation of the evidence presented at the hearing;

(c) that the conclusions and findings of the hearing report do not provide adequate guidance to the educator; or

(d) that the findings or conclusions of the hearing report do not adequately address the evidence as outlined in the hearing report, the Board or UPPAC may:

(i) direct the Executive Secretary to schedule the matter for rehearing before a hearing officer and panel; or

(ii) direct the Executive Secretary to amend the hearing report to reflect the UPPAC decision.

C. Consistent with Section 63G-2-301(2)(c), the final administrative disposition of all administrative proceedings of UPPAC contained in the recommended disposition section of the hearing report shall be public.

D. A respondent's failure to comply with the terms of a final disposition that includes a probation or suspension of the respondent's license may result in additional discipline against the educator license.

E. If a hearing officer fails to satisfy the responsibilities under this rule, UPPAC may:

(1) notify the Utah State Bar of the failure;

(2) reduce the hearing officer's compensation consistent with the failure;

(3) take timely action to avoid disadvantaging either party; and

(4) preclude the hearing officer from further employment by the Board for UPPAC purposes.

F. Deadlines within this Section may be waived by the Executive Secretary or UPPAC for good cause shown.

G. All criteria of letters of warning and reprimand, probation, suspension and revocation shall also apply to the comparable sections of the final hearing reports.

R686-101-14. Default.

A. The hearing officer may prepare an order of default in a hearing report including a statement of the grounds for default and the recommended disposition if:

(1) the respondent fails to attend or participate in a properly scheduled hearing after receiving proper notice. The hearing officer may determine that the respondent has failed to attend a properly scheduled hearing if the respondent has not appeared within 30 minutes of the appointed time for the hearing to begin, unless the respondent shows good cause for failing to appear in a timely manner;

(2) the respondent or the respondent's representative commits misconduct during the course of the hearing process.

B. The recommendation of default may be executed by the Executive Secretary following all applicable time periods, without further action by UPPAC.

C. Except as provided in R686-101, a default judgment shall result in a recommendation to the Board for a suspension of no less than five years.

D. A default judgment shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in 53A-6-501(2).

R686-101-15. Appeal.

A. UPPAC shall notify a respondent of a UPPAC recommendation for a suspension of two years or more or a revocation immediately following the UPPAC meeting finalizing the UPPAC recommendation.

B. Either party may appeal a final recommendation of UPPAC for a suspension of the respondent's license for two or more years or a revocation to the State Superintendent. A request for review by the State Superintendent shall follow the procedures in R277-514-3 and be submitted in writing within 15 days from the date that UPPAC sends written notice to the parties of its recommendation.

C. Either party may appeal the Superintendent's decision to the Board following the procedures in R277-514-4.

D. A request for appeal to the State Superintendent or the Board shall include:

(1) name, position, and address of appellant;

(2) issue(s) being appealed; and

(3) signature of appellant.

R686-101-16. Temporary Suspension of License Pending a Hearing.

A. If the Executive Secretary determines, after affording respondent an opportunity to discuss allegations of misconduct, that reasonable cause exists to believe that the charges will be proven to be correct and that permitting the respondent to retain his license prior to hearing would create unnecessary and unreasonable risks for children, then the Executive Secretary may order immediate suspension of the Respondent's license pending final Board action.

B. The formal UPPAC recommendation and evidence of the temporary suspension may not be introduced at the hearing.

C. Notice of the temporary suspension shall be provided to other states under R277-514.

R686-101-17. Remedies for Individuals Beyond UPPAC Actions.

Despite UPPAC or Board actions, informants or other injured parties who feel that their rights have been compromised, impaired or not addressed by the provisions of this rule, may appeal directly to district court.

KEY: hearings, reports
November 7, 2013 **53A-6-306(1)(a)**

R686. Professional Practices Advisory Commission, Administration.

R686-102. Request for Licensure Reinstatement and Reinstatement Procedures.

R686-102-1. Definitions.

A. "Administrative hearing" means a formal adjudicative proceeding consistent with 53A-6-601. The Utah State Board of Education and Utah State Office of Education licensing process is not governed by the Utah Administrative Procedures Act, Title 63G, Chapter 4.

B. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional or criminal conduct; is unfit for duty; has lost his license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in R277-515.

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

D. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file owned and maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history; and

(5) a record of disciplinary action taken against the educator's license.

E. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, of UPPAC.

F. "Hearing" means an administrative proceeding held pursuant to Section 53A-6-601, is a formal adjudication in which allegations made in a complaint are examined before a hearing officer and UPPAC hearing panel, where each party has the opportunity to present witnesses and evidence relevant to the complaint and respond to witnesses or evidence presented by the other party. At the conclusion of a hearing, the hearing officer, after consulting with members of the UPPAC hearing panel, prepares a hearing report and submits it to the Executive Secretary.

G. "Hearing officer" means a person who is experienced in matters relating to administrative procedures, education and education law and is either a member of the Utah State Bar Association or a person not a member of the bar who has received specialized training in conducting administrative hearings, and is appointed by the Executive Secretary at the request of UPPAC to manage the proceedings of a hearing. The hearing officer may not be an acting member of UPPAC. The hearing officer has broad authority to regulate the course of the hearing and dispose of procedural requests but shall not have a vote as to the recommended disposition of a case.

H. "Hearing panel" means a hearing officer and three or more members of UPPAC agreed upon by UPPAC to assist the hearing officer in conjunction with the hearing panel in conducting a hearing and preparing a hearing report.

I. "Hearing report" means a report prepared by the hearing officer consistent with the recommendations of the hearing panel at the conclusion of a hearing. The report includes a recommended disposition, detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent, and applicable law and rule.

J. "License" means a teaching or administrative credential, including endorsements, which is issued by a state to signify authorization for the person holding the license to provide professional services in the state's public schools.

K. "Petitioner" means the individual seeking an educator license following denial of a license or seeking reinstatement following license suspension or in the event of compelling circumstances, following revocation.

L. "Prosecutor" means the attorney designated by the USOE to represent the complainant and present evidence in support of the complaint. The prosecutor may also be the investigator, but does not have to be.

M. "Suspension" means an invalidation of a Utah educator license. A suspension may include specific conditions that an educator shall satisfy and may identify a minimum time period that shall elapse before the educator can request a reinstatement hearing before UPPAC.

N. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established under Section 53A-6-301.

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

R686-102-2. Authority and Purpose.

A. This rule is authorized by Section 53A-6-306(1)(a) directing UPPAC to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to establish procedures regarding educator license reinstatement.

R686-102-3. Application for Licensing Following Denial or Loss of License.

A. An individual who has been denied licensing or lost his license through suspension, or through surrender of a license or allowing a license to lapse in the face of an allegation of misconduct, may request review to consider reinstatement of a license. The request for review shall be in writing and addressed to the UPPAC Executive Secretary at the USOE mailing address, and shall have the following information:

(1) name and address of the individual requesting review;

(2) action being requested;

(3) specific evidence and documentation of compliance with terms and conditions of any remedial or disciplinary requirements or recommendations from UPPAC or the Board;

(4) reason(s) that individual seeks reinstatement;

(5) signature of person requesting review.

B. The Executive Secretary shall review the request with UPPAC.

(1) If UPPAC determines that the request is incomplete or invalid, the person requesting reinstatement shall be notified of the denial.

(2) If UPPAC determines that the request is complete, timely and appropriate, a hearing shall be scheduled and held as provided under Section R686-102-4.

C. Burden of Proof: The burden of proof for recommending or granting reinstatement of a license shall fall on the individual seeking the reinstatement.

(1) Individuals requesting reinstatement of a suspended license shall:

(a) show sufficient evidence of compliance with any conditions imposed in the past disciplinary action;

(b) provide sufficient evidence to the reinstatement hearing panel that the educator shall not engage in recurrences of the actions that gave rise to the suspension and that reinstatement is appropriate;

(c) undergo a criminal background check consistent with Utah law and R277-517; and

(d) provide materials for review by the hearing panel that demonstrate petitioner's compliance with directives from UPPAC or the Board found in petitioner's original stipulated agreement or hearing report.

(2) Individuals requesting licensing following denial shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable, when requesting

reinstatement.

D. An individual whose license has been suspended or revoked in another state shall seek reinstatement in the other state prior to approval of a request for a reinstatement hearing.

R686-102-4. Reinstatement Hearing Procedures.

A. The individual seeking reinstatement of his license shall be the petitioner.

B. A hearing officer shall preside over the hearing and shall rule on all procedural issues as they arise.

C. A hearing panel, made up of three members of UPPAC, shall hear the evidence and along with the prosecutor and hearing officer, question the petitioner regarding the appropriateness of reinstatement.

D. A petitioner may be represented by counsel and may present evidence and witnesses.

E. Presentation of evidence and witnesses by either party shall be consistent with R686-101.

F. The hearing officer shall direct one or both parties to explain the background of a case to provide necessary information about the initial misconduct and subsequent UPPAC and Board action to panel members at the beginning of the hearing.

G. The petitioner shall present documentation or evidence that supports reinstatement.

H. The State, represented by the UPPAC prosecutor, shall present any evidence or documentation that explains and supports the State's recommendation in the matter.

I. Other evidence or witnesses may be presented by either party and shall be presented consistent with R686-101.

J. The petitioner shall:

(1) focus on the petitioner's actions and rehabilitative efforts and performance following license denial or suspension;

(2) explain item by item how each condition of the hearing report or stipulated agreement was satisfied;

(3) provide documentation in the form of evaluations, reports, or plans, as directed by the hearing report or stipulated agreement of satisfaction of all required and outlined conditions;

(4) be prepared to completely and candidly respond to the UPPAC prosecutor and hearing panel questions about the misconduct that caused the license suspension, subsequent rehabilitation activities, any counseling or therapy related to the original misconduct, and work and professional actions and behavior between the suspension and reinstatement request;

(5) present and be prepared to question witnesses (including counselors, current employers, support group members) at the hearing who can provide substantive corroboration of rehabilitation or current professional fitness to be an educator;

(6) provide copies of all reports and documents to the UPPAC prosecutor and hearing officer at least five days before a reinstatement hearing; and

(7) bring eight copies of all documents or materials that shall be introduced at the hearing to the hearing.

K. The UPPAC prosecutor, the hearing panel and hearing officer shall thoroughly question the petitioner as to the petitioner's:

(1) specific and exact compliance with reinstatement requirements;

(2) counseling, if required for reinstatement. Petitioner shall state, under oath, that he provided all relevant information and background to his counselor or therapist;

(3) specific plans for avoiding previous misconduct; and

(4) demeanor and changed understanding of petitioner's professional integrity and actions consistent with R277-515.

L. The appointed hearing officer shall rule on procedural issues in a reinstatement hearing in a timely manner as they arise.

M. No more than 20 days following a reinstatement hearing, the hearing officer, with the assistance of the hearing panel, shall prepare a hearing report, which shall comply with the requirements set forth in R686-102-5, and which shall be provided to the UPPAC Executive Secretary.

(1) The hearing report shall be submitted to UPPAC at the next meeting following receipt by the Executive Secretary.

(2) If the recommendation in the hearing report is for reinstatement of an educator license that was suspended, UPPAC may do the following upon receipt of the hearing report:

(a) accept the recommendation as prepared in the hearing report;

(b) amend the recommendation with conditions or modifications to the panel's recommendation which shall be directed by UPPAC and prepared by the UPPAC Executive Secretary and attached to the hearing report;

(c) reject the recommendation.

(3) If UPPAC rejects a recommendation for reinstatement of an educator license, the Executive Secretary shall notify the educator within 20 working days of the UPPAC meeting in which the recommendation was rejected.

R686-102-5. Reinstatement Hearing Report.

A. A reinstatement hearing report shall:

(1) provide a summary of the background of the original disciplinary action;

(2) provide adequate information, including summary statements of evidence presented, documents provided, and petitioner's testimony and demeanor for both UPPAC and the Board to evaluate petitioner's progress and rehabilitation since petitioner's original disciplinary action;

(3) specifically address petitioner's appropriateness and fitness to be a public school educator again; and

(4) provide a statement that the hearing panel's recommendation to UPPAC was unanimous or provide the panel's vote concerning reinstatement.

B. The conclusions section of a reinstatement hearing report is public information. Other parts of the hearing report are protected.

C. If a license is reinstated, an educator's CACTUS file shall show that the educator's license was reinstated and the date of formal Board action reinstating the license.

KEY: licensure, reinstatement, hearings
November 7, 2013 53A-6-306(1)(a)

R686. Professional Practices Advisory Commission, Administration.

R686-103. Utah Professional Practices Advisory Commission Review of License Due to Background Check Offenses.

R686-103-1. Definitions.

A. "Applicant" means an individual seeking a clearance of a criminal background check pursuant to approval for an educational license at any stage of the licensing process from the USOE, including license renewal.

B. "Arrest" means a seizure or forcible restraint; the taking or keeping of a person in custody by legal authority, especially in response to a criminal charge; specifically the apprehension of someone for the purpose of securing the administration of the law. For purposes of this rule, "arrest" also means fingerprinting at the time of restraint or at a later time related to the cause for restraint.

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

D. "Conviction" means the act or process of judicially finding someone guilty of a crime.

E. "Executive Committee" means a subcommittee of UPPAC consisting of the Executive Secretary, Chair, Vice-Chair, and one member of UPPAC at large. All Executive Committee members, excluding the Executive Secretary, shall be selected by UPPAC. Substitutes may be appointed from within UPPAC by the Executive Secretary as needed.

F. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State Superintendent of Public instruction to serve as the executive officer, and a non-voting member, of UPPAC.

G. "License" means a teaching or administrative credential, including endorsements, which is issued by the Board to signify authorization for the person holding the license to provide professional services in Utah's public schools.

H. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as establishing under Section 53A-6-301.

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

R686-103-2. Authority and Purpose.

A. This rule is authorized by Section 53A-6-306(1)(a) which directs UPPAC to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to establish procedures for an applicant to proceed toward licensing or be denied to continue when an application or recommendation for licensing or renewal identifies offenses in the applicant's criminal background check. The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d).

R686-103-3. Initial Submission and Evaluation of Information.

A. Upon receipt of information as the result of a fingerprint check of all applicable state, regional, and national criminal records files pursuant to Section 53A-6-401, the Executive Secretary shall make a determination to approve the applicant's request for criminal background check clearance based on time passed since offense, violent nature of the offense (student safety), involvement or non-involvement of students or minors in the offense, and other relevant factors, or refer the application to UPPAC for a decision and request further information and explanation from the applicant. The Executive Secretary may require the applicant to provide additional information, including:

(1) a letter of explanation for each reported offense that details the circumstances, the final disposition, and any explanation for the offense the applicant may want to provide UPPAC, including any advocacy for approving licensing.

(2) official documentation regarding each offense, including court records and police reports for each offense, or if both court records and police reports are not available, a letter on official police or court stationery from the appropriate court or police department involved, explaining why the records are not available.

B. UPPAC shall only consider an applicant's licensing request after receipt of all letters of explanation and documentation requested in good faith by the Executive Secretary.

C. If an applicant is under court supervision of any kind, including parole, informal or formal probation or plea in abeyance, there is a presumption that the individual shall not be approved for licensing until the supervision is successfully terminated.

D. It is the applicant's sole responsibility to provide the requested material to UPPAC.

E. Upon receipt of any requested documentation, including the applicant's written letters of explanation and advocacy, UPPAC shall either approve the applicant's request for criminal background check clearance; deny the applicant's licensing request; or seek further information, personally from the applicant or other sources, at the first possible meeting of UPPAC.

F. UPPAC has directed the Executive Secretary to approve the following without additional UPPAC review:

(1) singular offenses committed by an applicant, excluding offenses identified in R686-103-4G, if the arrest occurred more than two years prior to the date of submission to UPPAC for review;

(2) more than two offenses committed by the applicant, excluding offenses identified in R686-103-4G, if at least one arrest occurred more than five years prior to the date of submission to UPPAC for review; or

(3) more than two offenses committed by the applicant, excluding offenses identified in R686-103-4G, if all arrests for the offenses occurred more than 10 years prior to the date of submission to UPPAC for review.

G. UPPAC shall review all arrests and convictions for the following:

(1) convictions or pleas in abeyance for any offense where the arrest occurred less than two years prior to the date of submission to UPPAC;

(2) conviction(s) for felonies;

(3) arrests or convictions for sex-related or lewdness offenses;

(4) arrests or convictions for drug-related offenses where the charge or conviction is for a class A misdemeanor or higher; and

(5) convictions involving children in any way.

H. UPPAC directs the Executive Secretary to use reasonable discretion to interpret the information received from the Bureau of Criminal Identification (BCI) provided to BCI from multiple jurisdictions to comply with the provisions of R686-103-4F and G and to interpret strictly the provisions of R686-103-4F and G.

R686-103-4. Appeal.

A. Should UPPAC deny an applicant's licensing request, UPPAC shall inform the applicant in writing that the application for licensing has been denied and notify the applicant of the right to appeal that decision under this Rule.

B. The applicant shall have 30 days from notice provided under R686-103-3A to make formal written request for an appeal.

C. An applicant's request to appeal the denial of clearance shall follow the application criteria and format contained in R686-101 and shall include:

(1) name and address of the individual requesting review;
(2) action being requested;
(3) the grounds for the appeal, which are limited to:
(a) a mistake of identity;
(b) a mistake of fact regarding the information relied upon by UPPAC in making its decision;
(c) information that could not, with reasonable diligence, have been discovered and produced by the applicant previously and provided previously to UPPAC; or
(d) compelling circumstances that in the judgment of the Executive Committee warrant an appeal.
(4) signature of person requesting review.
D. The Executive Secretary shall make a determination regarding the grounds for appeal in a timely manner, inform the applicant in writing of the decision, and, if necessary, schedule an appeal hearing at the earliest possible date, consistent with the standard UPPAC meetings.

R686-103-5. Appeal Procedure.
A. An applicant shall have the right to be represented by an attorney at an appeal hearing under this Rule. UPPAC shall be represented by a person appointed by the Investigations Unit of the USOE.
B. The burden of proof at an appeal hearing shall be on the applicant to show that the actions of UPPAC in denying the applicant's licensing request were based on the grounds enumerated in R686-103-3C.
C. The hearing shall be heard before a panel (three members) of UPPAC or UPPAC, chosen under the same procedures and having the same duties as delineated in R686-101.
D. The Executive Secretary or UPPAC Chair shall conduct the hearing and act as hearing officer. The hearing officer's duties shall be the same duties as delineated in R686-101.
E. At the sole discretion of the hearing officer, the hearing shall be conducted consistent with R686-101, as applicable. All procedural matters shall be at the discretion of the hearing officer and the Executive Secretary who has the right to limit witnesses and evidence presented by the applicant in support of the appeal.
F. Within 20 days after the hearing, the Executive Secretary or UPPAC Chair shall issue a written report containing:
(1) detailed findings of fact related to the factual basis for the appeal;
(2) the decision and rationale of the hearing panel concerning the applicant's clearance of criminal background check request; and
(3) any time-line or conditions recommended by the panel for a reapplication for clearance by the applicant.
G. The panel's recommendation shall be reviewed by UPPAC at the first reasonable opportunity.
H. UPPAC's decision, upon review of the panel's recommendation, is the final administrative decision.

KEY: educator license, appeals
November 7, 2013 53A-6-306(1)
Notice of Continuation October 5, 2012

R708. Public Safety, Driver License.
R708-43. Verification of Personal Identifying Information by Depository Institutions.
R708-43-1. Purpose.

The purpose of this rule is to define the procedures, requirements and format for verifying personal identifying information in accordance with Subsection 53-3-109(1)(c)(iii).

R708-43-2. Authority.

This rule is authorized by Subsection 53-3-109(7)(f).

R708-43-3. Definitions.

(1) "Division" means the Utah Driver License Division.

(2) "Requestor" means a depository institution as defined in Section 7-1-103 that seeks access to verify personal identifying information contained in the Utah Driver License Division Database.

(3) "ValIDate" means the electronic web interface used to verify personal identifying information contained in the Utah Driver License Division Database.

(4) "Utah Interactive, Inc." means the entity under contract with the division to provide the ValIDate system.

R708-43-4. Application for Access to the ValIDate System.

(1) To apply for access to the ValIDate system, the requestor must:

(a) meet the qualifications stated in Subsection 53-3-109(1)(c)(iii);

(b) submit a "User Agreement for the ValIDate System" to the Division; and

(c) submit documentation to the division that establishes the requestor is a depository institution as defined in Section 7-1-103.

(2) Upon receipt of the required form and documentation, the division:

(a) shall review the materials to determine if the requestor is eligible to access the ValIDate system; and

(b) may request additional information to determine if the requestor is eligible to access the ValIDate system.

(3) If the division determines the requestor has met the requirements to access the ValIDate system, the division shall notify Utah Interactive, Inc. that the requestor is authorized to access ValIDate.

(4) If the division determines the applicant does not meet the requirements to access the ValIDate system:

(a) the division shall issue a denial letter to the requestor stating the reasons for the denial; and

(b) the requestor may seek agency review as provided by Section 63G-4-301 by filing a written request for review within 30 calendar days after the issuance of the letter.

R708-43-5. Procedures for Verification of Information.

(1) When submitting a query in ValIDate, the requestor shall enter the following information into the data fields:

(a) the subject's name as it appears on the Utah Driver License or Identification card;

(b) the subject's Utah Driver License or Identification card number; and

(c) the subject's date of birth.

(2) Upon submittal of an electronic request for verification, ValIDate will search the Utah Driver License Division Database and furnish a "YES" or "NO" response.

(3) A "YES" response verifies the name, Utah Driver License or Identification card number, and date of birth, matches the information in the Utah Driver License Division Database

(4) A "NO" response indicates one or more data fields submitted does not match the information in the Utah Driver License Division Database.

R708-43-6. Unauthorized Use.

(1) The division may suspend or revoke a requestor's access to ValIDate for failure to comply with the user agreement, this rule, or with Section 53-3-109.

(2) The requestor may seek agency review of the suspension or revocation as provided by Section 63G-4-301 by filing a written request for review within 30 calendar days after the issuance of the suspension or revocation letter.

KEY: driver license verification
November 21, 2013 53-3-109(7)(f)
Notice of Continuation January 20, 2011 53-3-109(1)(c)(iii)

R710. Public Safety, Fire Marshal.
R710-13. Reduced Cigarette Ignition Propensity and Firefighter Protection Act.
R710-13-1. Adoption, Title, Purpose, and Prohibitions.

Pursuant to Section 53-7-407, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules for the enactment of the Reduced Cigarette Ignition Propensity and Firefighter Protection Act.

R710-13-2. Definitions.

2.1 "AG" means Attorney General

2.2 "Board" means Utah Fire Prevention Board.

2.3 "NFPA" means National Fire Protection Association.

2.4 "SFM" means State Fire Marshal or authorized deputy.

2.5 "Tax Commission" means the Utah State Tax Commission.

2.6 "UCA" means Utah State Code Annotated 1953 as amended.

R710-13-3. Certification and Product Change.

3.1 As required in UCA 53-7-404(1), accepted alternative test methods of other states that are equal to or stricter performance standards as allowed in UCA 53-7-403(4), may also be accepted as meeting the standards established in the statute.

3.2 If the SFM intends to remove a brand from the certified list, it will send a notice of intent to deny to the manufacturer. The notice of intent shall include the following:

3.2.1 The factual and legal deficiencies upon with the SFM intended action rests.

3.2.2 The actions the manufacturer must take to satisfy the factual or legal deficiencies upon with the intended action is based.

3.2.3 The notification that the manufacturer shall have 15 working days to cure the deficiencies and submit documentation or other information to correct the deficiencies. The SFM may extend the time period for a manufacturer to cure the deficiencies.

R710-13-4. Implementation and Inspection.

4.1 As required in UCA 53-7-404(3), 53-7-405(6)(c), 53-7-407(2), and 53-7-408, the SFM, AG, and the Tax Commission will cooperate to produce a list or lists of cigarette brands that are legal for sale under any and all statutes of the State of Utah.

R710-13-5. Adjudicative Proceedings.

5.1 Adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

KEY: fire safe cigarettes
November 24, 2008 **53-7-407**
Notice of Continuation November 13, 2013

R728. Public Safety, Peace Officers Standards and Training.
R728-503. Utah Minimum Standards for All Emergency Pursuit Policies to be Adopted by Public Agencies that Operate Authorized Emergency Pursuit Vehicles.
R728-503-1. Authority.

(1) This rule establishes minimum standards for all emergency pursuit policies to be adopted by public agencies authorized to operate authorized emergency pursuit vehicles.

(2) This rule is authorized by Subsection 41-6a-212(5).

R728-503-2. Definitions.

(1) Terms in this rule are defined in Section 41-6a-102.

(2) In addition:

(a) "agency emergency pursuit policy" means the written principles by which a Utah individual public agency that operates authorized emergency pursuit vehicles is guided in the management of its affairs concerning whether to, and how to, engage and disengage in the pursuit of a suspect by vehicle.

(b) "authorized emergency pursuit vehicle" means law enforcement vehicle, either marked or unmarked, properly equipped with audible sirens and visual lights owned and operated by a public agency.

(c) "back-up unit" means each authorized emergency pursuit vehicle assisting the primary unit.

(d) "balance test" means that a law enforcement officer shall act as a reasonably prudent emergency vehicle operator in like circumstances while making an ongoing decision process to analyze the risk of initiating, continuing, and terminating pursuit given the following considerations:

(i) the need to apprehend a fugitive who presents a danger to others because the serious and violent nature of the crime for which the fugitive is sought or because the fugitive's driving presents a threat to the public safety that may outweigh the risks that a pursuit poses to others; and

(ii) the need to avoid pursuit if the threat of public or officer safety is greater than the need for immediately apprehending the suspect.

(e) "boxing-in" means a technique designed to stop a violator's vehicle by surrounding it with authorized emergency pursuit vehicles and then slowing all vehicles to a stop.

(f) "channelization" means a technique where objects are placed in the anticipated or actual path of a pursued vehicle which tend to alter the vehicle's intended direction of travel.

(g) "intervention techniques" means specific operational tactics including immobilization, channelization, ramming, boxing-in, roadblock procedures, tire deflation devices (spike strips, etc.) which are intended to disable fleeing vehicles or otherwise prevent further flight or escape.

(h) "paralleling" means participating in the pursuit by proceeding in the same direction and maintaining approximately the same speed while traveling on an alternate street or highway that parallels the pursuit route.

(i) "primary unit" means the authorized emergency pursuit vehicle that initiates a pursuit or assumes control of the pursuit as the lead vehicle or the first authorized emergency pursuit vehicle immediately behind the fleeing suspect.

(j) "supervisor" means a law enforcement officer who, by virtue of rank or assignment, is responsible for the direction or supervision of the activities of other law enforcement officers.

R728-503-3. Purpose.

(1)(a) The purpose of this rule is to provide minimum standards, below which, the individualized law enforcement agency emergency pursuit policy may not legally go.

(b) It is not the intent nor legal purpose of these minimum standards to be exhaustive or all inclusive on this subject.

(2) As law enforcement officers consider the balance test, these minimum standards assist in training as well as providing a threshold for the law enforcement officer while analyzing the balance test in actual field situations.

(3)(a) The department establishes these minimum standards to assist each agency develop its own agency emergency pursuit policy.

(b) While implementing and revising an agency emergency pursuit policy, each agency shall use these minimum standards as a starting point and then individualize its agency emergency pursuit policy as needed.

R728-503-4. Initiating Pursuit Policy.

(1) Each law enforcement officer shall consider the balance test prior to engaging in an emergency vehicle pursuit.

(2) Each law enforcement officer in an authorized emergency pursuit vehicle may initiate a vehicular pursuit when the suspect exhibits the intention to avoid apprehension by refusing to stop when properly directed to do so.

(3) In deciding whether to initiate pursuit, the law enforcement officer may take into consideration:

(a) road, weather, and environmental conditions;

(b) population density and vehicular and pedestrian traffic;

(c) the relative performance capabilities of the pursuit vehicle and driver and the suspect vehicle being pursued;

(d) the seriousness of the offense;

(e) likelihood of pursuit resulting in apprehension;

(f) familiarity with the area and road; and

(g) any other pertinent factors.

R728-503-5. Pursuit Operations Policy.

(1) When initiating pursuit, each authorized emergency pursuit vehicle shall activate appropriate warning equipment including an audible signal or visual signal visible to the front of the pursuing vehicle.

(2) When initiating pursuit and when reasonably possible during the pursuit the law enforcement officer shall notify communications of:

(a) the location, direction, and speed of the pursuit;

(b) the description of the pursued vehicle including suspects and occupants; and

(c) the reason for the pursuit.

(3) When reasonably possible the law enforcement officer shall keep communications updated on the pursuit.

(4) When reasonably possible, communications personnel shall:

(a) notify any available agency supervisor of the pursuit;

(b) clear the radio channel of non-emergency traffic; and

(c) relay necessary information to other law enforcement officers and jurisdictions.

(5) When reasonably possible, units and supervisors involved in the pursuit shall use a single statewide or regional radio channel that communications may restrict to pursuit communications.

(6) Unless circumstances dictate otherwise, a pursuit shall consist of no more than two police vehicles, a primary and a back-up unit. All other personnel shall stay clear of the pursuit unless instructed to participate by a supervisor. No unit shall pass another unit involved in the pursuit unless specifically requested to do so or it is otherwise considered necessary.

(7) The primary unit shall become back-up when the pursued vehicle comes under air surveillance, if available, or when another unit is assigned primary responsibility.

R728-503-6. Supervisory Responsibilities.

(1) As with any critical law enforcement incident, it may not be necessary for the supervisor to be present in order to begin exercising management and control of the pursuit.

(2) When reasonably possible, the supervisor shall not actually be engaged in the pursuit itself.

(3) Each supervisor shall consider the balance test prior to authorizing the pursuit or its continuance.

(4) When reasonably possible each supervisor shall:
(a) monitor incoming information;
(b) coordinate and direct activities;
(c) appropriately limit the number of pursuing units; and
(d) ensure notification of law enforcement agencies into whose jurisdiction the pursuit is likely to enter.
(5) A supervisor shall have the discretion to terminate the pursuit.

R728-503-7. Pursuit Tactics.
(1) When reasonably possible, authorized emergency pursuit vehicles having the most prominent markings and emergency lights shall be used to pursue, particularly as the primary unit. When a pursuit is initiated by an unmarked patrol unit, such unit shall relinquish the pursuit to a marked patrol unit as soon as practical.
(2) Intervention techniques shall be used only when it is possible to do so safely and when the law enforcement officers using them have received training in their use.
(3) There shall be no paralleling the pursuit route.
(4) Motorcycles may be used for pursuit in exigent circumstances and when weather and related conditions allow. They shall relinquish the pursuit to a marked patrol unit as soon as practical.
(5) Roadblocks may not be used unless the circumstances would warrant the use of deadly force.
(a) When reasonably possible, roadblocks shall only be created with a supervisor's approval.
(b) When a roadblock is created, law enforcement officers shall:
(i) allow for reasonable stopping distance;
(ii) place the roadblock in a position that is reasonably visible;
(iii) reasonably ensure the safety of non-involved pedestrians and motorists; and
(iv) not place themselves or their vehicle in a position to jeopardize their own safety.
(6) Decisions to discharge firearms at or from a moving vehicle shall be governed by the law enforcement agency's use of force policy and are prohibited when they present an unreasonable risk to others. These decisions shall first be authorized when reasonably possible by a supervisor.
(7) When the pursued vehicle is stopped, law enforcement officers shall use appropriate officer safety tactics and shall be aware of the necessity to utilize only reasonable and necessary force to take suspects into custody.

R728-503-8. Interjurisdictional Pursuits.
(1) Chapter 77-9, the Uniform Act on Fresh Pursuit, governs Rule R728-503-8 as applicable.
(2) The primary unit shall notify communications when it is likely that a pursuit will continue into a neighboring jurisdiction or across the county or state line.
(3) When possible, the supervisor shall authorize inter-jurisdictional pursuit.
(4) When a pursuit enters another jurisdiction, the action of law enforcement officers shall be governed by the policy of the law enforcement officers' own agency, specific inter-local agreements and state law as applicable.
(5) Pursuit into a bordering state shall comply with the law of both states and any applicable inter-jurisdictional agreements.

R728-503-9. Termination of Pursuit.
(1) The supervisor or the primary unit in absence of a supervisor shall continually re-evaluate the balance test to assess the pursuit situation.
(a) The supervisor may order the termination of a pursuit at any time.
(b) The primary unit may terminate the pursuit at any time.
(2) A pursuit may be terminated under the following conditions:
(a) the suspect's identity has been determined and future apprehension is likely;
(b) air support is available to track the suspect;
(c) weather or traffic conditions substantially increase the danger of the pursuit beyond the necessity of apprehending the suspect;
(d) the distance between the suspect and pursuing vehicles makes further pursuit futile;
(e) immediate apprehension is not necessary to protect the public or law enforcement officers;
(f) the law enforcement officer is unfamiliar with the area and is unable to accurately communicate location and direction of pursuit; and
(g) the pursuit proceeds the wrong way on a limited access road, for example an interstate highway.
(3) Termination of pursuit shall include deactivating the audible siren and visual light equipment, pulling the vehicle to the side of the road, and stopping.

R728-503-10. Training.
(1) Law enforcement officers who drive emergency authorized pursuit vehicles shall receive initial minimum tactical pursuit training and initial training defined in Rule R728-503.
(2) Pursuit training shall include details concerning the balance test and its application as to initiating and terminating pursuits.
(3) Ongoing annual policy and procedure and case law review shall be required for law enforcement officers to assure they are knowledgeable with their own individual agencies emergency pursuit policy.

KEY: pursuit, emergency vehicles, policy
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R746. Public Service Commission, Administration.
R746-360. Universal Public Telecommunications Service Support Fund.
R746-360-1. General Provisions.

A. Authorization -- Section 54-8b-15 authorizes the Commission to establish an expendable trust fund, known as the Universal Public Telecommunications Service Support Fund, the "universal service fund," "USF" or the "fund," to promote equitable cost recovery and universal service by ensuring that customers have access to basic telecommunications service at just, reasonable and affordable rates, consistent with the Telecommunications Act of 1996.

B. Purpose -- The purposes of these rules are:

1. to govern the methods, practices and procedures by which:

a. the USF is created, maintained, and funded by end-user surcharges applied to retail rates;

b. funds are collected for and disbursed from the USF to qualifying telecommunications corporations so that they will provide basic telecommunications service at just, reasonable and affordable rates; and,

2. to govern the relationship between the fund and the trust fund established under 54-8b-12, and establish the mechanism for the phase-out and expiration of the latter fund.

C. Application of the Rules -- The rules apply to all retail providers that provide intrastate public telecommunications services.

R746-360-2. Definitions.

A. Affordable Base Rate (ABR) -- means the monthly per line retail rates, charges or fees for basic telecommunications service which the Commission determines to be just, reasonable, and affordable for a designated support area. The Affordable Base Rate shall be established by the Commission. The Affordable Base Rate does not include the applicable USF retail surcharge, municipal franchise fees, taxes, and other incidental surcharges.

B. Average Revenue Per Line -- means the average revenue for each access line computed by dividing the sum of all revenue derived from a telecommunications corporation's provision of public telecommunications services, including, but not limited to, revenues received from the provision of services in both the interstate and intrastate jurisdictions, whether designated "retail," "wholesale," or some other categorization, all revenues derived from providing network elements, services, functionalities, etc. required under the Federal Telecommunications Act of 1996, Pub. L. 104-104,110 Stat.56 or the Utah Telecommunications Reform Act, Laws of Utah 1995, Chapter 269, all support funds received from the Federal Universal Service Support Fund, and each and every other revenue source or support or funding mechanism used to assist in recovering the costs of providing public telecommunications services in a designated support area by that telecommunications corporation's number of access lines in the designated support area.

C. Basic Telecommunications Service -- means a local exchange service consisting of access to the public switched network; touch-tone, or its functional equivalent; local flat-rated, unlimited usage, exclusive of extended area service; single-party service with telephone number listed free in directories that are received free; access to operator services; access to directory assistance, lifeline and telephone relay assistance; access to 911 and E911 emergency services; access to long-distance carriers; access to toll limitation services; and other services as may be determined by the Commission.

D. Designated Support Area -- means the geographic area used to determine USF support distributions. A designated support area, or "support area," need not be the same as a USF proxy model's geographic unit. The Commission will determine the appropriate designated support areas for determining USF support requirements. Unless otherwise specified by the Commission, the designated support area for a rate-of-return regulated Incumbent telephone corporation shall be its entire certificated service territory located in the State of Utah.

E. Facilities-Based Provider -- means a telecommunications corporation that uses its own facilities, a combination of its own facilities and essential facilities or unbundled network elements obtained from another telecommunications corporation, or a telecommunications corporation which solely uses essential facilities or unbundled network elements obtained from another telecommunications corporation to provide public telecommunications services.

F. Geographic Unit -- means the geographic area used by a USF proxy cost model for calculating costs of public telecommunications services. The Commission will determine the appropriate geographic area to be used in determining public telecommunications service costs.

G. Net Fund Distributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues collected by that company, when the former amount is greater than the latter amount.

H. Net Fund Contributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues generated by that company, when the latter amount is greater than the former amount.

I. Trust Fund -- means the Trust Fund established by 54-8b-12.

J. USF Proxy Model Costs -- means the total, jurisdictionally unseparated, cost estimate for public telecommunications services, in a geographic unit, based on the forward-looking, economic cost proxy model(s) chosen by the Commission. The level of geographic cost disaggregation to be used for purposes of assessing the need for and the level of USF support within a geographic unit will be determined by the Commission. These models shall be provided by the Commission by January 2, 2001.

K. Universal Service Fund (USF or fund) -- means the Universal Public Telecommunications Service Support Fund established by 54-8b-15 and set forth by this rule.

R746-360-3. Duties of Administrator.

A. Selection of Administrator -- The Division of Public Utilities will be the fund administrator. If the Division is unable to fulfill that responsibility, the administrator, who must be a neutral third party, unaffiliated with any fund participant, shall be selected by the Commission.

B. Cost of Administration -- The cost of administration shall be borne by the fund; unless administered by a state agency.

C. Access to Books -- Upon reasonable notice, the administrator shall have access to the books of account of all telecommunications corporations and retail providers, which shall be used to verify the intrastate retail revenue assessed in an end-user surcharge, to confirm the level of eligibility for USF support and to ensure compliance with this rule.

D. Maintenance of Records -- The administrator shall maintain the records necessary for the operation of the USF and this rule.

E. Report Forms -- The administrator shall develop report forms to be used by telecommunications corporations and retail providers to effectuate the provisions of this rule and the USF. An officer of the telecommunications corporation or retail provider shall attest to and sign the reports to the administrator.

F. Administrator Reports -- The administrator shall file reports with the Commission containing information on the average revenue per line calculations, projections of future USF

needs, analyses of the end-user surcharges and Affordable Base Rates, and recommendations for calculating them for the following 12-month period. The report shall include recommendations for changes in determining basic telecommunications service, designated support areas, geographic units, USF proxy cost models and ways to improve fund collections and distributions.

G. Periodic Review -- The administrator, under the direction of the Commission, shall perform a periodic review of fund recipients to verify eligibility for future support and to verify compliance with all applicable state and federal laws and regulations.

H. Proprietary Information -- Information received by the administrator which has been determined by the Commission to be proprietary shall be treated in conformance with Commission practices.

I. Information Requested -- Information requested by the administrator which is required to assure a complete review shall be provided within 45 days of the request. Failure to provide information within the allotted time period may be a basis for withdrawal of future support from the USF or other lawful penalties to be applied.

R746-360-4. Application of Fund Surcharges to Customer Billings.

A. Commencement of Surcharge Assessments -- Commencing June 1, 1998, end-user surcharges shall be the source of revenues to support the fund. Surcharges will be applied to intrastate retail rates, and shall not apply to wholesale services.

B. Surcharge Based on a Uniform Percentage of Retail Rates -- The retail surcharge shall be a uniform percentage rate, determined and reviewed annually by the Commission and billed and collected by all retail providers.

C. Surcharge -- The surcharge to be assessed shall equal 1 percent of billed intrastate retail rates.

R746-360-5. Fund Remittances and Disbursements.

A. Remitting Surcharge Revenues --

1. Telecommunications corporations, not eligible for USF support funds, providing telecommunications services subject to USF surcharges shall collect and remit surcharge revenues to the Commission as follows:

a. if the average monthly USF surcharge collections over the prior six months was ten dollars or greater, within 45 days after the end of each month,

b. if the average monthly USF surcharge collections over the prior six months was less than ten dollars, the telecommunications corporation may accrue the USF surcharge collections and submit the accrued collections on a semiannual basis.

2. Telecommunications corporations eligible for USF support funds shall make remittances as follows:

a. Prior to the end of each month, the fund administrator shall inform each qualifying telecommunications corporation of the estimated amount of support that it will be eligible to receive from the USF for that month.

b. Net fund contributions shall be remitted to the Commission within 45 calendar days after the end of each month. If the net amount owed is not received by that date, remedies, including withholding future support from the USF, may apply.

3. The Commission will forward remitted revenues to the Utah State Treasurer's Office for deposit in a USF account.

B. Distribution of Funds -- Net Fund distributions to qualifying telecommunications corporations for a given month shall be made 60 days after the end of that month, unless withheld for failure to maintain qualification or failure to comply with Commission orders or rules.

R746-360-6. Eligibility for Fund Distributions.

A. Qualification --

1. To qualify to receive USF support funds, a telecommunications corporation shall be designated an "eligible telecommunications carrier," pursuant to 47 U.S.C. Section 214(e), and shall be in compliance with Commission orders and rules. Each telecommunications corporation receiving support shall use that support only to provide basic telecommunications service and any other services or purposes approved by the Commission.

2. Additional qualification criteria for Incumbent telephone corporations - In addition to the qualification criteria of R746-360-6A.1.,

a. Non-rate-of-return Incumbent telephone corporations, except Incumbent telephone corporations subject to pricing flexibility pursuant to 54-8b-2.3 shall make Commission approved, aggregate rate reductions for public telecommunications services, provided in the State of Utah, equal to each incremental increase in USF distribution amounts received after December 1, 1999.

b. Rate-of-return Incumbent telephone corporations shall complete a Commission review of their revenue requirement and public telecommunications services' rate structure prior to any change in their USF distribution which differs from a prior USF distribution, beginning with the USF distribution for December, 1999.

B. Rate Ceiling -- To be eligible, a telecommunications corporation may not charge retail rates in excess of the Commission determined Affordable Base Rates for basic telecommunications service or vary from the terms and conditions determined by the Commission for other telecommunications services for which it receives Universal Service Fund support.

C. Lifeline Requirement -- A telecommunications corporation may qualify to receive distributions from the fund only if it offers Lifeline service on terms and conditions prescribed by the Commission.

D. Exclusion of Resale Providers -- Only facilities-based providers, will be eligible to receive support from the fund. Where service is provided through one telecommunications corporation's resale of another telecommunications corporation's service, support may be received by the latter only.

R746-360-7. Calculation of Fund Distributions in Non-rate-of-Return Regulated Incumbent Telephone Corporation Territories.

A. Use of Proxy Cost Models -- The USF proxy cost model(s) selected by the Commission and average revenue per line will be used to determine fund distributions within designated support areas.

B. Use of USF Funds --Telecommunications corporations shall use USF funds to support each primary residential line in active service which it furnishes in each designated area.

C. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between USF proxy model cost estimates of costs to provide residential Basic Telecommunications Service in the designated support area and the product of the Incumbent telephone corporation's Average Revenue per line, for the designated support area, times the number of Incumbent telephone corporation's active residential access lines in the designated support area.

2. Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the Incumbent telephone corporation's average residential access line support amount for the respective designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active residential access lines in the

designated support area, times the eligible telecommunications corporation's number of active residential access lines.

D. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

E. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-8. Calculation of Fund Distributions in Rate-of-Return Incumbent Telephone Corporation Territories.

(A) Determination of Support Amounts --

(1) Incumbent telephone corporation - Monies from the fund will equal the numerical difference between the Incumbent telephone corporation's total embedded costs of providing public telecommunications services, for a designated support area, less the product of the Incumbent telephone corporation's Average Revenue Per Line, for the designated support area, times the Incumbent telephone corporation's active access lines in the designated support area. "Total embedded costs" shall include a weighted average rate of return on capital of the intrastate and interstate jurisdictions. For example, in the case of an Incumbent telephone corporation whose costs are allocated fifty percent to each jurisdiction and whose interstate return is 11.25 percent and whose intrastate return authorized by the Commission is 9 percent, the weighted average return on capital would be 10.125 percent.

(a) In order to determine the interstate return on capital to calculate the weighted average rate of return on capital for Incumbent telephone corporations, the Commission shall:

(i) use the prior year return reported by the National Exchange Carriers Association (NECA) to the Federal Communications Commission (FCC) on FCC Form 492 for Incumbent telephone corporations that do separations between intrastate and interstate jurisdictions under 47 CFR Part 36. In the event that the Incumbent local telephone corporation uses a future test period as provided in Utah Code Ann. Subsection 54-4-4(3)(b)(i), the interstate return for these Incumbent telephone corporations shall be the average of the actual return for the prior three years as reported on FCC Form 492.

(ii) use NECA's most recent interstate allocation computation filed at the FCC under 47 CFR Part 69.606 and the actual interstate return on capital reported by NECA as described in R746-360-8 A.1.a.i. for average schedule Incumbent telephone corporations.

(iii) use the actual interstate return of an Incumbent telephone corporation's relevant tariff group reported to the FCC in its most recent FCC Form 492A for Incumbent telephone corporations that are regulated on a price-cap basis in the interstate jurisdiction.

(2) Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the respective Incumbent telephone corporation's average access line support amount for the designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active access lines in the designated support area, times the eligible telecommunications corporation's number of active access lines in the designated support area.

(B) Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission-approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

(C) Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-9. One-Time Distributions From the Fund.

A. Applications for One-Time Distributions -- Telecommunications corporations, whether they are or are not receiving USF funds under R746-360-7 or R746-360-8, potential customers not presently receiving service because facilities are not available, or customers receiving inadequate service may apply to the Commission for one-time distributions from the fund for extension of service to a customer, or customers, not presently served or for amelioration of inadequate service.

1. These distributions are to be made only in extraordinary circumstances, when traditional methods of funding and service provision are infeasible.

2. One-time distributions will not be made for:

a. New subdivision developments;

b. Property improvements, such as cable placement, when associated with curb and gutter installations; or

c. Seasonal developments that are exclusively vacation homes.

i. Vacation home is defined as: A secondary residence which is primarily used for recreation and is unoccupied for a period of four consecutive weeks per year.

3. An application for a one-time distribution may be filed with the Commission by an individual or group of consumers desiring telephone service or improved service, a telecommunications corporation on behalf of those consumers, the Division of Public Utilities, or any entity permitted by law to request agency action. An application shall identify the service(s) sought, the area to be served and the individuals or entities that will be served if the one-time distribution is approved.

4. Following the application's filing, affected telecommunications corporations shall provide engineering, facilities, costs, and any other pertinent information that will assist in the Commission's consideration of the application.

5. In considering the one-time distribution application, the Commission will examine relevant facts including the type and grade of service to be provided, the cost of providing the service, the demonstrated need for the service, whether the customer is within the service territory of a telecommunications corporation, whether the proposed service is for a primary residence, the provisions for service or line extension currently available, and other relevant factors to determine whether the one-time distribution is in the public interest.

B. Presumed Reasonable Amounts and Terms -- Unless otherwise ordered by the Commission, the maximum one-time distribution will be no more than $10,000 per customer for customers of rate-of-return regulated companies. For customers of non-rate of return companies, the maximum one-time distribution shall be calculated so that the required customer payments would equal the payments required from a customer of a rate-of-return regulated company. The Commission will presume a company's service or line extension terms and conditions reasonable, for a subscriber in connection with one-time universal service fund distribution requests, if the costs of service extension, for each extension, are recovered as follows:

1. For rate-of-return regulated Local Exchange Carriers who request USF One-Time Distribution support for facility placement: The first $2,500 of cost coverage per account is provided by the company; and for cost amounts exceeding $2,500 per account up to two times the statewide average loop

investment per account for rate-of-return regulated telecommunication companies, as determined annually by the Division of Public Utilities, the company will pay 50 percent of the costs of the project.

2. For non-rate-of-return Local Exchange Carriers who request USF One-Time Distribution support for facility placement the first $2,500 of cost coverage per account is provided by the company; and all other costs are shared between the customer and the fund as provided herein.

3. For projects that exceed $2,500 per account, but are equal to or less than $10,000 per account, the customer shall pay 25 percent of the costs that exceed $2,500. For projects that exceed $10,000 per account, but are equal to or less than $20,000 per account, the customer shall pay 50 percent of the costs that are greater than $10,000 plus the previously calculated amount. For projects exceeding $20,000 per account the customer shall pay 75 percent of the cost above $20,000 until the State Universal Service Support Fund has paid the maximum amount as provided herein, any project costs above that level will be paid for 100 percent by the customer.

4. The State Universal Service Support Fund shall pay the difference between the sum of the defined company contributions plus customer contribution amounts and the total project cost up to the maximum amount provided herein.

5. Other terms and conditions for service extension shall be reviewed by the Commission in its consideration of an application and may be altered by the Commission in order to approve the use of universal service funds through the requested one-time distribution.

C. Combination of One-Time Distribution Funds with Additional Customer Funds and Future Customer Payment Recovery --

1. At least 51 percent of the potential customers must be full-time residents in the geographic area being petitioned for and must be willing to pay the initial up-front contribution to the project as calculated by the Commission or its agent.

2. Qualified customers in the area shall be notified by the telecommunications corporation of the nature and extent of the proposed service extension including the necessary customer contribution amounts to participate in the project. Customer contribution payments shall be made prior to the start of construction. In addition to qualified customers, the Local Exchange Company needs to make a good faith effort to contact all known property owners within the geographic boundaries of the proposed project and invite them to participate on the same terms as the qualified customers. Local Exchange Companies may ask potential customers to help in the process of contacting other potential customers.

3. New developments and empty lots will not be considered in the cost analysis for USF construction projects unless the property owner is willing to pay the per account costs for each lot as specified in this rule.

4. Potential customers who are notified and initially decline participation in the line extension project, but subsequently decide to participate, prior to completion of the project, may participate in the project if they make a customer contribution payment, prior to completion of the project, of 105 percent of the original customer contribution amount.

5. For a period of five years following completion of a project, new customers who seek telecommunications service in the project area, shall pay a customer contribution payment equal to 110 percent of the amount paid by the original customers in the project.

6. The telecommunications corporation shall ensure that all customer contribution payments required by R746-360-9(C)(3), (4), and (5) are collected. Funds received through these payments shall be sent to the universal service fund administrator. The company is responsible for tracking and notification to the Commission when the USF has been fully compensated. All monies will be collected and reported by the end of each calendar year, December 31st.

7. For each customer added during the five-year period following project completion, the telecommunications corporation and new customers shall bear the costs to extend service pursuant to the company's service or line extension terms and conditions, up to the telecommunications corporation's original contribution per customer for the project and the customer contributions required by this rule. The company may petition the Commission for a determination of the recovery from the universal service fund and the new customer for costs which exceed this amount.

D. Impact of Distribution on Rate of Return Companies -- A one-time distribution from the fund shall be recorded on the books of a rate base, rate of return regulated LEC as an aid to construction and treated as an offset to rate base.

E. Notice and Hearing -- Following notice that a one-time distribution application has been filed, any interested person may request a hearing or seek to intervene to protect his interests.

F. Bidding for Unserved Areas -- If only one telecommunications corporation is involved in the one-time distribution request, the distribution will be provided based on the reasonable and prudent actual or estimated costs of that company. If additional telecommunications corporations are involved, the distribution will be determined on the basis of a competitive bid. The estimated amount of the one-time distribution will be considered in evaluating each bid. Fund distributions in that area will be based on the winning bid.

R746-360-10. Altering the USF Charges and the End-User Surcharge Rates.

The uniform surcharge shall be adjusted periodically to minimize the difference between amounts received by the fund and amounts disbursed.

R746-360-11. Support for Schools, Libraries, and Health Care Facilities. Calculation of Fund Distributions.

The Universal Service Fund rules for schools, libraries and health care providers, as prescribed by the Federal Communications Commission in Docket 96-45, 97-157 Sections X and XI, paragraphs 424 - 749, of Order issued May 8, 1996, and CFR Sections 54.500 through 54.623 inclusive, incorporated by this reference, is the prescribed USF method that shall be employed in Utah. Funding shall be limited to funds made available through the federal universal service fund program.

KEY: public utilities, telecommunications, universal service fund

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	54-8b-15

R746. Public Service Commission, Administration.
R746-405. Filing of Tariffs for Gas, Electric, Telephone, and Water Utilities.
R746-405-1. General Provisions.

A. Scope--The following rules for electricity, gas, telephone, and water utilities are designed to provide for:

1. the general form and construction of tariffs required by law to be filed with the Commission and open for public inspection,

2. the procedures for filing and publishing tariffs in Utah, and

3. the particular circumstances and procedures under which utilities may depart from their filed and effective tariffs.

B. Applicability--These rules apply to and govern utilities of the classes herein named, whether they begin service before or after the effective date of these rules, but they shall not affect a right or duty arising out of an existing rule or order in conflict herewith. The rules apply only to new tariff filings, and do not require the modification of tariffs which are effective on the date the rules are adopted. Each utility shall have on file with the Commission its current tariff. Each utility shall abide by the tariff as filed and approved by the Commission. The Commission at any time may direct utilities to make revisions or filings of their tariffs or a part thereof to bring them into compliance. These rules do not apply to a telecommunications corporation subject to pricing flexibility pursuant to 54-8b-2.3.

C. Definitions--

1. "Commission" means the Public Service Commission of Utah.

2. "Effective Date" means the date on which the rates, charges, rules and classifications stated in the tariff sheets first become effective, except as otherwise provided by statute. This date, in accordance with the statutory notice period, shall not be less than the 30th calendar day after the filed date, without the prior approval of the Commission. Unless otherwise authorized, rates shall be made effective for service rendered on or after the effective date.

3. "Filed Date" of tariff sheets submitted to the Commission for filing is the date the tariff sheets are date-stamped at the Commission's Salt Lake City office.

4. "Tariff" means the entire body of rates, tolls, rentals, charges classifications and rules collectively enforced by the utility, although the book or volumes incorporating the same may consist of one or more sheets applicable to distinct service classifications.

5. "Tariff Sheet" means the individual sheets of the volume constituting the entire tariff of a utility and includes the title page, preliminary statement, table of contents, service area maps, rates schedules and rules.

6. "Utility" means a gas, electric, telecommunications, water or heat corporation as defined in Section 54-2-1.

D. Separate Utility Services--

1. Utilities engaged in rendering two or more classes of utility services, such as both gas and electric services, shall file with the Commission a separate tariff covering each class of utility service rendered.

2. Utilities planning to jointly provide utility service shall designate one utility to file a joint tariff for the service with the other utility or utilities filing a concurrence with the joint tariff.

E. Withdrawal of Service--No utility of a class specified herein shall, without prior approval of the Commission, withdraw from public service entirely or in any portion of the territory served.

R746-405-2. Format and Construction of Tariffs.

A. Format--Tariffs shall be in loose-leaf form for binding in a stiff-backed book or books as required and consist of parts or subdivisions arranged in order set forth as follows:

1. Title:

"TARIFF"
Applicable to
Kind of
SERVICE
NAME OF UTILITY

2. Table of Contents: a complete index of numbers and titles of effective sheets listed in the order in which the tariff sheets are arranged in the tariff book. Table of contents sheets shall bear sheet numbers and be in the form set forth in Subsection R746-405-2(C).

3. Preliminary statement: a brief description of the territory served, types and classes or service rendered and general conditions under which the service is rendered. Preliminary sheets shall bear sheet numbers and be in the form set forth in Subsection R746-405-2(C).

4. Service area maps: maps for telecommunication utilities shall clearly indicate the boundaries of the service area, the principal streets, other main identifying features therein, the general location of the service area in relation to nearby cities, major highways or other well-known reference points and the relation between service area boundaries and map references. Service area maps shall be approximately 8-1/2 x 11 inches in size, or folded to that size in order to fit within the borders of the space provided on tariff sheets. Maps for gas, water and electric utilities shall clearly indicate the boundaries of the service area.

B. Tariff Books--

1. Utilities shall maintain their presently effective tariff at each business office open to the public. Utilities with public websites shall provide access to a searchable copy of the utility's presently effective tariff.

2. Utilities shall remove canceled tariff sheets from their currently effective tariffs. Utilities shall permanently retain a file of canceled tariff sheets.

C. Construction of Tariffs for Filing--

1. The loose-leaf sheets used in tariffs shall be of paper stock not less than 16 lb. bond or of equal durability and 8-1/2 x 11 inches in size and electronically printed or copied. Tariffs may not be hand-written. One side of a sheet only may be used and a binding margin of at least 1-1/8 inches at the left of the sheet.

a. The tariff sheets of each utility shall provide the following information:

i. the name of the utility;

ii. the sheet, or page number, along with information to designate whether it is the first version of the sheet or whether the sheet has been revised since it was originally issued. Sheets shall be numbered consecutively;

iii. the number of the advice letter with which the sheet is submitted to the Commission or the docket number if the sheet is filed in accordance with a report and order of the Commission;

iv. information to indicate the date the sheet was filed with the Commission and the date the sheet became effective.

2. Tariffs shall include the following information and as nearly as possible in the following order:

a. schedule number or other designation;

b. class of service, such as business or residential;

c. character of applicability, such as heating, lighting or power, or individual and party-line service;

d. territory to which the tariff applies;

e. rates, in tabular form if practicable;

f. special conditions, limitations, qualifications and restrictions. The conditions shall be brief and clearly worded to cover all special conditions of the rate. Amounts subject to refund shall be specified.

3. If a rate schedule or a rule is carried forward from one sheet to another, the word "Continued" shall be shown.

D. Submission of Tariff Sheets and Advice Letters--

1. Tariff sheets shall be transmitted by an advice letter or in response to a Commission order. A revised table of contents sheet shall be transmitted with each proposed tariff change, if the change requires alteration of the table of contents.

2. An original of each advice letter and tariff sheet shall be filed with the commission, along with the number of paper copies specified at http://www.psc.utah.gov/filingrequirements.html. In addition, each advice letter and tariff filing shall be presented as an electronic word processing or spreadsheet document that is substantially the same as the filed paper copy.

3. Advice letters shall include the following:

a. sheet numbers and titles of the tariff sheets being filed, together with the sheet numbers of the sheets being canceled;

b. essential information as to the reasons for the filing;

c. dates on which the tariff sheets are proposed to become effective;

d. increases or decreases, more or less restrictive conditions, or withdrawals;

e. in the case of an increase authorized by the Commission, reference to the report and order authorizing the increase and docket number;

f. if the filing covers a new service not previously offered or rendered, an explanation of the general effect of the filing, including a statement as to whether present rates or charges will be affected, or service withdrawn from a previous user and advice whether the proposed rates are cost-based;

g. a statement that the tariff sheets proposed do not constitute a violation of state law or Commission rule. The filing of proposed tariff sheets shall of itself constitute the representation of the filing utility that it, in good faith, believes the proposed sheets or revised sheets to be consistent with applicable statutes, rules and orders. The Commission may, after hearing, impose sanctions for a violation hereof.

4. If authorized to file a notice that the effective tariff of a previous owner for the same service area is being adopted, the notice of adoption shall be submitted in the form of an advice letter.

5. Advice letters shall be numbered annually and chronologically. The first two digits represent the year followed by a hyphen and two or more digits, beginning with 01, as submitted by a utility for class of utility service rendered.

6. If a change is proposed on a tariff sheet, both clean and marked-up versions of the tariff sheet shall be included as part of the advice letter filing. The marked-up version of the proposed revised tariff sheet shall indicate deleted text by strike-through and additional text by underline.

7. At the time of making a tariff filing with the Commission, the utility shall furnish a copy of the advice letter and a copy of each related tariff sheet to:

a. the Division;

b. the Office; and

c. interested parties having requested notification.

8. If the suspension is lifted by order of the Commission, the filing shall be resubmitted under a new advice letter number. If the suspension is made permanent by the Commission, the advice letter number shall not be used again.

E. Approval of Filed Tariff Sheets--

1. Utility tariffs may not increase rates, charges or conditions, change classifications which result in increases in rates and charges or make changes which result in lesser service or more restrictive conditions at the same rate or charge, unless a showing has been made before and a finding has been made by the Commission that the increases or changes are justified. This requirement does not apply to electrical or telephone cooperatives in compliance with Section 54-7-12(6), or by telecommunications utilities with less than 5,000 subscribers access lines in compliance with Section 54-7-12(7).

2. New tariff sheets covering a service or commodity not previously furnished or supplied, or revised tariff sheets, not increasing, or increasing pursuant to Commission order, a rate, toll, rental or charge, may be filed by the advice letter. Tariff sheets, unless otherwise authorized by the Commission either on complaint or on its own motion, shall become effective after not less than 30 calendar days after the filed date.

3. Upon application in the advice letter and for good cause shown, the Commission may authorize tariff sheets to become effective on a day before the end of the 30 day notice period.

4.a. The Commission may reject, suspend, alter, or modify the effectiveness of tariff sheets that do not conform to these rules, which have alterations on the face thereof or contain errors, or for other reasons as the Commission determines.

b. Any party recommending that the Commission reject, suspend, alter, or modify the effectiveness of tariff sheets shall file its request no later than 15 calendar days after the date the tariff sheets were filed with the Commission.

c. The Commission shall notify the utility of its action by a letter stating the reasons for the action.

d. Rejected tariff sheets shall be retained in the utility's file of canceled and superseded sheets.

e. Advice letter numbers of rejected filings shall not be reused.

F. Public Inspection of Tariffs--

1. Utilities shall maintain, open for public inspection at their main office, a copy of the complete tariff and advice letters filed with the Commission. Utilities shall maintain, open for public inspection, copies of their effective tariffs applicable within the territories served by the offices.

2. Utilities shall post in a conspicuous place in their major manned business office, a notice to the effect that copies of the schedule of applicable rates in the territory are on file and may be inspected by anyone desiring to do so.

G. Contracts Authorized by Tariff--Tariff sheets expressly providing that a written contract shall be executed by a customer as a condition to the receipt of service, relating either to the quantity or duration of service or the installation of equipment, the contract need not be filed with the Commission. A copy of the general form of contract to be used in each case shall be filed with the tariff as provided in these rules.

This contract shall be subject to changes or modifications by the Commission.

KEY: rules and procedures, public utilities, tariffs, utility regulations

November 7, 2013	**54-3-2**
Notice of Continuation March 28, 2013	**54-3-3**
	54-3-4
	54-4-1
	54-4-4
	54-7-12

R850. School and Institutional Trust Lands, Administration.
R850-61. Native American Grave Protection and Repatriation.
R850-61-100. Authorities.

1. This rule implements Sections 6, 8, 10 and 12 of the Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-2-201(1)(a) which authorize the Director of the School and Institutional Trust Lands Administration to prescribe the management of cultural resources on trust lands. This rule outlines the manner by which the agency shall, pursuant to Section 53C-1-201(5)(b), provide policies for the ownership and control of Native American remains as defined in Section 9-9-402, that are discovered or excavated on school and institutional trust lands.

R850-61-200. Scope and Applicability.

1. This rule applies to all Native American remains found on school and institutional trust lands.

R850-61-300. Duties Upon Discovery of Remains.

1. Human remains are to be treated at all times with dignity and respect. Any person who discovers human remains on school and institutional trust lands must immediately cease all activity which might disturb the remains, take reasonable steps to protect the remains, and report the discovery to local law enforcement (in accordance with Section 76-9-704) and to the Director

2. If discontinuation of the activity is reasonable and prudent, and consistent with the Director's fiduciary responsibilities, the immediate site shall be restored and all activity in the area shall be re-routed or discontinued to limit any further disturbance to the site

3. If discontinuation is not reasonable or prudent, the agency shall follow the Utah Division of Indian Affairs' process (as contained in Utah Administrative Code R230-1) except when the Director concludes by written finding that:

(a) the determination of whether the remains in question are Native American, pursuant to U.A.C. R230-1-6(3), will unduly impact an authorized use of trust lands; or

(b) the time needed to prepare a preservation plan or the requirements of such a plan, pursuant to U.A.C. R230-1-7(1), will violate the fiduciary duty to the trust. When such a finding is made, the Director will assume control over the process.

4. Ownership or control of any Native American human remains that are excavated or removed from the site shall be determined pursuant to Utah Code Annotated Section 9-9-401 et seq.

KEY: cultural resources, Native American Grave Protection and Repatriation
November 17, 2003 53C-1-201(5)(b)
Notice of Continuation November 13, 2013 53C-1-302(1)(a)(ii)
53C-2-201(1)(a)

R909. Transportation, Motor Carrier.
R909-1. Safety Regulations for Motor Carriers.
R909-1-1. Authority and Purpose.

This Rule is enacted under the authority of Section 72-9-103 to enable the department to enforce the Federal Motor Carrier Safety Regulations as contained in Title 49, Code of Federal Regulations related to the operation of a motor carrier within the state, as required by Section 72-9-301.

R909-1-2. Adoption of Federal Regulations.

(1) Safety Regulations for Motor Carriers, 49 CFR Parts 350 through 384, Parts 387 through 399, and Part 40,(October 1, 2012), as amended by the Federal Register through August 23, 2013 are incorporated by reference, except for Parts 391.11(b)(1) and 391.49 as it applies to intrastate drivers only. These requirements apply to all motor carrier(s) as defined in 49 CFR Part 390.5, excluding commercial motor vehicles which are designed or used to transport more than 8 and less than 15 passengers (including the driver) for compensation and Section 72-9-102(2) engaged in intrastate commerce.

(2) Intrastate trucking operations in which the carriers operate double trailer combinations only are not required to comply with 49 CFR Part 380.203(a)(2).

(3) Exceptions to Part 391.41, Physical Qualification may be granted under the rules of Department of Public Safety, Driver's License Division, Section 53-3-303.5 for intrastate drivers under R708-34.

(4) Drivers involved wholly in intrastate commerce shall be at least 18 years old. However, if they are transporting placarded amounts of hazardous materials or carrying 16 or more passengers, including the driver, they must be 21 years old.

(5) Licensed child care providers operating a passenger vehicle with a seating capacity of not more than 30 passengers, and wholly in intrastate commerce, are exempt from 49 CFR Part 387 Subpart B but are subject to the minimum coverage requirements in Section 72-9-103.

R909-1-3. Insurance for Private Intrastate/Interstate Motor Carriers.

(1) "Private Motor Carrier" means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier.

(2) All intrastate private motor carriers shall have a minimum amount of $750,000 liability.

(3) All intrastate for-hire and private motor carriers transporting any quantities of oil listed in 49 CFR 172.101; hazardous waste, hazardous material and hazardous substances defined in 49 CFR 171.101, shall have $1,000,000 minimum level of financial responsibility and a MCS-90 endorsement maintained at the principal place of business.

R909-1-4. Implements of Husbandry.

"Implements of Husbandry" is defined in Section 41-1a-102(23) and must be in compliance with all provisions of Chapter 6, Title 41, Utah Code Annotated. Vehicles meeting this definition are exempt from 49 CFR Part 393 - Parts and Accessories Necessary for Safe Operations.

R909-1-5. Cease and Desist Order - Registration Sanctions.

As authorized by Section 72-9-303, the department may issue cease and desist orders to any motor carrier that fails or neglects to comply with State and Federal Motor Carrier Safety Regulations or any part of this rule.

R909-1-6. Penalties and Fines.

Any motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations or any part of this rule is subject to a civil penalty as authorized by Sections 72-9-701 and 72-9-703.

R909-1-7. Motor Carriers Delinquent in Paying Civil Penalties; Prohibition on Transportation.

Pursuant to Section 72-9-303, a motor carrier that has failed to pay civil penalties imposed by the department, or has failed to abide by a payment plan, may be prohibited from operating commercial motor vehicles in intrastate or interstate commerce.

R909-1-8. Form MCSA-1 Update Required.

Utah participates in the federal Performance and Registration Information Systems Management (PRISM) program which enforces the motor vehicle maintenance and requires updates to the USDOT number associated with the carrier responsible for the safety of each motor vehicle being registered. Utah based carriers are required to update their USDOT number information (Form MCSA-1) at the time of vehicle registration with the Utah State Tax Commission, or at least every 12 months.

KEY: trucks, transportation safety, implements of husbandry

November 7, 2013	**72-9-103**
Notice of Continuation: November 1, 2011	**72-9-104**
	72-9-101
	72-9-301
	72-9-303
	72-9-701
	72-9-703.

R930. Transportation, Preconstruction.
R930-7. Utility Accommodation.
R930-7-1. Purpose.

(1) The purpose of this rule is to:

(a) maximize public safety;

(b) provide for efficient highway operations and maintenance of roadways:

(c) maximize aesthetic quality;

(d) minimize future conflicts between the highway system and utility companies serving the general public; and

(e) ensure that use and occupancy by utility companies do not impair or increase the cost of future highway construction, expansion, or maintenance or interfere with any right of way reserved for these purposes.

(2) This rule prescribes conditions under which utility facilities may be accommodated on right of way and sets forth the state's regulations covering the placement and relocation of utility facilities in conflict with the construction and maintenance of highways.

(3) This rule should be interpreted to achieve maximum lawful public use of right of way for transportation purposes and to ensure that utility installations and operations affecting state right of way are accomplished in accordance with state and federal laws and regulations. It is in the public interest for utility facilities to be accommodated within rights of way when the accommodation does not adversely affect the integrity of highway features. The permitted use and occupancy of right of way for non-highway purposes is subordinate to the primary interests for transportation and safety of the traveling public.

(4) This rule is provided to facilitate the establishment of consistent expectations and effective working relationships between UDOT and utility companies through continuous communication, coordination and, cooperation.

(5) Through the Code of Federal Regulations (23 CFR, Part 645.215(a)), the U.S. Department of Transportation requires each state to submit a statement to the Federal Highway Administration (FHWA) on the authority of utility companies to use and occupy the right of way of state highways, the state highway agency's power to regulate the use, and the policies the state employs or proposes to employ for accommodating utilities within the right of way of Federal-aid highways under its jurisdiction. This rule demonstrates compliance to FHWA.

R930-7-2. Authority and Source Documents.

This rule is enacted under the authority of Section 72-6-116(2), wherein UDOT is authorized and given the responsibility to regulate and make rules for the installation, construction, maintenance, repair, renewal, system upgrade, and relocation of utility facilities within state administered highways, including ordering their relocation as may become necessary.

(1) Utah Code provides for the accommodation of utility facilities within the right of way and provides UDOT the authority to promulgate rules and regulations for administering those provisions. Accordingly, this rule has been developed pursuant to the following state and federal laws, codes, regulations, policies:

(a) Utah Code, Title 54, Public Utilities, Section 54-3-29;

(b) American Association of State Highway and Transportation Officials (AASHTO) publications, A Guide for Accommodating Utilities within Highway Right of Way and A Policy on the Accommodation of Utilities within Freeway Right of Way; and

(c) AASHTO publications, Roadside Design Guide and A Policy on Geometric -Design of Highways and Streets.

(2) This rule incorporates by reference 23 CFR Section 645, Subpart B, (November 22, 2000).

(3) UDOT has secured the authority from FHWA to issue permits for the use or occupancy of the right of way by utility facilities on Federal-aid highways. The use of Federal-aid highway right of way by utilities shall be in accordance with 23 CFR 645.215.

R930-7-3. Definitions.

(1) "Abandoned facility" is a utility facility that is not in use, no longer actively providing a service and is physically disconnected from the operating facility that is still in use and still actively providing a service. Abandoned facilities remain the property of the utility company.

(2) "Access control" is the regulation of public access to and from properties abutting the highway facilities. The two basic types of access control are:

(a) "No access (NA)" means access to through-traffic lanes is not allowed except at interchanges. Crossings at grade and direct driveway connections are prohibited.

(b) "Limited access (LA)" means access to selected public roads may be provided. There may be some crossings at grade and some private driveway connections.

(3) "Administrative citation" is a letter from UDOT to a utility company citing one or more non-compliance items and proper redress requirements such as action on the appropriate bond, revocation of permit, and revocation of a license agreement.

(4) "AASHTO" is the American Association of State Highway and Transportation Officials.

(5) "Backfill" means the replacement of soil removed during construction. It may also denote material placed over or around structures and utilities.

(6) "Bedding" means the composition and shaping of soil or other suitable material to support a pipe, conduit, casing, or utility tunnel.

(7) "Boring" means the operation by which carriers or casings are pushed or jacked under highways without disturbing the highway structure or prism. Bores are carved progressively ahead of the leading edge of the advancing pipe as soil is mucked back through the pipe.

(8) "Carrier" means a pipe directly enclosing a transmitted fluid (liquid, gas, or slurry).

(9) "Casing" is a larger pipe, conduit, or duct enclosing a carrier.

(10) "Clear Zone" means the total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and a clear run-out area. The desired width is dependent upon traffic volumes, speeds, and roadside geometry.

(11) "Coating" is material applied to or wrapped around a pipe.

(12) "Conduit" is an enclosed tubular casing for the protection of wires and cables.

(13) "Depth of bury (cover)" means the depth from ground or roadway surface to top of pipe, conduit, casing, cable, utility tunnel, or similar facility.

(14) "Deviation" means a granted permission to depart from the standards and requirements of this rule.

(15) "Emergency work" is utility company work required to prevent loss of life or significant damage to property.

(16) "Encasement" is a structural element surrounding a carrier or casing.

(17) "Encroachment" means the unauthorized use of highway right of way.

(18) "Encroachment permit" is a document that specifies the requirements and conditions for performing work on the highway right of way.

(19) "Environmentally protected areas" are areas that include, but are not limited to, wetlands, flood plains, stream channels, rivers, threatened or endangered species, archaeological sites, and historic sites.

(20) "Expressway" is a divided arterial highway for through traffic with partial control of access and generally with grade separations at major intersections.

(21) "Federal-aid highways" are highways eligible to receive Federal-aid.

(22) "FHWA" is the Federal Highway Administration.

(23) "Flexible carrier pipe" is a plastic, fiberglass, or metallic pipe having a large diameter to wall thickness ratio and which can be deformed without undue stress.

(24) "Flowable fill" is low strength flowable concrete as defined in UDOT Standard Specification 03575.

(25) "Freeway" is an expressway with full control of access.

(26) "Frontage road" is a local street or road auxiliary to and located on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.

(27) "Grade" is the rate or percent of change in slope, either ascending or descending, measured along the centerline of a roadway or access.

(28) "Grounded" means electrically connected to earth or to some extended conducting body that serves instead of the earth, whether the connection is intentional or accidental.

(29) "Grout" is a cement mortar or slurry of fine sand or clay.

(30) "Highway, street, or road" are general terms denoting a public way for the transportation of people, materials, and goods, but primarily for vehicular travel, including the entire area within the right of way.

(31) "Horizontal directional drilling" (HDD), also known as directional boring and directional drilling, is a method of installing underground pipes and conduits from the surface along a prescribed bore path. The process is used for installing telecommunications and power cable conduits, water lines, sewer lines, gas lines, oil lines, product pipelines, and casings used for environmental remediation. It is used for crossing waterways, roadways, congested areas, environmentally protected areas, and any area where other methods are not feasible.

(32) "Interstate highway system" (Interstate) is the Dwight D. Eisenhower National System of Interstate and Defense Highways as defined in the Federal-aid Highway Act of 1956 and any supplemental acts or amendments.

(33) "License Agreement or Statewide Utility License Agreement" is a document by which UDOT licenses the use and occupancy, with conditions, of highway rights of way for utility facilities.

(34) "Manhole" or "utility access hole" is an opening in an underground system that workers or others may enter for the purpose of making installations, removals, inspections, repairs, connections, and tests.

(35) "Median" is the portion of a divided highway separating the traveled ways for traffic in opposite directions.

(36) "MUTCD (Utah MUTCD)" means the current version of Utah Manual on Uniform Traffic Control Devices referenced in R920-1.

(37) "Pavement structure" is the combination of sub-base, base course, and surface course placed on a sub-grade to support the traffic load.

(38) "Permit" means encroachment permit.

(39) "Pipe" is a tubular product made as a production item for the transmission of liquid or gaseous substances. Cylinders formed from plate material in the fabrication of auxiliary equipment are not pipe as defined here.

(40) "Pipeline" is a continuous carrier used primarily for the transportation of liquids, gases, or solids from one point to another using either gravity or pressure flow.

(41) "Plowing" means the direct burial of utility lines by means of a mechanism that breaks the ground, places the utility line, and closes the break in the ground in a single operation.

(42) "Practicable" means reasonably capable of being accomplished or feasible as determined by UDOT.

(43) "Relocate" means to move an existing utility facility to a new location when found by UDOT to be necessary for construction or maintenance of a highway.

(44) "Right of way" is a general term denoting land, property, or interest therein, usually in a strip acquired for or devoted to transportation purposes.

(45) "Roadside" is a general term denoting the area between the outer edge of the roadway shoulder and the right of way limits.

(46) "Roadway" is the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

(47) "Slope" is the relative steepness of the terrain expressed as a ratio or percentage. Slopes may be categorized as positive or negative and as parallel or cross slopes in relation to the direction of traffic.

(48) "State highways" are those highways designated as State Highways in Title 72, Chapter 4, Designation of State Highways.

(49) "Structure" means any device used to convey vehicles, pedestrians, animals, waterways or other materials over highways, streams, canyons, or other obstacles. It also includes buildings, signs, and UDOT facilities with foundations.

(50) "Subsurface Utility Engineering (SUE)" is the management of certain risks associated with utility mapping at appropriate quality levels, utility coordination, utility relocation, communication of utility data, utility relocation cost estimates, implementation of utility accommodation policies, and utility design. SUE tools include traditional records, site surveys, and new technologies such as surface geophysical methods and non-destructive vacuum excavation, to provide quality levels of information. The SUE process for collecting and depicting information on existing subsurface Utility Facilities is described in ASCE Standard 38-02, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data.

(51) "Trenched" means installed in a narrow open excavation.

(52) "Trenchless (Untrenched)" means installed without breaking the ground or pavement surface by a construction method such as directional drilling, boring, tunneling, jacking, or auguring.

(53) "UDOT" is the Utah Department of Transportation and where referenced to be contacted, submitted to, approved by, accepted by or otherwise engaged, means an authorized representative.

(54) "Utility" or "utility facility" means privately, publicly, cooperatively, or municipally owned pipelines, facilities, or systems for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil, petroleum products, cable television, water, sewer, steam, waste, storm water not connected with highway drainage, and other similar commodities, which directly or indirectly service the public, or any part thereof.

(55) "Utility appurtenances" include but are not limited to pedestals, manholes, vents, drains, rigid markers, meter pits, sprinkler pits, valve pits, and regulator pits.

(56) "Utility company" is a privately, cooperatively, or publicly owned utility, including utilities owned by political subdivisions, and where referenced includes authorized representatives, contractors, and agents.

(57) "Vent" is an appurtenance designed to discharge gaseous contaminants from a casing.

R930-7-4. Scope.

(1) This rule supersedes portions of Manual of Accommodation of Utility Facilities and the Control and Protection of State Highway Rights of Way including Section

5 and portions relating to utility accommodation or that refer to utilities in the right of way or percent of reimbursement, which are part of R930-6 at the time of enactment of this rule.

(2) Regulations, laws, or orders of public authority or industry code prescribing a higher degree of protection or construction than provided by this rule shall govern.

R930-7-5. Application.

(1) This rule applies to privately, cooperatively, and publicly owned utility companies, including utility companies owned by political subdivisions, and shall include telecommunication, gas, oil, petroleum, electricity, cable television, water, sewer, data and video transmission lines, drainage and irrigation systems, and other similar utilities to be located, accommodated, adjusted or relocated within, on, along, across, over, through, or under the highway right of way. This rule does not apply to utility facilities that are required for UDOT highway purposes. This rule applies to underground, surface, or overhead facilities, either singularly or in combination, including bridge attachments.

(2) This rule applies to Federal-aid highway projects including local government projects. In compliance with 23 CFR 645.209(g) local governments are required to enter into formal agreements with UDOT that provide for a degree of protection to the highway at least equal to the protection provided by this rule.

R930-7-6. General Installation Requirements.

(1) General.

(a) Utility companies desiring to use right of way under the jurisdiction of UDOT for the installation or maintenance of any utility facility must be licensed to do so by entering into a license agreement with UDOT. This statewide agreement sets forth the procedures and conditions for the issuance of encroachment permits for all installations statewide. Encroachment permits are not issued without a license agreement first being executed. UDOT may impose additional restrictions or requirements for license agreements or encroachment permits.

(b) A permitted facility shall, if necessary, be modified by the utility company to improve safety or facilitate alteration or maintenance of the right of way as determined by UDOT.

(2) License Agreements or Statewide Utility License Agreements.

(a) Agreements are executed by UDOT and utility companies to set forth the terms and conditions for the accommodation and maintenance of utility facilities within the right of way. A license agreement is required for, but does not guarantee the approval of encroachment permits.

(b) As part of executing a license agreement with UDOT, owners of facilities located in the right of way are required to post a continuous bond in the amount of $100,000, naming UDOT as the insured, to guarantee satisfactory performance. The Statewide Utilities Engineer may approve a lesser amount. Failure by a utility company to maintain a valid bond in the amount required is cause for denying issuance of future permits to that utility company, and for the removal of that utility company's facilities from the right of way.

(c) A public utility is exempt from the bond requirements described in this section if the public utility:

(i) is a member of the municipal insurance pool;

(ii) is a political subdivision; or

(iii) carries liability insurance with minimum coverage of $1,000,000 per occurrence and as more specifically described in its License Agreement.

(d) Upon discovery of utility caused damage to the highway or to the right of way, UDOT may opt to exercise its bonding rights in recovering costs incurred to restore the highway or right of way. The utility company is liable for all restoration costs incurred as a result of damages caused by its utility, and its liability is not limited to the amount of the bond.

(e) License agreements may be terminated at any time by either party upon 30 days advance written notice to the other. Permits previously issued and approved under a terminated agreement are not affected and remain in effect on the same terms and conditions set forth in the agreement and permits. The obligation to maintain the $100,000 bond continues until the utility company's facilities are removed from UDOT's right of way.

(3) Emergency Work.

(a) In all emergency work situations, the utility company or its representative shall contact UDOT immediately and on the first business day shall contact UDOT to complete a formal permit. Failure to contact UDOT for an emergency work situation and obtain an encroachment permit within the stated time period is considered to be a violation of the terms and conditions of the utility company's license agreement. At the discretion of the utility company, emergency work may be performed by a bonded contractor, public agency, or a utility company. None of the provisions of this rule are waived for emergency work except for the requirement of a prior permit.

(4) One Call Requirements.

(a) Underground facilities are not permitted within the right of way unless the utility company subscribes to Blue Stakes of Utah and other appropriate "call-before-you-dig" systems, or otherwise provides utility plans as detailed in Section R930-7-11(6)(a) of this rule.

(5) Preservation of New Pavement.

(a) Cuts or open excavations on newly constructed, paved, or overlaid highways are not allowed for two years. If an emergency cut or excavation occurs, the responsible utility company shall comply with any special conditions imposed by UDOT regarding restoration of the roadway.

(6) Encroachment Permits.

(a) Encroachment Permits on State Highways.

Utility companies shall obtain an encroachment permit from UDOT for the installation and maintenance of utility facilities on the right of way. Encroachment permits are approved or disapproved by UDOT. Applications for encroachment permits are submitted to the Region Permits Officers by the utility company or its contractor. No utility company or utility company contractor shall begin any utility work on the right of way until an approved encroachment permit is issued by UDOT and the utility company is authorized to proceed in writing. Prior to the issuance of encroachment permits, fees are assessed to cover related costs incurred by UDOT including costs for planning, coordination, and utility plan review.

If the utility company expects work to significantly impact travel lane capacity, UDOT recommends the utility company contact the appropriate Region Permit Office to discuss concepts in advance of submitting an encroachment permit application.

Utility companies shall submit two sets of plans depicting the proposed installation. The plans shall be sized as required by UDOT and include utility company identification, work location, utility type and size, type of construction, vertical and horizontal location of facilities relative to the centerline of road, location of all appurtenances, trench details, right of way limits, and traffic control plans. Traffic control plans shall conform to the Utah MUTCD as outlined in Section R930-7-7(1)(d), are mandatory for each instance of utility construction or maintenance, and shall be attached to each permit application.

Utility companies may authorize their contractors to obtain permits on their behalf. All terms and conditions set forth in the license agreement apply. The utility company's construction forces or the utility contractor shall carry a copy of the approved permit at all times while working on the right of way.

(b) Bonding and Liability Insurance Requirements.

(i) Individual Encroachment Permit Bonding Requirements. As authorized by Sub-section 72-7-102(3)(b)(i) this rule requires encroachment permit applicants to post a Performance and Warranty or Maintenance Bond, using UDOT's approved bond form, for a period of three years from the date of beginning of work or two years from the end of work, whichever provides the longer period of coverage. A Performance and Warranty Bond is required for each individual encroachment permit. Political subdivisions of the state are not required to post a bond unless the political subdivision fails to meet the terms and conditions of previous permits issued as determined by UDOT. The amount of the bond is determined by the UDOT Region Permits Officer based on the scope of work being performed but will not be less than $10,000.

(ii) Statewide Encroachment Permit Bonding Option. Encroachment permit applicants who routinely acquire encroachment permits may elect to post a statewide performance and warranty or maintenance bond in lieu of posting multiple individual bonds. A statewide bond satisfies bonding requirements for work in all UDOT Regions. The bond amount is determined by UDOT but will not be less than $100,000. A valid statewide bond period shall be not less than three years and will meet bonding requirements for UDOT permits for a period of one year from date of issue. Encroachment permit applicants may submit a replacement statewide bond on an annual basis provided the bond period is not less than three years at time of replacement.

(iii) Inspection Bond. UDOT may require an additional inspection bond to ensure payment for UDOT field review and inspection costs before an encroachment permit is granted.

(iv) Proceeds Against the Bond. UDOT may proceed against the bond to recover all expenses incurred if payment is not received from the permit applicant within 45 calendar days of receiving an invoice. Upon discovery of utility caused damage to the highway or to the right of way, UDOT may opt to exercise its bonding rights in recovering costs incurred to restore the highway or right of way due to utility caused damages. Failure by the utility company to maintain a valid bond in the amounts required shall be cause for denying issuance of future permits and for the removal of the utility from the right of way.

(v) Liability Insurance Requirements. Permit applicants are also required to provide a certificate of liability insurance in the minimum amounts of $1,000,000 per occurrence and $2,000,000 in aggregate. Failure to meet this requirement will result in application denial. Liability insurance coverage is required throughout the life of the permit and cancellation will result in permit revocation.

(vi) Information about bond forms and liability insurance requirements are available on UDOT's website at: http://www.udot.utah.gov/go/encroachmentpermit

(c) Cancellation of Permits. Any failure on the part of a utility company to comply with the terms and conditions set forth in the license agreement or the encroachment permit may result in cancellation of the permit. Failure to pay any sum of money for costs incurred by UDOT in association with installation or construction review, inspection, reconstruction, repair, or maintenance of the utility facilities may also result in cancellation of the permit. UDOT also may remove the facilities and restore the highway and right of way at the sole expense of the utility company. Prior to any cancellation, UDOT shall notify the utility company in writing, setting forth the violations, and will provide the utility company a reasonable time to correct the violations to the satisfaction of UDOT.

(d) Assignment of Permits. Permits shall not be assigned without the prior written consent of UDOT. All assignees shall be required to file a new permit application.

(e) Indemnification. Permit holders performing utility work on the right of way shall, at all times, indemnify and hold harmless UDOT, its employees, and the State of Utah from responsibility for any damage or liability arising from their construction, maintenance, repair, or any other related operation during the work or as a result of the work. Permit holders shall also be responsible for the completion, restoration, and maintenance of any excavation for a period of three years unless UDOT requires a longer period of indemnification due to specific or unique circumstances.

R930-7-7. General Design Requirements.

(1) General.

(a) Joint use of state right of way may impact both the highway and the utility. Each utility company requesting the use of right of way for the accommodation of its facilities is responsible for the proper planning, engineering, design, construction, and maintenance of proposed installations. The utility company shall coordinate with UDOT and develop its projects to meet design standards and to optimize safety, cost effectiveness, and efficiency of operations for both the utility company and the state. Utility companies are directed to the following AASHTO publications for assistance:

(i) Roadside Design Guide;

(ii) A Policy on Geometric Design of Highways and Streets;

(iii) A Guide for Accommodating Utilities within Highway Right of Way; and

(iv) A Policy on the Accommodation of Utilities within Freeway Right of Way.

(b) The utility company is responsible for the design, construction, and maintenance of its facilities installed within the right of way. All elements of these facilities including materials used, installation methods, and locations shall be subject to review and approval by UDOT.

(c) Plans, Drawings and Specifications. The utility company shall provide UDOT with comprehensive plans, drawings and specifications as may be required for all proposed utility facilities within the right of way. Utility plan submittals shall contain physical features of the utility site including, but not limited to the following:

(i) highway route number;

(ii) highway mile post locations;

(iii) map with route and site location;

(iv) existing features such as manholes, structures, drainage facilities, other utilities, access controlled and right of way lines, center line of highway relative to the utility facility location, and relevant vertical information;

(v) plan and drawing scales; and

(vi) legend including definition of symbols used.

The plans, drawings, and specifications shall also contain administrative information, identification and type of materials to be used, relevant information on adjacent land classification and ownership, related permits and approvals if required, and identification of the responsible Engineer of Record.

(d) Traffic Control Plans. The utility company shall provide traffic control plans (TCP) that conform to the current Utah MUTCD and UDOT Traffic Control Standards and Specification.

(e) The utility company is responsible to ensure compliance with industry codes and standards, the conditions and special provisions specified in the permit, and applicable laws, rules and regulations of the State of Utah and the Code of Federal Regulations.

(f) All utility facility installations located in, on, along, across, over, through, or under the surface of the right of way, including attachments to highway structures, are the responsibility of the utility company and, as a minimum, shall meet the following utility industry and governmental requirements.

(i) Electric power and communications facilities shall

conform to the current applicable National Electric Safety Code.

(ii) Water, sewage and other effluent lines shall conform to the requirements of the American Public Works Association or the American Water Works Association.

(iii) Pressure pipelines shall conform to the current applicable sections of the standard code of pressure piping of the American National Standards Institute, 49 CFR 192, 193 and 195, and applicable industry codes.

(iv) Liquid petroleum pipelines shall conform to the current applicable recommended practice of the American Petroleum Institute for pipeline crossings under railroads and highways.

(v) Any pipelines carrying hazardous materials shall conform to the rules and regulations of the U.S. Department of Transportation governing the transmission of the materials.

(vi) Telecommunications with longitudinal installations within Interstate, Freeway and other Access Controlled Highway right of way shall conform to R907-64.

(2) Subsurface Utility Engineering.

(a) The use of Subsurface Utility Engineering (SUE) shall be required as an integral part of the design for new utility facility installations on the right of way when determined by UDOT to be warranted.

R930-7-8. Definitive Design Requirements.

(1) Location Requirements.

(a) Longitudinal Installations. The type of utility construction, vertical clearances, lateral location of poles and down guys, and related ground mounted utility facilities along roadways are factors of major importance in preserving a safe traffic environment, the appearance of the highway, and the efficiency and economy of highway construction and maintenance. Longitudinal utility facilities shall be located on a uniform alignment and as close to the right of way line as practicable. The joint use of pole lines is acceptable and encouraged; however, all installations shall be located so that all servicing may be performed with minimal traffic interference. The following additional requirements apply to longitudinal installations.

(i) Utility facilities shall be located so as to minimize the need for future utility relocations due to highway improvements, avoid risks to the highway, and not adversely impact environmentally protected areas.

(ii) The location of utility installations along urban streets with closely abutting structures such as buildings and signs generally requires special considerations. These considerations shall be resolved in a manner consistent with the prevailing limitations and as approved by UDOT.

(iii) The location of utility facilities and associated appurtenances shall be in accordance with the Americans with Disabilities Act.

(iv) The horizontal location of utility facilities and appurtenances within the right of way shall conform to the current edition of the AASHTO Roadside Design Guide.

(v) Adequate warning devices, barricades, and protective devices must be used to prevent traffic hazards. Where circumstances necessitate the excavation closer to the edge of pavement than established above, concrete barriers or other UDOT approved devices shall be installed for protection of traffic in accordance with UDOT Traffic Control Standards and UDOT's Supplemental Drawings.

(vi) There are greater restrictions on the accommodation of utility facilities within interstate, freeway, and other access controlled highway right of way. See Section R930-7-10 for details.

(b) Overhead Installations.

(i) Minimal vertical clearances for installed overhead lines are 18 feet for crossings and 23 feet for intersections. In addition, the vertical clearance for overhead lines above the highway and the vertical and lateral clearance from bridges and above ground UDOT facilities shall meet or exceed the current edition of the National Electrical Safety Code. Where overhead lines cross UDOT above ground facilities, including but not limited to signs, traffic signal heads, poles, and mast arms, vertical and lateral clearance shall meet OSHA working clearances for electrical lines in effect at the time of the installation which will accommodate maintenance work by UDOT personnel without having to discharge or shield the lines.

(ii) Utility companies planning to attach cable to other utility company poles shall obtain approval from the owner of the poles prior to a permit being issued by UDOT.

(iii) The utility facility shall conform to the current edition of the AASHTO Roadside Design Guide. Where there are existing curbed sections, utility facilities shall be located as far as practicable behind the face of curbs and, where feasible, behind sidewalks at locations that will not interfere with adjacent property use. In all cases there shall be a minimum of two feet clearance behind the face of the curb. All cases shall be resolved in a manner consistent with prevailing limitations and conditions.

(iv) Before locating a utility facility at other than the right of way line, consideration shall be given to designs using self-supporting, armless single pole construction, with vertical alignment of wires or cables, or other techniques permitted by government or industry codes that provide a safe traffic environment. Deviations from required clearances may be made where poles and guys can be shielded by existing traffic barriers or placed in areas that are inaccessible to vehicular traffic.

(v) Where irregular shaped portions of the right of way extend beyond or do not reach the normal right of way limits, variances in the location of utility facilities may be allowed to maintain a reasonably uniform alignment and thereby reduce the need for guys and anchors between poles and roadway.

(c) Subsurface Installations.

(i) Underground utilities may be placed longitudinally outside of the pavement by plowing or open trench method. Underground utilities shall be located on a uniform alignment and as near as practicable to the right of -way line to provide a safe environment for traffic operations, preserve the integrity of the highway, and preserve space for future highway improvements or other utility facility installations. The allowable distance from the right of way line will generally depend upon the terrain and obstructions such as trees and other existing underground and overhead objects. On highways with frontage roads, longitudinal installations shall be located between the frontage roads and the right of way lines. Utility companies shall include the placement of markers referenced in Section R930-7-11(5).

(ii) Unless UDOT grants a deviation, underground utility installations across existing roadways shall be performed by trenchless method in accordance with UDOT requirements and casings may be required. Pits shall be located outside of the clear zone and at least 30 feet from the edge of the nearest through traffic lane and at least 20 feet from the edge of pavement on ramps. On low traffic roadways and frontage roads, as determined by UDOT, bore pits shall be at least ten feet from the edge of pavement, five feet beyond toe of slope under fill sections and at least five feet from the face of curb and meet clear zone requirements from the edge of the traveled way whichever is greater. Bore pits shall be located and constructed so as to eliminate interference with highway structural footings. Shoring shall be used where necessary.

TABLE 1
Bore Pit Locations

Bore Pit Set Back	Outside Clear Zone

At least ten feet from the edge of pavement, five feet beyond toe of slope under fill sections and at least five feet from the face of curb	At least 30 feet from the edge of the nearest through traffic lane and at least 20 feet from the edge of pavement on ramps.

(iii) The depth of bury for all utility facilities under pavement shall be a minimum of four feet below the top of pavement or existing grade including open drainage features. Where utility facilities are installed within 20 feet from the edge of pavement, the depth of bury shall be a minimum of five feet below top of grade so as to allow for installation of UDOT signs or delineators. Utility facilities under sidewalks shall be installed a minimum of three feet below the top of sidewalk.

(iv) Utility facilities installed greater than 20 feet from the edge of pavement shall be installed a minimum depth of three feet below grade. Specific types of facilities such as high pressure gas lines or petroleum lines may require additional cover.

(v) All underground utilities installed in the right of way must meet the minimum standards for compaction as outlined in the current edition of the UDOT Standards and Specifications for Road and Bridge Construction.

(vi) Where minimum depth of bury is not feasible, the facility shall be rerouted or, if permitted by UDOT, protected with a casing, encasement, concrete slab, or other suitable protective measures.

TABLE 2

SUMMARY OF UDOT DEFINITIVE UTILITY REQUIREMENTS
MINIMUM DEPTH OF BURY
Longitudinal and Crossing Installations
All underground utilities (cased and uncased)

Under Pavement Surface	Under Sidewalks	Under Ditch	Less than 20 ft. from edge of pavement	Greater than 20 ft. from edge of pavement
Min. of four ft. below top of pavement	Min. of three ft. below top of sidewalk	Min. of three ft. below low point of ditch	Min. of five ft. below natural grade	Min. of three ft. below natural grade

(d) Crossings.

(i) Utility crossings shall be at 90 degrees unless a deviation is approved by UDOT. Crossing installations under paved surfaces shall be by trenchless methods. Jetting by means of water or compressed air is not permitted.

(ii) Utility crossings shall be avoided in deep roadway cuts, near bridge footings, near retaining and noise walls, at highway cross drains where flow of water may be obstructed, in wet or rocky terrain where it is difficult to attain minimum cover, and through slopes under structures.

(e) Median Installations.

(i) Overhead utility facilities such as poles, guys, or other related facilities shall not be located in highway medians. Deviations may be considered for crossings where wide medians provide for sufficient space to meet clear zone requirements from the edges of the travelled ways.

(f) Appurtenances.

(i) Utility appurtenances shall be located outside the clear zone and as close to the right of way line as practicable. Where these requirements cannot be met and no feasible alternative exists, a deviation to locate appurtenances within the clear zone in areas that are shielded by traffic barriers may be considered after the utility company provides written justification for such location for UDOT review. Cabinets, regulator stations, and other similar utility components shall not be located on the right of way unless they are determined by UDOT to be sufficiently small to allow a deviation.

(ii) Manholes, valve pits, and similar appurtenances shall be installed so that their uppermost surfaces are flush with the adjacent undisturbed surface.

(iii) Utility access points and valve covers shall be located outside the roadway where practicable. In urbanized areas where no feasible alternative to locating utility access points and valve covers outside of the roadway exists, the utility company must coordinate with UDOT to meet safety, operational, and maintenance requirements of both the utility company and UDOT.

(iv) Utility companies shall avoid placing manholes in the pavement of high speed and high volume highways. Deviations may be considered after written justification for such location is submitted by the utility company and reviewed and approved by UDOT. New manhole installations shall be avoided at highway intersections and within the wheel path of traffic lanes.

(v) Vents, drains, markers, utility access holes, shafts, shut-offs, cross-connect boxes, pedestals, pad-mounted devices, and similar appurtenances shall be located along or across highway rights of way in accordance with the provisions of the Americans With Disabilities Act.

(2) Environmental Compliance.

(a) The utility company shall comply with all applicable state and federal environmental laws and regulations, and shall obtain necessary permits. Environmental requirements include but are not limited to the following.

(i) Water Quality. A "Storm Water General Permit for Construction Activities" is required from the Utah Division of Water Quality for disturbances of one or more acres of ground surface.

(ii) Wetlands and Other Waters of the U.S. A "Section 404 Permit" is required from the U.S. Army Corps of Engineers for any impact to a wetland or water of the U.S.

(iii) Threatened or Endangered (T and E) Species. Comply with the Endangered Species Act; avoid impacts to T and E species or obtain a Permit from the U. S. Fish and Wildlife Service.

(iv) Historic and Archaeological Resources. Comply with the "National Historic Preservation Act"; avoid impacts to historic and archaeological resources. If resources could be impacted, contact the Utah State Historic Preservation Office.

(b) The utility company is responsible for environmental impacts and violations resulting from construction activities performed by the utility company or its contractors.

(c) If UDOT discovers or is made aware of a violation by the utility company or a failure to comply with state and federal environmental laws, regulations and permits, UDOT may revoke the permit, notify appropriate agencies, or both.

(3) Installation of Utilities in Scenic Areas.

(a) The type, size, design, and construction of utility facilities in areas of natural beauty shall not materially alter the scenic quality, appearance, and views from the highway or roadsides. These areas include scenic strips, overlooks, rest areas, recreation areas, adjacent rights of way and highways passing through public parks, recreation areas, wildlife and waterfowl refuges, and historic sites. Utility installations in these areas shall not be permitted. Deviation from this requirement may be allowed if there is no reasonable or feasible alternative as determined by UDOT based on written justification submitted by the utility company. On Federal-aid highways, all decisions related to utility installations within these areas shall be subject to the provisions detailed in 23 CFR 645.209(h).

(i) New underground utility installations may be permitted within scenic strips, overlooks, scenic areas, or in the adjacent rights of way, when they do not require extensive removal, or alteration of trees, and other shrubbery visible to the highway user, or do not impair the scenic appearance of the area.

(ii) New overhead installations of communication and electric power lines are not permitted in such locations unless

there is no feasible and reasonable alternative as determined by UDOT. Overhead installations shall be justified to UDOT by demonstrating that other locations are not available and that underground facilities are not technically feasible, economical or are more detrimental to the scenic appearance of the area.

Any installation of overhead facilities shall be made at a location and in a manner that will not detract from the scenic quality of the area being traversed. The installation shall utilize a suitable design and use materials aesthetically compatible to the scenic area, as approved by UDOT.

(4) Casing and Encasement Requirements.

(a) General. A carrier pipe is sometimes installed inside of a larger diameter pipe defined as a casing. Casings are typically used to provide complete independence of the carrier pipe from the surrounding roadway structure, and to provide adequate protection to the roadway from leakage of a carrier pipeline. It also provides a means for insertion and replacement of carriers without access or disturbance to through-traffic roadways.

(b) Casing requirements for crossing installations.

(i) All pipelines under pressure crossing under the roadbed of highways shall be in casings unless the pipeline is welded steel, meets industry corrosion protection standards, complies with federal and state requirements, and meets accepted industry standards regarding wall thickness and operating stress levels. In some cases UDOT may require a casing regardless of these exceptions if needed to protect the roadway, maintain public safety, or both.

(ii) In urban areas where space is limited for venting or where small pipelines are crossing, specifically intermediate high pressure lines, deviations for casing may be granted by UDOT.

(iii) Where a casing is required, it must be provided under medians, from top of back-slope to top of back-slope for cut sections, five feet beyond toe of slope under fill sections, five feet beyond face of curb in urban sections and all side streets, and five feet beyond any structure where the line passes under or through the structure. Deviations must be approved by UDOT. On freeways, expressways, and other access controlled highways, casings shall extend to the access control lines.

(iv) Utility installations by trenchless technologies, such as jacking, boring, or horizontal directional drilling methods, may be placed under highways without a casing pipe if approved by a UDOT representative.

(v) Where minimum bury is not feasible, the facility shall be rerouted or protected with a casing, concrete slab, or other suitable measures as determined by UDOT.

(c) Casings shall be considered for the following conditions:

(i) as an expediency in the insertion, removal, replacement, or maintenance of carrier pipe crossings of freeways, expressways, and other access controlled highways, and at other locations where it is necessary to avoid trenched construction;

(ii) as protection for carrier pipe from external loads or shock either during or after construction of the highway; and

(iii) as a means of conveying leaking fluids or gases away from the area directly beneath the roadway to a point of venting at or near the right of way line, or to a point of drainage in the highway ditch or a natural drainage way.

(d) UDOT may require casings for pressurized carriers or carriers of a flammable, corrosive, expansive, energized, or unstable material.

(e) Trenchless installations of coated carrier pipes shall be cased. Permission to deviate from this requirement may be granted where assurance is provided against damage to the protective coating.

(f) Encasement or other suitable protections shall be considered for pipelines with less than minimum cover, such as those near bridge footings or other highway structures, or across unstable or subsiding ground, or near other locations where hazardous conditions may exist.

(g) Rigid encasement or suitable bridging shall be used where support of pavement structure may be impaired by depression of flexible carrier pipe. Casings shall be designed to support the load of the highway and superimposed loads thereon and, as a minimum, shall be equal to or exceed the structural requirements of UDOT highway culverts in the UDOT Bridge Design Manual.

(h) Casings shall be sealed at the ends using suitable material to prevent water and debris from entering the annular space between the casing and the carrier. Such installations shall include necessary appurtenances, such as vents and markers.

(5) Mechanical and Other Protective Measures for Uncased Installation.

(a) When highway pipeline crossings are installed without casings or encasement, the following are suggested controls for providing mechanical or other protection.

(i) The carrier pipe shall conform to utility material and design requirements and utility industry and government codes and standards. The carrier pipe shall be designed to support the load of the highway plus superimposed loads operating under all ranges of pressure from maximum internal to zero pressure. Such installations shall use a higher factor of safety in the design, construction, and testing than would normally be required for cased construction.

(ii) Suitable bridging, concrete slabs, or other appropriate measures shall be used to protect existing uncased pipelines which may be vulnerable to damage from construction or maintenance operations. Construction or maintenance activities shall not proceed until protective measures are approved by UDOT.

(b) Uncased crossings of welded steel pipelines carrying flammable, corrosive, expansive, energized, or unstable materials may be permitted if additional protective measures are taken in lieu of encasement. Such measures shall use a higher factor of safety in the design, construction, and testing of the uncased carrier pipe, including thicker wall pipe, radiograph testing of welds, hydrostatic testing, coating and wrapping, and cathodic protection.

R930-7-9. Utilities on Highway Structures.

(1) General.

(a) The installation of utility facilities on highway structures can adversely impact the integrity and capacity of the structure, the safe operation of traffic, maintenance efficiency, and the aesthetic appeal of the structure. Utility facilities shall not be installed on highway structures except in extreme cases. When installation of utilities at an alternate location exceeds the cost of attaching to the structure by four times, UDOT will consider such an installation. The utility company shall submit documentation requesting installation on highway structures to the UDOT Structures Division for review and approval. Attachment of a utility facility will only be considered if the structure is adequate to support the additional load. This adequacy must be verified by a load rating completed by the utility company following UDOT's Load Rating Policies and Procedures, submitted to UDOT along with the necessary documentation including calculations and a load rating model.

Installing utility facilities within 50 feet of structures may impact the design, installation, operation, maintenance and safety of the structures, and the utility facilities. Utility companies shall address potential impacts when projects are proposed to ensure compatibility between utility facilities and UDOT structures and to assure all relevant utility industry codes and UDOT structural requirements are adequately addressed.

(2) Installation on Highway Structures.

(a) If UDOT allows a structure installation, it shall be at a

location and of a design subject to review and approval by UDOT's Structures Department. Utility installations on structures shall not be considered unless the structure is of a design that is adequate to support the additional load and can accommodate the utility without compromising highway features. In addition, the utility installation shall be subject to the following requirements.

(i) Due to variations in highway structure designs, site-specific conditions, and other considerations, there is no standardized method by which utilities are installed on structures. Therefore, each proposed installation shall be considered on its individual merits and shall be individually designed for the specific structure.

(ii) Where installations of pipelines carrying hazardous materials are allowed, the pipeline shall be cased. The casing shall be open or vented at each end so as to prevent possible build-up of pressure and to detect leakage. Where located near streams, casings shall be designed and installed so that leakage does not compromise the stream. If a deviation is allowed for no casing, additional protective measures shall be used including higher standards for design, safety, construction and testing of the pipeline than would normally be required for cased construction.

(iii) All pipeline installations carrying gas or liquid under pressure which by their nature may cause damage or injury if leaked, shall be installed with emergency shutoff valves. Such valves shall be placed within an effective distance on each side of the structure, as approved by UDOT, and shall be automatic if required by UDOT.

(iv) Utility installations on highway structures shall not reduce vertical clearances above rivers, streams, roadway surfaces or rails. Installations should be designed to occupy a position beneath the deck in an interior bay of a girder or beam, or within a cell of a box girder bridge. Installations shall always be above the bottom of girders on a girder bridge or above the bottom of the bottom cord of a truss bridge. Utility installations outside of a bridge structure are unsightly and susceptible to damage and will only be approved by UDOT if there is no reasonable alternative.

(v) All utility facilities installed on highway structures shall be constructed of durable materials, designed with a long life expectancy, and must be installed in a manner that will minimize routine servicing and maintenance.

(vi) Utility facility mountings shall be of sufficient strength to carry the weight of the utility and shall be of a design and type that will not rattle or loosen due to vibrations caused by vehicular traffic. Acceptable utility installation methods are hangers or roller assemblies suspended either from inserts from the underside of the bridge floor or from hanger rods clamped to the flange of a superstructure member. Bolting through the bridge floor is not permitted. Where there are transverse floor beams sufficiently removed from the underside of the deck, the utility placement shall allow adequate clearance to enable full inspection of both the deck and the utility line. UDOT may consider a proposal to support the utility line on top of the floor beams.

(vii) Communication and electric power line installations shall be suitably insulated, grounded, and preferably carried in protective conduit or pipe from the point of exit from the ground to re-entry. Cable shall be carried to a manhole located beyond the back-wall of the structure. Access manholes are not allowed in a bridge deck.

(viii) Utility installations shall provide for lineal expansion and contraction due to temperature variations in conjunction with bridge movement.

(ix) All utility facility clearances from structure members must conform to all governing codes and shall not render any portion of the structure inaccessible for maintenance purposes.

(x) The utility company shall be responsible for restoration or repair of any portion of a structure or highway damaged by utility facility installation or use.

(xi) The expansion of an existing utility facility carried by an existing structure may be permitted if the expansion does not adversely impact the performance and load carrying capacity of the structure and otherwise complies with this rule.

(3) Utility Company Responsibilities.

(a) It is the responsibility of the utility company to obtain approval for a highway structure installation. The utility company shall ascertain the extent of UDOT's requirements prior to initiating the design for installation. A Utah registered Professional or Structural Engineer shall be responsible for the design if the installation is allowed. The utility company must prepare and submit complete design documents showing all details of the proposed work. These documents shall include plans, calculations, updated load rating with a Virtis load rating model, the permit application, and any other necessary information. The utility company shall be responsible for protecting, maintaining or relocating its utility installation, including the arrangement of service interruptions, to accommodate future UDOT structure work.

(b) All materials incorporated in the design must be certifiable for quality and strength and full specifications must be provided in support of the design.

(c) Adequate written justification must support the need for installing the utility facility on the structure and demonstrate that there is no viable cost-effective alternative.

(d) All components of the utility attachment shall be protected from corrosion. Steel components shall be stainless, galvanized or painted in accordance with the current UDOT Standard Specifications for Highway and Bridge Construction.

R930-7-10. Utilities within Interstate, Freeway and Access Controlled Right-of-Way.

(1) General Provisions. There are two basic types of access control.

No Access - does not allow access to the through-traffic lanes except at interchanges. Crossings at grade and direct driveway connections are prohibited. Access is controlled by fencing. This is typical of interstates and freeways.

Limited Access - provides access to selected roads. There may be some crossings at grade and some private driveway connections. This is typical of expressways and certain other highways.

(2) Factors UDOT may consider for allowing accommodation include distance between distribution points, terrain, cost, and prior existence.

(3) Longitudinal telecommunication installations may be allowed under Rule R907-64.

(4) Pursuant to FHWA regulations, UDOT may allow longitudinal accommodation of utility facilities but with greater restrictions within no access and limited access highway right of way as follows:

(a) No access: longitudinal installations on highways with no access are not permitted except in cases where no other feasible location exists and under strictly controlled circumstances. FHWA approval is required for installations on interstate facilities; and

(b) Limited Access: longitudinal installations on highways with limited access are generally not permitted. When such installations are allowed, individual service connections are not permitted unless no other reasonable alternatives exist.

(5) Utility facilities are allowed to cross no access and limited access highway right-of-way but with additional requirements as noted below in Section R930-7-10(7).

(6) Longitudinal Utility Facilities.

(a) In addition to the requirements in Section R930-7-8(1)(a), the following requirements apply.

(i) Service connections are not permitted within no access

highway right of way. Service connections are not permitted within limited access highway right of way unless no reasonable alternative exists as demonstrated by the utility company and as reviewed and approved by UDOT.

(ii) Service, maintenance, and operation of utilities installed along and within no access highway right of way may not be conducted from the through-traffic roadways or ramps. All maintenance activities must be accessed from a point approved by UDOT and FHWA.

(iii) An existing utility facility within the right of way acquired for an interstate, freeway, or access controlled highway project may remain if it can be serviced, maintained, and operated without access from the through-traffic roadways or ramps, and it does not adversely affect the safety, design, construction, operation, maintenance, or stability of the interstate, freeway, or access controlled highway. Otherwise, it shall be relocated.

(iv) Where approval for installation is permitted, utility installations and related components shall be buried parallel to the interstate, freeway, or access controlled highway and shall be located within five feet of the outer most right of way limits. Utility appurtenances shall be located as close as possible to the right of way line.

(v) An existing utility carried on an interstate, freeway, or access controlled highway structure crossing a major valley or river may be permitted by UDOT to continue to be carried at the time the route is improved if the utility facility is serviced without interference to the traveling public.

(7) Utility Crossings.

(a) In addition to the requirements in Section R930-7-8(1)(d), the following requirements apply.

(i) A utility following a crossroad or street which is carried over or under an interstate, freeway, or access controlled highway must cross the interstate, freeway, or access controlled highway at the location of the crossroad or street in such a manner that the utility can be serviced without access from the through-traffic roadways or ramps.

(ii) Overhead utility lines crossing an interstate, freeway, or access controlled highway shall be adjusted so that supporting structures are located outside access control lines. In no case shall the supporting poles be placed within the clear zone. Where required for support, intermediate supporting poles may be placed in medians of sufficient width that provide the clear zone from the edges of both travelled ways. If additional lanes are planned, the clear zone shall be determined from the ultimate edges of the travelled way. When right of way lines and access control lines are not the same, such as when frontage roads are provided, supporting poles may be located in the area between them.

(iii) At interchange areas, supports for overhead utility facilities will be permitted only if located beyond the clear zone of traffic lanes or ramps, sight distance is not impaired, and can be safely accessed.

(iv) Manholes and other points of access to underground utilities may be permitted within the right of way of an interstate, freeway, or access controlled highway if they can be serviced or maintained without access from the through-traffic roadways or ramps. When right of way lines and access control lines are not the same, such as when frontage roads are provided, manholes and other points of access may be located in the area between them.

(v) Where a casing is not otherwise required, it shall be considered as expedient in the insertion, removal, replacement, or maintenance of carrier pipes crossing interstate, freeways, or access controlled highways. Casings shall extend to the access control lines. See Section R930-7-8(4).

(8) Longitudinal Telecommunications Installation.

(a) Installation must comply with R907-64.

(9) Wireless Telecommunications Facilities.

(a) Facilities must comply with R907-64.

R930-7-11. Utility Construction and Inspection.

(1) General Provisions.

(a) The method used for utility work is generally determined by local conditions. The location, terrain, obstructions, soil conditions, topography, and UDOT standards to maintain the integrity and safety of the right of way and roadway are important considerations for the proper placing of utilities. Familiarity and compliance with this rule will facilitate the construction process for utility companies.

(b) UDOT may perform routine inspection of utility construction work to monitor compliance with the license agreement, encroachment permit and with state and federal regulations. A permit may be revoked for cause if a utility company or contractor is not complying with the terms and limitations of the permit which will require a new permit at the contractor's expense to proceed with the work.

(c) Costs associated with the inspection are the responsibility of the utility company. Failure to pay inspection invoices issued by UDOT may result in revocation of the permit and may require the posting of an inspection bond on future permit applications.

(2) Utility Construction and Maintenance.

(a) No utility construction work by a utility company or a utility company's contractor may begin until a written encroachment permit has been issued to the utility company by UDOT.

(b) Traffic control for utility construction and maintenance operations shall conform to UDOT's current accepted Utah MUTCD or UDOT Traffic Control Plans, whichever is more restrictive. All utility construction and maintenance operations shall be planned to keep interference with traffic to an absolute minimum. On heavily traveled highways, utility operations interfering with traffic shall not be conducted during periods of peak traffic flow. This work shall be planned so that closures of intersecting streets, road approaches, or other access points are held to a minimum.

(c) The utility company shall not begin any work on UDOT right of way until the permit is issued and notice to proceed is given to the utility company by UDOT. After notice to proceed is received, the utility company shall complete construction in accordance with UDOT requirements.

(d) When highway utility construction or maintenance activities involve existing underground utility facilities, utility company or contractor shall comply with Title 54, Chapter 8a, Damage to Underground Utility Facilities.

(e) Utility work shall be completed within the number of days specified in the approved permit. When the work is not completed within the specified time UDOT has the option of extending the time or revoking the permit and acting on the appropriate bond to pay for completion of the work. All time extensions granted by UDOT shall be in writing.

(f) Disturbance of areas within highway right-of-way during utility construction shall be kept to a minimum and all right of way shall be restored to the satisfaction of UDOT. All utility construction methods used within the highway right of way shall be performed in accordance with current Standard Specifications for Highway and Bridge Construction, UDOT Permit Excavation Handbook, the provisions of this rule, and encroachment permit requirements. Unsatisfactory construction work, as determined by UDOT's inspector, shall promptly be corrected to comply with appropriate standards and specifications. UDOT may issue written notification that identifies the deficiencies and the period of time to cure or correct the deficiencies. If the restoration is not performed within the specified time, UDOT may perform or have performed the corrective work and the utility company shall be responsible for all costs incurred.

(g) The utility company shall avoid disturbing or damaging existing highway drainage facilities and is responsible for repairs, including restoration of ditch flow lines. Wherever necessary, the utility company shall provide drainage away from its own facilities to avoid damage to the highway.

(h) The utility company is prohibited from spraying, cutting or trimming trees or other landscape elements unless specific written permission is obtained from UDOT. The approval of an encroachment permit does not include approval of such work unless the cutting, spraying, and trimming is clearly indicated on the permit application. In general, when permission is given, only light trimming will be permitted. When tree removal is approved, the stump shall be removed and the hole properly backfilled to natural ground density or restored as otherwise approved by UDOT. The work site shall be left clean and trash free. All debris shall be removed. Reseeding shall be performed in accordance with UDOT's approved schedule.

(i) UDOT may require that any abandoned utility pipe or conduit be removed, capped, or filled with an appropriate material acceptable to UDOT.

(j) All utility facilities located on rights of way shall be adequately maintained. Any physical modifications, relocations, additions, excavations, or impedance of traffic within the right of way shall require the submittal of a new encroachment permit application. No work may begin until the new encroachment permit is approved.

(k) Restoration of the highway right of way disturbed by excavation, grading work, or other activities shall include reseeding and restoration of existing landscaping. All areas which are denuded of vegetation as a result of construction or maintenance shall be reseeded which is subject to inspection and acceptance by UDOT.

(3) Open Trench Construction Traversing Highways.

(a) Open trench utility installations are not permitted unless an acceptable trenchless method is unfeasible such as in unsuitable soil conditions or extremely difficult rock. UDOT may also grant a deviation from requiring trenchless construction where older pavement is severely deteriorated.

(b) Open trench construction on highways is limited to areas where traffic impacts are minimal. Any pavement structure broken, disturbed, cut or otherwise damaged in any way shall be removed and replaced to a design equal to or greater than the surrounding undisturbed pavement structure, or as otherwise determined by UDOT.

(c) For open trench installations, the utility company is responsible for the restoration and maintenance of the pavement structure for three years as outlined in Section R930-7-6(6)(b), unless a deviation is granted by UDOT. When the utility company or its contractor performing the work is not equipped to or fails to properly repair the damage to the pavement structure, UDOT will repair the damage and bill the utility company for the actual costs incurred, including any administrative costs. All pavement restoration work performed by the utility company shall be completed within 48 hours after completion of the excavation and backfill.

(d) All open trench utility installations shall conform to the applicable provisions of the current UDOT Standard Specifications for Road and Bridge Construction.

(e) It is the utility company's responsibility to restore the structural integrity of the road bed, secure the utility facility against deformation and leakage, assure that the utility trench does not become a drainage channel, and that the backfilled trench doesn't impede or alter road drainage.

(f) Trenches shall be cut to have vertical faces. Maximum width shall be two feet or the outside diameter of the pipe plus one and one-half feet on each side. All trenches shall be shored where necessary and shall meet OSHA requirements.

(g) Bedding shall be provided to a depth of one-half the diameter of the pipe and shall consist of granular material, free from rocks, lumps, clods, cobbles, or frozen materials, and shall be graded to a firm surface without abrupt change in bearing value. Unstable soils and rock ledges shall be sub-excavated from beneath the bedding zone and replaced with suitable granular material.

(h) Backfill shall meet the current UDOT Standard Specification 02056 Embankment, Borrow and Backfill and 03575 Flowable Fill. Additional specifications may be required by UDOT.

(i) Pavement replacement may be performed by either the utility company or a contractor engaged by the utility company. The Region Permits Officer will determine pavement replacement requirements. The utility company is liable for three years from the date of completion of the pavement replacement for the cost of repairs if the backfill subsides or the patched pavement fails.

(j) Where a utility company fails to properly repair any damage to the pavement structure, UDOT may repair the damage and the costs, including administrative costs, will be the responsibility of the utility company.

(4) Trenchless Utility Construction.

(a) Trenchless utility installations are required for all utility crossings of highways or roadways, where practicable. This construction method is required to avoid disturbing the pavement surface, particularly where underground utilities exist on major highways, expressways, or freeways. Only UDOT approved methods may be used to install a utility under a highway.

(b) All trenchless pipeline installations shall extend under and across the entire roadway prism to a point five feet beyond the toes of the fore-slopes, borrow ditch bottom, or across the access controlled right of way lines, but never less than 15 feet from the edge of pavement or a ramp.

(c) Water jetting or tunneling may not be used. Water-assisted or wet boring may be permitted if the utility company can demonstrate to UDOT that the operation will not adversely impact the roadway and sub-grade.

(d) The size of a trenchless operation shall be restricted to the minimum size necessary for the utility installation and shall not exceed the utility facility diameter by more than 5% unless otherwise required based on equipment and product manufacturer's specifications. Grout or flowable fill backfill shall be used for carriers or casings and for over-breaks, unused holes or abandoned carriers or casings. The composition of the grout shall be cement mortar, a slurry of fine sand or other fine granular materials.

(e) Portals including surface openings and bore pits shall be established safely beyond the highway surface and the clear zone so as to avoid impairing the roadway during installation of the pipeline.

(f) Where a bulkhead seals the pipeline portal, the portal shall be suitably offset from the surfaced area of the highway. Shoring and bulkheading shall conform to applicable federal, state, and local jurisdiction construction and safety standards. Where a bulkhead is not installed in the pipeline, the portal shall be offset no less than the vertical difference in elevation between the surfaced area of the highway and the bottom of the bore pit.

(g) The utility company shall follow manufacturer's guidelines and industry standards for equipment set-up and operation. The utility company shall assess soil conditions to determine the most appropriate installation technique. Subsurface bore paths shall be tracked and recorded by the utility company, and all failed bores shall be appropriately abandoned and backfilled by the utility company.

(h) Drilling fluids shall be prepared and used according to fluid and drilling equipment manufacturer's guidelines. The utility company shall use fluid containment pits at both bore

entry and exits points, and shall use appropriate operational controls so as to avoid heaving or loss of drilling fluids from the bore. Antifreeze additives shall be non-toxic and biodegradable products.

(i) The utility company shall dispose of drilling fluids and other materials in permitted facilities that accept the types of chemicals and wastes used in the trenchless operations.

(5) Utility Markers.

(a) The location of utility facilities within highway right of way presents certain risks to construction and maintenance activities, construction personnel, and to the facility itself when work in and around the area of the utility facility is in progress. To minimize risk and maximize safety, it is the utility company's responsibility to provide identification markers and tracer wire or detectable warning tape for all buried facilities located within the right of way.

(b) A trace wire, metallic tape, or other accepted industry material approved by UDOT for locating utilities with geophysical equipment shall be properly installed with all non-metallic underground lines.

(c) The utility company shall place permanent markers identifying the location of underground utility facilities, whether they are crossing the highway or installed longitudinally along the highway. Markers shall not interfere with highway safety and maintenance operations. Preferably, markers are to be located at the right of way line if that location will provide adequate warning. The telephone number for one-call notification services to request marking the line location prior to excavation, and for emergency response, shall appear on the marker.

(d) The utility company shall maintain its markers in good condition. Color faded markers shall be replaced as necessary so that their visibility to maintenance crews and others is not impaired.

(6) GPS Requirements.

(a) It is the responsibility of the utility company to produce and maintain a set of certified reproducible plans and an electronic file showing the location of all its facilities in the right of way including overhead facilities and crossing points. The utility company is responsible to maintain an accurate file to be used by UDOT for future planning to avoid utility conflicts. These plans shall also include appropriate vertical and horizontal ties to the highway survey control.

(b) For new facility installations, the utility company shall use a survey grade Global Positioning System (GPS) to survey their facility locations and submit an electronic file to UDOT. Specific requirements for survey data will be determined by UDOT. The location survey points shall include major junction points, manholes, valves, changes in line or grade, and any other significant feature that will facilitate installation approval and future planning activities.

(c) If the utility company fails to provide UDOT with a set of plans and files showing the surveyed utility locations upon request then the utility company is required to secure the actual locations of their facilities at no cost to UDOT. If the utility company fails to provide the utility location information requested within ten days, UDOT may hire a Subsurface Utility Engineering (SUE) consultant to locate the utilities at the utility company's expense.

R930-7-12. Utility Relocations Required by Highway Projects.

(1) General.

(a) Utility companies will comply with the requirements of Sections 54-3-29 and 72-6-116, when completing utility relocations necessitated by highway projects.

(b) This rule incorporates by reference 23 CFR Section 645, Subpart A, (November 22, 2000) for all utility relocations.

(c) The costs incurred by UDOT and the utility companies for compliance with the federal and state statutes, rules and regulations will be included as part of utility relocation costs.

(2) Longitudinal Telecommunications Relocations and Reimbursement.

(a) Utility companies are required to pay all relocation costs for their telecommunications facilities granted interstate access pursuant to Section 72-7-108.

R930-7-13. Deviations.

(1) Deviations from provisions of this rule may be allowed if they do not violate state and federal statutes, law, or regulations and UDOT has determined the use of the right of way will be for the public good without compromising the transportation purposes of the right of way.

(2) Requests for deviations with limited impact may be considered by UDOT on an individual basis, upon justification submitted by the utility company.

(3) Requests for significant deviations must demonstrate extreme hardship and unusual conditions and provide justification for the deviation. Requests must demonstrate that alternative measures can be specified and implemented and still fulfill the intent of state and federal regulations. Requests for these deviations must include the following:

(a) formal request by the utility company; and

(b) an evaluation of the direct and indirect design, safety, environmental, and economic impacts associated with granting a deviation.

(4) In order for UDOT to grant a significant deviation the following approvals are necessary:

(a) formal recommendation for approval by the UDOT Region Permits Officer or the officer's supervisor;

(b) formal recommendation for approval from the UDOT Region Director;

(c) concurrence of the UDOT Statewide Utilities Engineer; and

(d) FHWA concurrence if the deviation applies to a utility facility located within a Federal-aid highway right of way.

(5) For UDOT projects that are solely state funded, UDOT may deviate from the utility relocation regulations contained in the Code of Federal Regulations by reimbursing a utility company for replacement of existing buildings with functionally equivalent buildings, if the following requirements are met:

(a) the utility company owns the property in fee that UDOT needs to acquire for its project;

(b) the utility company owns operational facilities located upon, below or above the property;

(c) the utility company owns a building on the property that provides maintenance services for the utility facility;

(d) a property purchase in accordance with 49 CFR 24 will not adequately compensate the utility company's costs to relocate and functionally re-establish the maintenance facility; and

(e) the deviation promotes the public interest.

R930-7-14. Enforcement.

(1) This rule is subject to enforcement pursuant to and as provided for in Utah Code, and may include, but not be limited to the following:

(a) administrative citations, in letter form, citing non-compliance items and proper redress requirements, including notice that UDOT may take whatever action is necessary to rectify the situation and subsequently submit a claim against the appropriate bond to recover from the utility company actual costs incurred by UDOT;

(b) increased bonding levels to recoup potential restoration costs on current or future utility projects;

(c) denial of future permits until past non-compliance is resolved; and

(d) legal action to secure reimbursement from the utility

company for costs incurred by UDOT due to damages to the right of way or noncompliance with the permit.

KEY: right-of-way, utilities, utility accommodation
November 7, 2013 72-6-116(2)

R986. Workforce Services, Employment Development.
R986-200. Family Employment Program.
R986-200-201. Authority for Family Employment Program (FEP) and Family Employment Program Two Parent (FEPTP) and Other Applicable Rules.

(1) The Department provides services to eligible families under FEP and FEPTP under the authority granted in the Employment Support Act, UCA 35A-3-301 et seq. Funding is provided by the federal government through Temporary Aid to Needy Families (TANF) as authorized by PRWORA.

(2) Rule R986-100 applies to FEP and FEPTP unless expressly noted otherwise.

R986-200-202. Family Employment Program (FEP).

(1) The goal of FEP is to increase family income through employment, and where appropriate, child support and/or disability payments.

(2) FEP is for families with no more than one able bodied parent in the household. If the family has two able bodied parents in the household, the family is not eligible for FEP but may be eligible for FEPTP. Able bodied means capable of earning at least $500 per month in the Utah labor market.

(3) If a household has at least one incapacitated parent, the parent claiming incapacity must verify that incapacity in one of the following ways:

(a) receipt of disability benefits from SSA;

(b) 100% disabled by VA; or

(c) by submitting a written statement from:

(i) a licensed medical doctor;

(ii) a doctor of osteopathy;

(iii) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(iv) a licensed Advanced Practice Registered Nurse; or

(v) a licensed Physician's Assistant.

(d) the written statement in paragraph (c) of this subsection must be based on a current physical examination of the parent, not just a review of parent's medical records.

(4) Incapacity means not capable of earning $500 per month. The incapacity must be expected to last 30 days or longer.

(5) An applicant or parent must cooperate in the obtaining of a second opinion regarding incapacity if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the parent requests the second opinion.

(6) An incapacitated parent is included in the FEP household assistance unit and the parent's income and assets are counted toward establishing eligibility unless the parent is a SSI recipient. If the parent is a SSI recipient, that parent is not included in the household and none of the income or assets of the SSI recipient is counted.

(7) An incapacitated parent who is included in the household must still negotiate, sign and agree to participate in an employment plan. If the incapacity is such that employment is not feasible now or in the future, participation may be limited to cooperating with ORS and filing for any assistance or benefits to which the parent may be entitled. If it is believed the incapacity might not be permanent, the parent will also be required to seek assistance in overcoming the incapacity.

R986-200-203. Citizenship and Alienage Requirements.

(1) All persons in the household assistance unit who are included in the financial assistance payment, including children, must be a citizen of the United States or meet alienage criteria.

(2) An alien is not eligible for financial assistance unless the alien meets the definition of qualified alien. A qualified alien is an alien:

(a) who is paroled into the United States under section 212(d)(5) of the INA for at least one year;

(b) who is admitted as a refugee under section 207 of the INA;

(c) who is granted asylum under section 208 of the INA;

(d) who is a Cuban or Haitian entrant in accordance with the requirements of 45 CFR Part 401;

(e) who is an Amerasian from Vietnam and was admitted to the United States as an immigrant pursuant to Public Law 100-202 and Public Law 100-461;

(f) whose deportation is being withheld under sections 243(h) or 241(b)(3) of the INA;

(g) who is lawfully admitted for permanent residence under the INA,

(h) who is granted conditional entry pursuant to section 203(a)(7) of the INA;

(i) who meets the definition of certain battered aliens under Section 8 U.S.C. 1641(c); or

(j) who is a certified victim of trafficking.

(3) All aliens granted lawful temporary or permanent resident status under Sections 210, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified from receiving financial assistance for a period of five years from the date lawful temporary resident status is granted.

(4) Aliens are required to provide proof, in the form of documentation issued by the United States Citizenship and Immigration Services (USCIS), of immigration status. Victims of trafficking can provide proof from the Office of Refugee Resettlement.

R986-200-204. Eligibility Requirements.

(1) To be eligible for financial assistance under the FEP or FEPTP a household assistance unit must include:

(a) a pregnant woman when it has been medically verified that she is in the third calendar month prior to the expected month of delivery, or later, and who, if the child were born and living with her in the month of payment, would be eligible. The unborn child is not included in the financial assistance payment; or

(b) at least one minor dependent child who is a citizen or meets the alienage criteria. All minor children age 6 to 16 must attend school, or be exempt under 53A-11-102, to be included in the household assistance unit for a financial assistance payment for that child.

(i) A minor child is defined as being under the age of 18 years and not emancipated by marriage or by court order; or

(ii) an unemancipated child, at least 18 years old but under 19 years old, with no high school diploma or its equivalent, who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and the school has verified a reasonable expectation the 18 year old will complete the program before reaching age 19.

(2) Households must meet other eligibility requirements of income, assets, and participation in addition to the eligibility requirements found in R986-100.

(3) Persons who are fleeing to avoid prosecution of a felony are ineligible for financial assistance.

(4) All clients who are required to complete a negotiated employment plan as provided in R986-200-206 must attend a FEP orientation meeting, sign a FEP Agreement, and negotiate and sign an employment plan within 30 days of submitting his or her application for assistance. Attendance at the orientation meeting can only be excused for reasonable cause as defined in R986-200-212(8). The application for assistance will not be complete until the client has attended the meeting.

(5) If a parent in the financial assistance household received TANF funded financial assistance benefits from another state or from a tribe, the entire household is ineligible to receive TANF funded financial assistance in Utah the same month. This is true even if household composition has changed.

If a child in the household has received TANF funded financial assistance in another household, in this or any other state, the child will be excluded from the household determination in the same month according to the provisions of R986-200-205(2)(d). TANF funded financial assistance in Utah is FEP, FEP-TP, Emergency Assistance and AA.

R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.

The amount of financial assistance for an eligible household is based on the size of the household assistance unit and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents, parents listed on the birth certificate and stepparents, unless expressly excluded in this section, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged or his name must appear on the birth record. If the parents have a solemnized marriage at the time of birth, relationship is established and can only be rebutted by a DNA test;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(d) a child who was counted as a dependent in a household that received TANF funded financial assistance or in a specified relative household in the same month. A child cannot be counted as a dependent in two households that receive TANF funded financial assistance or specific relative assistance in the same month.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are counted:

(a) all absent household members who are not required to participate in an employment plan under R986-200-210 and who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included. If the household member is required to participate in an employment plan, the household member must be included.

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as income;

(d) former stepchildren who have no blood relationship to a dependent child in the household;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(f) if the only adult in the household is temporarily absent, the dependent child or children must be left under the care of an adult or benefits will be denied;

(4) In situations where there are children in the home for which there is court order regarding custody of the children, the Department will determine if the children should be included in the household assistance unit based on the actual living arrangements of the children and not on the custody order. If the child lives in the home 50% or more of the time, the child must be included in the household assistance unit and duty of support completed. It is not an option to exclude the child. This is true even if the court awarded custody to the other parent or the court ordered joint custody. If the child lives in the household less than 50% of the time, the child cannot be included in the household. It is not an option to include the child. This is true even if the parent applying for financial assistance has been awarded custody by the court or the court ordered joint custody. If financial assistance is allowed, a joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

R986-200-206. Participation Requirements.

(1) Payment of any and all financial assistance is contingent upon all parents in the household, including adoptive and stepparents, participating, to the maximum extent possible, in:

(a) assessment and evaluation;

(b) the completion of a negotiated employment plan; and

(c) assisting ORS in good faith to:
(i) establish the paternity of all minor children; and
(ii) establish and enforce child support obligations.
(d) obtaining any and all other sources of income. If any household member is or appears to be eligible for unemployment, SSA, Workers Compensation, VA, or any other benefits or forms of assistance, the Department will refer the individual to the appropriate agency and the individual must apply for and pursue obtaining those benefits. If an individual refuses to apply for and pursue these benefits or assistance, the individual is ineligible for financial assistance. Pursuing these benefits includes cooperating fully and providing all the necessary documentation to insure receipt of benefits. If the individual is already receiving assistance from the Department and it is found he or she is not cooperating fully to obtain benefits from another source, the individual will be considered to not be participating in his or her employment plan. If the individual is otherwise eligible for FEP or FEPTP, financial assistance will be provided until eligibility for other benefits or assistance has been determined. If an individual's application for SSA benefits is denied, the individual must fully cooperate in prosecuting an appeal of that SSA denial at least to the Social Security ALJ level.

(2) Parents who have been determined to be ineligible to be included in the financial assistance payment are still required to participate.

(3) Children at least 16 years old but under 18 years old, unless they are in school full-time or in school part-time and working less than 100 hours per month are required to participate.

R986-200-207. Participation in Child Support Enforcement.

(1) Receipt of child support is an important element in increasing a family's income.

(2) Every natural, legal or adoptive parent has a duty to support his or her children and stepchildren even if the children do not live in the parental home.

(3) A parent's duty to support continues until the child:
(a) reaches age 18;
(b) is 18 years old and enrolled in high school during the normal and expected year of graduation;
(c) is emancipated by marriage or court order;
(d) is a member of the armed forces of the United States; or
(e) is self supporting.

(4) A client receiving financial assistance automatically assigns to the state any and all rights to child support for all children who are included in the household assistance unit while receiving financial assistance. The assignment of rights occurs even if the client claims or establishes "good cause or other exception" for refusal to cooperate. The assignment of rights to support, cooperation in establishing paternity, and establishing and enforcing child support is a condition of eligibility for the receipt of financial assistance.

(5) For each child included in the financial assistance payment, the client must also assign any and all rights to alimony or spousal support from the noncustodial parent while the client receives public assistance.

(6) The client must cooperate with the Department and ORS in establishing and enforcing the spousal and child support obligation from any and all natural, legal, or adoptive non-custodial parents.

(7) If a parent is absent from the home, the client must identify and help locate the non-custodial parent.

(8) If a child is conceived or born during a marriage, the husband is considered the legal father, even if the wife states he is not the natural father.

(9) If the child is born out of wedlock, the client must also cooperate in the establishment of paternity.

(10) ORS is solely responsible for determining if the client is cooperating in identifying the noncustodial parent and with child support establishment and enforcement efforts for the purposes of receipt of financial assistance. The Department cannot review, modify, or reject a decision made by ORS.

(11) Unless good cause is shown, financial assistance will terminate if a parent or specified relative does not cooperate with ORS in establishing paternity or enforcing child support obligations.

(12) Upon notification from ORS that the client is not cooperating, the Department will commence reconciliation procedures as outlined in R986-200-212. If the client continues to refuse to cooperate with ORS at the end of the reconciliation process, financial assistance will be terminated.

(13) Termination of financial assistance for non cooperation is immediate, without a reduction period outlined in R986-200-212, if:
(a) the client is a specified relative who is not included in the household assistance unit;
(b) the client is a parent receiving SSI benefits; or
(c) the client is participating in FEPTP.

(14) Once the financial assistance has been terminated due to the client's failure to cooperate with child support enforcement, the client must then reapply for financial assistance. This time, the client must cooperate with child support collection prior to receiving any financial assistance.

(15) A specified relative, illegal alien, SSI recipient, or disqualified parent in a household receiving FEP assistance must assign rights to support of any kind and cooperate with all establishment and enforcement efforts even if the parent or relative is not included in the financial assistance payment.

R986-200-208. Good Cause for Not Cooperating With ORS.

(1) The Department is responsible for determining if the client has good cause or other exception for not cooperating with ORS.

(2) To establish good cause for not cooperating, the client must file a written request for a good cause determination and provide proof of good cause within 20 days of the request.

(3) A client has the right to request a good cause determination at any time, even if ORS or court proceedings have begun.

(4) Good cause for not cooperating with ORS can be shown if one of following circumstances exists:

(a) The child, for whom support is sought, was conceived as a result of incest or rape. To prove good cause under this paragraph, the client must provide:
(i) birth certificates;
(ii) medical records;
(iii) Department records;
(iv) records from another state or federal agency;
(v) court records; or
(vi) law enforcement records.

(b) Legal proceedings for the adoption of the child are pending before a court. Proof is established if the client provides copies of documents filed in a court of competent jurisdiction.

(c) A public or licensed private social agency is helping the client resolve the issue of whether to keep or relinquish the child for adoption and the discussions between the agency and client have not gone on for more than three months. The client is required to provide written notice from the agency concerned.

(d) The client's cooperation in establishing paternity or securing support is reasonably expected to result in physical or emotional harm to the child or to the parent or specified relative. If harm to the parent or specified relative is claimed, it must be significant enough to reduce that individual's capacity to adequately care for the child.

(i) Physical or emotional harm is considered to exist when

it results in, or is likely to result in, an impairment that has a substantial effect on the individual's ability to perform daily life activities.

(ii) The source of physical or emotional harm may be from individuals other than the noncustodial parent.

(iii) The client must provide proof that the individual is likely to inflict such harm or has done so in the past. Proof must be from an independent source such as:

(A) medical records or written statements from a mental health professional evidencing a history of abuse or current health concern. The record or statement must contain a diagnosis and prognosis where appropriate;

(B) court records;

(C) records from the Department or other state or federal agency; or

(D) law enforcement records.

(5) If a claim of good cause is denied because the client is unable to provide proof as required under Subsection (4) (a) or (d) the client can request a hearing and present other evidence of good cause at the hearing. If the ALJ finds that evidence credible and convincing, the ALJ can make a finding of good cause under Subsections (4) (a) or (d) based on the evidence presented by the client at the hearing. A finding of good cause by the ALJ can be based solely on the sworn testimony of the client.

(6) When the claim of good cause for not cooperating is based in whole or in part on anticipated physical or emotional harm, the Department must consider:

(a) the client's present emotional health and history;

(b) the intensity and probable duration of the resulting impairment;

(c) the degree of cooperation required; and

(d) the extent of involvement of the child in the action to be taken by ORS.

(7) The Department recognizes no other exceptions, apart from those recognized by ORS, to the requirement that a client cooperate in good faith with ORS in the establishment of paternity and establishment and enforcement of child support.

(8) If the client has exercised his or her right to an agency review or adjudicative proceeding under Utah Administrative Procedures Act on the question of non-cooperation as determined by ORS, the Department will not review, modify, or reverse the decision of ORS on the question of non-cooperation. If the client did not have an opportunity for a review with ORS, the Department will refer the request for review to ORS for determination.

(9) Once a request for a good cause determination has been made, all collection efforts by ORS will be suspended until the Department has made a decision on good cause.

(10) A client has the right to appeal a Department decision on good cause to an ALJ by following the procedures for appeal found in R986-100.

(11) If a parent requests a hearing on the basis of good cause for not cooperating, the resulting decision cannot change or modify the determination made by ORS on the question of good faith.

(12) Even if the client establishes good cause not to cooperate with ORS, if the Department supervisor determines that support enforcement can safely proceed without the client's cooperation, ORS may elect to do so. Before proceeding without the client's cooperation, ORS will give the client advance notice that it intends to commence enforcement proceedings and give the client an opportunity to object. The client must file his or her objections with ORS within 10 days.

(13) A determination that a client has good cause for non-cooperation may be reviewed and reversed by the Department upon a finding of new, or newly discovered evidence, or a change in circumstances.

R986-200-209. Participation in Obtaining an Assessment.

(1) Within 20 business days of the date the application for financial assistance has been completed and approved, the client will be assigned to an employment counselor and must complete an assessment.

(2) The assessment evaluates a client's needs and is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

(a) family circumstances including health, needs of the children, support systems, and relationships;

(b) personal needs or potential barriers to employment;

(c) education;

(d) work history;

(e) skills;

(f) financial resources and needs; and

(g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

R986-200-210. Requirements of an Employment Plan.

(1) Within 15 business days of completion of the assessment, the following individuals in the household assistance unit are required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan:

(a) All parents, including parents whose income and assets are included in determining eligibility of the household but have been determined to be ineligible or disqualified from being included in the financial assistance payment.

(b) Dependent minor children who are at least 16 years old, who are not parents, unless they are full-time students or are employed an average of 30 hours a week or more.

(2) The goal of the employment plan is obtaining marketable employment and it must contain the soonest possible target date for entry into employment consistent with the employability of the individual.

(3) An employment plan consists of activities designed to help an individual become employed. For each activity there will be:

(a) an expected outcome;

(b) an anticipated completion date;

(c) the number of participation hours agreed upon per week; and

(d) a definition of what will constitute satisfactory progress for the activity.

(4) Each activity must be directed toward the goal of increasing the household's income.

(5) Activities may require that the client:

(a) obtain immediate employment. If so, the parent client shall:

(i) promptly register for work and commence a search for employment for a specified number of hours each week; and

(ii) regularly submit a report to the Department on:

(A) how much time was spent in job search activities;

(B) the number of job applications completed;

(C) the interviews attended;

(D) the offers of employment extended; and

(E) other related information required by the Department.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the parent client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse

treatment;

(e) resolve transportation and child care needs;

(f) relocate from a rural area which would require a round trip commute in excess of two hours in order to find employment;

(g) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(h) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of, and provide verification for, each eligible activity in the employment plan in order to stay eligible for financial assistance. A list of what will be considered acceptable documentation is available at each employment center.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which includes providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available, supportive services will be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

(11) The number of hours of participation in subsection (3)(c) of this section will not be lower than 30 hours per week. All 30 hours must be in eligible activities. 20 of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the number of hours of participation in subsection (3)(c) of this section is a minimum of 20 hours per week and all of those 20 hours must be in priority activities.

(12) In the event a client has barriers which prevent the client from 30 hours of participation per week, or 20 hours in priority activities, a lower number of hours of participation can be approved if:

(a) the Department identifies and documents the barriers which prevent the client from full participation; and

(b) the client agrees to participate to the maximum extent possible to resolve the barriers which prevent the client from participating.

R986-200-211. Education and Training As Part of an Employment Plan.

(1) A parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited to the lesser of:

(a) 24 months which need not be continuous; or

(b) the completion of the education and training requirements of the employment plan.

(2) Post high school education or training will only be approved if all of the following are met:

(a) The client can demonstrate that the education or training would substantially increase the income level that the client would be able to achieve without the education and training, and would offset the loss of income the household incurs while the education or training is being completed.

(b) The client does not already have a degree or skills training certificate in a currently marketable occupation.

(c) An assessment specific to the client's education and training aptitude has been completed showing the client has the ability to be successful in the education or training.

(d) The mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed.

(e) The specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(f) The client, when determined appropriate, is willing to complete the education/training as quickly as possible, such as attending school full time which may include attending school during the summer.

(g) The client can realistically complete the requirements of the education or training program within the required time frames or time limits of the financial assistance program, including the 36-month lifetime limit for FEP and FEPTP, for which the client is eligible.

(3) A parent client may participate in education or training for up to six months beyond the 24-month limit if:

(a) the parent client is employed for 80 or more hours per month during each month of the extension;

(b) circumstances beyond the control of the client prevented completion within 24 months; and

(c) the Department director or designee determines that extending the 24-month limit is prudent because other employment, education, or training options do not enable the family to meet the objective of the program.

(4) A parent client with a high school diploma or equivalent who has received 24 months of education or training while receiving financial assistance must participate a minimum of 30 hours per week in eligible activities. Twenty of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the minimum number of hours of participation under this this subsection is 20 hours per week and all of those 20 hours must be in priority activities.

(5) Graduate work can never be approved or supported as part of an employment plan.

R986-200-212. Reconciling Disputes and Termination of Financial Assistance for Failure to Comply.

If a client who is required to participate in an employment plan consistently fails, without reasonable cause, to show good faith in complying with the employment plan, the Department will terminate all or part of the financial assistance. This will apply if the Department is notified that the client has failed to cooperate with ORS as provided in R986-200-207. A termination for the reasons mentioned in this paragraph will occur only after the Department attempts reconciliation through the following process:

(1) When an employment counselor discovers that a client is not complying with his or her employment plan, the employment counselor will attempt to discuss compliance with the client and explore solutions. The employment counselor will also send written notice of the failure to comply to the client. The notice will specify a date certain by which the client must comply and the consequences of not complying by that date.

(2) If compliance is not resolved by the date specified in the notice sent under subsection (1) of this section, the employment counselor will send a second written notice and initiate termination of the household financial assistance. This second notice will advise the client that the financial assistance will terminate at the end of that month unless the client resolves the problem, as provided in paragraph (2)(a) of this section. This second notice will also provide a date certain by which the compliance problems must be resolved for benefits to continue.

(a) If the client establishes reasonable cause for not complying with the employment plan or provides required documentation by the date specified in the first or second notice,

financial assistance will continue or be restored.

(b) If the compliance problem is not resolved as provided in subparagraph (a) of this subsection, the household will be ineligible for financial assistance for one full month. The client must then reapply for financial benefits and successfully complete a two week trial participation period before financial assistance will be approved.

(3) A client must demonstrate a genuine willingness to comply with the employment plan during the two week trial period.

(4) The two week trial period may be waived only if the client has cured all previous compliance issues prior to re-application.

(5) The provisions of this section apply to clients who are eligible for and receiving financial assistance during an extension period as provided in R986-200-218.

(6) A child age 16-18 who is not a parent and who is not participating will be removed from the financial assistance grant. The financial assistance will continue for other household members provided they are participating. If the child successfully completes a two week trial period, the child will be added back on to the financial assistance grant.

(7) Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling.

(8) Reasonable cause can also be established, as provided in 45 CFR 261.56, by a client who is a single custodial parent caring for a child under age six who refuses to engage in required work because he or she is unable to obtain needed child care because appropriate and affordable child care arrangements are not available within a reasonable distance from the home or work site.

(9) If a client is also receiving food stamps and the client is disqualified for non-participation under this section, the client will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

R986-200-213. Financial Assistance for a Minor Parent.

(1) Financial assistance may be provided to a single minor parent who resides in a place of residence maintained by a parent, legal guardian, or other adult relative of the single minor parent, unless the minor parent is exempt.

(2) The single minor parent may be exempt when:

(a) The minor parent has no living parent or legal guardian whose whereabouts is known;

(b) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(c) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for FEP and the minor parent was self supporting during this same period of time; or

(d) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian. A referral will be made to DCFS if allegations are made under this paragraph.

(3) Prior to authorizing financial assistance, the Department must approve the living arrangement of all single minor parents exempt under section (2) above. Approval of the living arrangement is not a certification or guarantee of the safety, quality, or condition of the living arrangements of the single minor parent.

(4) All minor parents regardless of the living arrangement must participate in education for parenting and life skills in infant and child wellness programs operated by the Department of Health and, for not less than 20 hours per week:

(a) attend high school or an alternative to high school, if the minor parent does not have a high school diploma;

(b) participate in education and training; and/or

(c) participate in employment.

(5) If a single minor parent resides with a parent, the Department shall include the income of the parent of the single minor parent in determining the single minor parent's eligibility for financial assistance.

(6) If a single minor parent resides with a parent who is receiving financial assistance, the single minor parent is included in the parent's household assistance unit.

(7) If a single minor parent receives financial assistance but does not reside with a parent, the Department shall seek an order requiring that the parent of the single minor parent financially support the single minor parent.

R986-200-214. Assistance for Specified Relatives.

(1) Specified relatives include:

(a) grandparents;

(b) brothers and sisters;

(c) stepbrothers and stepsisters;

(d) aunts and uncles;

(e) first cousins;

(f) first cousins once removed;

(g) nephews and nieces;

(h) people of prior generations as designated by the prefix grand, great, great-great, or great- great-great;

(i) brothers and sisters by legal adoption;

(j) the spouse of any person listed above;

(k) the former spouse of any person listed above;

(l) individuals who can prove they met one of the above mentioned relationships via a blood relationship even though the legal relationship has been terminated; and

(m) former stepparents.

(2) The specified relative must provide proof of relationship to the child. If the specified relative is unable to provide proof, but DCFS has determined that one of the relationships in subparagraph (1) of this section exists, the Department will accept the DCFS determination. DCFS will not be liable for any potential overpayment resulting from a determination made regarding relationship.

(3) The Department shall require compliance with Section 30-1-4.5

(4) A specified relative may apply for financial assistance for the child. If the child is otherwise eligible, the FEP rules apply with the following exceptions:

(a) The child must have a blood or a legal relationship to the specified relative even if the legal relationship has been terminated or have a blood relationship to a dependent child who in the home and who is included in the household for assistance purposes;

(b) Both parents must be absent from the home where the child lives. This is true even for a parent who has had his or her parental rights terminated;

(c) The child must be currently living with, and not just visiting, the specified relative;

(d) The parents' obligation to financially support their child will be enforced and the specified relative must cooperate with child support enforcement; and

(e) If the parent(s) state they are willing to support the child if the child would return to live with the parent(s), the child is ineligible unless there is a court order removing the child from the parent(s)' home.

(5) If the specified relative is currently receiving FEP or FEPTP, the child must be included in that household assistance unit.

(6) The income and resources of the specified relative are not counted unless the specified relative requests inclusion in the household assistance unit.

(7) If the specified relative is not currently receiving FEP or FEPTP, and the specified relative does not want to be included in the financial assistance payment, the specified relative shall be paid, on behalf of the child, the full standard financial assistance payment for one person. The size of the financial assistance payment shall be increased accordingly for each additional eligible child in the household assistance unit excluding the dependent child(ren) of the specified relative. Since the specified relative is not included in the household assistance unit, the income and assets of the specified relative, or the relative's spouse, are not counted.

(8) The specified relative may request to be included in the household assistance unit. If the specified relative is included in the household assistance unit, the household must meet all FEP eligibility requirements including participation requirements and asset limits.

(9) Income eligibility for a specified relative who wants to be included in the household assistance unit is calculated according to R986-200-241.

R986-200-215. Family Employment Program Two Parent Household (FEPTP).

(1) FEPTP is for households otherwise eligible for FEP but with two able-bodied parents in the household. Eligible refugee households with two able-bodied parents and at least one dependent child, must first exhaust RRP benefits before considering eligibility for FEPTP.

(2) Families may only participate in this program for seven months out of any 13-month period. Months of participation count toward the 36-month time limit in Sections 35A-3-306 and R986-200-217.

(3) Both parents must participate in eligible activities for a combined total of 60 hours per week, as defined in the employment plan. At least 50 of those hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. Refugee families may participate in any combination of eligible and priority activities for a combined total of 60 hours per week, as provided in the employment plan.

(4) Both parents are required to participate every week as defined in the employment plan, unless the parent can establish reasonable cause for not participating. Reasonable cause is defined in rule R986-200-212(8),

(5) Payment is made twice per month and only after proof of participation. Payment is based on the number of hours of participation by both parents. The amount of assistance is equal to the FEP payment for the household size prorated based on the number of hours which the parents participated up to a maximum of 60 hours of participation per week. In no event can the financial assistance payment per month for a FEPTP household be more than for the same size household participating in FEP.

(6) If it is determinated by the employment counselor that either one of the parents has failed to participate to the maximum extent possible assistance for the entire household unit will terminate immediately.

(7) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP.

(8) The parents must meet all other requirements of FEP including but not limited to, income and asset limits, cooperation with ORS if there are legally responsible persons outside of the household assistance unit, signing a participation agreement and employment plan and applying for all other assistance or benefits to which they might be entitled.

R986-200-216. Diversion.

(1) Diversion is a one-time financial assistance payment provided to help a client avoid receiving extended cash assistance.

(2) In determining whether a client should receive diversion assistance, the Department will consider the following:

(a) the applicant's employment history;

(b) the likelihood that the applicant will obtain immediate full-time employment;

(c) the applicant's housing stability; and

(d) the applicant's child care needs, if applicable.

(3) To be eligible for diversion the applicant must;

(a) have a need for financial assistance to pay for housing or substantial and unforseen expenses or work related expenses which cannot be met with current or anticipated resources;

(b) show that within the diversion period, the applicant will be employed or have other specific means of self support, and

(c) meet all eligibility criteria for a FEP financial assistance payment except the applicant does not need to cooperate with ORS in obtaining support. If the client is applying for other assistance such as medical or child care, the client will have to follow the eligibility rules for that type of assistance which may require cooperation with ORS.

(4) If the Department and the client agree diversion is appropriate, the client must sign a diversion agreement listing conditions, expectations and participation requirements.

(5) The diversion payment will equal three times the monthly financial assistance payment for the household size. All income expected to be received during the three-month period including wages and child support must be considered when negotiating diversion.

(6) Child support will belong to the client during the three-month period, whether received by the client directly or collected by ORS. ORS will not use the child support to offset or reimburse the diversion payment.

(7) The client must agree to have the financial assistance portion of the application for assistance denied.

(8) If a diversion payment is made, the client is ineligible for FEP for the three months covered by the diversion payment and must reapply at the end of the three month period.

(9) Diversion assistance is not available to clients participating in FEPTP. This is because FEPTP is based on performance and payment can only be made after performance.

(10) A household can only receive one diversion assistance payment in a 12 month period.

R986-200-217. Time Limits.

(1) Except as provided in R986-200-218 and in Section 35A-3-306, a family cannot receive financial assistance under the FEP or FEPTP for more than 36 months.

(2) The following months count toward the 36-month time limit regardless of whether the financial assistance payment was made in this or any other state:

(a) each month when a parent client received financial assistance beginning with the month of January, 1997;

(b) each month beginning with January, 1997, where a parent resided in the household, the parent's income and assets were counted in determining the household's eligibility, but the parent was disqualified from being included in the financial payment. Disqualification occurs when a parent has been determined to have committed fraud in the receipt of public assistance or when the parent is an ineligible alien; and

(c) each month when financial assistance was reduced or a partial financial assistance payment was received beginning with the month of January, 1997.

(3) Months which do not count toward the 36 month time limit are:

(a) months where both parents were absent from the home and dependent children were cared for by a specified relative who elected to be excluded from the household unit;

(b) months where the client received financial assistance as a minor child and was not the head of a household or married to the head of a household;

(c) months during which the parent lived in Indian country, as defined in Title 18, Section 1151, United States Code 1999, or an Alaskan Native village, if the most reliable data available with respect to the month, or a period including the month, indicate that at least 50% of the adults living in Indian country or in the village were not employed;

(d) months when a parent resided in the home but were excluded from the household assistance unit. A parent is excluded when they receive SSI benefits;

(e) diversion assistance does not count toward the 36 month time limit. If a client has already used 36 months of financial assistance, the client is not eligible for diversion assistance unless the client meets one of the extension criteria in R986-200-218 in addition to all other eligibility criteria of diversion assistance; or

(f) months when a parent client received transitional assistance.

R986-200-218. Exceptions to the Time Limit.

Exceptions to the time limit may be allowed for up to 20% of the average monthly number of families receiving financial assistance from FEP and FEPTP during the previous Federal fiscal year for the following reasons:

(1) A hardship under Section 35A-3-306 is determined to exist when a parent:

(a) is determined to be medically unable to work. The client must provide proof of inability to work in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) receipt of VA Disability benefits based on the parent being 100% disabled;

(iii) placement on the Division of Services to People with Disabilities' waiting list. Being on the waiting list indicates the person has met the criteria for a disability; or

(iv) is currently receiving Temporary Total or Permanent Total disability Workers' Compensation benefits;

(v) a medical statement completed by a medical doctor, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, or a doctor of osteopathy, stating the parent has a medical condition supported by medical evidence, which prevents the parent from engaging in work activities capable of generating income of at least $500 a month. The statement must be completed by a professional skilled in both the diagnosis and treatment of the condition; or

(vi) a statement completed by a licensed clinical social worker, licensed psychologist, licensed Mental Health Therapist as defined in UCA Section 58-60-102, or psychiatrist stating that the parent has been diagnosed with a mental health condition that prevents the parent from engaging in work activities capable of generating income of at least $500 a month. Substance abuse is considered the same as mental health condition;

(b) is under age 19 through the month of their nineteenth birthday;

(c) is currently engaged in an approved full-time job preparation, educational or training activity which the parent was expected to complete within the 36 month time limit but completion within the 36 months was not possible through no fault of the parent. Additionally, if the parent has previously received, beginning with the month of January 1997, 24 months of financial assistance while attending educational or training activities, good cause for additional months must be shown and approved;

(d) was without fault and a delay in the delivery of services provided by the Department occurred. The delay must have had an adverse effect on the parent causing a hardship and preventing the parent from obtaining employment. An extension under this section cannot be granted for more than the length of the delay;

(e) moved to Utah after exhausting 36 months of assistance in another state or states and the parent did not receive supportive services in that state or states as required under the provisions of PRWORA. To be eligible for an extension under this section, the failure to receive supportive services must have occurred through no fault of the parent and must contribute to the parent's inability to work. An extension under this section can never be for longer than the delay in services;

(f) completed an educational or training program at the 36th month and needs additional time to obtain employment;

(g) is unable to work because the parent is required in the home to meet the medical needs of a dependent. Dependent for the purposes of this paragraph means a person who the parent claims as a dependent on his or her income tax filing. Proof, consisting of a medical statement from a health care professional listed in subparagraph (1)(a)(v) or (vi) of this section is required unless the dependent is on the Travis C medicaid waiver program. The medical statement must include all of the following:

(i) the diagnosis of the dependent's condition,

(ii) the recommended treatment needed or being received for the condition,

(iii) the length of time the parent will be required in the home to care for the dependent, and

(iv) whether the parent is required to be in the home full-time or part-time; or

(h) is currently receiving assistance under one of the exceptions in this section and needs additional time to obtain employment. A client can only receive assistance for one month under this subparagraph. If the Department determines that granting an exception under this subparagraph adversely impacts its federally mandated participation rate requirements or might otherwise jeopardize its funding, the one month exception will not be granted or

(i) is no longer employed due to a verified reduction in force (layoff) and needs additional time to find work. Participation in eligible activities is required for an exception under this subparagraph. This exception is only available for parents who were laid off on or after January 1, 2008. This exception will not be available after December 31, 2011.

(2) Additional months of financial assistance may be provided if the family includes an individual who has been battered or subjected to extreme cruelty which is a barrier to employment and the implementation of the time limit would make it more difficult to escape the situation. Battered or subjected to extreme cruelty means:

(a) physical acts which resulted in, or threatened to result in, physical injury to the individual;

(b) sexual abuse;

(c) sexual activity involving a dependent child;

(d) threats of, or attempts at, physical or sexual abuse;

(e) mental abuse which includes stalking and harassment; or

(f) neglect or deprivation of medical care.

(3) Employment extension. An exception to the time limit can be granted for a maximum of an additional 24 months if during the previous two months, the parent client was employed for no less than 20 hours per week. The employment can consist of self-employment if the parent's net income from that self-employment is at or above minimum wage.

(a) If, at the end of the 24-month extension, the parent client qualifies for an extension under subsections (1) or (2) of this section, an additional extension can be granted under the provisions of those sections.

(b) A family cannot receive financial assistance for more

than a total of 60 months unless an extension can be granted under subsections (1) and (2) of this section.

(4) All clients receiving an extension must continue to participate, to the maximum extent possible, in an employment plan. This includes cooperating with ORS in the collection, establishment, and enforcement of child support and the establishment of paternity, if necessary.

(5) If a household filing unit contains more than one parent, and one parent has received at least 36 months of assistance as a parent, then the entire filing unit is ineligible unless both parents meet one of the exceptions listed above. Both parents need not meet the same exception.

(6) A family in which the only parent or both parents are ineligible aliens cannot be granted an extension under Section (3) above or for any of the reasons in Subsections (1)(c), (d), (e) or (f). This is because ineligible aliens are not legally able to work and supportive services for work, education and training purposes are inappropriate.

(7) A client who is no longer eligible for financial assistance may be eligible for other kinds of public assistance including food stamps, Child Care Assistance and medical coverage. The client must follow the appropriate application process to determine eligibility for assistance from those other programs.

(8) Exceptions are subject to a review at least once every six months.

R986-200-219. Emergency Assistance (EA) for Needy Families With Dependent Children.

(1) EA is provided in an effort to prevent homelessness. It is a payment which is limited to use for utilities and rent or mortgage.

(2) To be eligible for EA the family must meet all other FEP requirements except:

(a) the client need only meet the "gross income" test. Gross income which is available to the client must be equal to or less than 185% of the standard needs budget for the client's filing unit; and

(b) the client is not required to enter into an employment plan or cooperate with ORS in obtaining support.

(3) The client must be homeless, in danger of becoming homeless or having the utilities at the home cut off due to a crisis situation beyond the client's control. The client must show that:

(a) The family is facing eviction or foreclosure because of past due rent or mortgage payments or unpaid utility bills which result from the crisis;

(b) A one-time EA payment will enable the family to obtain or maintain housing or prevent the utility shut off while they overcome the temporary crisis;

(c) Assistance with one month's rent or mortgage payment is enough to prevent the eviction, foreclosure or termination of utilities;

(d) The client has the ability to resolve past due payments and pay future months' rent or mortgage payments and utility bills after resolution of the crisis; and

(e) The client has exhausted all other resources.

(4) Emergency assistance is available for only 30 consecutive days during a year to any client or that client's household. If, for example, a client receives an EA payment of $450 for rent on April 1 and requests an additional EA payment of $300 for utilities on or before April 30 of that same year, the request for an EA payment for utilities will be considered. If the request for an additional payment for utilities is made after April 30, it cannot be considered for payment. The client will not be eligible for another EA payment until April 1 of the following year. A year is defined as 365 days following the initial date of payment of EA.

(5) Payments will not exceed $450 per family for one month's rent payment or $700 per family for one month's mortgage payment, and $300 for one month's utilities payment.

R986-200-220. Mentors.

(1) The Department will recruit and train volunteers to serve as mentors for parent clients. The Department may elect to contract for the recruitment and training of the volunteers.

(2) A mentor may advocate on behalf of a parent client and help a parent client:

(a) develop life skills;

(b) implement an employment plan; or

(c) obtain services and support from:

(i) the volunteer mentor;

(ii) the Department; or

(iii) civic organizations.

R986-200-221. Drug Testing Requirements.

(1) A parent client or specified relative who is counted in the household assistance unit under R986-200-205 must complete a substance abuse questionnaire. A substance abuse questionnaire is defined as a written screening questionnaire designed to accurately determine the reasonable likelihood of the client having a substance use disorder involving the misuse of a controlled substance. Individuals in the household who have been disqualified from the receipt of assistance because of an IPV are also required to complete a substance abuse questionnaire and otherwise comply with this section.

(2) If the results of the substance abuse questionnaire indicate a reasonable likelihood of a substance use disorder involving the misuse of a controlled substance, a drug test is required within a period of time as specified by the Department. The test will be performed in accordance with the requirements of Utah Code Ann. Section 34-38-6. Before taking the drug test, the client may advise the person administering the test of any prescription or any over the counter medication the client is taking.

(3) If the client tests positive for the unlawful use of a controlled substance on the drug test required under subsection (2), benefits may continue but only if the client agrees to receive treatment from a Department approved provider. The treatment will be for a minimum of 60 days and the client must also submit to drug tests during, and at the conclusion of, treatment. Each test must be negative. The length of treatment, if over 60 days, will be determined by the treatment provider and the Department. The client cannot change treatment providers unless the treatment provider and the Department agree to the change.

(4) The entire household unit will be denied financial assistance for a period of three months for the first occurrence and 12 months for any subsequence occurrence within a 12 month period if a client identified in subsection (1):

(a) refuses to take a drug test as required in subsection (2) or (3) of this section,

(b) fails to enter and successfully complete treatment as required in subsection (3) of this section, or

(c) tests positive for the unlawful use of a controlled substance, on any subsequent drug test required by the Department, while in treatment or at the completion of treatment.

(5) A client can be excused from complying with the requirements of this section if the necessary resources are not available through no fault of the client.

(6) A client can be excused from complying with the requirements of this section in a timely manner if the client can show reasonable cause. Reasonable cause under this section means the client was prevented from complying in a timely manner through no fault of his or her own or failed to comply in a timely manner for reasons that are reasonable and compelling.

(7) If a client disagrees with the results of a drug test

performed under subsections (2) or (3) of this section, the client can provide the Department with the results of a second drug test. This second drug test will be performed:

(i) at the client's expense,

(ii) at a testing facility approved by the Department,

(iii) in accordance with requirements of Utah Code Ann. Section 34-38-6, and

(iv) within seven days of the Department sending notice of the results of the original drug test.

(c) If the results of the second drug test are negative, the Department will reimburse the client the actual and reasonable verified costs incurred in obtaining the second test.

R986-200-230. Assets Counted in Determining Eligibility.

(1) All available assets, unless exempt, are counted in determining eligibility. An asset is available when the applicant or client owns it and has the ability and the legal right to sell it or dispose of it. An item is never counted as both income and an asset in the same month.

(2) The value of an asset is determined by its equity value. Equity value is the current market value less any debts still owing on the asset. Current market value is the asset's selling price on the open market as set by current standards of appraisal.

(3) Both real and personal property are considered assets. Real property is an item that is fixed, permanent, or immovable. This includes land, houses, buildings, mobile homes and trailer homes. Personal property is any item other than real property.

(4) If an asset is potentially available, but a legal impediment to making it available exists, it is exempt until it can be made available. The applicant or client must take appropriate steps to make the asset available unless:

(a) Reasonable action would not be successful in making the asset available; or

(b) The probable cost of making the asset available exceeds its value.

(5) The value of countable real and personal property cannot exceed $2,000.

(6) If the household assets are below the limits on the first day of the month the household is eligible for the remainder of the month.

R986-200-231. Assets That Are Not Counted (Exempt) for Eligibility Purposes.

The following are not counted as an asset when determining eligibility for financial assistance:

(1) the home in which the family lives, and its contents, unless any single item of personal property has a value over $1,000, then only that item is counted toward the $2,000 limit. If the family owns more than one home, only the primary residence is exempt and the equity value of the other home is counted;

(2) the value of the lot on which the home stands is exempt if it does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is counted if marketable;

(3) water rights attached to the home property are exempt;

(4) motorized vehicles;

(5) with the exception of real property, the value of income producing property necessary for employment;

(6) the value of any reasonable assistance received for post-secondary education;

(7) bona fide loans, including reverse equity loans;

(8) per capita payments or any asset purchased with per capita payments made to tribal members by the Secretary of the Interior or the tribe. Any asset purchased with profit distributions or income to tribal members derived from tribal owned casinos and privately owned land is countable;

(9) maintenance items essential to day-to-day living;

(10) life estates;

(11) an irrevocable trust where neither the corpus nor income can be used for basic living expenses;

(12) for refugees, as defined under R986-300-303(1), assets that remain in the refugee's country of origin are not counted;

(13) one burial plot per member of the household. A burial plot is a burial space and any item related to repositories used for the remains of the deceased. This includes caskets, concrete vaults, urns, crypts, grave markers, etc. If the individual owns a grave site, the value of which includes opening and closing, the opening and closing is also exempt;

(14) a burial/funeral fund up to a maximum of $1,500 per member of the household;

(a) The value of any irrevocable burial trust is subtracted from the $1,500 burial/funeral fund exemption. If the irrevocable burial trust is valued at $1,500 or more, it reduces the burial/funeral fund exemption to zero.

(b) After deducting any irrevocable burial trust, if there is still a balance in the burial/funeral fund exemption amount, the remaining exemption is reduced by the cash value of any burial contract, funeral plan, or funds set aside for burial up to a maximum of $1,500. Any amount over $1,500 is considered an asset;

(15) any interest which is accrued on an exempt burial contract, funeral plan, or funds set aside for burial is exempt as income or assets. If an individual removes the principal or interest and uses the money for a purpose other than the individual's burial expenses, the amount withdrawn is countable income; and

(16) any other property exempt under federal law.

R986-200-232. Considerations in Evaluating Real Property.

(1) Any nonexempt real property that an applicant or client is making a bona fide effort to sell is exempt for a nine-month period provided the applicant or client agrees to repay, from the proceeds of the sale, the amount of financial and/or child care assistance received. Bona fide effort to sell means placing the property up for sale at a price no greater than the current market value. Additionally, to qualify for this exemption, the applicant or client must assign, to the state of Utah, a lien against the real property under consideration. If the property is not sold during the period of time the client was receiving financial and/or child care assistance or if the client loses eligibility for any reason during the nine-month period, the lien will not be released until repayment of all financial and/or child care assistance is made.

(2) Payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days of receipt and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, one 90-day extension may be granted. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal which is counted as income.

R986-200-233. Considerations in Evaluating Household Assets.

(1) The assets of a disqualified household member are counted.

(2) The assets of a ward that are controlled by a legal guardian are considered available to the ward.

(3) The assets of an ineligible child are exempt.

(4) When an ineligible alien is a parent, the assets of that alien parent are counted in determining eligibility for other family members.

(5) Certain aliens who have been legally admitted to the United States for permanent residence must have the income and assets of their sponsors considered in determining eligibility for financial assistance under applicable federal authority in

accordance with R986-200-243.

R986-200-234. Income Counted in Determining Eligibility.

(1) The amount of financial assistance is based on the household's monthly income and size.

(2) Household income means the payment or receipt of countable income from any source to any member counted in the household assistance unit including:

(a) children; and

(b) people who are disqualified from being counted because of a prior determination of fraud (IPV) or because they are an ineligible alien.

(3) The income of SSI recipients is not counted.

(4) Countable income is gross income, whether earned or unearned, less allowable exclusions listed in section R986-200-239.

(5) Money is not counted as income and an asset in the same month.

(6) If an individual has elected to have a voluntary reduction or deduction taken from an entitlement to earned or unearned income, the voluntary reduction or deduction is counted as gross income. Voluntary reductions include insurance premiums, savings, and garnishments to pay an owed obligation.

R986-200-235. Unearned Income.

(1) Unearned income is income received by an individual for which the individual performs no service.

(2) Countable unearned income includes:

(a) pensions and annuities such as Railroad Retirement, Social Security, VA, Civil Service;

(b) disability benefits such as sick pay and workers' compensation payments unless considered as earned income;

(c) unemployment insurance, except, starting March 1, 2009 and continuing as long as it is authorized by Congress and not counted for food stamps, the $25 supplemental weekly Unemployment Compensation payment authorized by the American Recovery and Reinvestment Act of 2009 (ARRA) will not be countable unearned income;

(d) strike or union benefits;

(e) VA allotment;

(f) income from the GI Bill;

(g) assigned support retained in violation of statute is counted when a request to do so has been generated by ORS;

(h) payments received from trusts made for basic living expenses;

(i) payments of interest from stocks, bonds, savings, loans, insurance, a sales contract, or mortgage. This applies even if the payments are from the sale of an exempt home. Payments made for the down payment or principal are counted as assets;

(j) inheritances;

(k) life insurance benefits;

(l) payments from an insurance company or other source for personal injury, interest, or destroyed, lost or stolen property unless the money is used to replace that property;

(m) cash contributions from any source including family, a church or other charitable organization;

(n) rental income if the rental property is managed by another individual or company for the owner. Income from rental property managed by someone in the household assistance unit is considered earned income;

(o) financial assistance payments received from another state or the Department from another type of financial assistance program including a diversion payment; and

(p) payments from Job Corps and Americorps living allowances.

(3) Unearned income which is not counted (exempt):

(a) cash gifts for special occasions which do not exceed $30 per quarter for each person in the household assistance unit. The gift can be divided equally among all members of the household assistance unit;

(b) bona fide loans, including reverse equity loans on an exempt property. A bona fide loan means a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;

(c) the value of food stamps, food donated from any source, and the value of vouchers issued under the Women Infants and Children program;

(d) any per capita payments made to individual tribal members by either the secretary of interior or the tribe are excluded. Profit distributions or income to tribal members derived from tribal owned casinos and privately owned land are countable income;

(e) any payments made to household members that are declared exempt under federal law;

(f) the value of governmental rent and housing subsidies, federal relocation assistance, or EA issued by the Department;

(g) money from a trust fund to provide for or reimburse the household for a specific item NOT related to basic living expenses. This includes medical expenses and educational expenses. Money from a trust fund to provide for or reimburse a household member for basic living expenses is counted;

(h) travel and training allowances and reimbursements if they are directly related to training, education, work, or volunteer activities;

(i) all unearned income in-kind. In-kind means something, such as goods or commodities, other than money;

(j) thirty dollars of the income received from rental income unless greater expenses can be proven. Expenses in excess of $30 can be allowed for:

(i) taxes;

(ii) attorney fees expended to make the rental income available;

(iii) upkeep and repair costs necessary to maintain the current value of the property; and

(iv) interest paid on a loan or mortgage made for upkeep or repair. Payment on the principal of the loan or mortgage cannot be excluded;

(k) if meals are provided to a roomer/boarder, the value of a one-person food stamp allotment for each roomer/boarder;

(l) payments for energy assistance including H.E.A.T payments, assistance given by a supplier of home energy, and in-kind assistance given by a private non-profit agency;

(m) federal and state income tax refunds and earned income tax credit payments;

(n) payments made by the Department to reimburse the client for education or work expenses, or a CC subsidy;

(o) income of an SSI recipient. Neither the payment from SSI nor any other income, including earned income, of an SSI recipient is included;

(p) payments from a person living in the household who is not included in the household assistance unit, as defined in R986-200-205, when the payment is intended and used for that person's share of the living expenses;

(q) educational assistance and college work study except Veterans Education Assistance intended for family members of the student, living stipends and money earned from an assistantship program is counted as income; and

(r) for a refugee, as defined in R986-300-303(1), any grant or assistance, whether cash or in-kind, received directly or indirectly under the Reception and Placement Programs of Department of State or Department of Justice.

R986-200-236. Earned Income.

(1) All earned income is counted when it is received even if it is an advance on wages, salaries or commissions.

(2) Countable earned income includes:

(a) wages, except Americorps*Vista living allowances are

not counted;
(b) salaries;
(c) commissions;
(d) tips;
(e) sick pay which is paid by the employer;
(f) temporary disability insurance or temporary workers' compensation payments which are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending the employee's return to the job;
(g) rental income only if managerial duties are performed by the owner to receive the income. The number of hours spent performing those duties is not a factor. If the property is managed by someone other than the individual, the income is counted as unearned income;
(h) net income from self-employment less allowable expenses, including income over a period of time for which settlement is made at one given time. The periodic payment is annualized prospectively. Examples include the sale of farm crops, livestock, and poultry. A client may deduct actual, allowable expenses, or may opt to deduct 40% of the gross income from self-employment to determine net income;
(i) training incentive payments and work allowances; and
(j) earned income of dependent children.
(3) Income that is not counted as earned income:
(a) income for an SSI recipient;
(b) reimbursements from an employer for any bona fide work expense;
(c) allowances from an employer for travel and training if the allowance is directly related to the travel or training and identifiable and separate from other countable income; or
(d) Earned Income Tax Credit (EITC) payments.

R986-200-237. Lump Sum Payments.
(1) Lump sum payments are one-time windfalls or retroactive payments of earned or unearned income. Lump sums include but are not limited to, inheritances, insurance settlements, awards, winnings, gifts, and severance pay, including when a client cashes out vacation, holiday, and sick pay. They also include lump sum payments from Social Security, VA, UI, Worker's Compensation, and other one-time payments. Payments from SSA that are paid out in installments are not considered lump sum payments but as income, even if paid less often than monthly.
(2) The following lump sum payments are not counted as income or assets:
(a) any kind of lump sum payment of excluded earned or unearned income. If the income would have been excluded, the lump sum payment is also excluded. This includes SSI payments and any EITC; and
(b) insurance settlements for destroyed exempt property when used to replace that property.
(3) The net lump sum payment is counted as income for the month it is received. Any amount remaining after the end of that month is considered an asset.
(4) The net lump sum is the portion of the lump sum that is remaining after deducting:
(a) legal fees expended in the effort to make the lump sum available;
(b) payments for past medical bills if the lump sum was intended to cover those expenses; and
(c) funeral or burial expenses, if the lump sum was intended to cover funeral or burial expenses.
(5) A lump sum paid to an SSI recipient is not counted as income or an asset except for those recipients receiving financial assistance from GA or WTE.

R986-200-238. How to Calculate Income.
(1) To determine if a client is eligible for, and the amount of, a financial assistance payment, the Department estimates the anticipated income, assets and household size for each month in the certification period.
(2) The methods used for estimating income are:
(a) income averaging or annualizing which means using a history of past income that is representative of future income and averaging it to determine anticipated future monthly income. It may be necessary to evaluate the history of past income for a full year or more; and
(b) income anticipating which means using current facts such as rate of pay and hourly wage to anticipate future monthly income when no reliable history is available.
(3) Monthly income is calculated by multiplying the average weekly income by 4.3 weeks. If a client is paid every two weeks, the income for those two weeks is multiplied by 2.15 weeks to determine monthly income.
(4) The Department's estimate of income, when based on the best available information at the time it was made, will be determined to be an accurate reflection of the client's income. If it is later determined the actual income was different than the estimate, no adjustment will be made. If the client notifies the Department of a change in circumstances affecting income, the estimated income can be adjusted prospectively but not retrospectively.

R986-200-239. How to Determine the Amount of the Financial Assistance Payment.
(1) Once the household's size and income have been determined, the gross countable income must be less than or equal to 185% of the Standard Needs Budget (SNB) for the size of the household. This is referred to as the "gross test".
(2) If the gross countable income is less than or equal to 185% of the SNB, the following deductions are allowed:
(a) a work expense allowance of $100 for each person in the household unit who is employed;
(b) fifty percent of the remaining earned income after deducting the work expense allowance as provided in paragraph (a) of this subsection, if the individual has received a financial assistance payment from the Department for one or more of the immediately preceding four months; and
(c) after deducting the amounts in paragraphs (a) and (b) of this subsection, if appropriate, the following deductions can be made:
(i) a dependent care deduction as described in subsection (3) of this section; and
(ii) child support paid by a household member if legally owed to someone not included in the household.
(3) The amount of the dependant care deduction is set by the Department and based on the number of hours worked by the parent and the age of the dependant needing care. It can only be deducted if the dependant care:
(a) is paid for the care of a child or adult member of the household assistance unit, or a child or adult who would be a member of the household assistance unit except that this person receives SSI. An adult's need for care must be verified by a doctor; and
(b) is not subsidized, in whole or in part, by a CC payment from the Department; and
(c) is not paid to an individual who is in the household assistance unit.
(4) After deducting the amounts allowed under paragraph (2) above, the resulting net income must be less than 100% of SNB for size of the household assistance unit. If the net income is equal to or greater than the SNB, the household is not eligible.
(5) If the net income is less than 100% of the SNB the following amounts are deducted:
(a) Fifty percent of earned countable income for all employed household assistance unit members if the household

was not eligible for the 50% deduction under paragraph (2)(b) above; and/or

(b) All of the earned income of all children in the household assistance unit, if not previously deducted, who are:

(i) in school or training full-time, or

(ii) in part-time education or training if they are employed less than 100 hours per month. "Part-time education or training" means enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours per day, whichever is less.

(6) The resulting net countable income is compared to the full financial assistance payment for the household size. If the net countable income is more than the financial assistance payment, the household is not eligible. If it is less, the net countable income is deducted from the financial assistance payment and the household is paid the difference.

(7) The amount of the standard financial assistance payment is set by the Department. The current amount is in the table that follows:

TABLE

Household Size	Payment Amount
1	$288
2	$399
3	$498
4	$583
5	$663
6	$731
7	$765
8	$801

Amounts for household sizes larger than 8 are available at all Department offices.

R986-200-240. Additional Payments Available Under Certain Circumstances.

(1) Each parent eligible for financial assistance in the FEP or FEPTP programs who takes part in at least one enhanced participation activity may be eligible to receive $60 each month in addition to the standard financial assistance payment. Enhanced participation activities are limited to:

(a) work experience sites of at least 20 hours a week and other eligible activities that together total 30 hours per week;

(b) full-time attendance in an education or employment training program; or

(c) employment of 20 hours or more a week and other eligible activities that together total 30 hours per week.

(2) An additional payment of $15 per month for a pregnant woman in the third month prior to the expected month of delivery. Eligibility for the allowance begins in the month the woman provides medical proof that she is in the third month prior to the expected month of delivery. The pregnancy allowance ends at the end of the month the pregnancy ends.

(3) A limited number of funds are available to individuals for work and training expenses. The funds can only be used to alleviate circumstances which impede the individual's ability to begin or continue employment, job search, training, or education. The payment of these funds is completely discretionary by the Department. The individual does not need to meet any eligibility requirements to request or receive these funds.

(4) Limited funds are available, up to a maximum of $300, to pay for burial costs if the individual is not entitled to a burial paid for by the county.

(5) A Department Regional Director or designee may approve assistance, as funding allows, for the emergency needs of a non-resident who is transient, temporarily stranded in Utah, and who does not intend to stay in Utah.

(6) A limited number of funds are available for enhanced payments to parents who are eligible for financial assistance in the FEP program or who are eligible for TANF non-FEP training under R986-200-245 and who participate in the HS/GED Pilot Program. The payment of these funds is completely discretionary by the Department and may differ from region to region. The payments may continue until the client completes the HS/GED Pilot Program even if the client is no longer receiving FEP.

R986-200-241. Income Eligibility Calculation for a Specified Relative Who Wants to be Included in the Assistance Payment.

(1) The income calculation for a specified relative who wants to be included in the financial assistance payment is as follows:

(a) All earned and unearned countable income is counted, as determined by FEP rules, for the specified relative and his or her spouse, less the following allowable deductions:

(i) one hundred dollars for each employed person in the household. This deduction is only allowed for the specified relative and/or spouse and not anyone else in the household even if working; and

(ii) the child care expenses paid by the specified relative and necessary for employment up to the maximum allowable deduction as set by the Department.

(2) The household size is determined by counting the specified relative, his or her spouse if living in the home, and their dependent children living in the home who are not in the household assistance unit.

(3) If the income less deductions exceeds 100% of the SNB for a household of that size, the specified relative cannot be included in the financial assistance payment. If the income is less than 100% of the SNB, the total household income is divided by the household size calculated under subsection (2) of this section. This amount is deemed available to the specified relative as countable unearned income. If that amount is less than the maximum financial assistance payment for the household assistance unit size, the specified relative may be included in the financial assistance payment.

R986-200-242. Income Calculation for a Minor Parent Living with His or Her Parent or Stepparent.

(1) All earned and unearned countable income of all parents, including stepparents living in the home, is counted when determining the eligibility of a minor parent residing in the home of the parent(s).

(2) From that income, the following deductions are allowed:

(a) one hundred dollars from income earned by each parent or stepparent living in the home, and

(b) an amount equal to 100% of the SNB for a group with the following members:

(i) the parents or stepparents living in the home;

(ii) any other person in the home who is not included in the financial assistance payment of the minor parent and who is a dependent of the parents or stepparents;

(c) amounts paid by the parents or stepparents living in the home to individuals not living at home but who could be claimed as dependents for Federal income tax purposes; and

(d) alimony and child support paid to someone outside the home by the parents or stepparents living in the home.

(3) The resulting amount is counted as unearned income to the minor parent.

(4) If a minor parent lives in a household already receiving financial assistance, the child of the minor parent is included in the larger household assistance unit.

R986-200-243. Counting the Income of Sponsors of Eligible

Aliens.

(1) Certain aliens who have been legally admitted into the United States for permanent residence must have a portion of the earned and unearned countable income of their sponsors counted as unearned income in determining eligibility and financial assistance payment amounts for the alien.

(2) The following aliens are not subject to having the income of their sponsor counted:

(a) paroled or admitted into the United States as a refugee or asylee;

(b) granted political asylum;

(c) admitted as a Cuban or Haitian entrant;

(d) other conditional or paroled entrants;

(e) not sponsored or who have sponsors that are organizations or institutions;

(f) sponsored by persons who receive public assistance or SSI;

(g) permanent resident aliens who were admitted as refugees and have been in the United States for eight months or less.

(3) Except as provided in subsection (7) of this section, the income of the sponsor of an alien who applies for financial assistance after April 1, 1983 and who has been legally admitted into the United States for permanent residence must be counted for five years after the entry date into the United States. The entry date is the date the alien was admitted for permanent residence. The time spent, if any, in the United States other than as a permanent resident is not considered as part of the five year period.

(4) The amount of income deemed available for the alien is calculated by:

(a) deducting 20% from the total earned income of the sponsor and the sponsor's spouse up to a maximum of $175 per month; then,

(b) adding to that figure all of the monthly unearned countable income of the sponsor and the sponsor's spouse; then the following deductions are allowed:

(i) an amount equal to 100% of the SNB amount for the number of people living in the sponsor's household who are or could be claimed as dependents under federal income tax policy; then,

(ii) actual payments made to people not living in the sponsor's household whom the sponsor claims or could claim as dependents under federal income tax policy; then,

(iii) actual payments of alimony and/or child support the sponsor makes to individuals not living in the sponsor's household.

(c) The remaining amount is counted as unearned income against the alien whether or not the income is actually made available to the alien.

(5) Actual payments by the sponsor to aliens will be counted as income only to the extent that the payment amount exceeds the amount of the sponsor's income already determined as countable.

(6) A sponsor can be held liable for an overpayment made to a sponsored alien if the sponsor was responsible for, or signed the documents which contained, the misinformation that resulted in the overpayment. The sponsor is not held liable for an overpayment if the alien fails to give accurate information to the Department or the sponsor is deceased, in prison, or can prove the request for information was incomplete or vague.

(7) In the case where the alien entered the United States after December 19, 1997, the sponsor's income does not count if:

(a) the alien becomes a United States citizen through naturalization;

(b) the alien has worked 40 qualifying quarters as determined by Social Security Administration; or

(c) the alien or the sponsor dies.

R986-200-244. TANF Needy Family (TNF).

(1) TNF is not a program but describes a population that can be served using TANF Surplus Funds.

(2) Eligible families must have a dependent child under the age of 18 residing in the home, and the total household income must not exceed 300% of the Federal poverty level. Income is determined as gross income without allowance for disregards.

(3) Services available vary throughout the state. Information on what is available in each region is available at each Employment Center. The Department may elect to contract out services.

(4) If TANF funded payments are made for basic needs such as housing, food, clothing, shelter, or utilities, each month a payment is received under TNF, counts as one month of assistance toward the 36 month lifetime limit. Basic needs also include transportation and child care if all adults in the household are unemployed and will count toward the 36 month lifetime limit.

(5) If a member of the household has used all 36 months of FEP assistance the household is not eligible for basic needs assistance under TNF but may be eligible for other TANF funded services.

(6) Assets are not counted when determining eligibility for TNF services.

R986-200-245. TANF Non-FEP Training (TNT).

(1) TNT is to provide skills and training to parents to help them become suitably employed and self-sufficient.

(2) The client must be unable to achieve self-sufficiency without training.

(3) Eligible families must have a dependent child under the age of 18 residing in the home and the total household income must not exceed 200% of the Federal poverty level. If the only dependent child is 18 and expected to graduate from High School before their 19th birthday the family is eligible up through the month of graduation. Income is counted and calculated the same as for WIA as found in rule R986-600.

(4) Assets are not counted when determining eligibility for TNT services.

(5) The client must show need and appropriateness of training.

(6) The client must negotiate an employment plan with the Department and participate to the maximum extent possible.

(7) The Department will not pay for supportive services such as child care, transportation or living expenses under TNT. The Department can pay for books, tools, work clothes and other needs associated with training.

R986-200-246. Transitional Cash Assistance.

(1) Transitional Cash Assistance, (TCA) is offered to help FEP and FEPTP customers stabilize employment and reduce recidivism.

(2) To be eligible for TCA a client must;

(a) have been eligible for and have received FEP or FEPTP during the month immediately preceding the month during which TCA is requested or granted. The FEP or FEPTP assistance must have been terminated due to earned or earned and unearned income and not for nonparticipation under R986-200-212. If the immediately preceding month was during a diversion period, or the client has a termination pending due to non participation as provided in R986-200-212, the client is not eligible for TCA,

(b) be employed and

(i) have income greater than the FEP or FEP TP income guideline

(ii) the FEP or FEP TP assistance was terminated because of that income, and

(iii) the earned income exceeds the unearned income at the

time the FEP or FEP TP was terminated, and

(c) continue to cooperate with the Office of Recovery Services, Child Support Enforcement.

(3) TCA is only available if the customer verifies income at the minimum required in subparagraph (2)(b) of this section.

(4) The TCA benefit is available for a maximum of three months in a 12 month period. The three months do not need to be consecutive.

(a) The assistance payment for the first two months of TCA is based on household size. All household income, earned and unearned, is disregarded.

(b) Payment for the third month is one half of the payment available in (4)(a) of this section.

(5) To receive the second and third month of the TCA benefit, the client must remain employed or have had an open FEP case that closed during the prior month due to income described in (2)(b) of this section.

(6) If initial verification is provided and a client is paid one month of TCA but the client is unable to provide documentation to support that initial verification, no further payments will be made under TCA but the one month payment will not result in an overpayment.

(7) TCA does not count toward the 36 month time limit found in R986-200-217.

R986-200-248. Wasatch Front North Service Area Pilot: FEP Subsidized Employment (FEP SE).

(1) FEP SE is a voluntary program providing short term subsidized employment for a maximum of three months to an eligible FEP recipient. FEP SE is a pilot program for Wasatch Front North Service Area but may be expanded to other service areas if funding permits. To be eligible, a FEP recipient must:

(a) be currently receiving FEP benefits and have received at least one FEP payment;

(b) have a current employment plan. If the client is working less than 30 hours per week, the employment plan must provide additional activities,

(c) be legally eligible to work in the U.S. and be a U.S. citizen or meet the alienage requirements of R986-200-203;

(d) have not worked for the employer where the client is to be hired under this program more than 40 hours in the 60 days immediately preceding the date of hire under the FEP SE program; and

(e) have not previously participated in the FEP SE program.

(2) An employer eligible for a subsidy under this section is an employer that:

(a) is registered with the Department's UI division as an active employer in "good standing". For the purposes of this section, "good standing" means the employer has no delinquent UI contributions or reports;

(b) is a "qualified employer" which is defined as any employer other than the United States, any State, or any political subdivision or instrumentality thereof. A public institution of higher education is considered a "qualified employer" for purposes of this section. The employer cannot be a Temporary Help Company as defined in R994-202-102 or a Professional Employer Organization as defined in R994-202-106;

(c) pays a wage of at least $8 per hour. Commission only jobs may qualify if the employer guarantees $8 per hour or more;

(d) has not displaced or partially displaced existing workers by participating in this program;

(e) has at least one other employee;

(f) will provide the client with at least 20 hours work per week; and

(g) does not hire the client for temporary or seasonal work.

(3) Once it has been verified that a FEP recipient has been hired, a qualified employer will be paid a $500 subsidy and an additional $1,500 subsidy at the conclusion of the third month of employment provided the required DWS invoices have been provided.

(4) FEP SE will continue for as long as funding is available.

R986-200-249. Access to Assistance.

Financial assistance for FEP and FEPTP is provided through an electronic benefit transfer (EBT) card. The card, instructions on its use, and applicable fees will be provided to all clients. A method for obtaining assistance without a fee will be made available. In other circumstances, minimal fees or/or surcharges will apply. Information about obtaining assistance without a fee or surcharge, when fees or surcharges apply, and the amount of the fee or surcharge is available on the Department's website: jobs.utah.gov.

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