R23. Administrative Services, Facilities Construction and Management.

R23-3. Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting for State Owned Facilities.

R23-3-1. Purpose and Authority.

(1) This rule establishes policies and procedures for the authorization, funding, and development of programs for capital development and capital improvement projects and the use and administration of the Planning Fund.

(2) The Board's authority to administer the planning process for state facilities is contained in Section 63A-5-103.

(3) The statutes governing the Planning Fund are contained in Section 63A-5-211.

(4) This rule is also to provide the rules and standards as required by Section 63A-5-103(1)(e)(v).

(5) The Board's authority to make rules for its duties and those of the Division is set forth in Subsection 63A-5-103(1).

R23-3-2. Definitions.

(1) "Agency" means as defined in Section 63A-1-103(1).

(2) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(3) "Capital Development" is defined in Section 63A-5-104.

(4) "Capital Improvement" is defined in Section 63A-5-104.

(5) "Director" means the Director of the Division, including, unless otherwise stated, the Director's duly authorized designee.

(6) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(7) "Planning Fund" means the revolving fund created pursuant to Section 63A-5-211 for the purposes outlined therein.

(8) "Program" means a document containing a detailed description of the scope, the required areas and their relationships, and the estimated cost of a construction project.

(a) "Program" typically refers to an architectural program but, as used in this rule, the term "program" includes studies that approximate an architectural program in purpose and detail.

(b) "Program" may include feasibility studies, building evaluations and a master plan.

R23-3-3. When Programs Are Required.

(1) For capital development projects, a program must be developed before the design may begin unless the Director determines that a program is not needed for that specific project. Examples of capital development projects that may not require a program include land purchases, building purchases requiring little or no remodeling, and projects repeating a previously used design.

(2) For capital improvement projects, the Director shall determine whether the nature of the project requires that a program be prepared.

R23-3-4. Authorization of Programs.

(1) An agency is required to receive approval from the Board before the agency begins programming for a new facility that requires legislative approval under Subsection 63A-5-104(3).

(2) When requesting Board approval, the agency shall justify the need for initiating the programming process at that point in time and also address the level of support for funding the project soon after the program will be completed.

(3) The Board may approve the programming of a new facility before the Legislature makes an appropriation for the new facility under Subsection 63A-5-104(8)(a). When the program is funded by the agency, programming funds may be reimbursed from an appropriation if, at a later time, the Legislature funds the programming.

R23-3-5. Funding of Programs.

Programs may be funded from one of the following sources.

(1) Funds appropriated for that purpose by the Legislature.

(2) Funds provided by the agency.

(a) This would typically be the funding source for the development of programs before the Legislature funds the project.

(b) Funds advanced by agencies for programming costs may be included in the project budget request but no assurance can be given that project funds will be available to reimburse the agency.

(c) Agencies that advance funds for programming that would otherwise lapse may not be reimbursed in a subsequent fiscal year.

(3) If an agency is able to demonstrate to the Board that there is no other funding source for programming for a project that is likely to be funded in the upcoming legislative session, it may request to borrow funds from the Planning Fund as provided for in Section R23-3-8.

R23-3-6. Administration of Programming.

(1) The development of programs shall be administered by the Division in cooperation with the requesting agency unless the Director authorizes the requesting agency to administer the programming.

(2) This Section R23-3-6 does not apply to projects that are exempt from the Division's administration pursuant to Subsection 63A-5-206(3).

R23-3-7. Restrictions of Programming Firm.

(1) The Division may in its sole discretion based on the interest of the State, determine whether a programming firm (person) may be able to participate in any or all of the design or other similar aspects of a project.

(2) If there is any restriction of a programming firm to participate in future selections of a project, the Division, shall provide this restriction in any competitive solicitation, if there is one, that may be issued for selecting a programming firm. If there is no solicitation for the selection of the programming firm (i.e. sole source, small purchase, emergency procurement, etc.), then Division may simply provide any restriction of the firm's future participation in any other aspect of the project, by placing the restriction in the contract.

(3) Notwithstanding any provision of this Rule or any other Rule of this Board, the Division may terminate or suspend programming and design contracts at any time consistent with the provisions of the contract.

R23-3-8. Use and Reimbursement of Planning Fund.

(1) The Planning Fund may be used for the purposes stated in Section 63A-5-211 including the development of:

(a) facility master plans;

(b) programs; and

(c) building evaluations or studies to determine the feasibility, scope and cost of capital development and capital improvement requests.

(2) Expenditures from the Planning Fund must be approved by the Director.

(3) Expenditures in excess of $25,000 for a single planning or programming purpose must also be approved in advance by the Board.

(4) The Planning Fund shall be reimbursed from the next funded or authorized project for that agency that is related to the purposes for which the expenditure was made from the Planning

Fund.

(5) The Division shall report changes in the status of the Planning Fund to the Board.

R23-3-9. Development and Approval of Master Plans.

(1) For each major campus of state-owned buildings, the agency with primary responsibility for operations occurring at the campus shall, in cooperation with the Division, develop and maintain a master plan that reflects the current and projected development of the campus.

(2) The purpose of the master plan is to encourage long term planning and to guide future development.

(3) Master plans for campuses and facilities not covered by Subsection (1) may be developed upon the request of the Board or when the Division and the agency determine that a master plan is necessary or appropriate.

(4) The initial master plan for a campus, and any substantial modifications thereafter, shall be presented to the Board for approval.

R23-3-10. Standards and Requirements for a Capital Development Project Request, Including a Feasibility Study.

(1) The Board Director shall establish a form for the consideration of Capital Development Projects which provides the following:

(a) the type of request, including whether it is, in whole or part, state funded, non-state or private funded, or whether it is non-state or private funded with an operations and maintenance request;

(b) defines the appropriateness and the project scope including proposed square footage;

(c) the proposed cost of the project including the preliminary cost estimate, proposed funding, the previous state funding provided, as well as other sources;

(d) the proposed ongoing operating budget funding, new program costs and new full time employees for the operations and maintenance and other programs;

(e) an analysis of current facilities and why the proposed facility is needed;

(f) a project executive summary of why the project is needed including the purpose of the project, the benefits to the State, how it relates to the mission of the entity and related aspects;

(g) the feasibility and planning of the project that includes how it corresponds to the applicable master plan, the economic impacts of the project, pedestrian, transportation and parking issues, various impacts including economic and community impacts, the extent of site evaluation, utility and infrastructure concerns and all other aspects of a customary feasibility study for a project of the particular type, location, size and magnitude;

(h) any land banking requests; and

(i) any other federal or state statutory or rule requirements related to the project.

(2) The form referred to in subsection (1) above shall also include the scoring criteria and weighting of the scores to be used in the Board's prioritization process, including:

(a) existing building deficiencies and life safety concerns;

(b) essential program growth;

(c) cost effectiveness;

(d) project need, including the improved program effectiveness and support of critical programs/initiatives;

(e) the availability of alternative funding sources that does not include funding from the Utah legislature; and

(f) weighting for all the above criteria as published in the Five Year Building Program for each agency as published and submitted to the Utah Legislature for the General Session immediately preceding the prioritization of the Board unless the Board in a public meeting has approved a different criteria and/or weighting system.

(3) The Board shall verify the completion and accuracy of the feasibility study referred to in this Rule.

(4) A capital development request by an agency described in Section 53B-1-102 shall comply with Section 63A-5-104(2)(d) and the Board shall comply with Section 63A-5-104(2)(e).

(5) An agency may submit an initial capital development request to the Board Director no later than the third Monday of July prior to the Utah Legislative Session that the request is related.

(6) An agency shall use best efforts to modify any submitted initial capital development request which was submitted to the Board director, no later than 14 days before the October Board meeting. Notwithstanding, the Board reserves the right to modify the request no later than the end of the hearing for the request at the October Board meeting. Any modification under this Rule R23-3-10(6) shall be for the purpose of a correction, or to better meet the standards or requirements of this Rule R23-3-10.

R23-3-11. Standards and Requirements Related to Operations and Maintenance of State-Owned Facilities.

(1) No later than October 1 of each calendar year, each agency shall report operations and maintenance expenditures for state owned facilities covering the prior fiscal year to the Board Director in accordance with Section 63A-5-103(e)(v) and this rule. All data must be entered into the Riskonnect database by the agency in accordance with the format outlined by the Board Director.

(2) The facility maintenance standards shall include utility metering requirements to track the utility costs as well as all other necessary requirements to monitor facility maintenance costs.

(3) The adopted Board facility management standards including annual reporting requirements shall be published on the Division of Facilities Construction and Management website.

(4) The Board Director shall oversee the conducting of facility maintenance audit for state-owned facilities.

(5) Each agency shall create operations and maintenance programs in accordance with this rule 23-3 and have it included in the agency institutional line items. On or before September 1, 2016, and each September 1 of every following year, each agency shall revise the agency's budget to comply with Section 63A-5-103 and this Rule R23-3-11(6), including but not limited to, the inclusion of the amount the agency received and expended on operations and maintenance for the immediately preceding fiscal year. The Board Director may request when it is in the interest of the Board to understand the amount of operations and maintenance funding available for a building, that an agency provide the information of the amounts received and expended on a per-building basis.

(6) The Board Director in the annual capital needs request sent to the agencies, shall provide an adjustment for inflationary costs of goods and services for the previous 12 months from the issuance of the annual needs request. When the annual report of each agency is reviewed by the Board and later submitted to the Office of the Legislative Fiscal Analyst and the Governor's Office of Management and Budget, it shall include the review and adjustment for inflationary costs of goods and services. All matters in this subsection shall be in accordance with Section 63A-5-103(1)(e)(v) and this rule.

(7) The report by the agencies to the Board Director shall also include the actual cost for operations and management requests for a new facility, when applicable.

R23-3-12. Operations and Maintenance Standards, Facilities Maintenance Programs and Standards.

The purpose of these programs and standards is to outline

the minimum requirements for maintaining state owned facilities and infrastructures in a manner that will maximize the usefulness and cost effectiveness of these facilities in enhancing the quality of life of Utah state employees, citizens, and visitors. Additional work may be required to satisfy code or judicial requirements. All agencies and institutions shall comply and will be audited against these standards by the Board. Exempt agencies are to review their maintenance programs against these standards and to report the degree of compliance for each of their individual building level or complexes to the legislature through the Board.

(1) Documentation.

(a) Architectural and Mechanical.

(i) At least one copy of the Operations and Maintenance Manuals shall be maintained at the facility or complex.

(ii) At least one copy of the architectural, mechanical, and electrical as-built drawings shall be maintained at the facility or complex.

(iii) A mechanism shall be provided whereby as-built drawings are promptly updated upon changes in the structural, mechanical, electrical, or plumbing systems.

(iv) As-built drawings shall be reviewed periodically to ensure that they reflect the current building or infrastructure configuration to be maintained at the facility or complex.

(v) Reserve copies of all building documentation shall be archived in an appropriate and separate location from the facility.

(2) Equipment Data Base and Tagging.

(a) An appropriate equipment numbering system shall be utilized and metal, plastic tags or labels placed on all building equipment and electrical panels.

(b) All equipment name plate data shall be collected, documented, and filed in a computerized data base/computerized maintenance management system (CMMS).

(3) Corrective Maintenance.

(a) A work request system shall be defined and made available to the user of the facility/infrastructure so that maintenance problems can be reported and logged promptly by the maintenance department. A log of all requests shall be maintained indicating the date of the request and the date of completion.

(b) A work order system shall be established to govern the procedures for corrective maintenance work. The work order system shall capture maintenance time, costs, nature of repair, and shall provide a basis for identifying maintenance backlog on the facility/infrastructure.

(c) Maintenance backlogs on the facility/infrastructure shall be regularly reviewed and older requests processed so that no request goes unheeded and all requests are acted upon in a timely manner.

(d) A priority system for corrective maintenance shall be established so that maintenance work is accomplished in an orderly and systematic manner. The facility user shall be made aware of the priority of requested maintenance and the time expected to accomplish the correction. If the stated goal cannot be met, the user shall be informed of the new goal for completing the request.

(e) The agency and institution shall report to the Board Director current and accurate operations and maintenance costs tracked to the individual building level for any facility measuring 3,000 GSF or greater. Locations consisting of multiple facilities that individually do not meet the minimum GSF requirement shall be required to report operations and maintenance costs at the campus/complex level. Reporting for Individual building O and M cost shall be reported no later than October 1 of each year.

(f) All operations and maintenance expenditure reports for both direct and indirect cost shall contain current and accurate costs including but not limited to: Utilities (Electrical, Gas/Fuel, and Water in certain cases Steam, High Temp Water, Chilled Water and Sewer may need reporting), Labor, Materials, Custodial, Landscape and Grounds services, Insurance, travel, leasing and rent. The direct and indirect costs shall be adjusted for inflation based on the applicable portion of the consumer price index in the reasonable discretion of the Board Director.

(4) Preventive Maintenance.

(a) State facilities managers shall automate preventive maintenance scheduling and equipment data bases.

(b) All equipment (e.g. chillers, boilers, air handlers and associated controls, air compressors, restroom exhaust fans, domestic hot water circulating pumps, automatic door operators, temperature control devices, etc.) shall be on a computer based preventive maintenance schedule. The frequency of preventive maintenance procedures shall be determined by manufacturer's recommendations and local craft expertise and site specific conditions.

(c) A filter maintenance schedule shall be established for HVAC filters and a record of filter changes maintained.

(d) Preventive maintenance work orders shall be issued for both contract and in house preventive maintenance and the completion of the prescribed maintenance requirements documented.

(e) Emergency generators shall be test run at least monthly. If test runs are not automatic, records of these test runs shall be maintained at the site. At least yearly, the transfer from outside power to emergency power shall be scheduled and successfully performed.

(5) Boilers.

(a) Steam Boilers.

(i) Steam boilers shall be checked daily when operational or on an automated tracking system.

(ii) Low water cut off devices shall be checked for actual boiler shut down at the beginning of the heating season and at least quarterly thereafter by duplicating an actual low-water condition.

(iii) Boiler relief valves shall be tested for proper operation at least annually.

(iv) A record of these tests shall be maintained near the location of the boiler.

(v) A daily log of the operating parameters shall be maintained on boilers when they are operational to include pressures, temperatures, water levels, condition of makeup and boiler feed water, and name of individual checking parameters.

(b) Hot Water And Steam Boilers

(i) All boilers shall receive inspections and certification as required from an authorized state agent or insurance inspector. The certificate of compliance shall be maintained at the boiler.

(ii) Monthly tests of boiler water pH and Total Dissolved Solids shall constitute the basis upon which to add water treatment chemicals. A log of these tests shall be maintained in the boiler room.

(6) Life Safety.

(a) All elevators shall receive regular inspections and maintenance by certified elevator maintenance contractors. Records of such maintenance shall be maintained at the site. Telephones within elevators shall be checked monthly for proper operation.

(i) All elevators shall have current Permits to Operate posted near the elevator equipment as required by the Utah State Labor Commission.

(b) Fire Protection Equipment.

(i) Detection and notification systems (e.g. control panel, smoke detection devices, heat sensing devices, strobe alarm lights, audible alarm indicating devices, phone line communication module, etc.) shall be inspected annually and tested for operation at least semi-annually by a properly certified technician. A record of these inspections shall be maintained and the FACP needs to be properly tagged as required by the

Utah State Fire Marshal.

(ii) Halon/Ansulor pre-action systems shall be inspected and tested by a certified inspector semi-annually to ensure their readiness in the event of a fire. Testing and inspection of these systems shall be documented.

(iii) Fire extinguishers shall be inspected monthly and tagged annually by a certified inspector and all tags should be properly and legibly completed.

(iv) Automatic fire sprinkler systems, standpipes and fire pumps shall be inspected annually by a certified technician. Tags should be properly and completely filled out including the type of inspection, month and year those inspections were performed, the person who performed the inspection, and the certificate of registration number of the person performing the inspection.

(c) Uninterruptible power supply systems for data processing centers shall be inspected and tested appropriately to ensure their readiness in the event of external power interruptions. Maintenance on these systems shall be documented.

(d) Emergency directional and exit devices (e.g. exit signs, emergency lights, ADA assist equipment, alarm communicators, etc.) shall be inspected at least quarterly for proper operation.

(7) Air Conditioning and Refrigerated Equipment.

(a) Chillers.

(i) A daily log or computerized log of important data (e.g. chilled water supply and return temperature, condenser water supply and return temperature, current draw, outside air temperature, oil level and pressure, etc.) should be kept, and the information trended to identify changes in the system operation. The causes of change should then be determined and corrected to prevent possible system damage.

(ii) The systems shall be leak checked on a quarterly basis during the operating season and once during the winter.

(iii) A factory trained technician should perform a service inspection annually to include an oil analysis. Any abnormal results should be discussed with the chiller manufacturer to determine a proper course of action.

(iv) Chillers shall not be permitted to leak in excess of 15% of their total charge annually. Losses exceeding this amount are in violation of the law and may result in costly fines.

(v) Should refrigerant need to be added to a system, document the amount of refrigerant added; the cause of the loss; and type of repairs done.

(vi) An adequate supply of refrigerant for the uninterrupted operation of existing CFC chillers shall be maintained until the chiller is converted or replaced. Examples of CFCs are R11, R12, R113, R502, etc.

(vii) Maintenance personnel that perform work other than daily logs and visual inspections on CFC chillers or refrigeration equipment containing CFCs or HCFCs must by law have an EPA certification matching the type of equipment being serviced.

(viii) The condition of refrigerant cooling water systems such as cooling towers shall be checked visually at least weekly for algae growth and scaling and appropriate treatment administered.

(b) Roof Top and Package Units.

(i) Annually check and clean as needed the condenser coil and evaporator coil.

(ii) The following preventive maintenance items shall be completed annually: tighten belts, oil motors, leak check, clean evaporator pans and drains.

(iii) Quarterly check filters and replace where necessary.

(c) Small Refrigerated Equipment.

(i) Annually clean condenser coil.

(ii) Annually oil the condenser fan motor and visually inspect the equipment and make necessary repairs as needed.

(8) Plumbing.

(a) All Backflow Prevention Devices shall be tested by a certified technician at least annually and proper documentation shall be filed with the appropriate agency. Proper documentation shall be kept on site and readily available.

(b) Cross-connection control shall be provided on any water operated equipment or mechanism using water treating chemicals or substances that may cause pollution or contamination of domestic water supply.

(c) Any water system containing storage water heating equipment shall be provided with an approved, UL listed, adequately sized combination temperature and pressure relief valve, and must also be seismically strapped.

(d) Pressure vessels must be tested annually or as required and all certificates must be kept current and available on site.

(9) Electrical Systems.

(a) All electrical panels shall have a thermal-scan test performed bi-annually on all components to identify hot spots or abnormal temperatures. The results of the test shall be documented.

(b) A clearance of three feet, or as required by NEC shall be maintained around all electrical panels and electrical rooms shall not be used for general storage.

(c) Every electrical panel shall be properly labeled identifying the following: panel identifier; area being serviced by each individual breaker; and equipment being serviced by each breaker or disconnect.

(d) All pull boxes, junction boxes, electrical termination boxes shall have proper covers in place and panels accessible to persons other that maintenance personnel shall remain locked to guard against vandalism or personal injury.

(e) Only qualified electrical personnel shall be permitted to work on electrical equipment.

(10) Facility Inspections.

(a) The facility shall periodically receive a detailed and comprehensive maintenance audit. The audit shall include HVAC filter condition, mechanical room cleanliness and condition, corrective and preventive maintenance programs, facility condition, ADA compliance, level of performance of the janitorial service, condition of the grounds, and a customer survey to determine the level of user satisfaction with the facility and the facility management and maintenance services.

(b) A copy of the above audit shall be maintained at the facility.

(c) Each year a Facility Risk Management Inspection shall be conducted, documented, and filed with the Risk Management Division of the Department of Administrative Services.

(d) Actions necessary to bring the facility into compliance with Risk Management Standards for routine maintenance items shall be completed within two months following the above Risk Management Inspection. Items requiring capital expenditures shall be budgeted and accomplished as funds can be obtained.

(e) Every five years the facility shall be inspected and evaluated by an Architect/Engineer (A/E), qualified third party or qualified in-house personnel to determine structural and infrastructural maintenance and preventive maintenance needs.

(i) The structural inspection and evaluation may include interior and exterior painting, foundations, walls, carpeting, windows, roofs, doors, ADA and OSHA compliance, brick work, landscaping, sidewalks, structural integrity, and exterior surface cleanliness.

(ii) The mechanical and electrical evaluation shall include the HVAC systems, plumbing systems, security, fire prevention and warning systems, and electrical distribution systems.

(f) The above inspection shall be documented and shall serve as a basis for budgeting for needed capital improvements.

(g) Intrusion alarm systems that communicate via phone line shall be tested monthly to ensure proper operation.

(h) Periodic inspections of facilities may be requested of local fire departments and the identified deficiencies promptly

corrected. These inspections and corrections shall be documented and kept on file at the facility.

(11) Indoor Air Quality and Energy Management.

(a) Indoor air quality shall be maintained within pertinent ASHRAE, OSHA, and State of Utah guidelines.

(b) All individual building utility costs (gas, electric, water, etc.) at facilities meeting the criteria listed in section 3.5 of the Facility Maintenance Standards shall be metered and reported back to the Board Director by October 1 of each year and made available at the facility so that energy usage can be accurately determined and optimized.

(c) Based on the ongoing analysis of energy usage, appropriate energy conservation measures shall be budgeted for, implemented, and the resulting energy savings documented.

(12) The following documents shall be on hand at the facility (where applicable) in an up to-date condition:

(a) A Hazardous Materials Management Plan;

(b) An Asbestos Control and Management Plan;

(c) A Laboratory Hygiene Plan;

(d) A Lockout/Tag out Procedure for Performing Maintenance on Building Equipment;

(e) A Blood Born Pathogen Program;

(f) An Emergency Management Plan to include emergency evacuation and disaster recovery; and

(g) A Respirator Program.

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R27. Administrative Services, Fleet Operations.
R27-7. Safety and Loss Prevention of State Vehicles.
R27-7-1. Authority.

(1) This rule is established pursuant to Subsection 63A-9-401(1)(d)(iii) which requires the division to make rules establishing requirements for fleet safety and loss prevention programs.

R27-7-2. Reporting Accidents and Violations of Motor Vehicle Laws.

(1) In the event of an accident involving a state vehicle, either the driver of the vehicle or the employing agency shall notify the division, the Division of Risk Management, and the agency's management, within 24 hours of the occurrence of the accident.

(2) Authorized drivers shall also follow Section R27-3-14 regarding reporting of violations of motor vehicle laws.

R27-7-3. Driver Eligibility to Operate a State Vehicle.

(1) The authority to operate a state vehicle is subject to withdrawal, suspension or revocation.

(2) The authority to operate a state vehicle shall be automatically withdrawn, suspended or revoked in the event that an authorized driver's license is not in a valid status.

(a) The authority to operate a state vehicle shall, at a minimum, be withdrawn, suspended or revoked for the period of denial, cancellation, disqualification, suspension or revocation of the authorized driver's license.

(b) The authority to operate a state vehicle shall not be reinstated until such time as the individual provides proof that his or her driver license has been reinstated or the division verifies the license has been reinstated.

(3) The authority to operate a state vehicle may be suspended or revoked for up to three years by the Driver Safety Committee or the Driver Eligibility Board for any of the following reasons:

(a) The authorized driver, while acting within the scope of employment, has been involved in three or more preventable accidents during a three-year period; or

(b) The authorized driver has three or more moving violations while driving a state vehicle within a 12-month period; or

(c) The authorized driver has been convicted of any of the following:

(i) Alcohol related driving violations;

(ii) reckless, careless, or negligent driving (including excessive speed violations);

(iii) driving violations that have resulted in injury or death;

(iv) felony related driving violations;

(v) hit and run violations;

(vi) impaired driving;

(vii) using a handheld wireless communication device while operating a moving motor vehicle; or

(viii) any other driving violation determined by the Driver Safety Committee or the Driver Eligibility Board as posing a significant risk to the safety or loss prevention of state vehicles.

(d) An authorized driver uses a vehicle in an unauthorized way or misuses, abuses or neglects a state vehicle as validated by the driver's agency;

(e) As provided in Section 63A-9-501, an authorized driver misuses or illegally operates a vehicle; or

(f) An authorized driver violates any major threshold as defined by the division or in policy by the employing agency.

(4) The withdrawal of authority to operate a state vehicle imposed by the Driver Safety Committee or the Driver Eligibility Board shall be in addition to agency-imposed disciplinary, corrective, or remedial action; except when the withdrawal of authority conflicts with an internal review and disciplinary process approved by the division and substantially meets the requirements outlined in rule.

(5) Pursuant to procedures outlined in Rule R27-2, a driver declared ineligible to operate a state vehicle by the Driver Safety Committee may appeal that determination to the Driver Eligibility Board. An appeal to the Driver Eligibility Board must be made in writing within 30 days from the date the Driver Safety Committee issues its decision.

(6) Effective Date

(a) Phase in - current state employees shall be subjected to R27-7-3(3) as of the effective date of the rules as published by the Division of Administrative Rules.

(b) State employees hired after the effective date of this administrative rule may be subject to a review of their driving record for three years previous to the hire date, and employment offers may be made conditional upon a favorable review.

R27-7-4. Driver Safety Committee.

(1) Each agency using a state vehicle shall establish and maintain a Driver Safety Committee or an internal review and disciplinary process that is approved by the division and substantially meets the requirements outlined in rule for the Driver Safety Committee.

(2) The purpose of the Driver Safety Committee is to increase the safety of the driver and reduce losses associated with the state vehicles. The Driver Safety Committee shall review any accident involving state vehicles in the possession or under the control of the agency. The Driver Safety Committee also reviews eligibility of a driver to operate a state vehicle based on the provisions of Section R27-7-3.

(3) After the Division of Risk Management has made an initial determination regarding the preventability of an accident, the agency Driver Safety Committee shall determine whether it agrees with the initial determination of preventability. The Driver Safety Committee shall use standards published by the National Safety Council.

(4) Each agency Driver Safety Committee shall meet monthly, except in cases when there are not items to review. The items to review are the preventability determination of any accidents and any major threshold violations committed in the previous month. The Driver Safety Committee shall report to the division its accident and major threshold determination and any actions taken.

(5) If an agency Driver Safety Committee does not send the monthly Driver Safety Committee report as specified in R27-7-4(4), the initial preventability determination of any accidents will stand. Any major threshold violations will receive the minimum driver eligibility suspension as outlined in Subsection R27-7-5(6). A driver may appeal the accident determination to the Driver Eligibility Board pursuant to Section R27-2.

(6) The Driver Eligibility Board may recommend disciplinary actions for agency drivers to the agency when it is acting on behalf of the agency Driver Safety Committee.

(7) If an agency has fewer than five employees, the agency head may perform the duties of the Driver Safety Committee outlined in rule. In the event the agency head is the driver to be reviewed, the review may be done by the Driver Eligibility Board. Appeals from the affected agency head will be heard by the Executive Director of the Department of Administrative Services, or designee and shall follow the appeal process outlined in rule.

R27-7-5. Driver Safety Committee Standards.

(1) The Driver Safety Committee shall have no less than three voting members. The members shall consist of, at a minimum, a risk coordinator, human resource representative and a fleet manager. In the absence of the fleet manager the employee's supervisor may fill the position.

(2) The Driver Safety Committee shall review the initial

accident preventability determination, moving violations committed in the state vehicle, moving violations outlined in Subsection R27-7-3(c), validity of citizen complaints and any other major threshold violations.

(3) An accident may be classified as preventable if any of the following factors are involved:

(a) Driving too fast for conditions;

(b) Failure to observe clearance;

(c) Failure to yield;

(d) Failure to properly lock the vehicle;

(e) Following too closely;

(f) Improper care of the vehicle;

(g) Improper backing;

(h) Improper parking;

(i) Improper turn or lane change;

(j) Reckless Driving as defined in Section 41-6a-528;

(k) Unsafe driving practices, including but not limited to: the use of electronic equipment or cellular phone while driving, smoking while driving, personal grooming, u-turn, driving with an animal(s) loose in the vehicle.

(4) An accident shall be classified as non-preventable when:

(a) The state vehicle is struck while properly parked;

(b) The state vehicle is vandalized while parked at an authorized location;

(c) The state vehicle is an emergency vehicle, and

(i) At the time of the accident the operator was in the line of duty and operating the vehicle in accordance with their respective agency's applicable policies, guidelines or regulations; and

(ii) Damage to the vehicle occurred during the chase or apprehension of people engaged in or potentially engaged in unlawful activities; or

(iii) Damage to the vehicle occurred in the course of responding to an emergency in order to save or protect the lives, property, health, welfare and safety of the public.

(5) Major threshold violations shall be determined as follows:

(a) Preventable Accidents:

(i) Three preventable accidents as determined by the Driver Safety Committee or the Driver Eligibility Board in a three year period; or

(ii) any single preventable accident as determined by the Driver Safety Committee or Driver Eligibility Board using aggravating factors outlined in Subsection R27-7-5(8).

(b) Moving violations:

(i) Three moving violations in a state vehicle within a 12-month period, not specifically outlined in Subsection R27-7-3(3)(c); or

(ii) Any moving violation outlined in Subsection R27-7-3(3)(c).

(c) Validated Citizen complaints: Validated citizen complaints may be considered a major threshold violation at the discretion of the Driver Safety Committee or Driver Eligibility Board using aggravating factors outlined in Subsection R27-7-5(8).

(d) Telematics Threshold violations:

(i) Three telematics threshold violations within a 12-month period; or

(ii) Any single telematics threshold violation as determined by the Driver Safety Committee or Driver Eligibility Board using aggravating factors outlined in Subsection R27-7-5(8).

(6) Major threshold violations will result, at a minimum, in the following state vehicle driving privilege suspensions:

(a) First major threshold violation shall receive a minimum of two-working day driving suspension.

(b) Second major threshold violation within 12 months of the first major threshold violation shall receive a minimum 14-calendar day driving suspension. If the second major threshold violation is not within a 12-month period of the first, then it is at the discretion of the Driver Safety Committee as to whether it is considered the first or second major threshold violation. The aggravating factors outlined in rule should be considered.

(c) Third major threshold violation within 12 months of the second major threshold violation shall receive a minimum of 30-calendar day driving suspension. If the third major threshold violation is not within a 12-month period of the second, then it is at the discretion of the Driver Safety Committee as to whether it is considered the first or third major threshold violation. The aggravating factors outlined in rule should be considered.

(d) Fourth major threshold violation within 12 months of the third major threshold violation shall receive a minimum of 60-calendar day driving suspension. If the fourth major threshold violation is not within a 12-month period of the third, then it is at the discretion of the Drier Safety Committee as to whether it is considered the first or fourth major threshold violation. The aggravating factors outlined in rule should be considered.

(7) The members of the Driver Safety Committee shall act on the following matters:

(a) The preventability of an accident in accordance with the standards in rule and the facts surrounding the accident and as to whether the single accident should be classified as a major threshold violation. The aggravating factors outlined in Subsection R27-7-5(8) should be considered.

(b) Any other item brought before the Driver Safety Committee that is allowed the discretion of the Driver Safety Committee, including driving suspension longer than the minimums outlined in rule.

(c) The Driver Safety Committee may impose a driving suspension for a period less than what is in rule, but only after the recommended period of driving suspension has been reviewed by and approved by the Driver Eligibility Board prior to the suspension taking effect.

(d) The Driver Safety Committee shall recommend appropriate disciplinary action to the employing agency.

(8) Aggravating Factors to Consider

(a) The following list are items to be considered when reviewing the driver eligibility suspension to be imposed or whether a single event outlined in Subsection R27-7-5 should be considered a major threshold violation.

(b) The event resulted in bodily harm.

(c) The event had a high likelihood of causing bodily harm.

(d) The amount of damage caused as a result of the event.

(e) The event had a high likelihood of causing damage.

(f) The event damaged the reputation of the state or agency.

(g) The event had a high likelihood of damaging the reputation of the state or agency.

(h) The frequency of the events under consideration.

(9) State vehicle driving eligibility suspensions should begin within two weeks of the Driver Safety Committee meeting, unless a differing timeline is outlined in rule.

R27-7-6. Effects of Driver Safety Committee Accident Preventability Classification.

(1) In the event that an accident is determined by the Driver Safety Committee to be preventable, the Driver Safety Committee shall require the following:

(a) as a result of the first preventable accident, the authorized driver shall be required to attend a Division of Risk Management-approved driver safety program;

(b) as a result of the the second preventable accident, the driver shall be required to attend, at their own expense, a state certified or nationally recognized defensive driving course;

(c) as a result of the third preventable accident within a

three-year period, the driver shall receive a major threshold violation and be subject to the standards of the Driver Safety Committee.

R27-7-7. Driver Eligibility Board.

(1) The Driver Eligibility Board shall have at least four voting members. Members of the Board shall include a representative from the division, the Division of Risk Management, the Department of Human Resource Management and, a representative of the employee's agency. Each member of the Board will be assigned by the Executive Director of the Department of Administrative Services.

(2) The Driver Eligibility Board shall meet within 30-calendar days of an appeal to the Driver Eligibility Board.

(3) The employing agency supervisor and the state driver being reviewed shall be notified of the Driver Eligibility Board's meeting place, date and time. Each state employee reviewed by the Driver Eligibility Board will be given the opportunity to speak to the Board and/or answer questions during the meeting if he or she chooses to attend the Board meeting.

(4) The Driver Eligibility Board or the Driver Safety Committee may suspend state vehicle driving privilege according to the provisions of Rule 27-7 for up to three years.

KEY: accidents, incidents, tickets, Driver Safety Committee
July 11, 2017 63A-9-401(1)(d)(iii)
Notice of Continuation November 6, 2015

R156. Commerce, Occupational and Professional Licensing.
R156-40. Recreational Therapy Practice Act Rule.
R156-40-101. Title.

This rule is known as the "Recreational Therapy Practice Act Rule".

R156-40-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 40, as used in Title 58, Chapters 1 and 40 or this rule:

(1) "Approved graduate degree", as used in Subsection 58-40-302(2)(a), means an earned graduate (Masters, Ed.D., or Ph.D.) degree in recreational therapy or a graduate degree with an approved emphasis in recreational therapy, which includes:

(a) a minimum of nine semester hours or 12 quarter hours of upper division or graduate level coursework in therapeutic recreation and/or recreational therapy;

(b) a minimum of 18 semester hours or 24 quarter hours of supportive coursework as outlined by the January 2017 NCTRC Certification Standards, Part I, which are incorporated by reference; and

(c) an approved practicum that:

(i) includes field placement experience in recreational therapy services that:

(A) uses the therapeutic recreation process as defined in the 2014 NCTRC Job Analysis, which is incorporated by reference; and

(B) is under the supervision of an onsite field placement supervisor who:

(I) is licensed in Utah as a TRS or MTRS; and

(II) is nationally certified by NCTRC as a CTRS; and

(ii) if the practicum is conducted outside Utah, is verified on an official university transcript.

(2) "Approved emphasis, option, or concentration in therapeutic recreation or recreational therapy", as used in Subsection 58-40-302(3)(a)(ii), means an emphasis, option or concentration posted on the transcript that meets the January 2017 NCTRC Certification Standards, Part I, which are incorporated by reference, including:

(a) a minimum of 18 semester or 24 quarter hours of therapeutic recreation and general recreation content coursework with no less than a minimum of 15 semester or 20 quarter hours in therapeutic recreation, consisting of a minimum of five three-credit hour courses;

(b) a total of 18 semester or 24 quarter hours of support coursework with a minimum of:

(i) three semester hours or four quarter hours coursework in the content area of anatomy and physiology;

(ii) three semester hours or four quarter hours coursework in the content area of abnormal psychology; and

(iii) three semester hours or four quarter hours coursework in the content area of human growth and development across the lifespan. The remaining semester hours or quarter hours of coursework must be fulfilled in the content area of "social sciences and humanities" as defined by the NCTRC; and

(c) field placement experience in therapeutic recreation services that:

(i) uses the therapeutic recreation process as defined in the January 2014 NCTRC Job Analysis, which is incorporated by reference;

(ii) is under the supervision of an academic supervisor and an onsite field placement supervisor, each of whom:

(A) is state licensed as a TRS or MTRS;

(B) is nationally certified by NCTRC as a CTRS; and

(C) meets the standards for field placement supervision; and

(iii) if the practicum is conducted outside Utah, is verified on an official university transcript.

(3) "Consultation", as used in Subsection 58-40-601(3)(a)(ii), is defined in Subsection R156-40-302f.

(4) "CTRS" means a person certified as a Certified Therapeutic Recreation Specialist by the NCTRC.

(5) "Diversional activity" means an activity that is unrelated to the goals, objectives, and expected outcomes outlined in the "recreational therapy treatment or intervention plan" described in Section 58-40-602.

(6) "Full-time and on-site", as used in Subsections 58-40-601(3)(a) and (b), means an individual who is employed on the premises with the hiring agency for a minimum of 30 hours per week.

(7) "Initial recreational therapy treatment", as used in Subsection R156-40-302f(3), means an order that directs the TRT to:

(a) collect data from chart reviews, interviews, and observations as part of an assessment as defined in Subsection 58-40-102(2)(a)(i);

(b) invite the patient to leisure diversionary programs and observe for recreation and leisure patterns;

(c) provide leisure materials to the patient and support the patient's independent leisure choices; and

(d) complete recreation therapy admission notes.

(8) "Maintain the ongoing documentation", as used in Subsection 58-40-601(3)(b), means:

(a) documenting the ongoing treatment or intervention provided to clients according to the treatment plan; and

(b) providing review of patient status according to federal, state, and agency regulations.

(9) "MTRS" means a person licensed as a master therapeutic recreation specialist.

(10) "NCTRC" means the National Council for Therapeutic Recreation Certification.

(11) "Supervision", as used in Section 58-40-601, means that a person who is employed full-time and on-site as a TRS or MTRS by a recreational therapy services provider is responsible to ensure that the supervised TRT implements the treatment plan as established by the supervisor.

(12) "Supervision of a temporary TRS", as used in Subsection R156-40-302g(1)(d), means that the TRS or MTRS supervisor:

(a) is responsible for the recreational therapy interventions performed by the temporary TRS; and

(b) will be required to review and approve the treatment plans as well as any modifications to the treatment plans as evidenced by the signature of the TRS or MTRS in the treatment plan.

(13) "TRS" means a person licensed as a therapeutic recreation specialist.

(14) "TRT" means a person licensed as a therapeutic recreation technician.

(15) "Written plan of operation", as used in Subsection 58-40-102(6)(b)(viii), means a comprehensive management plan that outlines recreational therapy services that, at a minimum, includes:

(a) vision and mission statement;

(b) policy and procedures;

(c) assessment protocol;

(d) treatment and/or intervention plan;

(e) scope of care; and

(f) personnel management.

(16) "Unprofessional conduct" is defined in Title 58, Chapters 1 and 40.

R156-40-103. 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 40.

R156-40-104. 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.

R156-40-302a. Qualifications for Licensure - Education Requirements.

In accordance with Section 58-40-302, the educational requirements for licensure include:

(1) An MTRS applicant shall:

(a) complete an approved graduate degree as defined in R156-40-102(1);

(b) have a current NCTRC certification as a CTRS or a current license as a TRS; and

(c) document completion of the education and 4000 hours of paid experience while nationally certified as a CTRS or licensed as a TRS.

(2) A TRS applicant shall:

(a) have a current NCTRC certification as a CTRS; and

(b) document completion of the education and practicum requirements for licensure as a TRS on an official university transcript.

(3) A TRT applicant shall:

(a) have an approved educational course in therapeutic recreation taught by an MTRS, as required by Subsection 58-40-302(4)(b)(i), which shall consist of 90 hours of structured education under the instruction and direction of a licensed MTRS, or if completed out of state, under the direction of a nationally certified CTRS, which includes:

(i) theories and concepts of recreational therapy;

(ii) the therapeutic recreation process;

(iii) characteristics of illness and disability and their effects on leisure;

(iv) medical and psychiatric terminology including psychiatric, pharmacology, gerontology, and abbreviations;

(v) ethics;

(vi) role and function of other health and human service professionals, including: agencies, medical specialists and allied health professionals; and

(vii) health and safety; and

(b) complete a two-hour pre-licensure course, as required by Subsection 58-40-302(4)(e), which shall meet the requirements of this Subsection.

(i) The course provider shall be one of the following:

(A) a recognized accredited college or university;

(B) a county, state, or federal agency; or

(C) a professional association, society or organization representing a licensed profession.

(ii) The content of the course shall be relevant to recreational therapy and include one or more of the following subject areas:

(A) suicide concepts and facts;

(B) suicide risk assessment, crisis intervention, and first aid;

(C) evidence-based intervention for suicide risk;

(D) continuity of care and follow-up services for suicide risk; or

(E) therapeutic alliances for intervention in suicide risk.

(iii) Each hour of education shall consist of 50 minutes of education in the form of classroom lectures and discussion, workshops, webinars, online self-paced modules, case study review, or simulations.

(iv) A course provider shall document and verify attendance and completion.

(v) An applicant for licensure is responsible for submitting evidence of course completion to the Division as a prerequisite for licensure.

R156-40-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Section 58-40-302, the experience requirements for licensure include:

(1) An MTRS is required to complete 4000 hours of paid experience, as required by Subsection 58-40-302(2)(b), which means an individual must either work as a TRS in Utah in a paid position practicing recreational therapy or work outside of Utah as a CTRS in a paid position practicing recreational therapy.

(2) A TRS is required to complete an approved practicum, as required by Subsection 58-40-302(3)(b), which means a practicum verified on the degree transcript.

(3) A TRT is required to complete an approved practicum, as required by Subsection 58-40-302(4)(c), which means 125 hours of field work experience to be completed over a duration of not more than nine months under the direction of a licensed TRS or MTRS supervisor or consultant, that includes:

(a) a minimum of 20 hours of direct face to face supervision of programming, documentation and treatment intervention by the TRS or MTRS supervisor or consultant;

(b) training in recreational therapy or therapeutic recreation process as defined in Subsection 58-40-102(5) and (6);

(c) interdisciplinary contact;

(d) administration contact; and

(e) community relations.

R156-40-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-40-302(2)(c), (3)(c) and (4)(d), applicants for licensure shall pass the following examinations:

(1) Applicants for licensure as a TRS or MTRS shall pass the NCTRC certification examination as evidenced by a current NCTRC certification as an CTRS.

(2) Applicants for licensure as a TRT shall pass the Therapeutic Recreation Technician Theory Examination with a minimum score of 70%.

(3) Applicants for licensure as a TRT who fail the Therapeutic Recreation Technician Theory Examination three consecutive times must repeat the educational coursework.

R156-40-302d. Time Limitation for TRT applicants.

(1) In accordance with Subsection 58-40-302(4) and Sections R156-40-302a, R156-40-302b and R156-40-302c, a TRT applicant shall pass the examinations and apply for licensure after completion of the 125 practicum hours required under Subsection R156-40-302b(3) and must do so within the same nine month period referred to in that Subsection.

(2) A TRT applicant who does not complete the education, practicum and examinations within nine months is not eligible to be employed as a TRT in a therapeutic recreation department.

(3) A TRT student who does not seek licensure within two years after completion of the education course shall retake the education, practicum and pass the examination prior to applying for licensure.

R156-40-302e. Qualifications for Supervision.

"Supervision of a therapeutic recreation technician", as used in Subsection 58-40-601(3)(a)(i), means that the TRS or MTRS supervisor is employed full-time and onsite in the same hospital, clinic, or facility as the person being supervised and is responsible for:

(1) providing "general supervision" as defined by Subsection R156-1-102(4)(c);

(2) ensuring that recreation therapy services are provided according to the Recreational Therapy Practice Act, standards of the profession, administrative and governing regulations;

(3) providing training, clinical guidance and evaluation; and

(4) demonstrating, as evidenced by the signature of the TRS or MTRS in the patient chart, review and evaluation of ongoing documentation.

R156-40-302f. Qualifications for Consultation.

"In consultation with a master therapeutic recreation technician", as used in Subsection 58-40-601(3)(a)(ii), means that the MTRS consultant contracted by the agency is responsible for:

(1) providing "general supervision" as defined in Subsection R156-1-102a(4)(c);

(2) performing the assessment as described in Subsection 58-40-102(2)(a)(ii);

(3) prescribing "initial recreational therapy treatment" as defined in Subsection R156-40-102(7), outlining the recreation therapy services to be performed by the TRT upon client admission, and to be superceded by the recreation therapy treatment or intervention plan;

(4) prescribing, creating or modifying the treatment or intervention plans to be performed by the TRT as determined by the assessment;

(5) observing, evaluating, and documenting that the recreation therapy services are being conducted according to administrative and governing regulations;

(6) observing, evaluating, and documenting adherence to the standards of practice of the recreational therapy profession; and

(7) demonstrating adherence, as evidenced by the signature of the MTRS in the patient chart, reviews, and evaluation of ongoing regulatory documentation.

R156-40-302g. Qualifications for Temporary License as a TRS - Supervision Required.

(1) In accordance with Section 58-1-303, an applicant for temporary licensure as a TRS shall:

(a) submit an application for temporary license in the form prescribed by the Division, which includes a verification that the applicant has registered and been approved to take the next available NCTRC examination;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) meet all the requirements for licensure, except passing the NCTRC examination; and

(d) practice recreational therapy under the supervision of a Utah licensed TRS or MTRS, as defined in Subsection R156-40-102(12).

(2) The temporary license shall be issued for a period not to exceed 120 days, to allow the applicant to pass the NCTRC examination.

(3) The temporary license shall not be renewed or extended for any purpose.

R156-40-303. 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 40 is established by rule in Section R156-1-308a(1).

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

R156-40-304. Continuing Education.

In accordance with Section 58-40-304, qualified continuing education requirements are established as follows:

(1) All MTRS, TRS, and TRT licensees shall complete 20 hours of qualified continuing education including two hours of suicide prevention training, that meets the requirements of this section.

(2) Qualified continuing education hours for licensees who have not been licensed for the entire two-year period shall be prorated from the date of licensure.

(3) Continuing education under this section shall:

(a) be relevant to the licensee's professional practice;

(b) be prepared and presented by individuals who are qualified by education, training, and experience to provide recreational therapy continuing education; and

(c) have a method of verification of attendance and completion.

(4) The suicide prevention training shall include one or more of the following subject areas:

(a) suicide concepts and facts;

(b) suicide risk assessment, crisis intervention, and first aid;

(c) evidence-based intervention for suicide risk;

(d) continuity of care and follow-up services for suicide risk; or

(e) therapeutic alliances for intervention in suicide risk.

(5) Credit for continuing education shall be recognized in accordance with the following:

(a) unlimited hours for continuing education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, lectures, conferences, or training sessions which meet the criteria listed in Subsection (3) above, and which are approved by, conducted by, or under the sponsorship of:

(i) the Division of Occupational and Professional Licensing;

(ii) recognized universities and colleges; or

(iii) professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of recreational therapy;

(b) a maximum of ten hours per two-year period may be recognized for teaching continuing education courses relevant to recreational therapy;

(c) a maximum of 12 hours per two-year period may be recognized for continuing education courses completed via the internet or webinar which provide a certificate of completion;

(d) a maximum of four hours per two-year period may be recognized for CPR and first aid certification through a live course, not online; and

(e) a maximum of six hours per two-year period may be recognized for publications in an article, journal, newsletter, or other professional publication.

(6) A licensee subject to circumstances that prevent the licensee from meeting one or more of these continuing education requirements may request a waiver or extension of time for a period of up to three years, in accordance with the provisions of Section R156-1-308d.

(7) A licensee shall maintain competent records of completed qualified continuing education for a period of six years, and if requested by the Division, shall demonstrate that the licensee meets the requirements of this section.

R156-40-502. Unprofessional Conduct.

Unprofessional conduct includes:

(1) failing to establish and maintain professional boundaries with a patient or former patient;

(2) exploiting a current patient or former patient for personal gain;

(3) failing as a TRS/MTRS to ensure the student TRT completes the minimum required education and experience prior to working with patients;

(4) failing as a TRS/MTRS to ensure the student TRT is competent to provide recreational therapy services when signing the education and experience verification; and

(5) failing to abide by the provisions of the American Therapeutic Recreation Association (ATRA) Code of Ethics, November 2009, which is incorporated by reference.

KEY: licensing, recreational therapy, recreation therapy

July 25, 2017	**58-40-101**
Notice of Continuation April 26, 2016	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-55b. Electricians Licensing Act Rule.
R156-55b-101. Title.

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

R156-55b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapter 55 or this rule:

(1) "Electrical work" as used in Subsection 58-55-102(13)(a) and in this rule means installation, fabrication or assembly of equipment or systems included in "Premises Wiring" as defined by Title 15A, State Construction and Fire Codes Act. Electrical work includes installation of raceway systems used for any electrical purpose, and installation of field-assembled systems such as ice and snow melting, pipe-tracing, manufactured wiring systems, and the like. Electrical work does not include installation of factory-assembled appliances or machinery that are not part of the premises wiring unless wiring interconnections external to the equipment are required in the field, and does not include cable-type wiring that does not pose a hazard from a shock or fire initiation standpoint as defined by Title 15A, State Construction and Fire Codes Act. Wiring covered by the National Electrical Code that does not pose a hazard as described above includes Class 2 wiring as defined in Article 725, Power-Limited circuits as defined in Article 760 and wiring methods covered by Chapter 8. All other wiring is subject to licensing requirements.

(2) "Immediate supervision", as used in Subsection 58-55-102(23) and this rule means the following:

(a) for industrial and commercial electrical work, the apprentice and the supervising electrician are physically present on the same project or jobsite but are not required to be within sight of one another; and

(b) for residential electrical work, the supervising electrician, when not physically present on the same project or jobsite as the apprentice, is available to provide reasonable direction, oversight, inspection, and evaluation of the work of an apprentice so as to ensure that the end result complies with applicable standards.

(3) "Minor electrical work incidental to a mechanical or service installation" as used in Subsection 58-55-305(1)(n) means the electrical work involved in installation, replacement or repair of appliances or machinery that utilize electrical power. Minor electrical work does not include modification or repair of "Premises Wiring" as defined in the National Electrical Code, and does not include installation of a disconnecting means or outlet. Electrical work is minor and incidental only when wiring is extended no more than ten feet in length from an outlet or disconnect provided specifically for the piece of equipment.

(4) "Residential project" as used in Subsection 58-55-302(3)(j)(ii) pertains to supervision and means electrical work performed in one or two-family dwellings, including townhouses, as determined by Title 15A, State Construction and Fire Codes Act.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-55b-501.

(6) "Work commonly done by unskilled labor" as used in Subsection 58-55-102(13)(b)(iii) means work such as digging, sweeping, hammering, carrying, drilling holes, or other tasks that do not directly involve the installation of raceways, conductors, cables, wiring devices, overcurrent devices, or distribution equipment. Unlicensed persons may handle wire on large wire pulls involving conduit of two inches or larger or assist in moving heavy electrical equipment when the task is performed in the immediate presence of and supervised by properly licensed master, journeyman, residential master or residential journeyman electricians acting within the scope of their licenses.

R156-55b-103. Authority.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 55.

R156-55b-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is described in Section R156-1-107.

R156-55b-302a. Qualifications for Licensure - Education and Experience Requirements.

(1) In accordance with Subsection 58-55-302(3)(i)(i), the approved electrical training program for licensure as a residential journeyman electrician consists of:

(a) a program of electrical study approved by the Utah Board of Regents, Utah System of Technical Colleges Board of Trustees or other out of state program that is deemed substantially equivalent as determined by the Electricians Licensing Board. Programs approved by the Electricians Licensing Board prior to January 1, 2009 remain approved programs; and

(b) at least two years of work experience as a licensed apprentice consistent with Section R156-55b-302b.

(2) In accordance with Subsection 58-55-302(3)(h)(i), the approved four year planned training program for licensure as a journeyman electrician consists of:

(a) a program of electrical study approved by the Utah Board of Regents, Utah System of Technical Colleges Board of Trustees or other out of state program that is deemed substantially equivalent as determined by the Electricians Licensing Board. Programs approved by the Electricians Licensing Board prior to January 1, 2009 remain approved programs; and

(b) at least four years of work experience as a licensed apprentice consistent with Section R156-55b-302b.

(3) A semester of school shall include at least 81 hours of classroom instruction time. A student shall attend a minimum of 72 hours to receive credit for the semester.

(4) A competency exam shall be given to each student at the end of each semester with the exception of the fourth year second semester. A student, to continue to the next semester, shall achieve a score of 75% or higher on the competency exam. A student who scores below 75% may retake the test one time.

(5) The applicant shall pass each class with a minimum score of 75%.

(6) Competency test results shall be provided to the Board at the Board meeting immediately following the semester in a format approved by the Board.

(7) An applicant for a master electrician license, applying pursuant to Subsection 58-55-302(3)(f)(i) shall be a graduate of an electrical program accredited by the Engineering Accreditation Commission/Accreditation Board for Engineering and Technology (EAC/ABET).

(8) An applicant shall provide documentation that all education and experience meets the requirements of this rule.

R156-55b-302b. Qualifications for Licensure - Work Experience - Residential Journeyman and Journeyman Electricians.

(1) In order to satisfy Subsections 58-55-302(3)(h) and (i), an applicant for a license as a residential journeyman electrician or journeyman electrician shall document the following on-the-job work experience:

(a) Residential Journeyman Electrician:

(i) at least 600 hours in boxes and fittings, conduit, wireways and cableways and associated fittings;

(ii) at least 3000 hours in wire and cable, individual

conductors and multi-conductors cables, and non-metallic sheathed cable;

(iii) at least 300 hours in distribution and utilization equipment, transformers, control panels, disconnects, motor starters, lighting fixtures, heaters, appliances, motor and other distribution or utilization equipment; and

(iv) at least 300 hours in specialized work including grounding, wiring of systems for sound, data, communication, alarms, automated systems, generators, batteries and computer equipment.

(b) Journeyman electrician:

(i) at least 4000 hours in raceways, boxes and fittings, conduit, wireways, cableways and other raceways and associated fittings, and non-metallic sheathed cable;

(ii) at least 800 hours in wire and cable, individual conductors and multi-conductor cables;

(iii) at least 400 hours in distribution and utilization equipment including transformers, panel boards, switchboards, control panels, disconnects, motor starters, lighting fixtures, heaters, appliances, motors and other distribution and utilization equipment; and

(iv) at least 400 hours in specialized work including grounding, wiring of systems for sound, data, communication, alarms, automated systems, generators, batteries and computer equipment.

(2) No more than 2000 hours of work experience may be credited for each 12 month period.

(3) No credit will be given for work experience performed illegally.

R156-55b-302c. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-55-302(1)(c)(i), an applicant for licensure under this rule shall pass the appropriate examinations that are approved by the Board, each of which shall consist of a theory part, a code part and a practical part as follows:

(a) Utah Electrical Licensing Examination for Master Electricians;

(b) Utah Electrical Licensing Examination for Master Residential Electricians;

(c) Utah Electrical Licensing Examination for Journeyman Electricians; and

(d) Utah Electrical Licensing Examination for Residential Journeyman Electricians.

(2) Admission to the examinations is permitted after:

(a) the applicant has completed all requirements for licensure set forth in Sections R156-55b-302a and R156-55b-302b; or

(b) the journeyman applicant has completed:

(i) the apprentice education program set forth in Subsection R156-55b-302a; and

(ii) not less than 6,000 hours of the experience required under Subsection R156-55b-302b;

(c) the residential journeyman applicant has completed:

(i) the apprentice education program set forth in Subsection R156-55b-302a; and

(ii) not less than 3,000 hours of the experience required under Subsection R156-55b-302b.

(3) The applicant shall obtain a "pass" grade on the practical part of the examination, a score of at least 75% on the theory part and a score of at least 75% on the code part of the examination.

(4)(a) If an applicant fails one or more parts of the examination, the applicant shall retake any part of the examination failed.

(b) An applicant shall wait at least 25 days between the first two retakes and thereafter shall wait 120 days between retakes.

(5) If an applicant passes any part of the examination but does not pass the entire examination, the passing score on any part of the examination shall be valid for one year from the date the part of the examination was passed. Thereafter, the applicant shall retake any previously passed part of the examination.

R156-55b-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 55 is established by rule in Section R156-1-308a.

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

R156-55b-304. Continuing Education.

(1) Required Hours. Pursuant to Sections 58-55-302.7 and 58-55-303, each licensee shall complete 16 hours of continuing education during each two year license term. A minimum of 12 hours shall be core education. The remaining four hours may be professional education.

(2) "Core continuing education" is defined as education covering the National Electrical Code as adopted or proposed for adoption.

(3) "Professional continuing education" is defined as education covering:

(a) National Fire Protection Association 70E (NFPA 70E), Occupational Safety and Health Administration (OSHA), Mine Safety and Health Administration (MSHA);

(b) electrical motors and motor controls, electrical tool usage; and

(c) supervision skills related to the electrical trade.

(4) Non-acceptable course subject matter includes the following types of courses and other similar courses:

(a) mechanical office and business skills, such as typing, speed reading, memory improvement and report writing;

(b) physical well-being or personal development, such as personal motivation, stress management, time management, or dress for success;

(c) presentations by a supplier or a supplier representative to promote a particular product or line of products; and

(d) meetings held in conjunction with the general business of the licensee or employer.

(5) The Division may:

(a) waive the continuing education requirements for a licensee that is an instructor of an approved apprenticeship program; or

(b) waive or defer the continuing education requirements as provided in Section R156-1-308d.

(6) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of at least 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes may be used for breaks.

(b) Provider. The course provider shall meet the requirements of this section and shall be one of the following:

(i) a recognized accredited college or university;

(ii) a state or federal agency;

(iii) a professional association or organization involved in the construction trades; or

(iv) a commercial continuing education provider providing a program related to the electrical trade.

(c) Content. The content of the course shall be relevant to the practice of the electrical trade and consistent with the laws and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.

(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience.

(g) Distance learning. A course may be recognized for continuing education that is provided through internet or home study courses provided that the course verifies registration and participation in the course by means of a passing a test demonstrating that the participant has learned the material presented. Test questions shall be randomized for each participant.

(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division and shall provide to individuals completing the course a certificate which contains the following information:

(i) the date of the course;

(ii) the name of the course provider;

(iii) the name of the instructor;

(iv) the course title;

(v) the hours of continuing education credit;

(vi) the attendee's name;

(vii) the attendee's license number; and

(viii) the signature of the course provider.

(7) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(8) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (11). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(9) Licensees who lecture in approved continuing education courses shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(10) A course provider shall submit continuing education courses for approval to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.

(11) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses which meet the standards set forth under this section.

(12) Continuing Education Registry.

(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.

(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:

(i) through its internet site electronically receive applications from continuing education course providers and shall submit the application for course approval to the Division for review and approval of only those programs which meet the standards set forth under this section;

(ii) publish on its website listings of continuing education programs which have been approved by the Division, and which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of qualified continuing education approved;

(iv) maintain accurate records of verification of attendance and completion, by individual licensee, which the licensee may review for compliance with this rule; and

(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.

(c) Fees. The Continuing Education Registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

R156-55b-305. Licensure by Endorsement.

The Division may issue a license by endorsement in accordance with the provisions of Section 58-1-302.

R156-55b-401. Conduct of Apprentice and Supervising Electrician.

(1) The conduct of licensed apprentice electricians and their licensed supervisors shall be in accordance with Subsection 58-55-302(3)(j), Sections 58-55-501, 58-55-502, and R156-55b-501.

(2) For the purposes of Subsections 58-55-102(31), 58-55-302(3)(j) and 58-55-501(12), one of the following shall apply:

(a) the supervisor and apprentice employees shall be employees of the same electrical contractor;

(b) the electrical contractor may contract with a licensed professional employer organization to employ such persons.

(3) An apprentice in the fourth through sixth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period. In the seventh and succeeding years of training, the nonsupervision provision no longer applies and the apprentice shall be under immediate supervision as set forth in Subsection 58-55-302(3)(j).

R156-55b-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing as a licensee to comply with the supervision requirements established by Subsection 58-55-302(3)(j).

(2) failing as a licensee to carry a copy of a current license at all times when performing electrical work;

(3) failing as an electrical contractor to certify an electrician's hours and breakdown of work experience by category when requested by an electrician who is or has been an employee; and

(4) failing as a licensee to provide proof of completed continuing education within 30 days of the Division's request.

R156-55b-502. Administrative Penalties.

(1) The administrative penalties defined in Section R156-55a-503 of the Utah Construction Trades Licensing Act Rule are hereby adopted as the administrative penalties applicable under this rule.

(2) The administrative penalty for a violation of Subsection 58-1-501(2)(o) under this rule shall be in accordance with Section R156-1-502.

KEY: occupational licensing, licensing, contractors, electricians

March 27, 2017 **58-1-106(1)(a)**
Notice of Continuation August 8, 2016 **58-1-202(1)(a)**
58-55-308(1)

R156. Commerce, Occupational and Professional Licensing.
R156-55c. Plumber Licensing Act Rule.
R156-55c-101. Title.

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

R156-55c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55 or this rule:

(1) "Immediate supervision", as used in Subsections 58-55-102(5) and 58-55-102(23) and this rule, means the apprentice and the supervising plumber are physically present on the same project or job site but are not required to be within sight of one another.

(2) "Minor plumbing work that is incidental", as used in Subsection 58-55-305(1)(k)(i) and this rule, means:

(a) installation, repair or replacement of the following residential type Plumbing Appliances:

(i) dishwashers;
(ii) refrigerators;
(iii) freezers;
(iv) ice makers;
(v) stoves;
(vi) ranges;
(vii) clothes washers;
(viii) clothes dryers; and

(b) repair or replacement of the following residential type Plumbing Appurtenances, Fixtures and Systems, when the cost of the repair or replacement does not exceed $300 in total value, including all labor and materials, and including all changes or additions to the contracted or agreed upon work:

(i) tub or shower trim;
(ii) tub or shower valve;
(iii) toilet flush valve;
(iv) toilet removal and reset;
(v) garbage disposal;
(vi) kitchen or lavatory sink P-trap;
(vii) kitchen or lavatory faucet rebuild and install;
(viii) supply line replacement after the fixture valve; and

(3) "Minor plumbing work that is incidental", as used in Subsection 58-55-305(1)(k)(i), does not include installation or replacement of a water heater, or work to include the initial installation of Plumbing Appurtenances, Fixtures and Systems.

(4) Plumbing Appliances, Appurtenances, Fixtures, and Systems, as used in this rule, shall have the same meaning as defined by Title 15A, State Construction and Fire Codes Act.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined in accordance with Subsection 58-1-203(1)(e), in Subsection R156-55c-501.

R156-55c-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 55.

R156-55c-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.

R156-55c-302a. Qualification for Licensure - Training and Instruction Requirement.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the training and instruction requirements for licensure in Subsection 58-55-302(3)(c) and (d) are defined, clarified, or established as follows:

(1) An applicant for a journeyman plumber's license shall demonstrate successful completion of the requirements of either paragraph (a) or (b):

(a)(i) 8,000 hours of training and instruction in not less than four years that meets the requirements of Subsections R156-55c-302a(4) and (6).

(ii) the 8,000 hours shall include 576 clock hours of related classroom instruction that meets the requirements of Subsection R156-55c-302a(5);

(iii) the apprenticeship shall be obtained while licensed as an apprentice plumber;

(iv) the apprenticeship shall include on the job training and instruction in nine of the 11 work process areas listed in Table I; and

(v) the hours obtained in any work process area shall be at least the number of hours listed in Table I.

(b)(i) 16,000 hours of on the job training and instruction in not less than eight years;

(ii) the apprenticeship shall be obtained while licensed as an apprentice plumber;

(iii) the hours shall include on the job training and instruction in nine of the 11 work process areas listed in Table I; and

(iv) the hours obtained in any work process shall be at least the number of hours listed in Table I.

TABLE I
Training and Instruction

Work Process		Minimum Hours
A.	Use of hand tools, equipment and pipe machinery	200
B.	Installation of piping for waste, soil, sewer and vent lines	2,000
C.	Installation of hot and cold water for domestic purposes	1,400
D.	Installation and setting of plumbing appliances and fixtures	1,200
E.	Maintenance and repair of plumbing	600
F.	General pipe work including process and industrial hours	600
G.	Gas piping or service piping	400
H.	Welding, soldering and brazing as it applies to the trade	100
I.	Service and maintenance of gas controls and equipment	100
J.	Hydronics piping and equipment installation	300
K.	Fire suppression system installation	100

(2) An applicant for a residential journeyman plumber's license shall demonstrate successful completion of the requirements of paragraph (a) or (b):

(a)(i) 6,000 hours of training and instruction in not less than three years that meets the requirements of Subsections R156-55c-302a(4) and (6).

(ii) the 6,000 hours shall include 432 clock hours of related classroom instruction that meets the requirements of Subsection R156-55c-302a(5);

(iii) the 6,000 hours shall be obtained while licensed as an apprentice plumber;

(iv) the apprenticeship shall include on the job training and instruction in eight of the ten work process areas listed in Table II; and

(v) the hours obtained in any work process area shall include at least the number of hours listed in Table II.

(b)(i) 12,000 hours of experience in not less than six years which has been documented using a form provided by the Division;

(ii) the experience shall be obtained while licensed as an apprentice plumber;

(iii) at least 9,000 hours of experience shall be directly involved in the plumbing trade;

(iv) the hours shall be in eight of the ten work process areas listed in Table II; and

(v) the hours obtained in any work process area shall include at least the number of hours listed in Table II.

TABLE II
Training and Instruction

Work Process	Minimum Hours
A. Use of hand tools, equipment and pipe machinery	100
B. Installation of piping for waste, soil, sewer and vent lines	1,600
C. Installation of hot and cold water for domestic purposes	1,200
D. Installation and setting of plumbing appliances and fixtures	800
E. Maintenance and repair of plumbing	600
F. Gas piping or service piping	400
G. Service and maintenance of gas controls and equipment	100
H. Welding, soldering and brazing as it applies to the trade	100
I. Hydronics piping and equipment installation	300
J. Fire suppression system installation	100

(3) A licensed residential journeyman plumber applying for a journeyman plumber's license shall complete 2,000 hours of on the job training in industrial or commercial plumbing while licensed as an apprentice plumber, which shall include successful completion of an approved fourth year course of classroom instruction.

(4) On the job training and instruction required in this section shall include measurements of an apprentice's performance in the plumbing trade.

(5) Formal classroom instruction required by this section shall meet the following requirements:

(a) instruction shall be conducted by an entity approved by the Utah Board of Regents, Utah System of Technical Colleges Board of Trustees or by another similar out of state body that approves formal plumbing educational programs; and

(b) instruction shall be conducted by competent qualified staff and shall include measures of competency and achievement level of each apprentice.

(6) Apprentice plumbers shall engage in the plumbing trades only in accordance with the following:

(a) except as provided in Subsection 58-55-302(3)(e)(ii) for fourth through tenth year apprentices, while engaging in the plumbing trade, an apprentice plumber shall be under the immediate supervision of a journeyman plumber for commercial or industrial work, and by a residential journeyman or journeyman plumber for residential work;

(b) the apprentice shall engage in the plumbing trade in accordance with the instruction of the supervising plumber; and

(c) the apprentice shall work in a ratio of not to exceed two apprentice plumbers to one supervising plumber.

R156-55c-302b. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Subsection 58-55-302(1)(c)(i) are as follows:

(1) The applicant shall obtain a minimum score of 70% on the Utah Plumbers Licensing Examination that shall consist of a written section and practical section.

(2) Admission to the examinations is permitted after:

(a) the applicant has completed all requirements for licensure set forth in this section and in Sections R156-55c-302a and R156-55c-302c; or

(b) the applicant has completed:

(i) the first semester of the fourth year of the apprentice education program set forth in Subsection R156-55c-302a(1)(a)(ii); and

(ii) not less than 6,000 hours of the experience required under Subsection R156-55c-302a(1)(a)(i).

(3) (a) If an applicant fails any section of the examination, the applicant shall retake that section.

(b) An applicant shall wait at least 25 days for the first two retakes, and thereafter shall wait 120 days between retakes.

(4) If an applicant passes any section of the examination but does not pass the entire examination, the passing score for that section shall be valid for one year from the pass date. After one year the applicant shall retake any previously passed section to support any subsequent application for licensure.

R156-55c-302c. Qualifications for Licensure - Master Supervisory Experience and Education Requirements.

In accordance with Subsections 58-55-302(3)(a)(i)(A) and 58-55-302(3)(b)(i), the minimum supervisory experience qualifications for licensure as a master plumber and residential master plumber are established as follows:

(1) An applicant shall demonstrate successful completion of 4000 hours of supervisory experience that includes each of the following categories and minimum number of hours:

(a) supervising employees: 700 hours;

(b) supervising construction projects: 700 hours;

(c) cost/price management: 300 hours; and

(d) miscellaneous construction experience: 300 hours in any one or more of the following: accounting/financial principles, contract negotiations, conflict resolutions, marketing, human resources and government regulation pertaining to business and the construction trades.

(2) The following, or the substantial equivalent thereof, as determined by the Board in collaboration with the Commission, shall apply to the minimum supervisory experience qualifications established in Subsection (1):

(a) supervisory experience shall be obtained while licensed in the proper license classification as either a journeyman plumber or a residential journeyman plumber;

(b) supervisory experience shall be obtained as an employee of a licensed plumbing contractor, whose employer covers the applicant with workers compensation and unemployment insurances and deducts federal and state taxes from the applicant's compensation;

(c) all supervisory experience shall be under the immediate supervision of the applicant's employer; and

(d) no more than 2000 hours of experience may be earned during any 12-month period.

(3) An associate of applied science or similar or higher educational degree, in accordance with Subsection 58-55-302(3)(a)(i)(B), shall fulfill 2000 hours of the 4000 hour supervisory experience requirement. Such an applicant shall complete the remaining minimum 2000 hour supervisory experience listed above in Subsection R156-55c-302c(1).

(a) The degree shall be accredited by one of the following:

(i) Middle States Association of Colleges and Schools;

(ii) New England Association of Colleges and Schools;

(iii) North Central Association of Colleges and Schools;

(iv) Northwest Commission on Colleges and Universities;

(v) Southern Association of Colleges and Schools; or

(vi) Western Association of Schools and Colleges.

(b) The degree shall be in one of the following courses of

study:
(i) accounting;
(ii) apprenticeship;
(iii) business management;
(iv) communications;
(v) computer systems and computer information systems;
(vi) construction management;
(vii) engineering;
(viii) environmental technology;
(ix) finance;
(x) human resources; or
(xi) marketing.

R156-55c-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 55, is established by rule in Section R156-1-308a(1).
(2) Renewal procedures shall be in accordance with Section R156-1-308c.

R156-55c-304. Continuing Education - Standards.
(1) Required Hours. Pursuant to Sections 58-55-302.7 and 58-55-303, each licensee shall complete 12 hours of continuing education during each two-year license term. A minimum of eight hours shall be core education. The remaining four hours may be professional education.
(2) "Core continuing education" is defined as education covering:
(a) International Building, Mechanical, Plumbing, and International Energy Conservation Codes and Utah building code amendments as adopted or proposed for adoption;
(b) the Americans with Disability Act;
(c) medical gas, National Fire Protection Association 13D and 54; and
(d) hydronics and waste water treatment.
(3) "Professional continuing education" is defined as education covering:
(a) energy conservation, management training, new technology, plan reading; and
(b) lien laws and Utah construction registry
(c) Occupational Safety and Health Administration (OSHA) training; and
(d) government regulations.
(4) Non-acceptable course subject matter includes the following types of courses and other similar courses:
(a) mechanical office and business skills, such as typing, speed reading, memory improvement, and report writing;
(b) physical well-being or personal development, such as personal motivation, stress management, time management, or dress for success;
(c) presentations by a supplier or a supplier representative to promote a particular product or line of products; and
(d) meetings held in conjunction with the general business of the licensee or employer.
(5) The Division may:
(a) waive the continuing education requirements for a licensee that is an instructor of an approved education apprenticeship program; or
(b) waive or defer the continuing education requirements as provided in Section R156-1-308d.
(6) A continuing education course shall meet the following standards:
(a) Time. Each hour of continuing education course credit shall consist of at least 50 minutes of education in the form of seminars, lectures, conferences, training sessions, or distance learning modules. The remaining ten minutes may be used for breaks.
(b) Provider. The course provider shall meet the requirements of this section and shall be one of the following:
(i) a recognized accredited college or university;
(ii) a state or federal agency;
(iii) a professional association or organization involved in the construction trades; or
(iv) a commercial continuing education provider providing a program related to the plumbing trade.
(c) Content. The content of the course shall be relevant to the practice of the plumbing trade and consistent with the laws and rules of this state.
(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.
(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.
(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training, and experience.
(g) Distance learning. A course that is provided through internet or home study courses may be recognized for continuing education if the course verifies registration and participation in the course by means of a passing a test demonstrating that the participant has learned the material presented. Test questions shall be randomized for each participant.
(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division, and shall provide to individuals completing the course a certificate that contains the following information:
(i) the date of the course;
(ii) the name of the course provider;
(iii) the name of the instructor;
(iv) the course title;
(v) the hours of continuing education credit;
(vi) the attendee's name;
(vii) the attendee's license number; and
(viii) the signature of the course provider.
(7) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.
(8) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts, and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (10). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.
(9) Licensees who lecture in approved continuing education courses shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.
(10) A course provider shall submit to the continuing education registry, in the format required by the continuing education registry:
(a) applications for approval of continuing education courses; and
(b) on behalf of each licensee, verification of the licensee's attendance and completion of a continuing education course.
(11) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses that meet the standards set forth under this section.
(12) Continuing Education Registry.

(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.

(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:

(i) through its internet site electronically receive applications for course approval from continuing education course providers, and submit to the Division for review and approval only those courses which meet the standards set forth under this section;

(ii) publish on its website listings of continuing education courses approved by the Division, which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of approved qualified continuing education courses;

(iv) maintain accurate records of verification of attendance and completion for each individual licensee, which the licensee may review for compliance with this rule; and

(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.

(c) Fees. The Continuing Education Registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

R156-55c-305. Licensure by Endorsement.

The Division may issue a license by endorsement in accordance with the provisions of Section 58-1-302.

R156-55c-401. Conduct of Apprentice and Supervising Plumber.

(1) The conduct of licensed apprentice plumbers and their licensed supervisors shall be in accordance with Subsections 58-55-302(3)(e), 58-55-501, 58-55-502 and R156-55c-501.

(2) For the purposes of Subsections 58-55-302(3)(e) and 58-55-501(12), one of the following shall apply:

(a) the supervisor and apprentice employees shall be employees of the same plumbing contractor; or

(b) the plumbing contractor may contract with a licensed professional employer organization to employ such persons.

R156-55c-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to comply with the supervision requirements established by Subsection 58-55-302(3)(e);

(2) failing as a licensed plumber to carry a copy of his current plumber's license on his person or in close proximity to his person when performing plumbing work or to display that license upon request of a representative of the Division or any law enforcement officer;

(3) failing as a plumbing contractor to certify work experience and supervisory hours when requested by a plumber who is or has been an employee of the plumbing contractor; and

(4) failing as a licensee to provide proof of completed continuing education within 30 days of the Division's request.

R156-55c-502. Administrative Penalties.

(1) The administrative penalties defined in Section R156-55a-503 of the Utah Construction Trades Licensing Act Rule are hereby adopted as the administrative penalties under this rule.

(2) The administrative penalty for a violation of Subsection 58-1-501(2)(o) under this rule shall be in accordance with Section R156-1-502.

KEY: occupational licensing, licensing, plumbers, plumbing
April 10, 2017 **58-1-106(1)(a)**
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58-55-101

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 test with uniform state content;

(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) successfully complete, within the 12-month period prior to the date of application, 15 hours of Utah-specific mortgage loan originator prelicensing education;

(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;

(ii) evidence that the individual has taken and successfully:

(A) passed the 20-hour national mortgage loan originator prelicensing course; and

(B) passed the mortgage loan originator examination that:

(I) meets the requirements of Section 61-2c-204.1(4);

(II) is approved and administered through the nationwide database; and

(III) consists of a national test with uniform state content;

(C) completed the division approved 40 hour Utah-specific lending manager prelicensing education within the 12-month period prior to the date of application to the division;

(D) applied to the testing contractor designated by the division to sit for the lending manager licensing examination;

(E) paid a nonrefundable examination fee to the testing contractor; and

(F) passed both the state and national (general) components of the licensing examination;

(e) within the 12-month period preceding the date of submission of a lending manager application to the division, successfully:

(i) register in the nationwide database by selecting the "lending manager" license type and completing the associated MU4 form;

(ii) 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);

(iii) authorize a criminal background check and submit fingerprints through the nationwide database;

(iv) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(v) if applying for an active license, affiliate with a registered Utah mortgage entity;

(vi) authorize the nationwide database to provide the individual's credit report to the division for review;

(vii) pay the lending manager licensing fee as required by the division and by the nationwide database;

(viii) complete, sign, date, and submit to the division:

(A) the Utah lending manager checklist form as found on the division website or the nationwide database;

(B) the two page lending manager application as provided by the testing contractor;

(C) the social security verification forms as provided by the testing contractor; and

(D) a copy of a paid invoice from the nationwide database showing proof of payment of the lending manager license fee.

(f) provide to the division experience documentation forms to evidence that the applicant has satisfied the experience requirement of section 61-2c-206(1)(d) as follows:

(i) during the five-year period preceding the date of submission of a lending manager license application to the division:

(A) three years full-time experience originating first-lien residential mortgages as a mortgage loan originator as defined in Section 61-2c-102(1)(ff):

(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) during the five-year period preceding the date of submission of a lending manager license application to the division:

(A) two years full-time experience originating first-lien residential mortgages as defined in Section 61-2c-102(1)(ff):

(I) under a license issued by a state regulatory agency; or
(II) as an employee of a depository institution;
(B) plus one year of full-time equivalent experience from the optional experience equivalency calculation in Subsection R162-2c-501a or the optional experience table in Subsection R162-2c-501b; and
(C) evidence of having originated a minimum of 30 first-lien residential mortgages; or
(iii) during the 12 years preceding the date of submission of a lending manager license application to the division:
(A) ten years of full-time experience providing direct supervision as a loan manager in the residential mortgage industry;
(B) with evidence of having directly supervised during the ten years described in this Subsection no fewer than five licensed or registered loan originators; and
(C) although the five individuals licensed or registered as described in this Subsection may have changed over time, the number of individuals being managed or supervised must have remained at a minimum of five individuals at all times during the ten years described in this Subsection; and
(D) evidence of having personally originated a minimum of 15 first-lien residential mortgages within the past five years.
(g) Failure to document acceptable experience in one of the three methods described in Subsection (f) will result in the denial of the lending manager application. All application fees are nonrefundable.
(h) designate in the nationwide database whether the individual will be acting for the sponsoring entity as:
(i) the principal lending manager;
(ii) an associate lending manager; or
(iii) a branch lending manager.
(i) Deadlines.
(i) If an individual passes one test portion of the lending manager examination but fails the other, the individual may retake and pass the failed portion of the exam within 90 days of the date on which the individual achieves a passing score on the first portion of the exam.
(ii) An application for licensure shall be submitted:
(A) within 90 days of the date on which the individual achieves passing scores on both examination portions; and
(B) within 12 months of the date on which the individual completes the pre-licensing education.
(iii) If any deadline in this Subsection R162-2c-201(2) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.
(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 assumed business name or trade name under which the entity will operate;
(B) submitting a license request for any assumed business name listed in the "Other Trade Name" section of the MU1 form; and
(C) 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 a branch office pursuant to this Subsection (4) shall ensure that any licensed trade names of the entity that are used from the branch office are listed in the "Other Name" section of the entity MU1 form.
(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 LM exam shall be valid for 90 days.
(7) Nonrefundable fees. All fees are nonrefundable, regardless of whether an application is granted or denied.
(8) 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 NMLS-approved continuing education courses, an individual shall certify through the nationwide database.

(f)(i) To act as an instructor of Division-approved continuing education courses, an individual shall complete the Division certification process at least 30 days prior to engaging in instruction.

(ii) To certify with the Division as an instructor, an applicant shall provide the following:

(A) applicant's name and contact information;

(B) evidence that the applicant meets the competency requirements of Subsection R162-2c-202;

(C) evidence that the applicant has graduated from high school or successfully completed equivalent education;

(D) evidence that the applicant understands the subject matter to be taught, as demonstrated through:

(I) a minimum of two years full-time experience as a mortgage licensee;

(II) college-level education related to the course subject; or

(III) demonstrated expertise in the subject proposed to be taught;

(E) evidence that the applicant has the ability to teach, as demonstrated through:

(F) a minimum of 12 months of full-time teaching experience; or

(I) part-time teaching experience equivalent to 12 months full-time teaching experience;

(II) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the Division or its representative;

(G) a signed statement agreeing not to market personal sales products;

(H) a signed statement certifying legal presence to work in the state;

(I) any other information the Division requires or requests; and

(J) a nonrefundable application fee.

(g) 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.

(h) 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.

(i) 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 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.

(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.

(c) Financial responsibility. A licensee shall submit a credit report in order to renew a license every fifth year following the renewal period beginning November 1, 2015.

(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) 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.

(C) In addition to other required continuing education, a mortgage loan originator licensed with the State of Utah on or after May 8, 2017, shall complete a division-approved continuing education course for new loan originators prior to renewing at the end of the first full calendar year of licensure.

(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 courses for new loan originators and on Utah law specified in Subsections (3)(a)(i)(A) and (3)(a)(i)(C), 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) residential address;

(C) telephone number(s); and

(D) 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) if acting as a PLM or BLM, exercise reasonable supervision over all sponsored mortgage loan originators and over all unlicensed staff working from the licensee's office 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 and Licensing 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;

(viii)(A) establish, maintain, and enforce written policies and procedures to ensure the independent judgment of any underwriter employed by the sponsoring entity, whether sponsored from the principal entity location or a branch office; and

(B) take corrective action for problems identified through the underwriting process; and

(ix) 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, which shall be remitted no later than 30 days following the date on which the fees are received by the mortgage entity;

(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);

(v) ensure that:

(I) each sponsored mortgage loan originator fulfills the affirmative duties set forth in this Subsection (1); and

(II) each sponsored LM fulfills the affirmative duties set forth in this Subsection (2); and

(vi) 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, which include, but are not limited to:

(A) the initial 1003 form, signed and dated by the loan originator; and

(B) the final 1003 form, signed and dated by the loan originator;

(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;

(xiii) pre-qualification and pre-approval letters; and

(xiv) 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) An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.

(3) Other adjudicative proceedings.

(a) All adjudicative proceedings as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be designated as formal or informal in the Division's notice of agency action or notice of proceeding, as applicable. These 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.

(c) A party to a proceeding may move the presiding officer to convert the proceeding to a formal or informal adjudication pursuant to Utah Code Section 63G-4-202(3).

(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
July 11, 2017 61-2c-103(3)
Notice of Continuation March 31, 2015 61-2c-402(4)(a)

R164. Commerce, Securities.
R164-1. Fraudulent Practices.
R164-1-3. Fraudulent Practices of Broker-Dealers, Broker-Dealer Agents, and Issuer-Agents.

(A) Authority and purpose.

(1) The Division enacts this rule under authority granted by Subsection 61-1-1(3) and Section 61-1-24.

(2) This rule identifies practices by broker-dealers, broker-dealer agents, or issuer-agents which are generally associated with schemes to manipulate the securities markets.

(3) A broker-dealer, broker-dealer agent, or issuer-agent who engages in one or more of the practices listed below will be deemed to have engaged in an "act, practice or course of business which operates or would operate as a fraud" as used in Subsection 61-1-1(3).

(4) This rule is not intended to be all-inclusive. Thus, acts or practices not listed may also be deemed fraudulent.

(5) This rule does not preclude application of the anti-fraud provisions of Subsection 61-1-1(3) against anyone for practices similar in nature to the practices listed in Subsection (C).

(B) Definitions used in the rule.

(1) "Customer" means potential, current, or past clients.

(2) "Designated security" means any equity security other than a security

(2)(a) listed, or approved for listing upon notice of issuance, on a national securities exchange and makes transaction reports available as required under SEC Rule 11Aa3-1, Dissemination of transaction reports and last sale data with respect to transactions in reported securities, 17 CFR 240.11Aa3-1 (1992), which is adopted and incorporated by reference and available from the SEC;

(2)(b) listed, or approved for listing upon notice of issuance, on the NASDAQ system;

(2)(c) issued by an investment company registered under the Investment Company Act of 1940;

(2)(d) that is a put option or call option issued by The Options Clearing Corporation; or

(2)(e) whose issuer has net tangible assets in excess of $4,000,000 as demonstrated by financial statements, dated less than fifteen months previous to the date of the transaction with the person, that you have reviewed and have a reasonable basis to believe are true and complete, and

(2)(e)(i) in the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with SEC Rule 2-02, Accountant's reports, 17 CFR 210.2-02 (1992), which is adopted and incorporated by reference and available from the SEC; or

(2)(e)(ii) in the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the Commission; furnished to the Commission pursuant to SEC Rule 12g3-2(b), Exemptions for American depositary receipts and certain foreign securities, 17 CFR 240.12g3-2 (1992), which is adopted and incorporated by reference and available from the SEC; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

(3) "Exempt transactions" under subparagraph (C)(1)(h) means:

(3)(a) transactions in which the price of the designated security is five dollars or more, exclusive of costs or charges; provided, however, that if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be five dollars or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security must have an exercise price or conversion price of five dollars or more;

(3)(b) transactions that are not recommended by you or your agent;

(3)(c) transactions by you:

(3)(c)(i) where commissions, commission equivalents, and mark-ups from transactions in designated securities during each of the immediately preceding three months, and during eleven or more of the preceding twelve months, did not exceed five percent of your total commissions, commission-equivalents, and mark-ups from transactions in securities during those months; and

(3)(c)(ii) you have not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the immediately preceding twelve months.

(3)(d) transactions that, upon prior written request or upon its own motion, the Division conditionally or unconditionally exempts as not encompassed within this definition.

(4) "Division" means the Division of Securities, Utah Department of Commerce.

(5) "Market-maker" means a broker-dealer who, with respect to a particular security,

(5)(a) regularly publishes bona fide, competitive bid and ask quotations in a recognized inter-dealer quotation system, or

(5)(b) regularly furnishes bona fide competitive bid and offer quotations to other broker-dealers upon request; and

(5)(c) is ready, willing and able to effect transactions in reasonable quantities at his quoted price with other broker-dealers on a regular basis.

(6) "NASDAQ" means National Association of Securities Dealers Automatic Quotation System.

(7) "You" means broker-dealers, broker-dealer agents, or issuer-agents as applicable.

(C) Acts which will be deemed fraudulent.

(1) If you engage in any of the following acts you will be deemed to be violating the anti-fraud provisions of Subsection 61-1-1(3):

(1)(a) Effecting a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security.

(1)(b) Receiving an unreasonable commission or profit.

(1)(c) Contradicting or negating the importance of information contained in a prospectus or other offering materials with intent to deceive or mislead.

(1)(d) Using advertising or sales presentations in a deceptive or misleading manner.

(1)(e) Leading a customer to believe that you are in possession of material, non-public information which would impact on the value of a security whether or not you are in possession of the material non-public information.

(1)(f) Making contradictory recommendations to different customers of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstance of each customer.

(1)(g) Failing to make a bona fide public offering of all the securities allotted to you for distribution by, among other things,

(1)(g)(i) transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to you or your nominee, or;

(1)(g)(ii) parking or withholding securities.

(1)(h) in connection with the solicitation of a purchase of a designated security which is not an exempt transaction as defined above:

(1)(h)(i) failing to disclose to your customer the bid and ask price, at which you effect transactions with individual, retail

customers, of the designated security as well as its spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents.

(1)(h)(ii) failing to advise your customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to you, including commissions, sales charges, or concessions.

(1)(h)(iii) failing, to disclose, both at the time of solicitation and on the confirmation, your firm's short inventory position of more than 5%, or your firm's long inventory position of more than 10%, of the issued and outstanding shares of that class of securities of the issuer, if:

(1)(h)(iii)(aa) your firm is a market-maker at the time of the solicitation, and

(1)(h)(iii)(bb) the transaction is a principal transaction;

(1)(h)(iv) conducting or participating in sales contests in a particular designated security.

(1)(h)(v) failing to include with the confirmation, in a form satisfactory to the Division, a written explanation of the bid and ask price.

(1)(h)(vi) failing or refusing to execute sell orders from a customer from whom you or your firm solicited the purchase of the designated security in a principal transaction.

(1)(h)(vii) soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.

(1)(h)(viii) engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same designated security.

(1)(i) effecting transactions in, or inducing the purchase or sale of any security by means of any manipulative, deceptive or other fraudulent device or contrivance, including the use of boiler room tactics or use of fictitious or nominee accounts.

KEY: securities, securities regulation, fraud

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Notice of Continuation July 3, 2017	**61-1-3**
	61-1-24

R164. Commerce, Securities.
R164-4. Licensing Requirements.
R164-4-1. Broker-Dealer, Broker-Dealer Agent, and Issuer-Agent Licensing Requirements.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule sets forth the procedure and requirements to license as a broker-dealer, broker-dealer agent, or issuer-agent.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "CRD" means the Central Registration Depository.

(3) "FINRA" means the Financial Industry Regulatory Authority, formerly known as NASD.

(4) "NASAA" means the North American Securities Administrators Association, Inc.

(5) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-dealer licensing, post licensing, renewal, and withdrawal requirements

(1) License requirements

(1)(a) To license as a broker-dealer, applicant must be a member of FINRA and submit to the CRD the following:

(1)(a)(i) SEC Form BD - Uniform Application for Broker-Dealer Registration;

(1)(a)(ii) application for a license as an agent in Utah, as specified in paragraph (D), for each principal, officer, agent or employee who directly supervises, or will directly supervise, any licensed agent associated with applicant in Utah; and

(1)(a)(iii) a license fee as specified in the Division's fee schedule, and in the form of payment prescribed by the CRD.

(1)(b) A certificate of license will not be issued. Proof of status is available from the CRD.

(2) Post-licensing requirements

(2)(a) Applicant must file amendments to SEC Form BD with the CRD only.

(2)(b) Applicant must file SEC Form X-17A-5, FOCUS reports in a timely manner with FINRA. However, the Division may request applicant to provide a copy of the FOCUS Report.

(3) License renewal requirements

(3)(a) All licenses expire on December 31 of each year.

(3)(b) To renew a license, applicant must submit to the CRD the license fee specified in the Division's fee schedule before December 31.

(4) License or application withdrawal requirements

(4)(a) To withdraw a license or application, applicant must file with the CRD, or with the Division if not required by the CRD, SEC Form BDW - Uniform Request for Withdrawal from Registration as a Broker-Dealer.

(4)(b) A withdrawal is effective 30 days following receipt of SEC Form BDW, unless the Division notifies applicant otherwise.

(D) Broker-dealer agent licensing, renewal, and withdrawal requirements

(1) License requirements

(1)(a) To license as a broker-dealer agent, applicant or the sponsoring broker-dealer must submit to the CRD the following, in addition to any information required by FINRA, the CRD, or the SEC:

(1)(a)(i) FINRA Form U-4 - Uniform Application for Securities Industry Registration or Transfer;

(1)(a)(ii) proof that applicant passed the Series 63, Uniform Securities Agent State Law Examination (Series 63 Exam), or the Series 66, Uniform Combined State Law Examination (Series 66 Exam), which are administered by FINRA, and any other exams required by the SEC or FINRA; and

(1)(a)(iii) a license fee as specified in the Division's fee schedule, and in the form of payment prescribed by the CRD.

(1)(b) A certificate of license will not be issued. Proof of status is available from the CRD.

(2) License renewal requirements

(2)(a) All licenses expire on December 31 of each year.

(2)(b) To renew a license, applicant must submit to the CRD the license fee specified in the Division's fee schedule before December 31.

(3) License or application withdrawal requirements

(3)(a) To withdraw a license or application, applicant must file with the CRD, FINRA Form U-5 - Uniform Termination Notice for Securities Industry Registration.

(3)(b) A withdrawal is effective 30 days following receipt of FINRA Form U-5, unless the Division notifies applicant otherwise.

(4) Miscellaneous provisions

(4)(a) Except as provided in subparagraph (D)(4)(b), applicant may associate with only one broker-dealer at a time.

(4)(b) A dual license may be allowed by the director if:

(4)(b)(i) applicant requests a dual license in writing to the Division which identifies the broker-dealers with which applicant will associate and sets forth the reasons for the dual license;

(4)(b)(ii) both broker-dealers with which applicant intends to associate represent in writing to the Division that each assumes full responsibility for applicant at all times; and

(4)(b)(iii) applicant discloses the dual license to each client.

(E) Issuer-agent licensing, renewal, and withdrawal requirements

(1) License requirements

(1)(a) To license as an issuer-agent, applicant or the sponsoring issuer must submit to the Division the following:

(1)(a)(i) FINRA Form U-4 with original signatures;

(1)(a)(ii) proof that applicant passed the Series 63 Exam or the Series 66 Exam;

(1)(a)(iii) a license fee as prescribed in the Division's fee schedule; and

(1)(a)(iv) a surety bond if required by Section R164-11-1.

(2) License renewal requirements

(2)(a) All licenses expire on December 31 of each year.

(2)(b) To renew a license, applicant must submit to the Division the following before December 31 of each year:

(2)(b)(i) FINRA Form U-4 with original signatures; and

(2)(b)(ii) The license fee specified in the Division's fee schedule.

(3) License or application withdrawal requirements

(3)(a) To withdraw a license or application, applicant must file with the Division a written request for withdrawal or FINRA Form U-5.

(3)(b) A withdrawal is effective thirty days following receipt of the written request for withdrawal, unless the Division notifies applicant otherwise.

(4) Miscellaneous provisions

(4)(a) If applicant applies for a license two or more times in a twelve-month period, the Division deems applicant to be a broker-dealer. Applicant must then license as a broker-dealer.

R164-4-2. Investment Adviser and Investment Adviser Representative Licensing Requirements.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule sets forth the procedure and requirements to license as an investment adviser and investment adviser representative.

(B) Definitions

(1) "CRD" means the Central Registration Depository.

(2) "Designated Official" means a person that is a partner,

officer, director, sole proprietor, or a person occupying a similar status or performing similar functions in an investment adviser firm.

(3) "Division" means the Division of Securities, Utah Department of Commerce.

(4) "Fee" means any remuneration received, directly or indirectly, for investment advice given or investment advisory services rendered, including, among other things, charges for a publication which includes investment advice and commissions paid or received when securities are purchased or sold as a result of investment advice given or investment advisory services rendered. License fees referred to in this rule are not included.

(5) "IARD" means the Investment Adviser Registration Depository.

(6) "Investment advice" or "investment advisory services" means advice given or services rendered concerning the value of securities or as to the advisability of investing in, or purchasing or selling securities.

(7) "NASAA" means the North American Securities Administrators Association, Inc.

(8) "FINRA" means the Financial Industry Regulatory Authority, formerly known as NASD.

(9) "SEC" means the United States Securities and Exchange Commission.

(10) "SIPC" means the Securities Investor Protection Corporation.

(C) Investment adviser and investment adviser representative licensing requirements

(1) Investment adviser licensing requirements. To license as an investment adviser, applicant must submit the following:

(1)(a) To the IARD:

(1)(a)(i) SEC Form ADV - Uniform Application for Investment Adviser Registration, Parts 1 and 2, including applicant's audited balance sheet if required under item 18 of Form ADV Part 2; and

(1)(a)(ii) a license fee as specified in the Division's fee schedule. (This fee includes the fee for one designated official.)

(1)(b) To the CRD:

(1)(b)(i) FINRA Form U-4 - Uniform Application for Securities Industry Registration or Transfer for applicant's designated official; and

(1)(b)(ii) proof that applicant's designated official has passed the Series 65 or both the Series 66 Exam and Series 7 Exam.

(1)(c) To the Division:

(1)(c)(i) a notification:

(aa) identifying the applicant's designated official; and

(bb) indicating whether the applicant will have either custody of or discretionary authority over client funds or securities.

(1)(c)(ii) If the applicant will have custody of or discretionary authority over client funds or securities, the applicant must provide Division Form 4-5BIA - Indemnity Bond of Investment Adviser or documents containing the information provided on Division Form 4-5BIA, or, alternatively, proof of membership in SIPC.

(2) Investment Adviser Representative Licensing Requirements. To license as an investment adviser representative, the investment adviser or federal covered adviser with which the applicant will associate must submit the following:

(2)(a) To the CRD:

(2)(a)(i) FINRA Form U-4; and

(2)(a)(ii) proof applicant passed the Series 65 Exam or both the Series 66 Exam and Series 7 Exam.

(2)(b) To the IARD, a license fee as specified in the Division's fee schedule.

(3) Miscellaneous provisions

(3)(a) Except as provided in Subparagraph (C)(3)(b), applicant may associate with only one investment adviser or federal covered adviser at a time.

(3)(b) A dual license may be allowed by the director if:

(3)(b)(i) Applicant requests a dual license in writing to the Division which identifies the investment advisers or federal covered advisers with which applicant intends to associate and sets forth the reasons for the dual license;

(3)(b)(ii) Both investment advisers or federal covered advisers with which applicant intends to associate represent in writing to the Division that each assumes full responsibility for applicant at all times; and

(3)(b)(iii) Applicant discloses the dual license to each client.

(D) Investment adviser and associated investment adviser representative renewal requirements

(1) All licenses expire on December 31 of each year.

(2) To renew licenses of the investment adviser and associated investment adviser representatives, the investment adviser must submit the following:

(2)(a) To the IARD:

(2)(a)(i) SEC Form ADV - Uniform Application for Investment Adviser Registration, Parts 1 and 2, including applicant's audited balance sheet if required under item 18 of Form ADV Part 2;

(2)(a)(ii) a license fee for the investment adviser and a license fee for each associated investment adviser representative as specified in the Division's fee schedule (the license fee for the investment adviser includes the fee for one designated official).

(2)(b) To the CRD:

(2)(b)(i) FINRA Form U-4 - Uniform Application for Securities Industry Registration or Transfer for applicant's designated official and any investment adviser representatives.

(2)(c) To the Division:

(2)(c)(i) Division Form 4-5BIA, Indemnity Bond of Investment Adviser, if required by Section R164-4-5; and

(2)(c)(ii) the investment adviser's most recently audited balance sheet, if the investment adviser requires payment of advisory fees six months or more in advance and in excess of $1,200 per client, or if the investment adviser has custody or possession of clients' funds or securities.

(E) Investment adviser representatives of federal covered advisers

(1) All licenses expire on December 31 of each year.

(2) To renew licenses of the investment adviser representatives of a federal covered adviser, the federal covered adviser must submit to the IARD before December 31, a license fee for each investment adviser representative as specified in the Division's fee schedule.

(F) Investment adviser and investment adviser representative withdrawal requirements

(1) Investment adviser withdrawal requirements

(1)(a) To withdraw a license or application, applicant must file with the IARD, SEC Form ADV-W - Notice of Withdrawal from Registration as Investment Adviser.

(1)(b) A withdrawal is effective thirty days following receipt of SEC Form ADV-W, unless the Division notifies applicant otherwise.

(2) Investment adviser representative withdrawal requirements

(2)(a) To withdraw a license or application, applicant must file with the CRD, a completed FINRA Form U-5.

(2)(b) A withdrawal is effective thirty days following receipt of applicant's FINRA Form U-5, unless the Division notifies applicant otherwise.

(G) Acts or practices which require licensing as an investment adviser and compliance with statutes and rules pertaining thereto

(1) Lawyers, accountants, engineers or teachers

(1)(a) A lawyer, accountant, engineer or teacher

(professional) must be licensed as an investment adviser or investment adviser representative if the professional provides investment advice or investment advisory services to the professional's clients for a fee, if the advice is not "solely incidental" to the professional's regular professional practice with respect to clients.

(1)(b) For purposes of this subparagraph (1), providing investment advice under ANY of the following circumstances would NOT be considered to be "solely incidental":

(1)(b)(i) The investment advice the professional or the investment advisory service the professional renders clients is the primary professional advice for which the professional charges or is paid a fee;

(1)(b)(ii) The professional advertises or otherwise holds himself out to the public as a provider of investment advice; or

(1)(b)(iii) The professional holds funds for clients pursuant to discretionary authority to invest such funds.

(1)(c) Following are examples to assist in understanding the meaning of "solely incidental":

(1)(c)(i) If the primary professional advice for which the professional receives a fee involves business or tax planning and the professional neither advertises or otherwise holds himself out as a provider of investment advice, nor holds funds which the professional invests for clients. The professional may also provide investment advice to clients in connection with the planning or other professional services, without being required to become licensed as an investment adviser.

(1)(c)(ii) If the professional advertises or otherwise holds himself out as a provider of investment advice, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

(1)(c)(iii) If the professional holds client funds which the professional invests for the client, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

(2) Broker-dealers and broker-dealer agents

(2)(a) A broker-dealer or broker-dealer agent must be licensed as an investment adviser or investment adviser representative if for a fee, the securities broker-dealer or sales agent of the securities broker-dealer provides investment advice to clients if the investment advice is not "solely incidental" to the conduct of business as a broker-dealer or broker-dealer agent.

(2)(b) For purposes of this subparagraph, providing investment advice under ANY of the following circumstances would NOT be considered "solely incidental":

(2)(b)(i) Providing investment advice to a client for a fee in addition to any commission received in connection with transactions in which the client either purchases or sells securities;

(2)(b)(ii) Providing investment advice, for a fee, to clients who are not clients of the broker-dealer with which the agent is licensed; or

(2)(b)(iii) Receiving compensation from an investment adviser to whom the broker-dealer or agent refers clients.

(3) Insurance agents

(3)(a) An insurance agent who, for a fee, provides investment advice to a client, must be licensed as an investment adviser or investment adviser representative.

(3)(b) An insurance agent who, performs an analysis of a client's estate, for a fee, which recommends that the client purchases or sells either specific securities or specific types of securities must be licensed as an investment adviser or investment adviser representative.

(3)(c) An insurance agent who, receives a commission from the sale of insurance to a client who makes such purchase with the proceeds of securities the insurance agent recommended be sold, must be licensed as an investment adviser or investment adviser representative.

(4) Others

(4)(a) One must be licensed as an investment adviser or investment adviser representative, as appropriate, whether or not described in subparagraphs (1), (2), or (3) of paragraph (G) if:

(4)(a)(i) Advertising, or otherwise holding oneself out as a provider of investment advice;

(4)(a)(ii) Publishing a newspaper, news column, news letter, news magazine, or business or financial publication, which, for a fee, gives investment advice based upon the specific investment situations of the clients; or

(4)(a)(iii) Receiving a fee from an investment adviser for client referrals.

R164-4-3. General Licensing Requirements.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule applies to the licensing of broker-dealers, broker-dealer agents, issuer-agents, investment advisers, and investment adviser representatives.

(B) Definitions

(1) "CRD" means the Central Registration Depository operated by FINRA.

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

(3) "IARD" means the Investment Adviser Registration Depository operated by FINRA.

(4) "NASAA" means the North American Securities Administrators Association, Inc.

(5) "FINRA" means the Financial Industry Regulatory Authority, formerly known as NASD.

(6) "SEC" means the United States Securities and Exchange Commission.

(7) "Termination" means the date on which FINRA processes FINRA Form U-5 - Uniform Termination Notice for Securities Industry Registration.

(C) Examination requirements

(1) A broker-dealer agent must pass the Series 63, Uniform Securities Agent State Law Examination (Series 63 Exam) or the Series 66, Uniform Combined State Law Examination (Series 66 Exam). If the broker-dealer agent's most recent license terminated two or more years before the date of receipt by the Division of a new application, the agent will be required to retake the examination.

(2) An issuer-agent must pass the Series 63 Exam or the Series 66 Exam. If the issuer-agent's most recent license terminated two or more years before the date of receipt by the Division of a new application, the agent will be required to retake the examination.

(3) Investment advisers and investment adviser representatives

(3)(a) Examination requirements. An individual applying to be licensed as an investment adviser or investment adviser representative shall provide the Division with proof of obtaining a passing score on one of the following examinations:

(3)(a)(i) Series 65, Uniform Investment Adviser Law Examination (Series 65 Exam); or

(3)(a)(ii) Series 7, General Securities Representative Examination (Series 7 Exam) and Series 66 Exam.

(3)(b) If an investment adviser or investment adviser representative has not been licensed in any jurisdiction for a period of two (2) years, the investment adviser or investment adviser representative will be required to retake the examination.

(3)(c) Waivers. The investment adviser or investment adviser representative may request a waiver of the examination requirement if such individual currently holds one of the following professional designations:

(3)(c)(i) Certified Financial Planner (CFP) awarded by the

Certified Financial Planner Board of Standards, Inc.;

(3)(c)(ii) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

(3)(c)(iii) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(3)(c)(iv) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;

(3)(c)(v) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or

(3)(c)(vi) Such other professional designation as the Division may recognize by order.

(D) Electronic Filing

(1) The Division designates and authorizes the web-based CRD to receive and store filings and collect related fees on behalf of the Division whenever this rule requires filings to be submitted to the CRD.

(2) The Division designates and authorizes the web-based IARD to receive and store filings and collect related fees on behalf of the Division whenever this rule requires filings to be submitted to the IARD.

(3) Unless otherwise provided, all broker-dealer, agent, investment adviser, and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Division pursuant to this rule, shall be filed electronically with and transmitted to either the CRD or the IARD as designated in this rule. The following additional conditions relate to such electronic filings:

(3)(a) When a signature or signatures are required by the particular instruction of any filing to be made through the CRD or the IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to the CRD or the IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

(3)(b) Solely for purposes of a filing made through the CRD or the IARD, a document is considered filed with the Division when all fees are received and the filing is accepted by the CRD or the IARD on behalf of the state.

(4) Notwithstanding Subparagraph (D)(3), the electronic filing of any particular document shall not be required until such time as the CRD or the IARD provides for receipt of such filings. Any documents required to be filed with the Division, the CRD or the IARD that are not permitted to be filed with or cannot be accepted by the CRD or the IARD shall be filed directly with the Division in either a paper format or as an attachment to an email to the Division in a format that can be viewed by the Division.

(5) This Subparagraph provides two "hardship exemptions" from the requirements to make electronic filings as required by this rule.

(5)(a) Temporary Hardship Exemption.

(5)(a)(i) Investment advisers licensed or required to be licensed under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to the IARD may request a temporary hardship exemption from the requirements to file electronically.

(5)(a)(ii) To request a temporary hardship exemption, the investment adviser must:

(5)(a)(ii)(aa) File Form ADV-H in paper format with the state securities agency where the investment adviser's principal place of business is located, no later than one business day after the filing that is the subject of the Form ADV-H was due; and

(5)(a)(ii)(bb) Submit the filing that is the subject of the Form ADV-H in electronic format to the IARD no later than seven business days after the filing was due.

(5)(a)(iii) The temporary hardship exemption will be deemed effective upon receipt by the Division of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the Division.

(5)(b) Continuing Hardship Exemption.

(5)(b)(i) A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome.

(5)(b)(ii) To apply for a continuing hardship exemption, the investment adviser must:

(5)(b)(ii)(aa) File Form ADV-H in paper format with the Division at least twenty business days before a filing is due; and

(5)(b)(ii)(bb) If a filing is due to more than one state securities agency, the Form ADV-H must be filed with the state securities agency where the investment adviser's principal place of business is located. The state securities agency who receives the application will grant or deny the application within ten business days after the filing of Form ADV-H.

(5)(b)(iii) The exemption is effective upon approval by the Division. The time period of the exemption may be no longer than one year after the date on which the Form ADV-H is filed. If the Division approves the application, the investment adviser must, no later than five business days after the exemption approval date, submit filings to the Division in paper format along with the appropriate processing fees for the period of time for which the exemption is granted.

(5)(c) The decision to grant or deny a request for a hardship exemption will be made by the state securities agency where the investment adviser's principal place of business is located, which decision will be followed by the state securities agency in the other state(s) where the investment adviser is licensed.

(E) Correcting amendments

(1) At a time when a material change occurs:

(1)(a) a broker-dealer must promptly file amendments to SEC Form BD - Uniform Application for Broker-Dealer Registration with the CRD;

(1)(b) a broker-dealer agent must promptly file amendments to FINRA Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the CRD;

(1)(c) an issuer-agent must promptly file amendments to FINRA Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the Division;

(1)(d) an investment adviser must promptly file amendments to SEC Form ADV - Uniform Application for Investment Adviser Registration with the IARD;

(1)(e) an investment adviser representative must promptly file amendments to FINRA Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the CRD; and

(1)(f) a federal covered adviser must promptly file amendments to SEC Form ADV - Uniform Application for Investment Adviser Registration with the IARD.

(2) Amendments should be filed in accordance with the instructions on the respective forms.

(F) Service of process

(1) The requirement in Subsection 61-1-4(1) that requires filing a consent to service of process may be fulfilled by execution of SEC Form BD, FINRA Form U-4, or SEC Form ADV, as applicable.

(G) License transfer

(1) A broker-dealer or broker-dealer agent may transfer a license by following CRD procedures. The Division recognizes and participates in the NASAA/CRD Temporary Agent Transfer ("TAT") program and will honor transfers effected through TAT procedures.

R164-4-4. Minimum Financial Requirements and Financial Reporting Requirements of Licensed Broker-Dealers and Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule provides the minimum financial requirements and financial reporting requirements for broker-dealers and investment advisers.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

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

(3) "Net worth" means an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; home, home furnishing, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(4) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-Dealer - Minimum Financial Requirements

(1) Each broker-dealer licensed or required to be licensed under the Act shall comply with SEC Rules 15c3-1 (17 CFR 240.15c3-1(1996)), 15c3-2 (17 CFR 240.15c3-2(1996)), and 15c3-3 (17 CFR 240.15c3-3(1996)), which are adopted and incorporated by reference.

(2) Each broker-dealer licensed or required to be licensed under the Act shall comply with SEC Rule 17a-11 (17 CFR 240.17a-11(1996)) and shall file with the Division upon request copies of notices and reports required under SEC Rules 17a-5 (17 CFR 240.17a-5(1996)), 17a-10 (17 CFR 240.17a-10(1996)), and 17a-11 (17 CFR 240.17a-11(1996)), which are adopted and incorporated by reference.

(3) To the extent the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended SEC rule.

(D) Investment Adviser - Minimum Financial Requirements

(1) Except as provided in subparagraph (D)(4), unless an investment adviser posts a bond pursuant to Section R164-4-5 or is not required to post a bond under Section R164-4-5(F)(2)(a), an investment adviser licensed or required to be licensed under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of $35,000, and every investment adviser licensed or required to be licensed under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of $10,000.

(2) An investment adviser registered or required to be registered who accepts prepayment of more than $1,200 per client and six or more months in advance shall maintain at all times a positive net worth.

(3) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser licensed or required to be licensed under the Act shall by the close of business on the next business day notify the Division if such investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the Division of its financial condition, including the following:

(3)(a) A trial balance of all ledger accounts;

(3)(b) A statement of all client funds or securities which are not segregated;

(3)(c) A computation of the aggregate amount of client ledger debit balances; and

(3)(d) A statement as to the number of client accounts.

(4) The Division may require that a current appraisal be submitted in order to establish the worth of any asset.

(5) Every investment adviser that has its principal place of business in a state other than this state shall maintain such minimum capital as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

R164-4-5. Bonding Requirements for Broker-Dealers, Broker-Dealer Agents, Issuer-Agents, and Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4 and 61-1-24.

(2) This rule sets the surety-bond requirements for broker-dealers, broker-dealer agents, issuer-agents, and investment advisers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "SEC" means the United States Securities and Exchange Commission.

(3) "SIPC" means the Securities Investor Protection Corporation.

(C) Bonding requirements for broker-dealers

(1) A broker-dealer who is a member of SIPC and is not excluded from membership assessments need not provide a bond.

(2) Every broker-dealer licensed or required to be licensed under this Act whose business is exclusively intrastate, who does not make use of any facility of a national securities exchange and who is not registered under section 15 of the Securities Exchange Act of 1934, shall be bonded in an amount of not less than $100,000 by a bonding company qualified to do business in this state.

(D) Bonding requirements for broker-dealer agents

(1) A broker-dealer agent need not provide a bond.

(E) Bonding requirements for issuer-agents

(1) An issuer-agent need not provide a bond unless otherwise required by Section R164-11-1.

(2) If an issuer-agent must provide a bond, it must be:

(2)(a) issued by a corporate bonding company qualified to do business in Utah;

(2)(b) on or in substantially the same form as Division Form 4-5BI, "Corporate Indemnity Bond of Issuer"; and

(2)(c) be in the amount of $25,000.

(3) Upon written request the Division may waive the bond requirement and accept instead the escrow of funds.

(3)(a) The issuer or issuer-agent must place in escrow at least $25,000.

(3)(b) The issuer or issuer-agent may place the money in escrow at any federal or state bank or savings institution, only.

(3)(c) The term of the escrow must extend for a period terminating no earlier than four years after expiration of the issuer's registration statement.

(3)(d) The escrow must be on or in substantially the same form as Division Form 4-5EIA, "Escrow Agreement", which is available from the Division.

(3)(e) The funds in escrow may be released only by an order of the Division, in accordance with the following:

(3)(e)(i) If claims have been made against the issuer-agent

in a court of competent jurisdiction and the court has finally adjudicated the dispute, or the claimant and the issuer-agent have agreed in writing to resolve the dispute, the amount of funds at issue may be ordered released by the Division in accordance with the order or agreement, up to the amount placed in escrow; or

(3)(e)(ii) The issuer's registration statement expired not less than four (4) years ago.

(F) Bonding requirements for certain investment advisers

(1) Except as provided in subparagraphs (F)(2) and (3), every investment adviser having custody of or discretionary authority over client funds or securities shall be bonded:

(1)(a) in an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser, which shall be at a minimum of $10,000;

(1)(b) issued by a bonding company qualified to do business in this state;

(1)(c) on or in substantially the same form as Division Form 4-5BIA, Corporate Indemnity Bond of Investment Adviser.

(2) The requirements of subparagraph (F)(1) shall not apply to those applicants or licensees who:

(2)(a) have custody solely as a consequence of the adviser's authority to withdraw advisory fees from client accounts; or

(2)(b) comply with the requirements of Section R164-4-4.

(3) An investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subparagraph (F)(1), provided that the investment adviser is licensed as in investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding.

(4) Upon request and for good cause shown, the Division may waive the bond requirement and accept instead the escrow of funds.

(4)(a) The investment adviser must place in escrow an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser, which shall be at a minimum of $10,000.

(4)(b) The investment adviser may place the money in escrow at any federal or state bank or savings institution, only.

(4)(c) The term of the escrow must extend for a period terminating no earlier than three years after expiration of the investment adviser's license.

(4)(d) The escrow must be on, or in substantially the same form as, Division Form 4-5EIA, Escrow Agreement.

(4)(e) The funds in escrow may be released only by an order of the Division, in accordance with the following:

(4)(e)(i) Where claims have been made against the investment adviser in a court of competent jurisdiction and the court has finally adjudicated the dispute, or the claimant and the investment adviser have agreed in writing to resolve the dispute, the amount of funds at issue may be ordered released by the Division in accordance with the order or agreement, up to the amount placed in escrow; or

(4)(e)(ii) The investment adviser has not been licensed by the Division for a period of at least four years.

R164-4-6. Notice Filing Requirements for Federal Covered Advisers.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4 and 61-1-24.

(2) This rule provides the notice filing requirements for federal covered advisers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "SEC" means the United States Securities and Exchange Commission.

(C) Notice Filings

Federal covered advisers required to file notice filings pursuant to Subsection 61-1-4(2), must file with IARD the following:

(1) an executed SEC Form ADV - Uniform Application for Investment Adviser Registration; and

(2) a filing fee as specified in the Division's fee schedule.

(D) Notice filing renewals

(1) All notice filings expire on December 31 of each year.

(2) To renew notice filings, a federal covered adviser must submit the following to IARD before December 31:

(2)(a) a copy of the federal covered adviser's most recent SEC Form ADV; and

(2)(b) a filing fee as specified in the Division's fee schedule.

R164-4-7. Broker-dealers, Investment Advisers and Other Securities Personnel Using the Internet for General Dissemination of Information on Products and Services.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-13 and 61-1-24.

(2) This rule clarifies when broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives are transacting business in this state for purposes of Section 61-1-4 by distributing information on available products and services through Internet Communications available to persons in this state.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Internet" means the global information system comprised of independent computer networks which are interconnected and share information without the use of a central processing center by use of the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, to include without limitation, the World Wide Web, proprietary or "common carrier" electronic delivery systems, or similar medium.

(3) "Internet Communications" means a communication made on the Internet which is directed generally to anyone who has access to the Internet, including persons in Utah, to include without limitation, postings on Bulletin Boards, displays on "Home Pages" or similar methods.

(C) Licensing Exclusion

Broker-dealers, investment advisers, broker-dealer agents ("BD agents") and investment adviser representatives ("IA reps") who use the Internet to distribute information on available products and services through Internet Communications shall not be deemed to be "transacting business" in this state for purposes of Subsections 61-1-3(1) and 61-1-3(3) based solely on that fact if the following conditions are observed:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(1)(a) the broker-dealer, investment adviser, BD agent or IA rep in question may only transact business in this state if first licensed, excluded or exempted from state broker-dealer, investment adviser, BD agent or IA rep licensing requirements, as may be; and

(1)(b) follow-up, individualized responses to persons in this state by such broker-dealer, investment adviser, BD agent or IA rep that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, will not be made absent compliance with state broker-dealer, investment adviser, BD agent or IA rep licensing requirements, or an applicable exemption or exclusion;

(2) The Internet Communication contains a mechanism,

including and without limitation, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, said broker-dealer, investment adviser, BD agent or IA rep is first licensed in this state or qualifies for an exemption or exclusion from such requirement. Nothing in this subparagraph shall be construed to relieve a state licensed broker-dealer, investment adviser, BD agent or IA rep from any applicable securities registration requirement in this state;

(3) The Internet Communication does not involve either effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, in this state over the Internet, but is limited to the dissemination of general information on products and services; and

(4) In the case of a BD agent or IA rep:

(4)(a) the affiliation with the broker-dealer or investment adviser of the BD agent or IA rep is prominently disclosed within the Internet Communication;

(4)(b) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated retains responsibility for reviewing and approving the content of any Internet Communication by a BD agent or IA rep;

(4)(c) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated first authorizes the distribution of information on the particular products and services through the Internet Communication; and

(4)(d) in disseminating information through the Internet Communication, the BD agent or IA rep acts within the scope of the authority granted by the broker-dealer or investment adviser.

(D) Limitations of Exclusion

(1) The exclusion provided in paragraph (C) extends to state broker-dealer, investment adviser, BD agent and IA rep licensing requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions.

(2) Nothing in this exclusion shall be construed to affect the activities of any broker-dealer, investment adviser, BD agent and IA rep engaged in business in this state that is not subject to the jurisdiction of the Division as a result of the National Securities Markets Improvements Act of 1996, as amended.

R164-4-8. Exclusion for Certain Canadian Brokers and Securities Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsections 61-1-13(3)(i) and 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exclusion from the definition of "Broker-dealer" for certain Canadian brokers and provides an exemption for transactions effectuated by these certain Canadian brokers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Broker-Dealer Exclusion

"Broker-dealer" as defined in Section 61-1-13(3) excludes a person who is resident in Canada, has no office or other physical presence in this state, and complies with the following conditions:

(1) Only effects or attempts to effect transactions in securities:

(1)(a) with or through the issuers of the securities involved in the transactions, broker-dealers, banks, saving institutions, trust companies, insurance companies, investment companies defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

(1)(b) with or for a person from Canada who is temporarily present in this state, with whom the Canadian person had a bona fide business-client relationship before the person entered this state; or

(1)(c) with or for a person from Canada who is in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor;

(2) files a notice in the form of his current application required by the jurisdiction in which their head office is located and a consent to service of process;

(3) is a member of a self-regulatory organization or stock exchange in Canada;

(4) Maintains his provincial or territorial registration and his membership in a self-regulatory organization or stock exchange in good standing;

(5) Discloses to his clients in this state that he is not subject to the full regulatory requirements of the Utah Uniform Securities Act; and

(6) Is not in violation of Section 61-1-1 and all rules promulgated thereunder.

(D) Transactional Securities Exemption

The Division finds that registration is not necessary or appropriate for the protection of investors in connection with an offer or sale of a security in a transaction effected by a person excluded from the definition of broker-dealer under Paragraph (C)

R164-4-9. Exemptions From Licensing Requirements for Investment Advisers Providing Advice to Certain Institutional Investors.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-3 and 61-1-24.

(2) This rule provides exemptions from the licensing requirements of the Act for investment advisers and investment adviser representatives who meet specified criteria.

(B) Definitions

(1) "Act" means the Utah Uniform Securities Act, Utah Code Ann. Section 61-1-1 et seq.

(2) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

(3)(a) "High net worth family entity" means a corporation, limited partnership, limited liability company, or other entity, with all of its owners, partners, or members belonging to a single family who are all related by blood, adoption or marriage; with a combined net worth of not less than $10 million; and with ownership by an individual family member being direct or indirect pursuant to a trust or other similar arrangement where the investment is made by or on behalf of, or for the benefit of, the individual.

(3)(b) An individual does not constitute a "high net worth family entity" for purposes of this rule regardless of the net worth of the individual.

(4) "Private fund" means an entity that:

(4)(a) would be subject to regulation under the federal Investment Company Act of 1940 but for the exceptions from the definition of "investment company" provided for:

(4)(a)(i) a fund that has no more than 100 beneficial owners and which is not making and does not presently propose to make a public offering of its securities, or

(4)(a)(ii) a fund that is owned exclusively by qualified purchasers, as defined in subsection (5) below, and which is not making and does not presently propose to make a public offering of its securities; and

(4)(b) offers interests in the entity based on the investment advisory skills, ability or expertise of the investment adviser.

(5) "Qualified purchaser" has the same meaning as defined in the Investment Company Act of 1940 Sec. 2(a)(51).

(C) Exemption for Investment Advice to Certain Institutional Investors

(1) For purposes of Subsection 61-1-3(3)(b)(ii), an investment adviser or investment adviser representative is exempt from the licensing requirements of the Act if the investment adviser or investment adviser representative renders investment advisory services only to the following institutional investors:

(1)(a) a non-individual "accredited investor" (as that term is defined in Rule 501(a)(1)-(3), (7), and any entity in which all of the equity owners are persons defined in Rule 501(a)(1)-(3) and (7), promulgated by the Securities and Exchange Commission (SEC) under the Securities Act of 1933 (1933 Act), as amended;

(1)(b) a "qualified institutional buyer" (as that term is defined in Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as amended; or

(1)(c) a corporation, partnership, trust, estate, or other entity (excluding individuals) having net worth of not less than $10 million, or a wholly-owned subsidiary of such entity.

(2) The exemption from investment adviser and investment adviser representative licensing provided by this Subsection (C) is not available if the institutional investor is in fact acting only as agent for another purchaser that is not an institutional investor listed in Subsection 61-1-3(3)(b) or Subsection (C)(1) of this rule. The exemption from licensure is available only if the institutional investor is acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the investment advisory services for which the investment adviser or investment adviser representative is claiming the exemption.

(D) Exemption for Investment Advice to Certain Private Funds

(1) For purposes of Subsection 61-1-3(3)(b)(ii), an investment adviser or investment adviser representative is exempt from the licensing requirements of the Act if the investment adviser or investment adviser representative renders investment advisory services only to a private fund that regularly makes equity investments in companies, if:

(1)(a) the private fund does not grant investors the right or power to redeem their interests in the fund within two years of purchase;

(1)(b) at the time of investment, at least 80% of the fair market value of the investments made by the private fund possess all of the following characteristics:

(1)(b)(i) the private fund, either alone or with other similarly situated private funds, has control of the target company;

(1)(b)(ii) the private fund, either alone or with other similarly situated private funds, has access to material business, financial and other corporate records of the target company without being required to resort to statutory stockholder or other equity owner records access provisions;

(1)(b)(iii) the private fund, either alone or with other similarly situated private funds, has the right to elect one or more directors to the target company's board of directors or equivalent governing management body, either at the outset or on the occurrence or non-occurrence of specified events; and

(1)(b)(iv) at the time of the investment, the securities representing the private fund's equity stake or into which such securities may be converted have not been listed on an exchange and are of a highly illiquid nature such that no significant secondary market exists for the securities; and

(1)(c) at the time of investment, at least 80% of the fair market value of the investments made by the private fund possess at least two of the following four characteristics:

(1)(c)(i) the private fund's interest in the target company includes a common, preferred, convertible or other direct or indirect equity stake;

(1)(c)(ii) the private fund, either alone or with other similarly situated private funds, has the right, at the target company's expense, to have its equity interest in the target registered for sale in a future public offering or otherwise redeemed upon the occurrence of given event or contingency or to otherwise obtain liquidity for the private fund's investment;

(1)(c)(iii) the private fund, either alone or with other similarly situated private funds, has:

(1)(c)(iii)(A) co-sale rights that allow the private fund to sell its equity in the target company on the same terms as holders of a majority of the equity interests of such target;

(1)(c)(iii)(B) liquidation preferences with priority to holders of common equity; or

(1)(c)(iii)(C) redemption rights to require the target company to repurchase or redeem the private fund's equity interest at a price constituting a preference to that of the common equity holders; and

(1)(c)(iv) the private fund, either alone or with other similarly situated private funds, has:

(1)(c)(iv)(A) anti-dilution rights materially limiting the power of the target company to issue new equity securities on terms that dilute the equity interest of the private fund without adjusting the investment rights of the private equity fund;

(1)(c)(iv)(B) rights of first offer or participation enabling the private fund to acquire its pro rata share of any newly issued equity securities;

(1)(c)(iv)(C) rights to materially preclude the target company from issuing equity without first obtaining consent of the private fund either as an equity holder or through the private fund's designee(s) on the target company's board of directors or equivalent governing management body; or

(1)(c)(iv)(D) other rights superior to the rights of holders of common equity relating to cause or block an event or transaction that would provide full or partial liquidity to the private fund.

(E) Exemptions for Investment Advice to Certain High Net Worth Family Entities

(1) For purposes of Subsection 61-1-3(3)(b)(ii), an investment adviser or investment adviser representative is exempt from the licensing requirements of the Act if the investment adviser or investment adviser representative:

(1)(a) renders investment advisory services to a high net worth family entity or related family entities, and

(1)(b) does not render investment advisory services to any other entities or individuals, other than those described in Subsections (C) and (D) above.

(F) Determination of Net Worth

(1) For purposes of determining the net worth of an institutional investor or high net worth family entity under this rule, an investment adviser or investment adviser representative may rely upon the entity's most recent annual balance sheet or other financial statement which shall have been audited by an independent accountant or which shall have been verified by a principal of the entity.

(G) Prohibition on Advertising and Touting

(1) The exemptions from the licensing requirements of the Act provided by this rule are not applicable if the investment adviser or investment adviser representative advertises its services or holds itself out to the public as a provider of investment advice, including:

(1)(a) advertising, touting, or providing testimonials of the performance, experience or expertise of the investment adviser or investment adviser representative;

(1)(b) making general solicitations for investment; or

(1)(c) paying a fee to any person for referrals or solicitations unless that person is a licensed investment adviser representative, issuer agent or broker-dealer agent in the

jurisdiction in which such activities occur.

(H) Advisory Services to Entity versus Owners of the Entity

(1) For purposes of this rule only, an investment adviser or investment adviser representative that is providing investment advisory services to a corporation, general partnership, limited partnership, limited liability company, trust or other legal entity, other than a private fund, is not providing investment advisory services to a shareholder, general partner, member, other security holder, beneficiary or other beneficial owner of the legal entity unless the investment adviser provides investment advisory services to such owner separate and apart from the investment advisory services provided to the legal entity.

(I) No Licensing Exemption for Advisory Services to Natural Persons

(1) There is no licensing exemption under this rule for an investment adviser or investment adviser representative providing investment advisory services to a natural person.

(2) Except as provided in Subsections (D) and (E), there is no licensing exemption under this rule for an investment adviser or investment adviser representative providing investment advisory services to a private fund, such as a hedge fund, that is composed partially or entirely of natural persons.

KEY: securities, securities regulation, investment advisers, securities licensing requirements

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61-1-24

R164. Commerce, Securities.
R164-5. Broker-Dealer and Investment Adviser Books and Records.
R164-5-1. Recordkeeping Requirements of Broker-Dealers and Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-5 and 61-1-24.

(2) This rule specifies the books and records a broker-dealer and an investment adviser must maintain.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

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

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-dealer requirements

(1) Unless otherwise provided by order of the SEC, each broker-dealer licensed or required to be licensed under this Act shall make, maintain and preserve books and records in compliance with SEC Rules 17a-3 (17 CFR 240.17a-3(1996)), 17a-4 (17 CFR 240.17a-4(1996)), 15c2-6 (17 CFR 240.15c2-6(1991)) and 15c2-11 (17 CFR 240.15c2-11(1996)), which are adopted and incorporated by reference.

(2) To the extent that the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

(D) Investment adviser requirements

(1) Except as provided in subparagraph (D)(3), unless otherwise provided by order of the SEC, each investment adviser licensed or required to be licensed under the Act shall make, maintain and preserve books and records in compliance with SEC Rule 204-2 (17 CFR 275.204-2(August 12, 2010)), which is adopted and incorporated by reference, notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940.

(2) To the extent that the SEC promulgates changes to the above-referenced rules, investment advisers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this rule to the extent that the violation results solely from the investment adviser's compliance with the amended rule.

(3) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subparagraph (D), provided the investment adviser is licensed or registered in such state and is in compliance with such state's record keeping requirements.

R164-5-3. Financial Reporting of Broker-Dealers and Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-5 and 61-1-24.

(2) This rule specifies the annual financial reports required of a broker-dealer and an investment adviser.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Broker-Dealer required financial statements

(1) Upon request, each broker-dealer must file with the Division audited financial statements as of the end of its fiscal year. The statements must meet the requirements of Paragraph (E).

(D) Investment Adviser required financial statements

(1) Except as provided in subparagraph (D)(2), each investment adviser who has custody or possession of client funds or securities or requires payment of advisory fees six months or more in advance and in excess of $1,200 per client shall file with the Division audited financial statements as of the end of the investment adviser's fiscal year. The statements must meet the requirements of Paragraph (E).

(2) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subparagraph (D), provided the investment adviser is licensed or registered in such state, is in compliance with such state's financial reporting requirements, and annually files with the Division a copy of any financial reports filed with such state.

(E) Financial statement requirements

The financial statements filed pursuant to this rule must:

(1) include a balance sheet, a statement of income or operations, a statement of shareholder equity, and a statement of cash flows, accompanied by appropriate notes stating the accounting principles and practices followed in their preparation, the basis at which securities are included and other notes as may be necessary for an understanding of the statements.

(2) be prepared in accordance with generally accepted accounting principles.

(3) be audited by an independent certified public accountant. The audit must:

(a) be made in accordance with generally accepted auditing standards;

(b) include a review of the accounting system, the internal accounting controls and procedures for the safeguarding of securities and funds including appropriate tests thereof since the prior examination.

(4) be accompanied by an unqualified opinion of the auditor as to the report of financial condition. In addition, the auditor shall submit as a supplementary opinion any comments, based upon the audit, as to any material inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities and funds, and shall indicate any corrective action taken or proposed.

(5) The financial statements shall be filed with the Division within 120 days following the end of the investment adviser's fiscal year.

KEY: securities, securities regulation, recordkeeping, financial requirements
November 22, 2010 61-1-5
Notice of Continuation July 3, 2017 61-1-24

R164. Commerce, Securities.
R164-6. Denial, Suspension or Revocation of a License.
R164-6-1g. Dishonest or Unethical Business Practices.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-6 and 61-1-24.

(2) This rule identifies certain acts and practices which the Division deems to constitute dishonest or unethical practices in the securities business under Subsection 61-1-6(2)(a)(ii)(G). The list contained herein should not be considered to be all-inclusive of such acts and practices, but rather is intended to act as a guide to broker-dealers, agents, investment advisers, federal covered advisers and investment adviser representatives as to the types of conduct which may result in sanctions under Subsection 61-1-6(2)(a)(ii)(G).

(3) Conduct which violates Section 61-1-1 may also be considered to constitute dishonest or unethical practices under Subsection 61-1-6(2)(a)(ii)(G).

(4) This rule is patterned after well-established standards in the industry which have been adopted by the SEC, FINRA, NASAA, the national securities exchanges and various courts. It represents one of the purposes of the securities laws: to create viable securities markets in which those persons involved are held to a high standard of fairness with respect to their dealings with the public.

(5) The provisions of this rule apply to federal covered advisers to the extent that the conduct alleged is fraudulent or deceptive, or to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

(6) The federal statutory and regulatory provisions referenced in Paragraph (E) shall apply to investment advisers, federal covered advisers, and investment adviser representatives regardless of whether the federal provision limits its application to advisers subject to federal registration.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Market maker" means a broker-dealer who, with respect to a particular security:

(a) regularly publishes bona fide, competitive bid and ask quotations in a recognized inter-dealer quotation system, or

(b) regularly furnishes bona fide competitive bid and offer quotations to other broker-dealers upon request; and

(c) is ready, willing and able to effect transactions in reasonable quantities at his quoted price with other broker-dealers on a regular basis.

(3) "NASAA" means the North American Securities Administrators Association, Inc.

(4) "FINRA" means the Financial Industry Regulatory Authority, formerly known as NASD.

(5) "NASDAQ" means National Association of Securities Dealers Automated Quotation System.

(6) "OTC" means over-the-counter.

(7) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-Dealers

In relation to Broker-Dealers, as used in Subsection 61-1-6(2)(a)(ii)(G) "dishonest or unethical practices" shall include:

(1) engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment, upon request, of free credit balances reflecting completed transactions of any of its customers, or both;

(2) inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(3) recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(4) executing a transaction on behalf of a customer without prior authorization to do so;

(5) exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders, or both;

(6) executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

(7) failing to segregate a customer's free securities or securities held in safekeeping;

(8) hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by the rules and regulations of the SEC;

(9) entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(10) failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

(11) charging fees for services without prior notification to a customer as to the nature and amount of the fees;

(12) charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

(13) offering to buy from or sell to any person any security at a stated price unless the broker-dealer is prepared to purchase or sell, as the case may be, at the price and under the conditions as are stated at the time of the offer to buy or sell;

(14) representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by any person for whom the broker-dealer is acting or with whom the broker-dealer is associated in the distribution, or any person controlled by, controlling or under common control with the broker-dealer;

(15) effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

(a) effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) entering an order or orders for the purchase or sale of a security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of the security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subparagraph shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

(c) effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in a security or raising or depressing the price of a security, for the purpose of inducing the purchase or sale of

the security by others;

(16) guaranteeing a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for the customer;

(17) publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which:

(a) purports to report any transaction as a purchase or sale of any security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or

(b) purports to quote the bid price or asked price for any security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security;

(18) using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of the prohibited practice would be distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

(19) failing to disclose to a customer that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security, and if the disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

(20) failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

(21) failure or refusal to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint;

(22) permitting a person to open an account for another person or transact business in the account unless there is on file written authorization for the action from the person in whose name the account is carried;

(23) permitting a person to open or transact business in a fictitious account;

(24) permitting an agent to open or transact business in an account other than the agent's own account, unless the agent discloses in writing to the broker-dealer or issuer with which the agent associates the reason therefor;

(25) in connection with the solicitation of a sale or purchase of an OTC, non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act of 1934, when requested to do so by a customer;

(26) marking any order tickets or confirmations as "unsolicited" when in fact the transaction is solicited;

(27) for any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account which, with respect to all OTC non-NASDAQ equity securities in the account, contains a value for each security based on the closing market bid on a date certain; provided that, this subsection shall apply only if the firm has been a market maker in the security at any time during the month in which the monthly or quarterly statement is issued;

(28) failing to comply with any applicable provision of the Conduct Rules of FINRA or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization to which the broker-dealer is subject and which is approved by the SEC;

(29) any acts or practices enumerated in Section R164-1-3;

(30) failing to comply with a reasonable request from the Division for information or testimony, or an examination request made pursuant to Subsection 61-1-5(5), or a subpoena of the Division;

(31) dividing or otherwise splitting commissions, profits or other compensation from the purchase or sale of securities with any person not licensed as an agent of the broker-dealer, or of a broker-dealer under direct or indirect common control; or

(32) in connection with the offer, sale, or purchase of any security, using a specific certification or designation that indicates or implies that the user has special certification or training in advising or servicing clients or prospective clients, in such a way as to mislead any person. The prohibited use of such certification or professional designation includes, but is not limited to, the following:

(a) use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(b) use of a nonexistent or self-conferred certification or designation;

(c) use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the person using the certification or professional designation does not have; or

(d) use of a certification or professional designation that was obtained from a designating or certifying organization that:

(i) is primarily engaged in the business of instruction in sales and/or marketing;

(ii) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(iii) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(iv) does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

(D) Agents

In relation to agents of broker-dealers or agents of issuers, as used in Subsection 61-1-6(2)(a)(ii)(G) "dishonest or unethical practices" shall include:

(1) engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

(2) effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, in the case of agents of broker-dealers, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

(3) establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

(4) sharing directly or indirectly in profits or losses in the account of any customer without the prior written authorization of the customer and the broker-dealer which the agent represents;

(5) dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with any person not also licensed as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control;

(6) for agents who are dually licensed under Rule R164-4-1(D)(4)(b), failing to disclose the dual license to a client; or

(7) engaging in conduct specified in subsections (C)(2), (C)(3), (C)(4), (C)(5), (C)(6), (C)(9), (C)(10), (C)(15), (C)(16), (C)(17), (C)(18), (C)(24), (C)(25), (C)(26), (C)(28), (C)(29), (C)(30) or (C)(32).

(E) Investment Advisers, Investment Adviser Representatives and Federal Covered Advisers

In relation to investment advisers or investment adviser representatives, as used in Subsection 61-1-6(2)(a)(ii)(G) "dishonest or unethical practices" shall include the following listed practices. In relation to federal covered advisers, as used in Subsection 61-1-6(2)(a)(ii)(G), "dishonest or unethical practices" shall include the following, but only if such conduct involves fraud or deceit:

(1) recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser;

(2) exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;

(3) inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account if an adviser in such situations can directly benefit from the number of securities transactions effected in a client's account. The rule appropriately forbids an excessive number of transaction orders to be induced by an adviser for a "customer account";

(4) placing an order to purchase or sell a security for the account of a client without authority to do so;

(5) placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client;

(6) borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;

(7) loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;

(8) misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;

(9) providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact except that this prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service;

(10) charging a client an unreasonable advisory fee;

(11) failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(a) entering into compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(b) charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees;

(12) guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered;

(13) publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940;

(14) disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client;

(15) taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of Reg. 206(4)-2 under the Investment Advisers Act of 1940;

(16) entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract;

(17) failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of Section 204A of the Investment Advisers Act of 1940;

(18) entering into, extending, or renewing any advisory contract which would violate section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers and investment adviser representatives registered or required to be registered under this Act, notwithstanding whether such adviser or investment adviser representative would be exempt from federal registration pursuant to section 203(b) of the Investment Advisers Act of 1940;

(19) including, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of this act or of the Investment Advisers Act of 1940, or any other practice that would violate section 215 of the Investment Advisers Act of 1940;

(20) engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contravention of section 206(4) of the Investment Advisers Act of 1940 notwithstanding the fact that such investment adviser or investment adviser representative is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940;

(21) engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of this act or any rule or regulation thereunder;

(22) for an investment adviser representative compensating any customer for losses in the account of the customer without the prior written authorization of the customer and the representative's investment adviser;

(23) failing to comply with a reasonable request from the Division for information or testimony, or an examination request made pursuant to Subsection 61-1-5(5), or a subpoena of the Division; or

(24) in connection with the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or when issuing or promulgating analyses or reports relating to securities, using a specific certification or designation that indicates or implies that the user has special certification or training in advising or servicing clients or prospective clients,

in such a way as to mislead any person. The prohibited use of such certification or professional designation includes, but is not limited to, the following:

(a) use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(b) use of a nonexistent or self-conferred certification or designation;

(c) use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the person using the certification or professional designation does not have; or

(d) use of a certification or professional designation that was obtained from a designating or certifying organization that:

(i) is primarily engaged in the business of instruction in sales and/or marketing;

(ii) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(iii) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(iv) does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

KEY: securities regulation, dishonest or unethical practices, business practices, designation
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R164. Commerce, Securities.
R164-18. Procedures.
R164-18-6. Procedures for Administrative Actions.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 63G-4-202, 63G-4-203, 63G-4-503, and 61-1-24.

(2) The purpose of this rule is to:

(a) designate those actions which the Division shall deem to be requests for initial agency action;

(b) designate those categories of adjudicative proceedings which will be conducted on an informal basis, in accordance with the Utah Administrative Procedures Act and the Rules of Procedure for Adjudicative Proceedings before the Department of Commerce;

(c) set forth circumstances in which hearings shall be required or permitted; and

(d) clarify certain Division policies regarding declaratory orders.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

(2) "CRD" means the Central Registration Depository, Inc.

(3) "Director" means the Director of the Division of Securities, Utah Department of Commerce.

(4) "Division" means Division of Securities, Utah Department of Commerce.

(C) Categorization of Adjudicative Proceedings

All adjudicative proceedings under the Act are designated as informal adjudicative proceedings, except that the director may convert proceedings to formal adjudicative proceedings in accordance with the provisions of Subsection 63G-4-202(3).

(D) Commencement of Adjudicative Proceedings

Filing of the following documents with the Division shall be deemed to be a request for initial Division action:

(1) SEC Form BD - Uniform Application for Broker-Dealer Registration pursuant to Sections 61-1-4 and R164-4-1 (whether filed with the division or the CRD);

(2) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer pursuant to Sections 61-1-4 and R164-4-1 (whether filed with the division or the CRD);

(3) SEC Form ADV - Uniform Application for Investment Adviser Registration pursuant to Sections 61-1-4 and R164-4-2 (whether filed with the division or the CRD);

(4) NASAA Form U-1 - Uniform Application to Register Securities pursuant to Sections 61-1-9 and R164-9-1;

(5) Form 10-2-1 - Application for Registration by Qualification pursuant to Sections 61-1-10 and R164-10-2;

(6) Request for declaratory order designating a person as not being within the definition of "broker-dealer" as defined in Subsection 61-1-13(1)(c), or "agent" as defined in Subsection 61-1-13(1)(b);

(7) Request for declaratory order designating a person as not being within the definition of "investment adviser" as defined in Subsection 61-1-13(1)(q), or "investment adviser representative" as defined in Subsection 61-1-13(1)(r);

(8) Request for order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(1)(i) (exempt securities);

(9) Request for order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(2)(v) (exempt transactions);

(10) Request for order releasing impounded funds pursuant to Section R164-11-7b;

(11) Request for confirmation of exchange listing exemption pursuant to Section R164-14-1(e);

(12) Request for confirmation of investment company exemption pursuant to Subsection 61-1-14(1)(h);

(13) Request for confirmation of manual listing exemption pursuant to Section R164-14-2b;

(14) Request for confirmation of secondary trading exemption pursuant to Section R164-14-2m;

(15) Request for confirmation of reorganization exemption pursuant to Section R164-14-2p.

(E) Procedures for Informal Adjudicative Proceedings

A hearing will be held only if required by the Act or by the provisions of this section. When a hearing is permitted but not required, a hearing will be held only if requested by a party within 30 days from the date a notice of agency action is mailed.

(F) Hearings: When Held

(1) Under the Act, a hearing is not required and will not be held in the following adjudicative proceedings:

(a) Licensing of broker-dealer, agent, investment adviser, or investment adviser representative pursuant to Section 61-1-4;

(b) Order requiring applicant to publish announcement of application pursuant to Subsection 61-1-4(1)(c);

(c) Cancellation of registration or application of broker-dealer, agent, investment adviser, or investment adviser representative pursuant to Subsection 61-1-6(5);

(d) Grant of registration by coordination pursuant to Section 61-1-9;

(e) Stop order based on failure to file price amendments pursuant to Subsection 61-1-9(5);

(f) Grant of registration by qualification pursuant to Section 61-1-10;

(g) Order requiring additional information or verification pursuant to Subsection 61-1-10(2)(q);

(h) Order imposing conditions of registration pursuant to Subsection 61-1-11(7);

(i) Order vacating or modifying stop order pursuant to Subsection 61-1-12(2);

(j) Order designating a person as not being within the definition of a "broker-dealer" pursuant to Subsection 61-1-13(1)(c), or "agent" pursuant to Subsection 61-1-13(1)(b);

(k) Order designating a person as not being within the definition of "investment advisor" pursuant to Subsection 61-1-13(1)(q), or "investment adviser representative" pursuant to Subsection 61-1-13(1)(r);

(l) Order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(1)(i) (exempt securities);

(m) Order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(2)(v) (exempt transactions);

(n) Order requiring filing of prospectus, sales literature, etc.pursuant to Section 61-1-15;

(o) Order releasing impounded funds pursuant to Section R164-11-7b;

(p) Order to show cause pursuant to Subsection 61-1-20(1)(a);

(q) Confirmation of exchange listing exemption pursuant to Section R164-14-1(e);

(r) Confirmation of investment company exemption pursuant to Subsection 61-1-14(1)(h);

(s) Confirmation of manual listing exemption pursuant to Section R164-14-2b;

(t) Confirmation of secondary trading exemption pursuant to Section R164-14-2m;

(u) Confirmation of reorganization exemption pursuant to R164-14-2p.

(2) In the following proceedings, a hearing will be held only if timely requested:

(a) Petition for order denying, suspending or revoking registration of broker-dealer, agent, investment adviser, or investment adviser representative pursuant to Section 61-1-6;

(b) Petition for stop order denying, suspending or revoking effectiveness of a securities registration statement pursuant to Section 61-1-12;

(c) Order denying or revoking exemption under

Subsection 61-1-14(2)(p)(v);

(d) Petition for order denying or revoking exemption from registration pursuant to Subsection 61-1-14(4);

(e) Order denying or revoking exemption under Subsection 61-1-14(2)(j)(ii)(E)(II).

(G) Declaratory Orders

(1) The Division will not issue declaratory orders when a petition requests a ruling with respect to the applicability of Section 61-1-1.

(2) A request for a "no-action" letter under Section R164-25-5 shall be deemed to be a petition for a declaratory order.

KEY: securities regulation, adjudicative procedure

February 2, 2010	**61-1-18.3**
Notice of Continuation July 3, 2017	**61-1-4**
	61-1-11

R164. Commerce, Securities.
R164-25. Record of Registration.
R164-25-5. Requests for Interpretive Opinions and No-action Letters.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-25(5) and Section 61-1-24.

(2) When requested, the Division may interpret the statutes and rules administered by the Division for members of the general public, prospective registrants, attorneys, and others.

(3) When requested, the Division also may render "no-action" letters in which the Division advises the person soliciting its views that under a described set of facts, the Division staff will not recommend that the Director take any action, such as enjoining a proposed transaction, if the transaction is carried out as described.

(4) As to the requesting party, the Division is bound by an interpretive opinion or no-action letter. However, because of the fact-specific nature of each request, other parties may not rely upon an interpretive opinion or no-action letter addressed to another party. Moreover, an interpretive opinion or no-action letter is no bar to civil or criminal action by other parties.

(B) Request procedure

(1) Requesting parties must file two written copies of the request for interpretive opinions or no-action letters.

(2) Requests must include the following:

(2)(a) a brief summary of the statutory and rule sections to which the request pertains;

(2)(b) a detailed factual representation concerning every relevant aspect of the proposed transaction, event or circumstance;

(2)(c) a discussion of current statutes, rules and legal principles relevant to the facts set forth;

(2)(d) a statement by the person requesting the interpretive opinion or no-action letter which indicates why the person thinks the circumstances call for an interpretive opinion or no-action letter, the person's own opinion in the matter, and the basis for the opinion;

(2)(e) a representation that there is no legal action, judicial or administrative, which relates, directly or indirectly, to the facts set forth;

(2)(f) a representation that the transaction in question has not been commenced or, if it has commenced, the present status of the transaction.

(2)(g) a fee as specified in the Division's fee schedule.

(C) Areas of no comment

The Division will not respond to requests for interpretive opinions or no-action letters that:

(1) involve the anti-fraud provisions of the Utah Uniform Securities Act or the rules thereunder.

(2) involve transactions which have already taken place.

(3) attempt to include every possible type of situation which may arise in the future such that the request is overly broad or calls for a speculative response.

KEY: securities regulation

1994	**61-1-24**
Notice of Continuation July 3, 2017	**61-1-25(5)**

R277. Education, Administration.
R277-110. Legislative Supplemental Salary Adjustment.
R277-110-1. Definitions.

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

B. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;
(2) educational background;
(3) endorsements;
(4) employment history;
(5) professional development information; and
(6) a record of disciplinary action taken against the educator.

C. "Educator" means a teacher or other individual as defined by the Utah State Legislature in 53A-17a-153.

D. "Educator Salary Adjustments" means salary increases paid annually in equal amounts to educators as defined in 53A-17a-153(1) and specified in R277-110-3C and D.

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

G. "USDB" means Utah Schools for the Deaf and the Blind.

R277-110-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of Public Education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-153(6) which authorizes the Board to make rules regarding educator salary adjustments.

B. The purpose of this rule is to outline a consistent method for enacting educator salary adjustments in accordance with Section 53A-17a-153, Educator Salary Adjustments.

R277-110-3. Procedures.

A. Each LEA shall:

(1) have employee evaluation procedures consistent with Title 53A, Chapter 8a; schools exempt from Title 53A, Chapter 8a shall have employee evaluation procedures in place to participate in the Program and receive funds under Section 53A-17a-153.

(2) put the Educator Salary Adjustment appropriation into the LEA's salary schedule each year that an educator salary adjustment is appropriated by the Legislature;

(3) ensure the amount of the Educator Salary Adjustment is the same for each eligible full-time-equivalent educator position in the LEA;

(4) ensure that each eligible employee who is not a full-time educator receives a proportional salary adjustment based on the number of hours the employee works in his current assignment as an educator;

(5) ensure that each educator who receives a salary adjustment has received a satisfactory or above job performance rating in his most recent evaluation concluded in the school year prior to the year for which the adjustment is made; new hires are considered to have met this requirement by successfully completing the position hiring process and being selected for an educator position.

B. Once an educator qualifies for an adjustment in a designated school year, the adjustment becomes an ongoing part of the educator's salary.

C. Educators in the following assignments shall receive salary adjustments of $2500 and $1700 and benefits as designated annually:

(1) a classroom teacher;
(2) speech pathologist;
(3) librarian or media specialist;
(4) preschool teacher;
(5) mentor teacher;
(6) teacher specialist;
(7) teacher leader;
(8) guidance counselor;
(9) audiologist;
(10) psychologist; or
(11) social worker as defined in 53A-17a-153(1).

D. School building level administrators shall receive salary adjustments of $2500 and benefits as designated annually.

E. The educator shall be licensed, employed by an LEA and hold a current license issued under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act.

F. Each LEA shall annually note on the appropriate salary schedule:

(1) the amount of the Educator Salary Adjustment;
(2) the positions qualifying for the adjustment;
(3) that an educator or administrator received a satisfactory or better performance rating required to receive the adjustment; and

G. Each LEA shall document satisfactory performance ratings annually.

H. The USOE shall remit to LEAs, through monthly bank transfers and allotment memos beginning in July of each year, an estimated educator salary adjustment amount to be adjusted in November of each year to match the number of qualified educators in the CACTUS data base system.

I. Adjustments to CACTUS after November 15 of each year shall not count towards the amount for Educator Salary Adjustments until the following year.

J. Educator Salary Adjustments may not be included when calculating the weighted average compensation adjustment for non-administrative licensed staff.

R277-110-4. Reports.

A. LEAs shall maintain adequate accounting records to submit an annual report summarizing the uses and recipients of Educator Salary Adjustment funds to USOE each year by November 1 on USOE-designated forms.

(1) LEAs shall:
(a) maintain the information by program and;
(b) carry over any unused balances within the program for use in the following year.

(2) Reports shall balance with amounts reported on the AFR (Annual Financial Report) and the APR (Annual Program Report).

(3) Failure to submit the required reports on a timely basis may result in withholding of LEA funds until the report is submitted in an acceptable format and is complete, or may render the LEA ineligible for participation in the Educator Salary Adjustment program the following year.

(4) Failure to remedy allocation of funds not in accordance with Section 53A-17a-153, Educator Salary Adjustment, and R277-110, Legislative Supplemental Salary Adjustment, shall also result in withholding of LEA funds for the Educator Salary Adjustment program until an appropriate remedy is implemented and verified.

KEY: educators, salary adjustments
September 21, 2012 **Art X Sec 3**
Notice of Continuation July 19, 2017 **53A-1-401(3)**
53A-17a-153(6)

R277. Education, Administration.
R277-122. Board of Education Procurement.
R277-122-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Title 63G, Chapter 6a, Utah Procurement Code.

(2) The purpose of this rule is to adopt and incorporate by reference Title R33, Purchasing and General Services, with exceptions as described in this rule.

R277-122-2. Definitions.

(1) "Manager of procurement" means a Board employee designated by the Board to be the head of the procurement unit as described in Section R277-122-4 and Section R33-1-3.

(2) "Responsible" means the same as that term is defined in Subsection 63G-6a-103 (75).

(3) "Responsive" means the same as that term is defined in Subsection 63G-6a-103 (76).

R277-122-3. Incorporation of Title R33 With Exceptions.

(1) The Board adopts and incorporates by reference Title R33, Purchasing and General Services, as in effect on April 1, 2017, with the exceptions described in this section.

(2) The Board does not adopt Section R33-8-101b.

(3) The Board adopts Section R277-122-5 in place of Section R33-9-103.

(4) The Board adopts Section R277-122-6 in place of Section R33-12-201.

(5) The Board adopts Section R277-122-8 in place of Section R33-12-608.

(6) The Board adopts Section R277-122-9 in place of Subsections:

(a) R33-16-101a (2)(a); and

(b) R33-16-301 (4).

R277-122-4. Head of the Procurement Unit Designated.

The Board designates the manager of procurement as the head of the procurement unit.

R277-122-5. Cancellation Before Award.

(1) A solicitation may be cancelled prior to a contract award if the head of the procurement unit determines the cancellation is:

(a) in the best interest of the Board; and

(b) supported by a reasonable and good faith justification.

(2) The head of the procurement unit shall include notice of the Board's right of cancellation described in Subsection (1) in each Board solicitation.

R277-122-6. Establishment of Terms and Conditions.

The head of the procurement unit shall develop standard terms and conditions for use with Board contracts and agreements.

R277-122-7. Requirements for Cost or Pricing Data.

(1) If cost or pricing data is required by Section 63G-6a-1206 or Section R33-12-601, the head of the procurement unit shall require the person who seeks a cost-based contract to submit:

(a) factual and verifiable information related to the contractor's estimated cost for completing a project on:

(i) the date the contract is signed by both parties; or

(ii) an earlier date agreed to by both parties that is:

(A) as close as practicable to the date described in Subsection (1)(a)(i); and

(B) before prudent buyers and sellers would reasonably expect price negotiations to be affected significantly; and

(b) underlying data related to a contractor's estimate that can be reasonably expected to contribute to the soundness of estimates of future costs and the validity of determinations of costs already incurred, including:

(i) vendor quotations;

(ii) nonrecurring costs;

(iii) information on changes in production methods and in production or purchasing volume;

(iv) data supporting projections of business prospects and objectives and related operations costs;

(v) unit-cost trends such as those associated with labor efficiency;

(vi) make-or-buy decisions;

(vii) estimated resources to attain business goals; or

(viii) information on management decisions that could have a significant bearing on costs.

(2) Submission of certified cost or pricing data applies to contracts of $50,000.00 or greater if the contract price is not established by:

(a) adequate price competition;

(b) established catalogue or market prices; or

(c) law or regulation.

R277-122-8. Use of Federal Cost Principles.

The head of the procurement unit shall apply the federal cost principles described in 2 CFR Part 200, Subpart E in determining which costs expended under Board contracts are reasonable, allocable, and allowable.

R277-122-9. Grounds for Protest -- Intervention in a Protest.

(1) A bidder who files a protest shall include in the bidder's submission a concise statement of the grounds for the protest, which shall include the facts leading the protestor to contend that a grievance has occurred, including but not limited to specifically referencing:

(a) the circumstances described in Subsections R33-16-101a(2)(a) (i) through (iii);

(b) a provision of the solicitation alleged to be:

(i) unduly restrictive;

(ii) anticompetitive; or

(iii) unlawful;

(c) an alleged material error made by the evaluation committee or conducting procurement unit; or

(d) the circumstances described in Subsections R33-16-101a(2)(a)(vi) and (vii).

(2) A motion to intervene in a post-award protest may only be made by the announced awardee.

(3) A person may intervene in a pre-award protest, if the person's proposal:

(a) was evaluated;

(b) found to be responsive; and

(c) the head of the procurement unit finds the person to be responsible.

KEY: procurement, efficiency
July 10, 2017 **Art X Sec 3**
53A-1-401
63G-6a

R277. Education, Administration.
R277-401. Child Abuse-Neglect Reporting by Education Personnel.
R277-401-1. Definitions.

A. This rule uses the definition of neglected child found in Section 78A-6-105(28).

B. This rule uses the definition of abused child found in Section 78A-6-105(2).

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

D. "DCFS" means the Division of Child and Family Services.

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.

R277-401-2. Authority and Purpose.

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

B. The purpose of this rule is to clarify:

(1) the Board's support for taking early protective measures towards allegations of child abuse. The daily contact of education personnel with children places them in a unique position to identify and refer suspected cases of abuse.

(2) the role of all school employees in reporting and participating in investigations of suspected child abuse as required by Section 62A-4a-403.

R277-401-3. Policies and Procedures.

A. Each LEA shall develop and adopt a child abuse-neglect policy.

(1) School officials shall cooperate with social service and law enforcement agency employees authorized to investigate charges of child abuse and neglect.

(2) LEA policies shall ensure that the anonymity of those reporting or investigating child abuse or neglect is preserved in a manner required by Section 62A-4a-412.

(3) An LEA policy may direct a school employee to notify the building principal of the neglect or abuse. Such a report to a principal, supervisor, school nurse or psychologist does not satisfy the employee's personal duty to report to law enforcement or DCFS.

(4) LEA policies shall direct school employees to cooperate appropriately with law enforcement and DCFS investigators who come into the school, including:

(a) allowing authorized representatives to interview children consistent with DCFS and local law enforcement protocols;

(b) allowing appropriate access to student records;

(c) making no contact with parents/legal guardians of children being questioned by DCFS or local law enforcement; and

(d) cooperating with ongoing investigations and maintaining appropriate confidentiality.

B. School employee responsibilities

(1) Any school employee who knows or reasonably believes that a child has been neglected, or physically or sexually abused, shall immediately notify the nearest peace officer, law enforcement agency, or DCFS.

(2) It is not the responsibility of school employees to prove that the child has been abused or neglected, or determine whether the child is in need of protection. Investigations are the responsibility of the DCFS. Investigation by education personnel prior to submitting a report should not go beyond that necessary to support a reason to believe that a reportable problem exists.

(3) Persons making reports or participating in an investigation of alleged child abuse or neglect in good faith are immune from any civil or criminal liability that otherwise might arise from those actions, as provided by law.

KEY: child abuse, education policy, faculty, students
October 9, 2012 Art X Sec 3
Notice of Continuation July 19, 2017 53A-1-401(3)

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

A. Fee: Any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods. Admission fees, transportation charges, and similar payments to third parties are fees if the charges are made in connection with an activity or function sponsored by or through a school. For purposes of this policy, charges related to the National School Lunch Program are not fees.

B. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

C. Optional Project: A project chosen and retained by a student in lieu of a meaningful and productive project otherwise available to the student which would require only school-supplied materials.

D. "Provision in Lieu of Fee Waiver" means an alternative to fee payment and waiver of fee payment. A plan under which fees are paid in installments or under some other delayed payment arrangement is not a waiver or provision in lieu of fee waiver.

E. Student Supplies: Items which are the personal property of a student which, although used in the instructional process, are also commonly purchased and used by persons not enrolled in the class or activity in question and have a high probability of regular use in other than school-sponsored activities. The term includes pencils, papers, notebooks, crayons, scissors, basic clothing for healthy lifestyle classes, and similar personal or consumable items over which a student retains ownership. The term does not include items such as the foregoing for which specific requirements such as brand, color, or a special imprint are set in order to create a uniform appearance not related to basic function.

F. "Supplemental Security Income for children with disabilities (SSI)" is a benefit administered through the Social Security Administration that provides payments for qualified children with disabilities in low income families.

G. "Temporary Assistance for Needy Families (TANF)," (formerly AFDC) provides monthly cash assistance and food stamps to low-income families with children under age 18 through the Utah Department of Workforce Services.

H. Textbook: Book, workbook, and materials similar in function which are required for participation in a course of instruction.

I. Waiver: Release from the requirement of payment of a fee and from any provision in lieu of fee payment.

R277-407-2. Authority and Purpose.

A. This rule is authorized under Article X, Sections 2 and 3 of the Utah Constitution which vests general control and supervision of the public education system in the State Board of Education and provides that public elementary and secondary schools shall be free except that fees may be imposed in secondary schools if authorized by the Legislature. Section 53A-12-102(2) authorizes the State Board of Education to adopt rules regarding student fees. This rule is consistent with the State Board of Education document, Principles Governing School Fees, adopted by the State Board of Education on March 18, 1994. This rule is also consistent with the Permanent Injunction, Doe v. Utah State Board of Education, Civil No. 920903376.

B. The purpose of this rule is:

(1) to permit the orderly establishment of a reasonable system of fees;

(2) to provide adequate notice to students and families of fee and fee waiver requirements; and

(3) to prohibit practices that would exclude those unable to pay from participation in school-sponsored activities.

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

A. No fee may be charged in kindergarten through sixth grades for materials, textbooks, supplies, or for any class or regular school day activity, including assemblies and field trips.

B. Textbook fees may only be charged in grades seven through twelve.

C. Fees may be charged to students in sixth grade only if the student attends a school that includes grades 7, 8, 9, 10, 11, or 12. All school and school district materials and information, including local board-approved fees and parent information, shall include notice that fees may be charged to sixth graders and fee waiver requirements apply.

D. If a class is established or approved which requires payment of fees or purchase of materials, tickets to events, etc., in order for students to participate fully and to have the opportunity to acquire all skills and knowledge required for full credit and highest grades, the class shall be subject to the fee waiver provisions of R277-407-6.

E. Students of all grade levels may be required to provide materials for their optional projects, but a student may not be required to select an optional project as a condition for enrolling in or completing a course. Project-related courses must be based upon projects and experiences that are free to all students.

F. Schools shall provide school supplies for K-6 students. A student may, however, be required to replace supplies provided by the school which are lost, wasted, or damaged by the student through careless or irresponsible behavior.

G. An elementary school or teacher may provide to parents or guardians a suggested list of supplies. The suggested list shall contain the express language in Section 53A-12-102(2)(c).

H. Secondary students may be required to provide their own student supplies, subject to the provisions of Section R277-407-6.

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

A. Fees may be charged, subject to the provisions of Section R277-407-6, in connection with any school-sponsored activity which does not take place during the regular school day, regardless of the age or grade level of the student, if participation is voluntary and does not affect a student's grade or ability to participate fully in any course taught during the regular school day.

B. Fees related to extracurricular activities may not exceed limits established by the LEA. Schools shall collect these fees consistent with LEA policies and state law.

R277-407-5. General Provisions.

A. No fee may be charged or assessed in connection with any class or school-sponsored or supported activity, including extracurricular activities, unless the fee has been set and approved by the LEA and distributed in an approved fee schedule or notice in accordance with this rule.

B. Fee schedules and policies for the entire LEA shall be adopted at least once each year by the LEA in a regularly scheduled public meeting of the LEA. Provision shall be made for broad public notice and participation in the development of fee schedules and waiver policies. Minutes of LEA meetings during which fee and waiver policies are developed or adopted, together with copies of approved policies, shall be kept on file by the LEA and made available upon request.

C. Each LEA shall adopt procedures to reasonably ensure that the parent or guardian of each child who attends school within the LEA receives written notice of all current and applicable fee schedules and fee waiver policies, including easily understandable procedures for obtaining waivers and for

appealing a denial of waiver, as soon as possible prior to the time when fees become due. Copies of the schedules and waiver policies shall be included with all registration materials provided to potential or continuing students.

D. No present or former student may be denied receipt of transcripts or a diploma for failure to pay school fees. A reasonable charge may be made to cover the cost of duplicating or mailing transcripts and other school records. No charge may be made for duplicating or mailing copies of school records to an elementary or secondary school in which the student is enrolled or intends to enroll.

E. To preserve equal opportunity for all students and to limit diversion of money and school and staff resources from the basic school program, each LEA's fee policies shall be designed to limit student expenditures for school-sponsored activities, including expenditures for activities, uniforms, clubs, clinics, travel, and subject area and vocational leadership organizations, whether local, state, or national.

F. Donations or contributions may be solicited and accepted in accordance with LEA policies, but all such requests must clearly state that donations and contributions are voluntary. A donation is a fee if a student is required to make a donation in order to participate in an activity.

G. In the collection of school fees, LEAs shall comply with statutes and State Tax Commission rules regarding the collection of state sales tax.

R277-407-6. Waivers.

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

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

(1) at least one person at an appropriate administrative level is designated in each school to administer the policy and grant waivers;

(2) the process for obtaining waivers or pursuing alternatives is administered fairly, objectively, and without delay, and avoids stigma and unreasonable burdens on students and parents;

(3) students who have been granted waivers or provisions in lieu of fee waivers are not treated differently from other students or identified to persons who do not need to know;

(4) fee waivers or other provisions in lieu of fee waivers are available to any student whose parent is unable to pay the fee in question; fee waivers shall be verified by a school or LEA administrator consistent with requirements of Section 53A-12-103(5);

(5) the LEA requires documentation of fee waivers consistent with Section 53A-12-103(5);

(6) schools and the LEA submit fee waiver compliance forms consistent with Doe v. Utah State Board of Education, Civil No. 920903376 that affirm compliance with provisions of the Permanent Injunction and provisions of Section 53A-12-103(5);

(7) the LEA does not retain required fee waiver verification documentation for protection of privacy and confidentiality of family income records consistent with 53A-12-103(6);

(8) textbook fees are waived for all eligible students in accordance with Sections 53A-12-201 and 53A-12-204 of the Utah Code and this Section;

(9) parents are given the opportunity to review proposed alternatives to fee waivers;

(10) a timely appeal process is available, including the opportunity to appeal to the LEA or its designee;

(11) any requirement that a given student pay a fee is suspended during any period during which the student's eligibility for waiver is being determined or during which a denial of waiver is being appealed; and

(12) the LEA provides for balancing of financial inequities among schools so that the granting of waivers and provisions in lieu of fee waivers do not produce significant inequities through unequal impact on individual schools.

B. A student is eligible for fee waiver as follows:

(1) income verification consistent with Section 53A-12-103(5);

(2) the student receives (SSI) Supplemental Security Income (ONLY THE STUDENT WHO RECEIVES THE SSI BENEFIT QUALIFIES FOR FEE WAIVERS);

(3) the family receives TANF (currently qualified for financial assistance or food stamps);

(4) the student is in foster care (under Utah or local government supervision);

(5) the student is in state custody.

C. In lieu of income verification, supporting documents shall be required for each special category of fee waiver-eligible students:

(1) For TANF, a letter of decision covering the period for which fee waiver is sought from Utah Department of Workforce Services;

(2) For SSI, a benefit verification letter from Social Security;

(3) For state custody or foster care, the youth in custody required intake form and school enrollment letter or both provided by the case worker from the Utah Division of Child and Family Services or the Utah Juvenile Justice Department.

D. CASE BY CASE DETERMINATIONS MAY BE MADE FOR THOSE WHO DO NOT QUALIFY UNDER ONE OF THE FOREGOING STANDARDS but who, because of extenuating circumstances such as, but not limited to, exceptional financial burdens such as loss or substantial reduction of income or extraordinary medical expenses, are not reasonably capable of paying the fee.

E. Expenditures for uniforms, costumes, clothing, and accessories (other than items of typical student dress) which are required for school attendance, participation in choirs, pep clubs, drill teams, athletic teams, bands, orchestras, and other student groups, and expenditures for student travel as part of a school team, student group, or other school-approved trip, are fees requiring approval of the LEA, and are subject to the provisions of this section, consistent with Doe v. Utah State Board of Education, Civil No. 920903376, p. 43.

F. Student Records

(1) An LEA or school may pursue reasonable methods to collect fees, but shall not exclude students from school or withhold official student records, including written or electronic grade reports, diploma, or transcripts, for fees owed.

(2) An LEA or school may withhold the official student records of a student responsible for lost or damaged school property consistent with Section 53A-11-806, but may not withhold a student's records that would prevent a student from attending school or being properly placed in school.

(3) Consistent with Section 53A-11-504, a school requested to forward a certified copy of a transferring student's record to a new school shall comply within 30 school days of the request.

G. Charges for class rings, letter jackets, school photos, school yearbooks, and similar articles not required for participation in a class or activity are not fees and are not subject to the waiver requirements.

R277-407-7. Fee Waiver Reporting Requirements.

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

following:

(1) a summary of the number of students in the LEA given fee waivers, the number of students who worked in lieu of a waiver, and the total dollar value of student fees waived by the LEA;

(2) a copy of the LEA's fee and fee waiver policies;

(3) a copy of the LEA's fee schedule for students; and

(4) the notice of fee waiver criteria provided by the LEA to a student's parent or guardian.

(5) consistent fee waiver compliance forms provided by the Utah State Office of Education and required by Doe v. Utah State Board of Education, Civil No. 920903376.

KEY: education, school fees

August 7, 2013	**Art X Sec 3**
Notice of Continuation July 19, 2017	**53A-12-102**
	53A-12-201
	53A-12-204
	53A-11-806(2)
Doe v. Utah State Board of Education, Civil No. 920903376	

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

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

B. "LEA" means a local education agency, including local school boards/public school districts and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

C. "Textbook" means any printed book which is required for participation in a course of instruction. The term also includes printed texts approved for pilot or trial use by the State Instructional Materials Commission or books used in classes for which textbooks are generally not adopted at the state level.

D. "Useable textbooks" means a set of at least 25 textbooks, as defined above, that are not badly damaged, worn out or outdated.

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

R277-433-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3 which places general control and supervision of the public school system under the Board and by Section 53A-12-207 which requires the Board to make rules providing for the disposal or reuse of useable textbooks in the public schools.

B. The purpose of this rule is to provide procedures for LEA policies for the reuse or disposal of textbooks in the public schools.

R277-433-3. LEA Policies on Disposal of Textbooks.

A. LEAs shall develop policies regarding the reuse or disposal of textbooks.

B. LEA policies shall provide procedures for notification to other LEAs of available textbooks and timelines for disposal of textbooks.

C. LEA policies shall provide procedures for negotiating the exchange of the textbooks.

D. A required policy and implementation shall be suspended consistent with Section 53A-12-207(1) until the 2013-2014 school year.

KEY: textbooks
October 9, 2012 **Art X Sec 3**
Notice of Continuation July 19, 2017 **53A-12-207**

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

A. "ADM" means average daily membership derived from end-of-year data.

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

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

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

E. "WPU" means weighted pupil unit: the basic unit used to calculate the amount of state funds a school district may receive.

R277-445-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-109(3) which requires the Board to adopt rules that govern the approval of necessarily existent small schools consistent with state law and ensure that districts are not building secondary schools in close proximity to one another where economy and efficiency would be better served by one school meeting the needs of secondary students in a designated geographical area.

B. The purpose of this rule is to specify the standards by which the Board classifies schools as necessarily existent. Schools so classified may receive state funds which are in addition to those received on the basis of the regular WPU formula.

R277-445-3. Standards.

A. A school may be classified as necessarily existent if it meets the following standards:

(1) the average daily membership for the school does not exceed:

(a) 160 for elementary schools, including kindergarten at a weighting of .55 per average daily membership; or

(b) 300 for one or two-year secondary schools; or

(c) 450 for three-year secondary schools; or

(d) 500 for four-year secondary schools; or

(e) 600 for six-year secondary schools.

(2) the school meets the criteria of Subsection 3(A)(1) and one-way bus travel over Board approved bus routes for any student from the assigned school to the nearest school within the district of the same type requires:

(a) students in kindergarten through grade six to travel more than 45 minutes;

(b) students in grades seven through twelve to travel more than one hour and 15 minutes.

(3) the school meets the criteria of Subsection 3(A)(1) for grades K-6 if it is an elementary school or grades 7-12 if it is a secondary school except as provided below:

(a) schools with less than six grades are not recognized as necessarily existent small schools if it is feasible in terms of school plant to consolidate them into larger schools and if consolidated would not meet the criteria listed in Subsections 3(A)(1) and 3(A)(2) above;

(b) a secondary complex or attendance area which when analyzed on a 7-12 grade basis, meets the criteria of necessarily existent, shall not have its qualifying status invalidated by a reorganization pattern determined by a district;

(c) in unusual circumstances, where in the judgment of a panel of at least five USOE staff members designated by the Superintendent, the existing conditions warrant approval of a middle school, such a school may be designated by the Superintendent as a necessarily existent small school, provided it meets the criteria listed in Subsection 3(A)(1) above or 3(A)(4) below.

(4) the school meets the criteria of Subsection 3(A)(1), may not meet the criteria of Subsection 3(A)(2), but is in a district which has been consolidated to the maximum extent possible, and activities in cooperation with neighboring districts within or across county boundaries are appropriately combined;

(5) the school meets the criteria of Subsection 3(A)(1), does not meet the criteria of Subsections 3(A)(2), but there is evidence acceptable to the Superintendent of increased growth in the school sufficient to take it out of the small school classification within a period of three years.

(a) The school may be classified as necessarily existent until its ADM surpasses the size standard for small schools of the same type.

(b) The school's ADM shall be annually compared to the school's projected ADM to determine increases or decreases in enrollment.

(c) An increase in the school's ADM shall be 80 percent of the projected annual increase. If the assessment for the first or second year shows the increase in the ADM is less than 80 percent, the school shall no longer be classified as necessarily existent;

(6) the school meets both the criteria of Subsection 3(A)(1) and at least the accredited with comment level of Board accreditation standards (as provided in R277-410, R277-411, and R277-412), does not meet the criteria of Subsections 3(A)(2), 3(A)(3), 3(A)(4), or 3(A)(5), but there is evidence as determined by the Superintendent that consolidation may result in undesirable social, cultural, and economic changes in the community, and:

(a) the school has a safe and educationally adequate school facility with a life expectancy of at least ten years, as judged, at least every five years, by the USOE after consultation with the district; or

(b) the district shall incur construction costs by combining a school seeking necessarily existent small school status with an existing school and such construction and land costs exceed the insurance replacement value of the exiting school by 30 percent. The existing school shall have a life expectancy of at least ten years. In the event that the ADM from the school seeking necessarily existent small school status when combined with the ADM at the existing school exceed criteria in R277-445-3A(1), the existing school would be disqualified.

(c) schools qualifying under standard (b) above shall be evaluated every five years.

(7) the school meets the criteria of Subsection 3(A)(1), does not meet the criteria of Subsections 3(A)(2), 3(A)(3), 3(A)(4), 3(A)(5), or 3(A)(6), and the removal of the necessarily existent status results in capital costs which the school district cannot meet within three years when utilizing all funds available from local, state, or federal sources or a combination of the sources.

B. Any prior year funding balance in the Necessarily Existent Small Schools Program shall be distributed by the USOE in the current year using a formula that considers the tax effort of a local board of education.

C. Additional WPU funds allocated to school districts for necessarily existent small schools shall be utilized for programs at the school for which the units were allocated. The funds must supplement and not supplant other funds allocated to special schools by the local board of education.

D. Schools shall be classified after consultation with the district and in accordance with applicable state statutes and Board standards.

KEY: school enrollment, educational facilities

August 7, 2013	**Art X Sec 3**
Notice of Continuation July 19, 2017	**53A-1-401(3)**
	53A-17a-109(3)

R277. Education, Administration.
R277-474. School Instruction and Human Sexuality.
R277-474-1. Definitions.

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

B. "Curriculum materials review committee (committee)" means a committee formed at the district or school level, as determined by the local board of education or local charter board, that includes parents, health professionals, school health educators, and administrators, with at least as many parents as school employees. The membership of the committee shall be appointed and reviewed annually by August 1 of each year by the local board, shall meet on a regular basis as determined by the membership, shall select its own officers and shall be subject to Sections 52-4-1 through 52-4-10.

C. "Family Educational Rights and Privacy Act" is a state statute, Sections 53A-13-301 and 53A-13-302, that protects the privacy of students, their parents, and their families, and supports parental involvement in the public education of their children.

D. "Human sexuality instruction or instructional programs" means any course, unit, class, activity or presentation that provides instruction or information to students about sexual abstinence, human reproduction, reproductive anatomy, physiology, pregnancy, marriage, childbirth, parenthood, contraception, or HIV/AIDS and other sexually transmitted diseases. While these topics are most likely discussed in such courses as health education, health occupations, human biology, physiology, parenting, adult roles, psychology, sociology, child development, and biology, this rule applies to any course or class in which these topics are the focus of discussion.

E. "Instructional Materials Commission" means an advisory commission authorized under Section 53A-14-101.

F. "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.

G. "Maturation education" means instruction and materials used to provide fifth or sixth grade students with age appropriate, accurate information regarding the physical and emotional changes associated with puberty, to assist in protecting students from abuse and to promote hygiene and good health practices.

H. "Medically accurate" means verified or supported by a body of research conducted in compliance with scientific methods and published in journals that have received peer-review, where appropriate, and recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field, such as the American Medical Association.

I. "Parental notification form" means a form developed by the USOE and used exclusively by LEAs or Utah public schools for parental notification of subject matter identified in this rule. Students may not participate in human sexuality instruction, maturation education, or instructional programs as identified in R277-474-2D without prior affirmative parent/guardian response on file. The form:

(1) shall explain a parent's right to review proposed curriculum materials in a timely manner;

(2) shall request the parent's permission to instruct the parent's student in identified course material related to human sexuality or maturation education;

(3) shall allow the parent to exempt the parent's student from attendance for class period(s) while identified course material related to human sexuality or maturation education is presented and discussed;

(4) shall be specific enough to give parents fair notice of topics to be covered;

(5) shall include a brief explanation of the topics and materials to be presented and provide a time, place and contact person for review of the identified curricular materials;

(6) shall be on file with affirmative parent/guardian response for each student prior to the student's participation in discussion of issues protected under Section 53A-13-101; and

(7) shall be maintained at the school for a reasonable period of time.

J. "Professional development" means training in which Utah educators may participate to renew a license, receive information or training in a specific subject area, teach in another subject area or teach at another grade level.

K. "Utah educator" means an individual such as an administrator, teacher, counselor, teacher's assistant, or coach, who is employed by a unit of the Utah public education system and who provides teaching or counseling to students.

L. "Utah Professional Practices Advisory Commission (UPPAC)" means a Commission authorized under 53A-6-301 and designated to review allegations against educators and recommend action against educators' licenses to the Board.

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

R277-474-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-13-101(1)(c)(ii)(B) which directs the Board to develop a rule to allow local boards to adopt human sexuality education materials or programs under Board rules and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purposes of this rule are:

(1) to provide requirements for the Board, LEAs and individual educators to select instructional materials about human sexuality and maturation;

(2) to provide notice to parents/guardians of proposed human sexuality and maturation discussions and instruction; and

(3) to provide direction to public education employees regarding instruction and discussion of maturation and human sexuality with students.

R277-474-3. General Provisions.

A. The following may not be taught in Utah public schools through the use of instructional materials, direct instruction, or online instruction:

(1) the intricacies of intercourse, sexual stimulation or erotic behavior;

(2) the advocacy of premarital or extramarital sexual activity; or

(3) the advocacy or encouragement of the use of contraceptive methods or devices.

B. Educators are responsible to teach the values and information identified under Section 53A-13-101(4).

C. Utah educators shall follow all provisions of federal and state law including parent/guardian notification and prior written parental consent requirements under Sections 76-7-322 and 76-7-323 in teaching any aspect of human sexuality.

R277-474-4. State Board of Education Responsibilities.

The Board shall:

A. develop and provide professional development and assistance with training for educators on law and rules specific to human sexuality instruction and related issues.

B. develop and provide a parental notification form and timelines for use by LEAs.

C. establish a review process for human sexuality instructional materials and programs using the Instructional Materials Commission and requiring final Board approval of the Instructional Materials Commission's recommendations.

D. approve only medically accurate human sexuality instruction programs.

E. receive and track parent and community complaints and

comments received from LEAs related to human sexuality instructional materials and programs.

R277-474-5. LEA Responsibilities.

A. Annually each LEA shall require all newly hired or newly assigned Utah educators with responsibility for any aspect of human sexuality instruction to attend state-sponsored professional development outlining the human sexuality curriculum and the criteria for human sexuality instruction in any courses offered in the public education system.

B. Each LEA shall provide training consistent with R277-474-5A at least once during every three years of employment for Utah educators.

C. Local school boards and local charter boards shall form curriculum materials review committees (committee) at the district or school level as follows:

(1) The committee shall be organized consistent with R277-474-2B.

(2) Each committee shall designate a chair and procedures.

(3) The committee shall review and approve all guest speakers and guest presenters and their respective materials relating to human sexuality instruction in any course and maturation education prior to their presentations.

(4) The committee shall not authorize the use of any human sexuality instructional program or maturation education program not previously approved by the Board, approved consistent with R277-474-6, or approved under Section 53A-13-101(1)(c)(ii).

(5) The district superintendent or charter school administrator shall report educators who willfully violate the provisions of this rule to the Commission for investigation and possible discipline.

(6) The LEA shall use the common parental notification form or a form that satisfies all criteria of the law and Board rules, and comply with timelines approved by the Board.

(7) Each LEA shall develop a logging and tracking system of parental and community complaints and comments resulting from student participation in human sexuality instruction, to include the disposition of the complaints, and provide that information to the USOE upon request.

D. If a student is exempted from course material required by the Board-approved Core Standards consistent with Sections 53A-13-101.2(1), (2) and (3), the school shall:

(1) waive the participation requirement; or

(2) provide a reasonable alternative to the requirement.

R277-474-6. Local Board or Local Charter Board Adoption of Human Sexuality Education and Maturation Education Instructional Materials.

A. A local board may adopt instructional materials under Section 53A-13-101(1)(c)(iii).

B. Materials that are adopted shall comply with the criteria of Section 53A-13-101(1)(c)(iii) and:

(1) shall be medically accurate as defined in R277-474-2H.

(2) shall be approved by a majority vote of the local board members or local charter board members present at a public meeting of the board.

(3) shall be available for reasonable review opportunities to residents of the district or parents/guardians of charter school students prior to consideration for adoption.

C. The LEA shall comply with the reporting requirement of Section 53A-13-101(1)(c)(iii)(D). The report to the Board shall include:

(1) a copy of the human sexuality instructional materials and maturation education materials not approved by the Instructional Materials Commission that the local board or local charter board seeks to adopt;

(2) documentation of the materials' adoption in a public board meeting;

(3) documentation that the materials or program meets the medically accurate criteria of R277-474-2H;

(4) documentation of the recommendation of the materials by the committee; and

(5) a statement of the local board's or local charter board's rationale for selecting materials not approved by the Instructional Materials Commission.

D. The local board's or local charter board's adoption process for human sexuality instructional materials and maturation education materials shall include a process for annual review of the board's decision.

R277-474-7. Utah Educator Responsibilities.

A. Utah educators shall participate in training provided under R277-474-5A.

B. Utah educators shall use the common parental notification form or a form approved by their employing LEA, and timelines approved by the Board.

C. Utah educators shall individually record parent and community complaints, comments, and the educators' responses regarding human sexuality instructional programs.

D. Utah educators may respond to spontaneous student questions for the purposes of providing accurate data or correcting inaccurate or misleading information or comments made by students in class regarding human sexuality.

KEY: schools, sex education
July 10, 2017 Art X Sec 3
Notice of Continuation May 1, 201753A-13-101(1)(c)(ii)(B)
53A-1-401(3)

R277. Education, Administration.
R277-487. Public School Data Confidentiality and Disclosure.
R277-487-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;

(c) Subsection 53A-13-301(4), which directs that the Board may make rules to establish standards for public education employees, student aides, and volunteers in public schools regarding the confidentiality of student information and student records;

(d) Subsection 53A-8a-410(4), which directs that the Board may make rules to ensure the privacy and protection of individual evaluation data; and

(e) Section 53A-1-411, which directs the Board to establish procedures for administering or making available online surveys to obtain information about public education issues.

(2) The purpose of this rule is to:

(a) provide for appropriate review and disclosure of student performance data on state administered assessments as required by law;

(b) provide for adequate and appropriate review of student performance data on state administered assessments to professional education staff and parents of students;

(c) ensure the privacy of student performance data and personally identifiable student information, as directed by law;

(d) provide an online education survey conducted with public funds for Board review and approval; and

(e) provide for appropriate protection and maintenance of educator licensing data.

R277-487-2. Definitions.

(1) "Association" has the same meaning as that term is defined in Subsection 53A-1-1601(3).

(2) "Chief Privacy Officer" means a Board employee designated by the Board as primarily responsible to:

(a) oversee and carry out the responsibilities of this rule; and

(b) direct the development of materials and training about student and public education employee privacy standards for the Board and LEAs, including:

(i) FERPA; and

(ii) the Utah Student Data Protection Act, Title 53A, Chapter 1, Part 14.

(3) "Classroom-level assessment data" means student scores on state-required tests, aggregated in groups of more than 10 students at the classroom level or, if appropriate, at the course level, without individual student identifiers of any kind.

(4) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" means the electronic file maintained and owned by the Board on all licensed Utah educators, which includes information such as:

(a) personal directory information;

(b) educational background;

(c) endorsements;

(d) employment history; and

(e) a record of disciplinary action taken against the educator.

(5) "Confidentiality" refers to an obligation not to disclose or transmit information to unauthorized parties.

(6) "Data governance plan" has the same meaning as defined in Subsection 53A-1-1402(9).

(7) "Data security protections" means protections developed and initiated by the Superintendent that protect, monitor and secure student, public educator and public education employee data as outlined and identified in FERPA and Sections 63G-2-302 through 63G-2-305.

(8) "Disclosure" includes permitting access to, revealing, releasing, transferring, disseminating, or otherwise communicating all or any part of any individual record orally, in writing, electronically, or by any other communication method.

(9) "Enrollment verification data" includes:

(a) a student's birth certificate or other verification of age;

(b) verification of immunization or exemption from immunization form;

(c) proof of Utah public school residency;

(d) family income verification; or

(e) special education program information, including:

(i) an individualized education program;

(ii) a Section 504 accommodation plan; or

(iii) an English language learner plan.

(10) "FERPA" means the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g.

(11) "Information Technology Systems Security Plan" means a plan incorporating policies and process for:

(a) system administration;

(b) network security;

(c) application security;

(d) endpoint, server, and device security;

(e) identity, authentication, and access management;

(f) data protection and cryptography;

(g) monitoring, vulnerability, and patch management;

(h) high availability, disaster recovery, and physical protection;

(i) incident responses;

(j) acquisition and asset management; and

(k) policy, audit, and e-discovery training.

(12) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(13) "Metadata dictionary" has the same meaning as defined in Subsection 53A-1-1402(16).

(14) "Personally identifiable student data" has the same meaning as defined in Subsection 53A-1-1402(20).

(15)(a) "Student data advisory groups" has the same meaning as described in Subsection 53A-1-1403(3).

(16) "Student data manager: means the individual at the LEA level who:

(a) is designated as the student data manager by an LEA under Section 53A-1-1404;

(b) authorizes and manages the sharing of student data;

(c) acts as the primary contact for the Chief Privacy Officer;

(d) maintains a list of persons with access to personally identifiable student information; and

(e) is in charge of providing annual LEA staff and volunteer training on data privacy.

(17)(a) "Student information" means materials, information, records and knowledge that an LEA possesses or maintains about individual students.

(b) Student information is broader than student records and personally identifiable student information and may include information or knowledge that school employees possess or learn in the course of their duties.

(18) "Student performance data" means data relating to student performance, including:

(a) data on state, local and national assessments;

(b) course-taking and completion;

(c) grade-point average;

(d) remediation;

(e) retention;

(f) degree, diploma, or credential attainment; and

(g) enrollment and demographic data.

(19) "Third party contractor" has the same meaning as defined in Subsection 53A-1-1402(26).

R277-487-3. Data Privacy and Security Policies.

(1) The Superintendent shall develop resource materials for LEAs to train employees, aides, and volunteers of an LEA regarding confidentiality of personally identifiable student information and student performance data.

(2) The Superintendent shall make the materials developed in accordance with Subsection (1) available to each LEA.

(3) An LEA or public school may not be a member of or pay dues to an association that is not in compliance with:

(a) FERPA;

(b) Title 53A, Chapter 1, Part 14, Student Data Protection Act;

(c) Title 53A, Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act; and

(d) this R277-487.

(4) An LEA shall comply with Title 53A, Chapter 1, Part 14, Student Data Protection Act.

(5) An LEA shall comply with Section 53A-13-303.

(6) An LEA is responsible for the collection, maintenance, and transmission of student data.

(7) An LEA shall ensure that school enrollment verification data, student performance data, and personally identifiable student information are collected, maintained, and transmitted:

(a) in a secure manner; and

(b) consistent with sound data collection and storage procedures, established by the LEA.

(8) An LEA may contract with a third party provider to collect, maintain, and have access to school enrollment verification data or other student data if:

(a) the third party contractor meets the definition of a school official under 34 CFR 99.31 (a)(1)(i)(B);

(b) the contract between the LEA and the third party contractor includes a provision that the data is the property of the student under Section 53A-1-1405; and

(c) the LEA monitors and maintains control of the data.

(9) If an LEA contracts with a third party contractor to collect and have access to the LEA's data as described in Subsection (6), the LEA shall notify a student and the student's parent or guardian in writing that the student's data is collected and maintained by the third party contractor.

(10) An LEA shall publicly post the LEA's definition of directory information and describe how a student data manager may share personally identifiable information that is directory information.

(11) By July 1 annually, an LEA shall enter all student data elements shared with third parties into the Board's metadata dictionary.

(12) An LEA shall report all unauthorized disclosures of student data by third parties to the Superintendent.

(13) An LEA shall provide the Superintendent with a copy or link to the LEA's data governance plan by October 1 annually.

(14) An LEA shall provide the Superintendent with a copy or link to the LEA's Information Technology Systems Security Plan by October 1 annually.

(15) All public education employees, aides, and volunteers in public schools shall become familiar with federal, state, and local laws regarding the confidentiality of student performance data and personally identifiable student information.

(16) All public education employees, aides, and volunteers shall maintain appropriate confidentiality pursuant to federal, state, local laws, and LEA policies created in accordance with this section, with regard to student performance data and personally identifiable student information.

(17) An employee, aide, or volunteer may not share, disclose, or disseminate passwords for electronic maintenance of:

(a) student performance data; or

(b) personally identifiable student information.

(18) A public education employee licensed under Section 53A-6-104 may only access or use student information and records if the public education employee accesses the student information or records consistent with the educator's obligations under R277-515.

(19) The Board may discipline a licensed educator in accordance with licensing discipline procedures if the educator violates this R277-487.

(20) An LEA shall annually provide a training regarding the confidentiality of student data to any employee with access to education records as defined in FERPA.

(21) A school employee shall annually submit a certified statement to the LEA's student data manager, which certifies that the school employee completed the LEA's required student privacy training and understands student privacy requirements.

R277-487-4. Transparency.

(1) The Superintendent shall recommend policies for Board approval and model policies for LEAs regarding student data systems.

(2) A policy prepared in accordance with Subsection (1) shall include provisions regarding:

(a) accessibility by parents, students, and the public to student performance data;

(b) authorized purposes, uses, and disclosures of data maintained by the Superintendent or an LEA;

(c) the rights of parents and students regarding their personally identifiable information under state and federal law;

(d) parent, student, and public access to information about student data privacy and the security safeguards that protect the data from unauthorized access and use; and

(e) contact information for parents and students to request student and public school information from an LEA consistent with the law.

R277-487-5. Responsibilities of Chief Privacy Officer.

(1) The Chief Privacy Officer:

(a) may recommend legislation, as approved by the Board, for additional data security protections and the regulation of use of the data;

(b) shall supervise regular privacy and security compliance audits, following initiation by the Board;

(c) shall have responsibility for identification of threats to data security protections;

(d) shall develop and recommend policies to the Board and model policies for LEAs for:

(i) protection of personally identifiable student information;

(ii) consistent wiping or destruction of devices when devices are discarded by public education entities; and

(iii) appropriate responses to suspected or known breaches of data security protections;

(e) shall conduct training for Board staff and LEAs on student privacy; and

(f) shall develop and maintain a metadata dictionary as required by Section 53A-1-1403.

R277-487-6. Prohibition of Public Education Data Use for Marketing.

Data maintained by the state, a school district, school, or other public education agency or institution in the state, including data provided by contractors, may not be sold or used for marketing purposes, or targeted advertising as defined in Subsection 53A-1-1402(26) except with regard to authorized

uses of directory information not obtained through a contract with an educational agency or institution.

R277-487-7. Public Education Research Data.

(1) The Superintendent may provide limited or extensive data sets for research and analysis purposes to qualified researchers or organizations.

(2) The Superintendent shall use reasonable methods to qualify researchers or organizations to receive data, such as evidence that a research proposal has been approved by a federally recognized Institutional Review Board or "IRB."

(3) The Superintendent may post aggregate de-identified student assessment data to the Board website.

(4) The Superintendent shall ensure that personally identifiable student information is protected.

(5) The Superintendent:

(a) is not obligated to fill every request for data and shall establish procedures to determine which requests will be filled or to assign priorities to multiple requests;

(b) may give higher priority to requests that will help improve instruction in Utah's public schools; and

(c) may charge a fee to prepare data or to deliver data, particularly if the preparation requires original work.

(6) A researcher or organization shall provide a copy of the report or publication produced using Board data to the Superintendent at least 10 business days prior to the public release.

(7) Requests for data that disclose student information may only be provided in accordance with Section 53A-1-1409 and FERPA, incorporated herein by reference, and may include:

(a) student data that are de-identified, meaning that a reasonable person in the school community who does not have personal knowledge of the relevant circumstances could not identify student(s) with reasonable certainty;

(b) agreements with recipients of student data where recipients agree not to report or publish data in a manner that discloses students' identities; or

(c) release of student data, with appropriate binding agreements, for state or federal accountability or for the purpose of improving instruction to specific student subgroups.

(8) Recipients of Board research data shall sign a confidentiality agreement, if required by the Superintendent.

(9) Either the Board or the Superintendent may commission research or may approve research requests.

(10) Request for records under Title 63G, Chapter 2, Government Records Access and Management Act, are not subject to this Section R277-487-7.

R277-487-8. Public Education Survey Data.

(1) The Superintendent shall approve statewide education surveys administered with public funds through the Board or through a contract approved by the Board, as required under Section 53A-1-411.

(2) Data obtained from a statewide survey administered with public funds under Subsection (1) to the extent not subject to Section 53A-1-1405 are the property of the Board.

(3) The Superintendent shall make data obtained from a survey developed in accordance with Subsection (1) available only if the data is shared in such a manner as to protect the privacy of students and educators in accordance with federal and state law.

R277-487-9. CACTUS Data.

(1) The Board maintains information on all licensed Utah educators in CACTUS, including information classified as private, controlled, or protected under GRAMA.

(2) The Superintendent shall open a CACTUS file for a licensed Utah educator when the individual initiates a Board background check.

(3) Authorized Board staff may update CACTUS data as directed by the Superintendent.

(4) Authorized LEA staff may change demographic data and update data on educator assignments in CACTUS for the current school year only.

(5) A licensed individual may view his own personal data, but may not change or add data in CACTUS except under the following circumstances:

(a) A licensee may change the licensee's contact and demographic information at any time;

(b) An employing LEA may correct a current educator's assignment data on behalf of a licensee.

(c) A licensee may petition the Board for the purpose of correcting any errors in the licensee's CACTUS file.

(6) The Superintendent shall include an individual currently employed by a public or private school under a letter of authorization or as an intern in CACTUS.

(7) The Superintendent shall include an individual working in an LEA as a student teacher in CACTUS.

(8) The Superintendent shall provide training and ongoing support to authorized CACTUS users.

(9) For employment or assignment purposes only, authorized LEA staff members may:

(a) access data on individuals employed by the LEA; or

(b) view specific limited information on job applicants if the applicant has provided the LEA with a CACTUS identification number.

(10) CACTUS information belongs solely to the Board.

(g) The Superintendent may release data within CACTUS in accordance with the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.

R277-487-10. Educator Evaluation Data.

(1)(a) The Superintendent may provide classroom-level assessment data to administrators and teachers in accordance with federal and state privacy laws.

(b) School administrators shall share information requested by parents while ensuring the privacy of individual student information and educator evaluation data.

(2) Individual educator evaluation data shall be protected at the school, LEA and state levels and, if applicable, by the Board.

(3) An LEA shall designate employees who may have access to educator evaluation records.

(4) An LEA may not release or disclose student assessment information that reveals educator evaluation information or records.

(5) An LEA shall train employees in the confidential nature of employee evaluations and the importance of securing evaluations and records.

R277-487-11. Application to Third Party Contractors.

(1) The Board and LEAs shall set policies that govern a third party contractor's access to personally identifiable student data and public school enrollment verification data consistent with Section 53A-1-1401 et seq.

(2) An LEA may release student information and public school enrollment verification data to a third party contractor if:

(a) the release is allowed by, and released in accordance with, Section 53A-1-1409 and FERPA, incorporated herein by reference, and its implementing regulations; and

(b) the LEA complies with the requirements of Subsection R277-487-3(6).

(4) All Board contracts shall include sanctions for contractors or third party providers who violate provisions of state policies regarding unauthorized use and release of student and employee data.

(5) The Superintendent shall recommend that LEA policies include sanctions for contractors who violate provisions

of federal or state privacy law and LEA policies regarding unauthorized use and release of student and employee data.

R277-487-12. Annual Reports by Chief Privacy Officer.

(1) The Chief Privacy Officer shall submit to the Board an annual report regarding student data.

(2) The public report shall include:

(a) information about the implementation of this rule;

(b) information about research studies begun or planned using student information and data;

(c) identification of significant threats to student data privacy and security;

(d) a summary of data system audits; and

(e) recommendations for further improvements specific to student data security and the systems that are necessary for accountability in Board rules or legislation.

R277-487-13. Data Security and Privacy Training for Educators.

(1) The Superintendent shall develop a student and data security and privacy training for educators.

(2) The Superintendent shall make the training developed in accordance with Subsection (1) available through UEN.

(3) Beginning in the 2018-19 school year, an educator shall complete the training developed in accordance with Subsection (1) as a condition of re-licensure.

KEY: students, records, confidentiality

July 10, 2017	**Art X Sec 3**
Notice of Continuation November 14, 2014	**53A-13-301(4)**
	53A-1-401
	53A-1-411
	53A-8a-410(4)

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

A. "Accredited" means a Board-approved educator preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC) or the Council for Accreditation of Educator Preparation (CAEP).

B. "Accredited school" for purposes of this rule, means a public or private school that meets standards essential for the operation of a quality school program and has received formal approval through a regional accrediting association.

C. "Authorized staff" for purposes of this rule means an individual designated by the USOE or an LEA and approved by the USOE and who has completed CACTUS training.

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

E. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;
(2) educational background;
(3) endorsements;
(4) employment history; and
(5) a record of disciplinary action taken against the educator.

F. "ESEA subject" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA).

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

H. "Letter of Authorization" means a designation given to an individual for one year, such as an out-of-state candidate or individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by an LEA.

I. "Level 1 license" means a Utah professional educator license issued upon completion of a Board-approved educator preparation program or an alternative preparation program, or to an applicant that holds an educator license issued by another state or country that has met all ancillary requirements established by law or rule.

J. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:

(1) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;

(2) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah;

(3) additional requirements established by law or rule.

K. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received National Board Certification or a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school, or holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language hearing Association (ASHA) certification.

L. "License areas of concentration" means designations to licenses obtained by completing a Board-approved educator preparation program or an alternative preparation program in a specific area of educational studies to include the following: Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Middle (still valid, but not issued after 1988, 5-9), Secondary (6-12), Administrative/Supervisory (K-12), Career and Technical Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders, Speech-Language Pathologist, Speech-Language Technician. License areas of concentration may also bear endorsements relating to subjects or specific assignments.

M. "License endorsement (endorsement)" means a specialty field or area earned through completing required course work established by the USOE or through demonstrated competency approved by the USOE; the endorsement shall be listed on the professional educator license indicating the specific qualification(s) of the holder.

N. "Professional learning plan" means a plan developed by an educator in collaboration with the educator's supervisor consistent with R277-500 detailing appropriate professional learning activities for the purpose of renewing the educator's license.

O. "Renewal" means reissuing or extending the length of a license consistent with R277-500.

P. "State Approved Endorsement Program (SAEP)" means a plan in place developed between the USOE and a licensed educator to direct the completion of endorsement requirements by the educator consistent with R277-520-11.

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

R277-502-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, by Section 53A-6-104 which gives the Board power to issue licenses, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule specifies the types of license levels and license areas of concentration available and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah. The rule provides a process and criteria for educators whose licenses have lapsed and return to the teaching profession. All licensed educators employed in the Utah public schools shall be licensed consistent with this rule in order for the district to receive full funding under Section 53A-17a-107(2).

R277-502-3. Program Approval and Requirements.

A. The Board may accept educator license recommendations from educator preparation programs that have applied for Board approval and have met the requirements described in this rule and the Standards for Program Approval established by the Board in R277-504, R277-505, or R277-506 as determined by USOE.

B. The Board, or its designee, may establish deadlines and uniform forms and procedures for all aspects of licensing.

C. To be approved for license recommendation the educator preparation program shall:

(1) be accredited by NCATE or TEAC; or

(2) be accredited by CAEP using the CAEP Program Review with National Recognition or CAEP Program Review with feedback options; and

(3) have a physical location in Utah where students attend classes or if the program provides only online instruction:

(a) the program's primary headquarters shall be located in Utah and

(b) the program shall be licensed to do business in Utah through the Utah Department of Commerce;

(4) include coursework designed to ensure that the

educator is able to meet the Utah Effective Teaching Standards and Educational Leadership Standards established in R277-530;

(5) in the case of content endorsements, include coursework that is, at minimum, equivalent to the course requirements for the endorsement as established by USOE;

(6) establish entry requirements designed to ensure that only high quality individuals enter the licensure program; requirements shall include the following minimum components, beginning August 1, 2014:

(a) a minimum high school/college GPA of 3.0; and

(b) a USOE-cleared fingerprint background check; and

(c) a passing score on a Board-approved basic skills test; or

(d) an ACT composite score of 21 with a verbal/English score no less than 20 and a mathematics/quantitative score of no less than 19; or

(e) a combined SAT score of 1000 with neither mathematics nor verbal below 450.

(7) include a student teaching or intern experience that meets the requirements detailed in R277-504, R277-505, and R277-506.

D. An institution may waive any of the entrance requirements provided in R277-502-3C(6) based on program established guidelines for no more than 10 percent of an entrance cohort.

E. USOE representatives shall be a part of the accrediting team for any Board-approved educator preparation program seeking to maintain or receive program approval. USOE representatives shall be responsible for:

(1) observing and monitoring the accreditation process;

(2) reviewing subject specific programs to determine if the program meets state standards for licensure in specific areas;

(3) reviewing program procedures to ensure that Board requirements for licensure are followed;

(4) reviewing licensure candidate files to determine if Board requirements for licensure are followed by the program.

F. After completion of the accreditation site visit, a Board-approved educator preparation program, working with the USOE, shall prepare and submit a program approval request for consideration by the Board that includes:

(1) program summary;

(2) accreditation findings;

(3) program areas of distinction;

(4) program enrollment;

(5) program goals and direction.

G. If the program approval request is approved by the Board, the program shall be considered Board-approved until the next scheduled accreditation visit unless the program is placed on probation by the USOE for failure to meet program requirements detailed in applicable Board rules and program approval is revoked by the Board under R277-502-3O.

H. New educator preparation programs that seek Board approval or previously Board-approved educator preparation programs that seek approval for additional license area preparation and endorsements shall submit applications to USOE including:

(1) information detailing the exact license areas of concentration and endorsements that the program intends to award;

(2) detailed course information, including required course lists, course descriptions, and course syllabi for all courses that will be required as part of a program;

(3) detailed information showing how the required coursework will ensure that the educator satisfies all standards in the Utah Effective Teaching Standards and Educational Leadership Standards established in R277-530 and Professional Educator Standards established in R277-515;

(4) information about program timelines and anticipated enrollment.

I. Applications for new educator preparation programs shall be approved by the Board.

J. Applications for previously Board-approved educator preparation programs desiring Board approval for additional license areas and endorsements:

(1) shall be reviewed and approved by USOE;

(2) may receive preliminary approval pending Utah State Board of Regents approval of the new program if the program is within a public institution.

K. An educator preparation program seeking accreditation may apply to the Board for probationary approval for a maximum of three years contingent on the completion of the accreditation process.

L. A previously Board-approved educator preparation program shall submit an annual report to the USOE by July 1 of each year. The report shall summarize the institution's annual accreditation report and shall include the following:

(1) student enrollment counts designated by anticipated license area of concentration and endorsement and disaggregated by gender and ethnicity;

(2) information explaining any significant changes to course requirements or course content;

(3) the program's response to USOE-identified areas of concern or areas of focus;

(4) information regarding any program-determined areas of concern or areas of focus and the program's planned response;

(5) a summary explanation of students admitted under the waiver identified in R277-502-3D and an explanation of the waiver.

M. The USOE shall provide reporting criteria to Board-approved educator preparation programs regarding the annual report and USOE-designated areas of concern or focus by January 31 annually.

N. Educator preparation programs that submit inadequate or incomplete information to the USOE may be placed on a probationary status by USOE.

O. Board-approved educator preparation programs on probationary status that continue to fail to meet requirements may have their license recommendation status revoked in full or in part by the Board with at least one year notice.

P. An individual that completes a Board-approved educator preparation program may be recommended for licensure within five years of program completion if the individual meets current licensing requirements.

Q. If five years have passed since an individual completed a Board-approved preparation program, the individual may be recommended for licensure following review by the individual program. The preparation program officials shall determine whether any content or pedagogy coursework previously completed meets current program standards and if additional coursework, hours or other activities are necessary. The individual shall complete all work required by the program officials before receiving a license recommendation.

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

A. Level 1 License Requirements

(1) An initial license, the Level 1 license, is issued to an individual who is recommended by a Board-approved educator preparation program or approved alternative preparation program, or an educator with a professional educator license from another state.

(a) LEAs and Board-approved educator preparation programs shall cooperate in preparing candidates for the educator Level 1 license. The resources of both may be used to assist candidates in preparation for licensing.

(b) The recommendation indicates that the individual has satisfactorily completed the programs of study required for the

preparation of educators and has met licensing standards in the license areas of concentration for which the individual is recommended.

(2) The Level 1 license is issued for three years.

(3) A Level 1 license holder shall satisfy all requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

(4) An educator qualified to teach any ESEA subject shall be considered Highly Qualified in at least one ESEA subject prior to moving from Level 1 to Level 2.

(5) A license applicant who has received or completed license preparation activities or coursework inconsistent with this rule may present compelling information and documentation for review and approval by the USOE to satisfy the licensing requirements.

(6) If an educator has taught for three years in a K-12 public education system in Utah, a Level 1 license may only be renewed if:

(a) the employing LEA has requested a one year extension consistent with R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers; or

(b) the individual has continuous experience as a speech language pathologist in a clinical setting.

B. Level 2 License Requirements

(1) A Level 2 license may be issued by the Board to a Level 1 license holder upon satisfaction of all Board requirements for the Level 2 license and upon the recommendation of the employing LEA.

(2) The recommendation shall be made following the completion of three years of successful, professional growth and educator experience, satisfaction of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers, any additional requirements imposed by the employing LEA, and before the Level 1 license expires.

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

(4) The Level 2 license may be renewed for successive five year periods consistent with R277-500, Educator Licensing Renewal.

C. Level 3 License Requirements

(1) A Level 3 license may be issued by the Board to a Level 2 license holder who:

(a) has achieved National Board Certification; or

(b) has a doctorate in education in a field related to a content area in a unit of the public education system or an accredited private school; or

(c) holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language Hearing Association (ASHA) certification.

(2) A Level 3 license is valid for seven years unless suspended or revoked for cause by the Board.

(3) The Level 3 license may be renewed for successive seven year periods consistent with R277-500.

(4) A Level 3 license shall revert to a Level 2 license if the holder fails to maintain National Board Certification status or fails to maintain a current Certificate of Clinical Competence from the American Speech-Language-Hearing Association.

D. License Renewal Timeline

Licenses expire on June 30 of the year of expiration recorded on CACTUS and may be renewed any time after January of the same year. Responsibility for license renewal rests solely with the holder.

R277-502-5. Professional Educator License Areas of Concentration, and Endorsements and Under-Qualified Employees.

A. Unless excepted under rules of the Board, to be employed in the public schools in a capacity covered by the following license areas of concentration, a person shall hold a valid license issued by the Board in the respective license areas of concentration:

(1) Early Childhood (K-3);
(2) Elementary (1-8);
(3) Elementary (K-6);
(4) Middle (still valid, and issued before 1988, 5-9);
(5) Secondary (6-12);
(6) Administrative/Supervisory (K-12);
(7) Career and Technical Education;
(8) School Counselor;
(9) School Psychologist;
(10) School Social Worker;
(11) Special Education (K-12);
(12) Preschool Special Education (Birth-Age 5);
(13) Communication Disorders;
(14) Speech-Language Pathologist;
(15) Speech-Language Technician.

B. Under-qualified educators:

(1) Educators who are licensed and hold the appropriate license area of concentration but who are working out of their endorsement area(s) shall request and prepare an SAEP to complete the requirements of an endorsement with a USOE education specialist; or

(2) LEAs may request Letters of Authorization from the Board for educators employed by LEAs if educators have not completed requirements for areas of concentration or endorsements.

(a) An approved Letter of Authorization is valid for one year.

(b) Educators may be approved for no more than three Letters of Authorization throughout their employment in Utah schools. The State Superintendent of Public Instruction or designee may grant exceptions to the three Letters of Authorization limitation on a case by case basis following specific approval of the request by the LEA governing board. Letters of Authorization approved prior to the 2000-2001 school year shall not be counted in this limit.

(c) If an education employee's Letter of Authorization expires before the individual is approved for licensing, the employee falls into under-qualified status.

C. License areas of concentration may be endorsed to indicate qualification in a subject or content area.

(1) A STEM endorsement shall be recognized as a minimum of 16 semester hours of university credit toward lane change on an LEA salary schedule.

(a) The State Superintendent of Public Instruction or designee shall determine the mathematics-, engineering-, science-, and technology-related courses and experiences necessary for STEM endorsements.

(b) The State Superintendent of Public Instruction or designee shall determine which content area endorsements qualify as STEM endorsements.

(2) An endorsement is not valid for employment purposes without a current license and license area of concentration.

R277-502-6. Returning Educator Relicensure.

A. A previously licensed educator with an expired license may renew an expired license upon satisfaction of the following:

(1) Completion of criminal background check including review of any criminal offenses and clearance by the Utah Professional Practices Advisory Commission;

(2) Employment by an LEA;

(3) Completion of a one-year professional learning plan developed jointly by the school principal or charter school director and the returning educator consistent with R277-500 that also considers the following:

(a) previous successful public school teaching experience;

(b) formal educational preparation;

(c) period of time between last public teaching experience and the present;

(d) school goals for student achievement within the employing school and the educator's role in accomplishing those goals;

(e) returning educator's professional abilities, as determined by a formal discussion and observation process completed within the first 30 days of employment; and

(f) completion of additional necessary professional development for the educator, as determined jointly by the principal/school and educator.

(4) Filing of the professional development plan within 30 days of hire;

(5) Successful completion of required Board-approved exams for licensure;

(6) Satisfactory experience as determined by the LEA with a trained mentor; and

(7) Submission to the USOE of the completed and signed Return to Original License Level Application, available on the USOE website prior to June 30 of the school year in which the educator seeks to return.

B. The Professional Learning Plan is independent of the License Renewal Point requirements in R277-500-3C.

C. Returning educators who previously held a Level 2 or Level 3 license shall be issued a Level 1 license during the first year of employment. Upon completion of the requirements listed in R277-502-6A and a satisfactory LEA evaluation, the employing LEA may recommend the educator's return to Level 2 or Level 3 licensure.

D. Returning educators who taught less than three consecutive years in a public or accredited private school shall complete the Early Years Enhancement requirements before moving from Level 1 to Level 2 licensure.

R277-502-7. Professional Educator License Reciprocity.

A. Utah is a member of the Compact for Interstate Qualification of Educational Personnel under Section 53A-6-201.

B. A Level 1 license may be issued to an individual holding a professional educator license in another state who has completed preparation equivalent to Board-approved standards and who has completed Board-approved testing, as required by R277-503-3.

(1) If the applicant has three or more continuous years of previous educator experience in a public or accredited private school, a Level 2 license may be issued upon the recommendation of the employing Utah LEA after at least one year.

(2) If the applicant has less than three years of previous educator experience in a public or accredited private school, a Level 2 license may be issued following satisfaction of the requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

R277-502-8. Professional Educator License Fees.

A. The Board may establish a fee schedule for the issuance and renewal of licenses and endorsements consistent with 53A-6-105. All endorsements to which the applicant is entitled may be issued or renewed with the same expiration date for one licensing fee.

B. A fee may be charged for a valid license to be reprinted or for an endorsement to be added.

C. All costs for testing, evaluation, and course work shall be borne by the applicant unless other arrangements are agreed to in advance by the employing LEA.

D. Costs to review nonresident educator applications may exceed the cost to review resident applications due to the following:

(1) The review is necessary to ensure that nonresident applicants' training satisfies Utah's course and curriculum standards.

(2) The review of nonresident licensing applications is time consuming and potentially labor intensive.

E. Differentiated fees may be set consistent with the time and resources required to adequately review all applicants for educator licenses.

KEY: professional competency, educator licensing

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R277. Education, Administration.
R277-516. Background Check Policies and Required Reports of Arrests for Licensed Educators, Volunteers, Non-licensed Employees, and Charter School Governing Board Members.
R277-516-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b)(i) Subsections 53A-1-301(3)(a) and 53A-1-301(3)(d)(x), which instruct the Superintendent to perform duties assigned by the Board that include:

(ii) presenting to the Governor and the Legislature each December a report of the public school system for the preceding year that includes:

(A) investigation of all matters pertaining to the public schools; and

(B) statistical and financial information about the school system which the Superintendent considers pertinent;

(c) Subsections 53A-1-402(1)(a)(i) and (iii), which direct the Board to:

(i) establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services; and

(ii) the evaluation of instructional personnel; and

(d) Title 53A, Chapter 15, Part 15, Background Checks, which directs the Board to require educator license applicants to submit to background checks and provide ongoing monitoring of licensed educators.

(2) The purpose of this rule is ensure that all students who are compelled by law to attend public schools, subject to release from school attendance consistent with Section 53A-11-102, are instructed and served by public school teachers and employees who have not violated laws that would endanger students in any way.

R277-516-2. Definitions.

(1) "Charter school governing board" means a board designated by a charter school to make decisions for the operation of the charter school.

(2) "Charter school board member" means a current member of a charter school governing board.

(3) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the database maintained on all licensed Utah educators, which includes information such as:

(a) personal directory information;

(b) educational background;

(c) endorsements;

(d) employment history;

(e) professional development information;

(f) completion of employee background checks; and

(g) a record of disciplinary action taken against the educator.

(4) "Contract employee" means an employee of a staffing service who works at a public school under a contract between the staffing service and the public school.

(5) "DPS" means the Department of Public Safety.

(6) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.

(7)(a) "Licensed educator" means an individual who holds a valid Utah educator license and has satisfied all requirements to be a licensed educator in the Utah public school system (examples are traditional public school teachers, charter school teachers, school administrators, Board employees, and school district specialists).

(b) A licensed educator may or may not be employed in a position that requires an educator license.

(c) A licensed educator includes an individual who:

(i) is student teaching;

(ii) is in an alternative route to licensing program or position; or

(iii) holds an LEA-specific competency-based license.

(8) "Non-licensed public education employee" means an employee of a an LEA who:

(a) does not hold a current Utah educator license issued by the Board under Title 53A, Chapter 6, Educator Licensing and Professional Practices; or

(b) is a contract employee.

(9) "Public education employer" means the education entity that hires and employs an individual, including public school districts, the Utah State Office of Education, Regional Service Centers, and charter schools.

(10) "Utah Professional Practices Advisory Commission" or "UPPAC" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, established in Section 53A-6-301.

(11) "Volunteer" means a volunteer who may be given significant unsupervised access to children in connection with the volunteer's assignment.

R277-516-3. Licensed Public Education Employee Personal Reporting of Arrests.

(1) A licensed educator who is arrested, cited or charged with the following alleged offenses shall report the arrest, citation, or charge within 48 hours or as soon as possible to the licensed educator's district superintendent, charter school director or designee:

(a) any matters involving an alleged sex offense;

(b) any matters involving an alleged drug-related offense;

(c) any matters involving an alleged alcohol-related offense;

(d) any matters involving an alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person;

(e) any matters involving an alleged felony offense under Title 76, Chapter 6, Offenses Against Property;

(f) any matters involving an alleged crime of domestic violence under Title 77, Chapter 36, Cohabitant Abuse Procedures Act; and

(g) any matters involving an alleged crime under federal law or the laws of another state comparable to the violations listed in Subsections (a) through (f).

(2) A licensed educator shall report convictions, including pleas in abeyance and diversion agreements within 48 hours or as soon as possible upon receipt of notice of the conviction, plea in abeyance or diversion agreement.

(3) An LEA superintendent, director, or designee shall report conviction, arrest or offense information received from a licensed educator to the Superintendent within 48 hours of receipt of information from a licensed educator.

(4) The Superintendent shall develop an electronic reporting process on the Board's website.

(5) A licensed educator shall report for work following an arrest and provide notice to the licensed educator's employer unless directed not to report for work by the employer, consistent with school district or charter school policy.

R277-516-4. Non-licensed Public Education Employee, Volunteer, and Charter School Board Member Background Check Policies.

(1) An LEA shall adopt a policy for non-licensed public education employee, volunteer, and charter school board member background checks that includes at least the following components:

(a) a requirement that the individual submit to a background check and ongoing monitoring through registration

with the systems described in Section 53A-15-1505 as a condition of employment or appointment; and

(b) identification of the appropriate privacy risk mitigation strategy that will be used to ensure that the LEA only receives notifications for individuals with whom the LEA maintains an authorizing relationship.

(2) An LEA policy shall describe the background check process necessary based on the individual's duties.

R277-516-5. Non-licensed Public Education Employee, Volunteer, or Charter School Board Member Arrest Reporting Policy Required from LEAs.

(1) An LEA shall have a policy requiring a non-licensed public employee, a volunteer, a charter school board member, or any other employee who drives a motor vehicle as an employment responsibility, to report offenses specified in Subsection (3).

(2) An LEA shall post the policy described in Subsection (1) on the LEA's website.

(3) An LEA's policy described in Subsection (1) shall include the following minimum components:

(a) reporting of the following:

(i) convictions, including pleas in abeyance and diversion agreements;

(ii) any matters involving arrests for alleged sex offenses;

(iii) any matters involving arrests for alleged drug-related offenses;

(iv) any matters involving arrests for alleged alcohol-related offenses; and

(v) any matters involving arrests for alleged offenses against the person under Title 76, Chapter 5, Offenses Against the Person.

(b) a timeline for receiving reports from non-licensed public education employees;

(c) immediate suspension from student supervision responsibilities for alleged sex offenses and other alleged offenses which may endanger students during the period of investigation;

(d) immediate suspension from transporting students or public education vehicle operation or maintenance for alleged offenses involving alcohol or drugs during the period of investigation;

(e) adequate due process for the accused employee consistent with Section 53A-15-1506;

(f) a process to review arrest information and make employment or appointment decisions that protect both the safety of students and the confidentiality and due process rights of employees and charter school board members; and

(g) timelines and procedures for maintaining records of arrests and convictions of non-licensed public education employees and charter school board members.

(4) An LEA shall ensure that the records described in R277-516-5(3)(g):

(a) include final administrative determinations and actions following investigation; and

(b) are maintained:

(i) only as necessary to protect the safety of students; and

(ii) with strict requirements for the protection of confidential employment information.

R277-516-6. Public Education Employer Responsibilities Upon Receipt of Arrest Information.

(1) A public education employer that receives arrest information about a licensed public education employee shall review the arrest information and assess the employment status consistent with Section 53A-6-501, Rule R277-515, and the LEA's policy.

(2) A public education employer that receives arrest information about a non-licensed public education employee, volunteer, or charter school board member shall review the arrest information and assess the individual's employment or appointment status:

(a) considering the individual's assignment and duties; and

(b) consistent with a local board-approved policy for ethical behavior of non-licensed employees, volunteers, and charter school board members.

(3) A local board shall provide appropriate training to non-licensed public education employees, volunteers, and charter school board members about the provisions of the local board's policy for self-reporting and ethical behavior of non-licensed public education employees, volunteers, and charter school board members.

(4) A public education employer shall cooperate with the Superintendent in investigations of licensed educators.

R277-516-7. Misconduct Notification Requirements and Procedures.

(1)(a) An educator who has reasonable cause to believe that a student may have been physically or sexually abused by a school's employee shall immediately report that belief to:

(i) law enforcement;

(ii) the school principal; and

(iii) to any other entity to which a report is required by law.

(b) A school administrator who receives a report described in Subsection (1)(a) shall immediately submit the information to UPPAC if the employee is licensed as an educator.

(2) A local superintendent or charter school director shall notify UPPAC if an educator is determined, pursuant to an administrative or judicial action, or internal LEA investigation, to have had disciplinary action taken for, or, to have engaged in:

(a) unprofessional conduct or professional incompetence that:

(i) results in suspension for more than one week or termination;

(ii) requires mandatory licensing discipline under R277-515; or

(iii) otherwise warrants UPPAC review; or

(b) immoral behavior.

(3) An educator who fails to comply with Subsection (1) may:

(a) be found guilty of unprofessional conduct; and

(b) have disciplinary action taken against the educator.

(4) The Superintendent may withhold, reduce, or terminate funding to an LEA for failure to make a required report under R277-516 through the process described in Rule R277-114.

KEY: school employees, self reporting

August 12, 2016	**Art X Sec 3**
Notice of Continuation July 19, 2017	**53A-1-301(3)(a)**
	53A-1-301(3)(d)(x)
	53A-1-402(1)(a)(i)
	53A-1-402(1)(a)(iii)

R277. Education, Administration.
R277-608. Prohibition of Corporal Punishment in Utah's Public Schools.
R277-608-1. Definitions.

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

B. "Corporal punishment" means the intentional infliction of physical pain upon the body of a minor child as a disciplinary measure.

C. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and the Utah Schools for the Deaf and the Blind.

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

R277-608-2. Authority and Purpose.

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

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

R277-608-3. Reporting Requirements.

A. Each LEA shall incorporate in the LEA plan submitted to the USOE annually, the prohibition of corporal punishment consistent with the law.

B. An LEA policy shall incorporate a prohibition of corporal punishment consistent with the law, appropriate sanctions and appeal procedures for LEA employees disciplined under this rule and the corresponding state statute.

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

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

KEY: students' rights, disciplinary problems, teachers
January 10, 2012 Art X Sec 3
Notice of Continuation July 19, 2017 53A-1-401(3)
53A-11-801 through 805

R277. Education, Administration.
R277-713. Concurrent Enrollment of High School Students in College Courses.
R277-713-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53A-15-1707, which directs the Board to provide for the distribution of concurrent enrollment dollars in rule.

(2) The purpose of the concurrent enrollment program is to provide a challenging college-level and productive experience in high school, and to provide transition courses that can be applied to postsecondary education.

(3) The purpose of this rule is to specify the standards and procedures for concurrent enrollment courses and the criteria for funding appropriate concurrent enrollment expenditures.

R277-713-2. Definitions.

(1) "Concurrent Enrollment" means a public high school student is enrolled in a course that satisfies both high school graduation requirements and qualifies for higher education credit at a USHE institution.

(2) "Concurrent Enrollment Program" or "Program" means the program created in Section 53A-15-1703 that receives funding in accordance with Section 53A-15-1707, which allows students to participate in concurrent enrollment courses.

(3) "Master course list" means a list of approved courses, maintained by the Superintendent and USHE, which may be offered and funded through the concurrent enrollment program.

(4) "USHE" means the Utah System of Higher Education.

R277-713-3. Student Eligibility and Participation.

(1) A student participating in the program shall:

(a) be enrolled in a public high school in the state and counted in average daily membership for that high school, as required in Section 53A-15-1702(4);

(b) have on file at the participating school, a current student SEOP, as defined in Section 53A-1a-106.

(c) have completed a concurrent enrollment participation form, including a parent permission form and acknowledgment of program participation requirements, as required in section 53A-15-1705; and

(d)(i) be enrolled in grade 11 or 12; or

(ii) if allowed by exception, be enrolled in grade 9 or 10, as detailed in Section 53A-15-1703.

(2) Student eligibility requirements for the program shall be:

(a) established by an LEA and a USHE institution; and

(b) sufficiently selective to predict a successful experience for qualified students.

(3) An LEA has the primary responsibility for identifying a student who is eligible to participate in a concurrent enrollment class.

(4) To ensure that a student is prepared for college level work, an LEA shall appropriately evaluate the student's abilities prior to participation in concurrent enrollment courses, and to determine that the student meets prerequisites previously established for the same campus-based course by the sponsoring USHE institution.

R277-713-4. Course Credit and Offerings - Course Approval Process.

(1) Credit earned through a concurrent enrollment course:

(a) has the same credit hour value as when taught on a college campus;

(b) applies toward graduation on the same basis as a course taught at a USHE institution to which the credits are submitted;

(c) generates higher education credit that becomes a part of a student's permanent college transcript;

(d) generates high school credit that is consistent with the LEA policies for awarding credit for graduation; and

(e) is transferable from one USHE institution to another.

(2) A USHE institution is responsible to determine the credit for a concurrent enrollment course, consistent with State Board of Regents policies.

(3) An LEA and a USHE institution shall provide the Superintendent and USHE with proposed new course offerings, including syllabi and curriculum materials, by November 15 of the year preceding the school year in which the courses would be offered.

(4) A concurrent enrollment course shall be approved by the Superintendent and USHE, and designated on the master course list, maintained by the Superintendent and USHE.

(5)(a) Concurrent enrollment course offerings shall reflect the strengths and resources of the respective schools and USHE institutions and be based upon student needs.

(b) The number of courses selected shall be kept small enough to ensure coordinated statewide development and professional development activities for participating teachers.

(6) To provide for the focus of energy and resources on quality instruction in the concurrent enrollment program, program courses shall be limited to courses in:

(a) English;
(b) mathematics;
(c) fine arts;
(d) humanities;
(e) science;
(f) social science;
(g) world languages; and
(h) career and technical education.

(7) A Technology-intensive concurrent enrollment (TICE) course is a hybrid course, having a blend of different learning activities, available both in the classroom and online, or may be delivered exclusively online.

(8) A concurrent enrollment course shall be a course at the 1000 or 2000 level in postsecondary education, except for a 3000-level accelerated foreign language course, which may be approved as a concurrent enrollment course for eligible students.

(9) A concurrent enrollment course may not be approved if it is:

(a) a high school course that is typically offered in grade 9 or 10; or

(b) a postsecondary course below the 1000 level.

(10) The appropriate USHE institution shall take responsibility for course content, procedures, examinations, teaching materials, and program monitoring and all procedures and materials shall be consistent with Utah law, and shall ensure quality and comparability with courses offered on a college or university campus.

R277-713-5. Program Management and Delivery.

(1)(a) Concurrent enrollment courses and curriculum may be provided through live classroom instruction or by other means, including electronic communications.

(b) An LEA and a USHE institution shall design and implement courses to take full advantage of the most currently available educational technology.

(2) An LEA shall use a Superintendent-designated 11-digit course code for a concurrent enrollment course.

(3) An LEA and a USHE institution shall jointly align information technology systems with all individual student

academic achievement data so that student information will be tracked through both education systems consistent with Section 53A-1-603.5.

R277-713-6. Faculty and Educator Requirements.

(1) An educator who is not employed by a USHE institution and teaches a concurrent enrollment course shall:

(a) be employed by an LEA;

(b) have secondary endorsements in each subject area in which they teach; and

(c) have a Level 4 mathematics endorsement if the educator teaches a mathematics concurrent enrollment course.

(2) An educator employed by an LEA who teaches a concurrent enrollment course shall be approved as an adjunct faculty member at the contracting USHE institution prior to teaching the concurrent enrollment course.

(3) High school educators who hold adjunct or part time faculty status with a USHE institution for the purpose of teaching concurrent enrollment courses shall be included as fully as possible in the academic life of the supervising academic department at the USHE institution.

(4) An LEA and a USHE institution shall share expertise and professional development, as necessary, to adequately prepare a teacher to teach in the concurrent enrollment program, including federal and state laws specific to student privacy and student records.

(5) A USHE institution that employs a faculty member who teaches in a high school has responsibility for ensuring and maintaining documentation that the faculty member has successfully completed a criminal background check, consistent with Section 53A-15-1503.

R277-713-7. Concurrent Enrollment Funding and Use of Concurrent Enrollment Funds.

(1) Program funds shall be allocated in accordance with Section 53A-15-1707.

(2) Program funds allocated to LEAs may not be used for any other program or purpose, except as provided in Section 53A-17a-105.5.

(3) Concurrent enrollment funding may not be used to fund a parent- or student-initiated college-level course at an institution of higher education.

(4) The Superintendent may not distribute concurrent enrollment funds to an LEA for reimbursement of a concurrent enrollment course:

(a) that is not on the master course list;

(b) for a student that has exceeded 30 semester hours of concurrent enrollment for the school year;

(c) for a concurrent enrollment course repeated by a student; or

(d) taken by a student:

(i) who has received a diploma;

(ii) whose class has graduated; or

(iii) who has participated in graduation exercises.

(5)(a) An LEA shall receive a pro-rated amount of the funds appropriated for concurrent enrollment according to the number of semester hours successfully completed by students registered through the LEA in the prior year compared to the state total of completed concurrent enrollment hours.

(b) Successfully completed means that a student received USHE credit for the course.

(6) An LEA's use of state funds for concurrent enrollment is limited to the following:

(a) aid in professional development of adjunct faculty in cooperation with the participating USHE institution;

(b) assistance with delivery costs for distance learning programs;

(c) participation in the costs of LEA personnel who work with the program;

(d) student textbooks and other instructional materials;

(e) fee waivers for costs or expenses related to concurrent enrollment for fee waiver eligible students under R277-407;

(f) purchases by LEAs of classroom equipment required to conduct concurrent enrollment courses; and

(g) other uses approved in writing by the Superintendent consistent with the law and purposes of this rule.

(7) An LEA that receives program funds shall provide the Superintendent with the following:

(a) end-of-year expenditures reports; and

(b) an annual report regarding supervisory services and professional development provided by a USHE institution.

(8) Appropriate reimbursement may be verified at any time by an audit.

R277-713-8. Student Tuition and Fees.

(1) A concurrent enrollment program student may be charged partial tuition and program-related fees, in accordance with Section 53A-15-1706.

(2) Postsecondary tuition and participation fees charged to a concurrent enrollment student are not fees, as defined in R277-407, and do not qualify for a fee waiver under R277-407.

(3)(a) All costs related to concurrent enrollment classes that are not tuition and participation fees are subject to a fee waiver consistent with R277-407.

(b) Concurrent enrollment costs subject to fee waiver may include consumables, lab fees, copying, material costs, and textbooks required for the course.

(4)(a) Except as provided in Subsection (4)(b), an LEA shall be responsible for fee waivers.

(b) An agreement between a USHE institution and an LEA may address the responsibility for fee waivers.

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

(1) An LEA and a USHE institution that plan to collaborate to offer a concurrent enrollment course shall enter into an annual contract for the upcoming school year by no later than May 30.

(2) An LEA shall provide the Superintendent a copy of each annual contract entered into between the LEA and a USHE institution for the upcoming school year by no later than May 30.

(3) An LEA and a USHE institution shall use the standard contract language developed by the Superintendent and USHE.

KEY: students, curricula, higher education

August 11, 2016 **Art X Sec 3**

Notice of Continuation July 19, 2017 **53A-1-401**

53A-1-402(1)(c)

53A-15-101

53A-15-101.5

53A-17a-120.5

R277. Education, Administration.
R277-800. Utah Schools for the Deaf and the Blind.
R277-800-1. Definitions.

A. "Accessible media producer" means companies or agencies that create fully-accessible specialized, student-ready formats for curriculum materials, such as Braille, large print, audio, or digital books.

B. "Advisory Council" means the Advisory Council for the Utah Schools for the Deaf and the Blind with members, responsibilities, and other provisions under Section 53A-25b-203 and R277-800-4.

C. "Assessment" means the process of documenting, usually in measurable terms, knowledge, skills, attitudes and abilities pertaining to the fields of vision and hearing. These assessments may include the following areas of focus:

(1) valid, reliable and appropriate assessments given to determine eligibility for placement and services by a team of qualified professionals and the student's parent(s);

(2) functional assessments accomplished by observation and measurement of daily living skills and functional use of vision or hearing;

(3) academic evaluations as part of the Utah Performance Assessment System for Students (U-PASS), including an alternate assessment with appropriate accommodations as indicated on the individualized education program (IEP).

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

E. "Campus-Based Program" means a program provided by USDB that offers an alternative to an outreach program for students who are blind or visually impaired, deaf or hard of hearing, or deafblind (ages three to 22). Services are provided by qualified USDB staff at a USDB site.

F. "The Chafee Amendment to the Copyright Act, 17 U.S.C. Section 121" (Chafee Amendment) is a federal law that allows an authorized entity to reproduce or distribute copyrighted materials in specialized formats for students who are blind or have other print disabilities without the need to obtain permission of the copyright owner. Authorized entities are governmental or nonprofit organizations that have a primary mission to provide copyrighted works in specialized formats for students who are blind or have other print disabilities.

G. "Child Find" means activities and strategies designed to locate, evaluate, and identify individuals eligible for services under the IDEA.

H. "Consultation" means a meeting for discussion or the seeking of advice.

I. "Designated LEA" means the local education agency assigned by a student's IEP or Section 504 team to have primary responsibility for ensuring that all rights and requirements regarding individual student assessment, eligibility services and procedural safeguards are satisfied consistent with the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1400, Part B, or Section 504 of the Rehabilitation Act of 1973.

J. "Deafblindness" or "deafblind" means written verification provided by a medical professional stating that an individual has concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness. The definition of deafblindness also includes the provisions of 53A-25b-102 and 301.

K. "Educational Resource Center" (ERC) is a center under the direction of the USDB that provides information, technology, and instructional materials to assist Utah children with sensory impairments in progressing in the curriculum. It is also the mission of the ERC to facilitate access to materials, information, and training for teachers and parents of children with sensory impairments.

L. "Hearing impairment/deafness" ('hard of hearing' for purposes of this rule) is defined as follows:

(1) Hearing impairment is an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness.

(2) Deafness is a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, and that adversely affects a student's educational performance.

M. "Local education agency" (LEA) means an agency that has administrative control and direction for public education. School districts, charter schools, and the USDB are LEAs.

N. "National Instructional Materials Access Center (NIMAC) is a central national repository that receives file sets in the NIMAS from publishers to maintain, catalogue, and house for future reference file sets for states to use with students who have print disabilities and require accessible alternate formats.

O. "National Instructional Materials Accessibility Standard" (NIMAS) means the electronic standard that enables all producers of alternate formats for students with print disabilities to work from one standard format available from publishers for this purpose.

P. "Outreach program" is a program provided by the USDB that offers an alternative to a campus-based program for students who are blind or visually impaired, deaf or hard of hearing, or deafblind (ages three to 22). Services are provided at a student's resident school or at a designated school by a qualified teacher of the blind or visually impaired, deaf or hard of hearing, or deafblind.

Q. "Related services" means those supportive services that are necessary for the appropriate implementation of the IEP. These may include but are not limited to speech pathology, audiology, low vision services, orientation and mobility, school counselor, transportation, school nurse, occupational therapy, or physical therapy.

R. "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.

S. "Technical assistance" means assistance to public education employees or licensed educators, and parents and families in significant areas of need by someone who has the expertise necessary to give council and training in designated areas.

T. "USDB" means the Utah Schools for the Deaf and the Blind.

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

V. "Utah State Instructional Materials Access Center (USIMAC) is a center that receives NIMAS electronic file sets and produces them in the accessible alternate format required by students with print disabilities.

W. Visual impairment (including blindness) is an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness that adversely affects a student's educational performance.

X. "WPU" means weighted pupil unit, the basic unit used to calculate the amount of state funds for which a school district or charter school is eligible.

R277-800-2. 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-25B-201 which describes the authority of the Board regarding the USDB, Section 53A-25b-203 which directs the Board to appoint Advisory Council members and assign a USOE staff member as a liaison between

the Board and the Advisory Council, Section 53A-25b-302 which directs the Board to establish entrance policies and procedures to be considered, consistent with IDEA, for student placement recommendations at the USDB, Section 53A-25b-501 to establish USIMAC and outline collaboration and operating procedures for USIMAC and USDB resources, 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 standards and procedures for the operation of the USDB and the USDB outreach programs and services.

R277-800-3. Board Authority Over and Support for USDB.

A. Consistent with Section 53A-25b-201, the Board is the governing board of the USDB.

B. The USDB superintendent, appointed consistent with Section 53A-25b-201(2), is subject to the direction of the Board and its executive officer, the State Superintendent of Public Instruction.

C. The Board shall appoint the USDB superintendent on the basis of outstanding qualifications.

(1) The USDB superintendent's term of office is for two years and until a successor is appointed and qualified.

(2) The Board shall set the USDB superintendent's compensation for services.

(3) The USDB superintendent shall have, at a minimum, an annual evaluation, as directed by the Board.

(4) The USDB superintendent qualifications shall be established by the Board.

(5) The duties of the USDB superintendent shall be established by the Board.

D. The Board shall direct the USOE to support, provide assistance, and work cooperatively with the USDB in providing services to designated Utah students.

E. The Board shall assign a liaison to provide appropriate supervision to the USDB to ensure compliance with the law.

F. The Board and USOE staff, as assigned, shall assist the USDB, its superintendent, and associate superintendents in adopting policies and preparing an annual budget that are consistent with the law.

(1) The Board shall approve the annual budget and expenditures of USDB.

(2) The USDB superintendent shall, subject to the approval of the Board, appoint an associate superintendent to administer the Utah School for the Deaf and an associate superintendent to administer the Utah School for the Blind. Qualifications of the associate superintendents shall be aligned with the requirements of Section 53A-25b-201.

(3) The USDB superintendent and associates may hire staff and teachers as needed for the USDB. Educators and related service providers shall be appropriately licensed and credentialed or both for their specific assignments.

(4) In employment practices and decisions, the USDB and the USDB superintendent shall maintain the accreditation of the USDB school and programs.

(5) The USDB superintendent and associates shall communicate regularly and effectively with the USOE and provide a written report to the Board at least annually in adequate time prior to the November legislative interim meeting or as requested by the Board.

(6) The USDB report shall contain:

(a) a financial report;

(b) a report on the activities of the superintendent and associate superintendents;

(c) a report on activities to involve parents and constituency, including LEA personnel and advocacy groups, in the governance of the school and implementation of service delivery plans for students with sensory impairments; and

(d) a report on student achievement including student achievement data that provides longitudinal data for both current and previous students served by USDB, graduation rates, and students exiting USDB and their educational placements after exiting.

(7) USDB shall ensure that each child/student served by USDB is assigned a unique student identifier (SSID) to allow for annual data collection and reporting of achievement of current and past students.

(8) USDB shall provide the USOE with a listing of past and current children/students, including the assigned unique student identifier, served by USDB by September 1 of each year to facilitate the required data collection.

R277-800-4. USDB Advisory Council.

A. The Board shall establish the Advisory Council for USDB and appoint and support Advisory Council members as directed in Section 53A-25b-201.

B. The Advisory Council shall have not more than 11 Board-appointed voting members and shall include members as qualified under Section 53A-25b-201.

C. The Board shall appoint Advisory Council members for two year terms and members may serve no more than three consecutive terms. Advisory Council members serve at the pleasure of the Board.

D. If an Advisory Council member resigns or is asked to resign, the Board shall appoint another member in a timely manner by seeking nominations.

E. The Board shall assist the Advisory Council in developing and passing by-laws establishing procedures for nominating and recommending dismissal of Advisory Council members, and setting ethical standards for Advisory Council members.

(1) The bylaws shall include operating procedures for the Advisory Council; and

(2) the bylaws may allow for representation on the Advisory Council of constituencies within the USDB community.

F. Advisory Council membership and school community council membership:

(1) Members of the Advisory Council may serve as school community council members under Section 53A-1a-108(4) and R277-491.

(2) The USDB school community council and election process shall be consistent with Section 53A-1a-108 and R277-491.

(3) The USDB may implement electronic voting and consider encouraging school community council participation through electronic meetings and technology that facilitate participation of parents of USDB students in voting and school community council meetings.

R277-800-5. USDB or Student's District of Residence/Charter School as Designated LEA.

A. To be eligible to receive free services from the USDB, a student must be a resident of Utah and meet requirements of Section 53A-25b-301.

B. A student's IEP under IDEA or Section 504 accommodation plan shall determine a student's placement at the USDB, in a school district/school or charter school. USDB services for students who are school-age shall be limited to those on an IEP or Section 504 accommodation plan.

C. Consistent with Section 53A-25b-301(3)(c), an IEP team or Section 504 team shall determine the appropriate placement for each blind, deaf or deafblind student consistent with IDEA using the Blind/Visually Impaired Guidelines, Deaf/Hard of Hearing Guidelines, or Deafblind Guidelines, as guidance. The USDB Guidelines are hereby incorporated by reference and included with this rule.

D. It is the responsibility of the student's district of

residence or charter school to conduct Child Find under R277-800-1F, and to convene the initial IEP or Section 504 team meeting in order to determine a student's placement.

(1) A student's initial IEP or Section 504 accommodation plan meeting shall include a representative from the student's district of residence or charter school and a representative from the USDB.

(2) The LEA shall consider the parental preference in the IEP or Section 504 accommodation plan process consistent with Section 53A-25b-301(3)(c). The final placement decision, as documented on the IEP or Section 504 accommodation plan, shall document a free appropriate public education (FAPE) for the student and shall not be determined solely by parent preference.

E. When USDB is the designated LEA, USDB has full responsibility for all services defined in the IEP/Section 504 accommodation plan. A representative from the district of residence or charter school remains a required member of the IEP or Section 504 accommodation team.

F. When the district of residence or charter school is the LEA designated to provide services to a student with an IEP or Section 504 accommodation plan, the district of residence or charter school has the responsibility for providing instruction and services for the student except that the USDB may be designated by the team as a related service provider. The USDB remains a required member of the student's IEP or 504 accommodation plan team.

G. The IEP or Section 504 accommodation plan shall clearly define what services are to be provided by the related service provider(s).

H. The IEP or Section 504 team shall determine the designated LEA for student placement.

I. Parent complaints regarding student placement at district of residence or USDB:

(1) If a parent is dissatisfied with a student's placement at USDB or district of residence or charter school, the parent may access dispute resolution procedures, consistent with Utah State Board of Education Special Education Rules, November 2013.

(2) If a student's IEP or Section 504 accommodation plan provides for services to be provided by both the USDB and district of residence, or for the USDB and district of residence to share responsibility for serving a student, the parent may access dispute resolution procedures consistent with Utah State Board of Education Special Education Rules, November 2013.

R277-800-6. LEA and Board Interagency Agreement.

A. The Board, USOE, and LEAs, with assistance from the USDB, shall develop an Interagency Agreement that further explains roles, services, and financial obligations to students and participating entities and a basic process for resolving disagreements among the parties to the Agreement.

B. The Board shall also designate a USOE arbitrator or a panel of arbitrators to resolve disagreements among the USOE, the USDB, and LEAs regarding services to blind, visually impaired, deaf, hard of hearing, and deafblind students in order to provide services. The Board may make this appointment when a disagreement arises.

C. The Interagency Agreement shall detail eligibility for USDB services, cost, if any, for the provision of USDB services and accessible materials.

R277-800-7. Assessment of USDB Students with Visual and Hearing Impairments Served in LEAs of Residence.

A. Appropriate specialists shall assess students consistent with Section 53A-1-601 et seq., R277-402, R277-700, R277-705, IDEA, Section 504 of the Rehabilitations Act, and Section 53A-25B-304.

B. The USDB shall establish an assessment policy and guidelines to implement required assessments and address:

(1) appropriate, complete and timely evaluations of students;

(2) procedures for administration of assessments in addition to those required by the law, as determined by IEPs, Section 504 accommodation plans, and individual teachers;

(3) complete and accurate required assessments available to eligible students consistent with state and LEA assessment timelines and availability of materials for non-disabled students;

(4) staff professional development and preparation on appropriate administration of assessments and reporting of assessment results; and

(5) procedures to ensure appropriate interpretation of assessments and results for parents and use of assessment results by USDB personnel.

R277-800-8. Outreach Programs.

A. The USDB and LEAs may negotiate to share the costs for providing more efficient, cost-effective, and convenient services to students who are deaf, blind, or deafblind in public school classrooms in locations other than the USDB campus.

B. LEAs shall provide:

(1) classroom(s);

(2) basic instructional materials;

(3) physical education, music, media, school lunch, and other programs and services, consistent with those programs and services provided to other students within the LEA;

(4) administrative support;

(5) basic secretarial services;

(6) special education related services.

C. The USDB shall provide:

(1) classroom instructors, including aides;

(2) instructional materials specific to the disability of the students.

D. LEAs may reassign the responsibilities of the USDB and a school district or charter school as negotiated between the LEAs and the USDB.

E. An LEA shall claim the state WPU if the LEA provides all items or services identified in R277-800-8B.

R277-800-9. USDB Fiscal Procedures.

A. The USDB shall keep fiscal, program, and accounting records as required by the Board and shall submit reports required by the Board.

B. The USDB shall follow state standards for fiscal procedures, auditing, and accounting, consistent with Section 53A-25b-105.

C. The USDB is a public state entity under the direction of the Board and as such is subject to state laws and exemptions consistent with Section 53A-25b-105.

D. The USDB shall prepare and present an annual budget to the Board that includes no more than a five percent carryover of any one fund, including reimbursement funds from federal programs. The five percent carryover prohibition does not apply to funds received under Section 53A-16-101.5 and Section 12 of the Utah Enabling Act.

E. The USOE shall recover federal reimbursement funds (IDEA and Medicaid) quarterly during the year. The USOE shall identify reimbursement amounts in the current year's or no later than the subsequent year's budget.

F. The USDB shall use the revenue from the federal land grant designated for the maintenance of the School for the Blind and for the School for the Deaf solely for the benefit of deaf and blind students. The recommended or designated use of the fund is subject to review by the Board.

R277-800-10. Utah State Instructional Materials Access Center (USIMAC).

A. The Board authorizes the establishment of the USIMAC to produce core instructional materials in alternative

formats to ensure that all students with print disabilities qualified under the Chafee Amendment receive their materials in a timely manner.

B. The USIMAC shall provide materials for all students with print disabilities who are qualified under the Chafee Amendment or otherwise eligible through an IEP or Section 504 accommodation plan.

C. The USOE shall oversee the operations of the USIMAC.

D. The USDB is the fiscal agent and operates the USIMAC to the extent of funds received annually from the Utah Legislature and the USOE.

E. LEAs may purchase accessible instructional materials using their own funding or request the production of accessible instructional materials in alternate formats from the USIMAC in accordance with established opt in procedures to ensure timely access for students with print disabilities.

F. For LEA textbook requests submitted by April 1 of the preceding school year, the USIMAC shall provide the textbook in the requested alternate format by the beginning of the following school year.

G. The USDB ERC shall serve as the repository and distribution center for the USIMAC.

H. Operation of the USIMAC

(1) Qualifying students: A student qualifies for accessible instructional materials from the USIMAC (Braille, audio, large print, digital formats) following LEA determination that the student has a print disability in accordance with the Chafee Amendment, IDEA, or Section 504 of the Rehabilitation Act.

(2) Costs for developing core instructional materials:

(a) An LEA shall request textbooks for blind, vision impaired or deafblind students served by the USDB or LEAs consistent with the student's IEP or Section 504 accommodation plan.

(b) When an LEA requests a core instructional textbook that was published before August 2006, the USIMAC shall conduct a search for the textbook within existing resources; if available, the USIMAC shall send the textbook to the ERC for distribution to the LEA.

(i) If the textbook is not available within existing resources, the USIMAC will conduct a search to determine if the textbook is available for purchase through another source.

(ii) If the textbook is available through the American Printing House for the Blind (APH), the USDB shall order the textbook using state acquired federal funds designated specifically for USIMAC materials and sent to the ERC for distribution to the LEA.

(iii) If the textbook is not available from APH, but is available from another accessible media producer, the textbook shall be purchased and sent to the ERC for distribution to the LEA.

(iv) If the textbook is not available for purchase, the LEA shall provide a regular print hard copy of the textbook to the USIMAC. The USIMAC shall then produce the textbook and send it to the ERC for distribution.

(v) The USIMAC shall produce the textbook in the LEA requested alternate format in accordance with the cost sharing outlined in the Interagency Agreement described in R277-800-6.

(c) The sharing of costs for purchases described in R277-800-12 shall be outlined in the Interagency Agreement described in R277-800-6.

(d) For textbooks published after August 2006, the USIMAC shall follow the same procedures outlined in R277-800-12H(2)(b). If the USIMAC is unable to obtain the NIMAS file set in a timely manner as a result of publisher negligence, the Board shall authorize the USIMAC to seek damages from publisher(s) as a result of the failure to meet contract provisions.

(3) Textbook publishers required to meet NIMAS requirements:

(a) All approved textbook contracts for the state of Utah for instructional materials published after August 2006 shall include a provision for making NIMAS file sets available through the NIMAC in accordance with IDEA and USOE Instructional Materials Contract timelines.

(b) If the USIMAC is unable to obtain the NIMAS file set from the NIMAC because the publisher fails to provide the NIMAS file set to the NIMAC in accordance with IDEA and USOE Instructional Materials Contract timelines, the USIMAC shall bill the textbook publisher the difference in the cost of producing the alternate format textbook without benefit of the NIMAS file set.

(c) Publishers shall be advised of the rule; the Utah Instructional Materials Commission under R277-469 shall not approve textbooks and materials from publishers that have a pattern of not providing materials and textbooks for students with disabilities in a timely manner, consistent with the law and Board rules.

(d) LEAs shall request and access audio books through the USIMAC, as appropriate, or through other sources. Membership required for other sources is the responsibility of the LEA designated as the responsible entity for serving the student in the IEP or Section 504 accommodation plan.

KEY: educational administration

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Notice of Continuation July 19, 2017	**53A-1-401(3)**
	53A-25b-203
	53A-25b-302
	53A-25b-501

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-302. Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements.
R315-302-1. Location Standards for Disposal Facilities.

(1) Applicability.

(a) These standards apply to each new solid waste disposal facility and any existing solid waste disposal facility seeking facility expansion, including:

(i) Class I, II, and V Landfills;

(ii) Class III Landfills as specified in Rule R315-304;

(iii) Class IV and VI Landfills as specified in Rule R315-305;

(iv) piles that are to be closed as landfills; and

(v) Incinerators as specified in Rule R315-306.

(b) These standards, except for Subsection R315-302-1(2)(f) or unless otherwise noted, do not apply to:

(i) an existing facility;

(ii) a transfer station or a drop box facility;

(iii) a pile used for storage;

(iv) composting or utilization of sludge or other solid waste on land; or

(v) hazardous waste disposal sites regulated by Rules R315-260 through 266, 268, 270, 273 and Rule R315-101.

(2) Location Standards. Each applicable solid waste facility shall be subject to the following location standards.

(a) Land Use Compatibility. No new facility shall be located within:

(i) one thousand feet of a:

(A) national, state, county, or city park, monument, or recreation area;

(B) designated wilderness or wilderness study area;

(C) wild and scenic river area; or

(D) stream, lake, or reservoir;

(ii) ecologically and scientifically significant natural areas, including wildlife management areas and habitat for threatened or endangered species as designated pursuant to the Endangered Species Act of 1982;

(iii) one-fourth mile of:

(A) existing permanent dwellings, residential areas, and other incompatible structures such as schools or churches unless otherwise allowed by local zoning or ordinance; and

(B) historic structures or properties listed or eligible to be listed in the State or National Register of Historic Places;

(iv) ten thousand feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used by only piston-type aircraft unless the owner or operator demonstrates that the facility design and operation will not increase the likelihood of bird/aircraft collisions. Every new and existing disposal facility is subject to this requirement. If a new landfill or a lateral expansion of an existing landfill is located within six miles of an airport runway end, the owner or operator must notify the affected airport and the Federal Aviation Administration; or

(v) areas with respect to archeological sites that would violate Section 9-8-404.

(b) Geology.

(i) No new facility or lateral expansion of an existing facility shall be located in a subsidence area, a dam failure flood area, above an underground mine, above a salt dome, above a salt bed, or on or adjacent to geologic features which could compromise the structural integrity of the facility.

(ii) Holocene Fault Areas. A new facility or a lateral expansions of an existing facility shall not be located within 200 feet of a Holocene fault unless the owner or operator demonstrates to the Director that an alternative setback distance of less than 200 feet will prevent damage to the structural integrity of the unit and will be protective of human health and the environment.

(iii) Seismic Impact Zones. A new facility or a lateral expansion of an existing facility shall not be located in seismic impact zones unless the owner or operator demonstrates to the satisfaction of the Director that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

(iv) Unstable Areas. The owner or operator of an existing facility, a lateral expansion of an existing facility, or a new facility located in an unstable area must demonstrate to the satisfaction of the Director that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted. The owner or operator must consider the following factors when determining whether an area is unstable:

(A) on-site or local soil conditions that may result in significant differential settling;

(B) on-site or local geologic or geomorphologic features; and

(C) on-site or local human-made features or events, both surface and subsurface.

(c) Surface Water.

(i) No new facility or lateral expansion of an existing facility shall be located on any public land that is being used by a public water system for water shed control for municipal drinking water purposes.

(ii) Floodplains. No new or existing facility shall be located in a floodplain unless the owner or operator demonstrates to the Director that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in a washout of solid waste so as to pose a hazard to human health or the environment.

(d) Wetlands. No new facility or lateral expansion of an existing facility shall be located in wetlands unless the owner or operator demonstrates to the Director that:

(i) where applicable under section 404 of the Clean Water Act or applicable State wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(ii) the unit will not violate any applicable state water quality standard or section 307 of the Clean Water Act;

(iii) the unit will not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of a critical habitat protected under the Endangered Species Act of 1973;

(iv) the unit will not cause or contribute to significant degradation of wetlands. The owner or operator must demonstrate the integrity of the unit and its ability to protect ecological resources by addressing the following factors:

(A) erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the unit;

(B) erosion, stability, and migration potential of dredged and fill materials used to support the unit;

(C) the volume and chemical nature of the waste managed in the unit;

(D) impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(E) the potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(F) any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;

(v) to the extent required under section 404 of the Clean Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands, as defined by acreage and function, by first avoiding impacts to wetlands to the maximum extent practicable as required by Subsection R315-302-1(2)(d)(i), then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting

remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(vi) sufficient information is available to make a reasonable determination with respect to these demonstrations.

(e) Ground Water.

(i) No new facility or lateral expansion of an existing facility shall be located at a site:

(A) where the bottom of the lowest liner is less than five feet above the historical high level of ground water; or

(B) for a landfill that is not required to install a liner, the lowest level of waste must be at least ten feet above the historical high level of ground water.

(C) If the aquifer beneath a landfill contains ground water which has a Total Dissolved Solids (TDS) of 10,000 mg/l or greater and the landfill is constructed with a composite liner, the bottom of the lowest liner may be less than five feet above the historical high level of the ground water.

(ii) No new facility shall be located over a sole source aquifer as designated in 40 CFR 149.

(iii) No new facility shall be located over groundwater classed as IB under Section R317-6-3.3.

(iv) Unless all units of the proposed facility are constructed with a composite liner or other equivalent design approved by the Director:

(A) a new facility located above any aquifer containing ground water which has a TDS content below 1,000 mg/l which does not exceed applicable ground water quality standards for any contaminant is permitted only where the depth to ground water is greater than 100 feet; or

(B) a new facility located above any aquifer containing ground water which has a TDS content between 1,000 and 3,000 mg/l and does not exceed applicable ground water quality standards for any contaminant is permitted only where the depth to ground water is 50 feet or greater.

(C) The applicant for the proposed facility will make the demonstration of ground water quality necessary to determine the appropriate aquifer classification.

(v) No new facility shall be located in designated drinking water source protection areas or, if no source protection area is designated, within a distance to existing drinking water wells or springs for public water supplies of 250 days ground water travel time. This requirement does not include on-site operation wells. The applicant for the proposed facility will make the demonstration, acceptable to the Director, of hydraulic conductivity and other information necessary to determine the 250 days ground water travel distance.

(vi) Ground Water Alternative.

(A) Subject to the ground water performance standard stated in Subsection R315-303-2(1), if a solid waste disposal facility is to be located over an area where the ground water has a TDS of 10,000 mg/l or greater, or where there is an extreme depth to ground water, or where there is a natural impermeable barrier above the ground water, or where there is no ground water, the Director may approve, on a site specific basis, an alternative ground water monitoring system at the facility or may wave the ground water monitoring requirement. If ground water monitoring is waved the owner or operator shall make the demonstration stated in Subsection R315-308-1(3).

(B) A facility that has a ground water monitoring alternative approved under Subsection R315-302-1(2)(e)(vi) is subject to the ground water quality standards specified in Subsection R315-303-2(1) and the approved alternative shall be revoked by the Director if the operation of the facility impacts ground water.

(f) Historic preservation survey requirement.

(i) Each new facility or expansion of an existing facility shall:

(A) have a notice of concurrence issued by the state historic preservation officer as provided for in Subsection 9-8-404(3)(a)(i); or

(B) show that the state historic preservation officer did not respond within 30 days to the submittal, to the officer, of an evaluation; or

(C) have received a joint analysis conducted as required by Subsection 9-8-404(2).

(ii) Each existing facility shall, for all areas of the site that have not been disturbed:

(A) have a notice of concurrence issued by the state historic preservation officer as provided for in Subsection 9-8-404(3)(a)(i); or

(B) show that the state historic preservation officer did not respond within 30 days to the submittal, to the officer, of an evaluation; or

(C) have received a joint analysis conducted as required by Subsection 9-8-404(2).

(3) Exemptions. Exemptions from the location standards with respect to airports, floodplains, wetlands, fault areas, seismic impact zones, and unstable areas cannot be granted. Exemptions from other location standards of Section R315-302-1 may be granted by the Director on a site specific basis if it is determined that the exemption will cause no adverse impacts to human health or the environment.

(a) No exemption may be granted without application to the Director.

(b) If an exemption is granted, a facility may be required to have a more stringent design, construction, monitoring program, or operational practice to protect human health or the environment.

(c) All applications for exemptions shall meet the conditions of Section R315-311-3 pertaining to public notice and comment period.

R315-302-2. General Facility Requirements.

(1) Applicability.

(a) Each new and existing solid waste facility for which a permit is required by Section R315-310-1, shall meet the applicable requirements of Section R315-302-2 or portions of Section R315-302-2 as required by Rules R315-304, R315-305, R315-306, R315-307, R315-312, R315-313, or R315-314.

(b) Any facility which stores waste in piles that is subject to the requirements of Rule R315-314 shall meet the applicable requirements of Section R315-302-2.

(c) Any recycling facility or composting facility subject to the standards of Rule R315-312 shall submit a plan of operation, to the Director, that demonstrates compliance with the applicable standards of Section R315-302-2 and Rule R315-312.

(i) The submitted plan of operation shall be reviewed to determine compliance with the applicable standards of Section R315-302-2 and Rule R315-312.

(ii) Prior to the acceptance of waste or recyclable material or beginning operations at the facility, the owner or operator of a recycling or composting facility must receive notice from the Director that the plan of operation meets the applicable standards of Section R315-302-2 and Rule R315-312.

(d) Any transfer station subject to the standards of Rule R315-313 shall submit a plan of operation to the Director that demonstrates compliance with the applicable standards of Section R315-302-2 and Rule R315-313.

(i) The submitted plan of operation shall be reviewed to determine compliance with the applicable standards of Section R315-302-2 and Rule R315-313.

(ii) Prior to the acceptance of waste or beginning operations at the facility, the owner or operator of a transfer station facility must receive notice from the Director that the plan of operation meets the applicable standards of Section

R315-302-2 and Rule R315-313.

(e) The requirements of Section R315-302-2 apply to industrial solid waste facilities as specified in Rule R315-304.

(f) A solid waste incinerator facility that meets the quantity limitation of Subsection R315-306-3(1)(b) shall meet the reporting requirements of Subsection R315-302-2(4).

(2) Plan of Operation. Each owner or operator shall develop, keep on file, and abide by a plan of operation approved by the Director. The plan shall describe the facility's operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the Director or his authorized representative. The facility must be operated in accordance with the plan. Each plan of operation shall include:

(a) an intended schedule of construction. Facility permits will be reviewed by the Director no later than 18 months after the permit is issued and periodically thereafter, to determine if the schedule of construction is reasonably being followed. Failure to comply with the schedule of construction may result in revocation of the permit;

(b) a description of on-site solid waste handling procedures during the active life of the facility;

(c) a schedule for conducting inspections and monitoring for the facility;

(d) contingency plans in the event of a fire or explosion;

(e) corrective action programs to be initiated if ground water is contaminated;

(f) contingency plans for other releases, e.g. release of explosive gases or failure of run-off containment system;

(g) a plan to control fugitive dust generated from roads, construction, general operations, and covering the waste;

(h) a plan to control wind-blown litter that includes equipment and methods to contain litter, including a schedule and methods to collect scattered litter in a timely manner;

(i) a description of maintenance of installed equipment including leachate and gas collection systems, and ground water monitoring systems;

(j) procedures for excluding the receipt of prohibited hazardous waste or prohibited waste containing PCBs;

(k) procedures for controlling disease vectors;

(l) a plan for an alternative waste handling or disposal system during periods when the solid waste facility is not able to dispose of solid waste, including procedures to be followed in case of equipment breakdown;

(m) closure and post-closure care plans;

(n) cost estimates and financial assurance as required by Subsection R315-309-2(3);

(o) a landfill operations training plan for site operators; and

(p) other information pertaining to the plan of operation as required by the Director.

(3) Recordkeeping. Each owner or operator shall maintain and keep, on-site or at a location approved by the Director, the following permanent records:

(a) a daily operating record, to be completed at the end of each day of operation, that shall contain:

(i) the weights, in tons, or volumes, in cubic yards, of solid waste received each day, number of vehicles entering, and if available, the type of wastes received each day;

(ii) deviations from the approved plan of operation;

(iii) training and notification procedures;

(iv) results of ground water and gas monitoring that may be required; and

(v) an inspection log or summary; and

(b) other records to include:

(i) documentation of any demonstration made with respect to any location standard or exemption;

(ii) any design documentation for the placement or recirculation of leachate or gas condensate into the landfill as allowed by Subsection R315-303-3(2)(b);

(iii) closure and post-closure care plans as required by Subsections R315-302-3(4) and (7);

(iv) cost estimates and financial assurance documentation as required by Subsection R315-309-2(3);

(v) any information demonstrating compliance with Class II Landfill requirements if applicable; and

(vi) other information pertaining to operation, maintenance, monitoring, or inspections as may be required by the Director.

(4) Reporting.

(a) Each owner or operator of any facility, including a facility performing post-closure care, shall prepare an annual report and place the report in the facility's operating record. The owner or operator of the facility shall submit a copy of the annual report to the Director by March 1 of each year for the most recent calendar year or fiscal year of facility operation.

(b) The annual report shall cover facility activities during the previous year and must include, at a minimum, the following information:

(i) name and address of the facility;

(ii) calendar year covered by the report;

(iii) annual quantity, in tons, of solid waste received;

(iv) the annual update of the required financial assurances mechanism pursuant to Subsection R315-309-2(2);

(v) results of ground water monitoring and gas monitoring; and

(vi) training programs or procedures completed.

(c) Since the amount of waste received must be reported in tons, the following conversion factors shall be used for waste received that is not weighted on scales.

(i) Municipal solid waste:

(A) Uncompacted - 0.15 tons per cubic yard; and

(B) Compacted (delivered in a compaction vehicle) - 0.30 tons per cubic yard.

(ii) Construction/demolition waste - 0.50 tons per cubic yard.

(iii) Municipal incinerator ash - 0.75 tons per cubic yard.

(iv) Other ash - 1.10 tons per cubic yard.

(v) Waste delivered by a resident in a pickup truck or a single axle trailer - 0.25 tons per vehicle.

(vi) Industrial waste - a reasonable conversion factor, based on site specific data, developed by the owner or operator of the facility.

(d) If an owner or operator of a municipal landfill or a construction/demolition landfill has documented conversion factors that are based on facility specific data, these conversion factors may be used to report the amounts of waste when approved by the Director.

(5) Inspections.

(a) The owner or operator shall inspect the facility to prevent malfunctions and deterioration, operator errors, and discharges which may cause or lead to the release of wastes to the environment or to a threat to human health. The owner or operator must conduct these inspections with sufficient frequency, no less than quarterly, to identify problems in time to correct them before they harm human health or the environment. The owner or operator shall keep an inspection log or summary including at least the date and time of inspection, the printed name and handwritten signature of the inspector, a notation of observations made, and the date and nature of any repairs or corrective action. The log or summary must be kept at the facility or other convenient location if permanent office facilities are not on-site, for at least three years from the date of inspection. Inspection records shall be available to the Director or his authorized representative upon request.

(b) The Director or any duly authorized officer, employee, or representative of the Director may, at any reasonable time and

upon presentation of appropriate credentials, enter any solid waste facility and inspect the property, records, monitoring systems, activities and practices, or solid waste being handled for the purpose of ascertaining compliance with Rules R315-301 through 320 and the approved plan of operation for the facility.

(i) The inspector may conduct monitoring or testing, or collect samples for testing, to verify the accuracy of information submitted by the owner or operator or to ensure that the owner or operator is in compliance. The owner or operator may request split samples and analysis parameters on any samples collected by the inspector.

(ii) The inspector may use photographic equipment, video camera, electronic recording device, or any other reasonable means to record information during any inspection.

(iii) The results of any inspection shall be furnished promptly to the owner or operator of the facility.

(6) Recording with the County Recorder.

Not later than 60 days after certification of closure, the owner or operator of a solid waste disposal facility shall:

(a) submit plats and a statement of fact concerning the location of any disposal site to the county recorder to be recorded as part of the record of title; and

(b) submit proof of record of title filing to the Director.

R315-302-3. General Closure and Post Closure Requirements.

(1) Applicability.

(a) The owner or operator of any solid waste disposal facility that requires a permit shall meet the applicable standards of Section R315-302-3 and shall provide financial assurance for closure and post-closure care costs that meets the requirements of Rule R315-309.

(b) The requirements of Subsections (2), (3), and (4) of this section apply to any solid waste management facility as defined by Subsection 19-6-502(12). The requirements of Subsections (5), (6), and (7) of this section apply to:

(i) Class I, II, IV, V, and VI Landfills;

(ii) Class III Landfills as specified in Rule R315-304: and

(iii) any landtreatment disposal facility.

(2) Closure Performance Standard. Each owner or operator shall close its facility or unit in a manner that:

(a) minimizes the need for further maintenance;

(b) minimizes or eliminates threats to human health and the environment from post-closure escape of solid waste constituents, leachate, landfill gases, contaminated run-off or waste decomposition products to the ground, ground water, surface water, or the atmosphere; and

(c) prepares the facility or unit for the post-closure period.

(3) Closure Plan and Amendment.

(a) Closure may include covering, grading, seeding, landscaping, contouring, and screening. For a transfer station or a drop box facility, closure includes waste removal and decontamination of the site, including soil analysis, ground water analysis, or other procedures as required by the Director.

(b) Each owner or operator shall develop, keep on file and abide by a plan of closure required by Subsection R315-302-2(2)(m) which, when approved by the Director, will become part of the permit.

(c) The closure plan shall project time intervals at which sequential partial closure, if applicable, is to be implemented and identify closure cost estimates and projected fund withdrawal intervals for the associated closure costs from the approved financial assurance instrument required by Rule R315-309.

(d) The closure plan may be amended if conditions and circumstances justify such amendment. If it is determined that amendment of a facility closure plan is required, the Director may direct facility closure activities, in part or whole, to cease until the closure plan amendment has been reviewed and approved by the Director.

(e) Each owner and operator shall close the facility or unit in accordance with the approved closure plan and all approved amendments.

(4) Closure Procedures.

(a) Each owner and operator shall notify the Director of the intent to implement the closure plan in whole or part, 60 days prior to the projected final receipt of waste at the unit or facility unless otherwise specified in the approved closure plan.

(b) The owner or operator shall commence implementation of the closure plan, in part or whole, within 30 days after receipt of the final volume of waste, or for landfills, when the final elevation is attained in part or all of the facility cell or unit as identified in the approved facility closure plan unless otherwise specified in the approved closure plan. Closure activities shall be completed within 180 days from their starting time. Extensions of the closure period may be granted by the Director if justification for the extension is documented by the owner or operator.

(c) When an owner or operator completes closure of a solid waste management unit or facility closure is completed, he shall, within 90 days or as required by the Director, submit to the Director:

(i) facility or unit closure plans, except for Class IIIb, IVb, and VI Landfills, signed by a professional engineer registered in the state of Utah, and modified as necessary to represent as-built changes to final closure construction as approved in the closure plan; and

(ii) certification by the owner or operator, and, except for Class IIIb, IVb, and VI Landfills, a professional engineer registered in the state of Utah, that the site or unit has been closed in accordance with the approved closure plan.

(5) Post-Closure Performance Standard. Each owner or operator shall provide post-closure activities for continued facility maintenance and monitoring of gases, land, and water for 30 years or as long as the Director determines is necessary for the facility or unit to become stabilized and to protect human health and the environment.

(6) Post-Closure Plan and Amendment.

(a) For any disposal facility, except an energy recovery or incinerator facility, post-closure care may include:

(i) ground water and surface water monitoring;

(ii) leachate collection and treatment;

(iii) gas monitoring;

(iv) maintenance of the facility, the facility structures that remain after closure, and monitoring systems for their intended use as required by the approved permit;

(v) a description of the planned use of the property; and

(vi) any other activity required by the Director to protect human health and the environment for a period of 30 years or a period established by the Director.

(b) Each owner or operator shall develop, keep on file, and abide by a post-closure plan as required by Subsection R315-302-2(2)(m) and as approved by the Director as part of the permit. The post-closure plan shall address facility or unit maintenance and monitoring activities until the site becomes stabilized (i.e., little or no settlement, gas production or leachate generation) and monitoring and maintenance activities can be safely discontinued.

(c) The post-closure plan shall project time intervals at which post-closure activities are to be implemented and identify post-closure cost estimates and projected fund withdrawal intervals from the selected financial assurance instrument, where applicable, for the associated post-closure costs.

(d) The post-closure plan may be amended if conditions and circumstances justify such amendment. If it is determined that amendment of a facility or unit post-closure plan is required, the Director may direct facility post-closure activities, in part or whole, to cease until the post-closure plan amendment

has been reviewed and approved.

(7) Post-Closure Procedures.

(a) Each owner or operator shall commence post-closure activities after closure activities have been completed. The Director may direct that post-closure activities cease until the owner or operator receives a notice from the Director to proceed with post-closure activities.

(b) When post-closure activities are complete, as determined by the Director, the owner or operator shall submit a certification to the Director, signed by the owner or operator, and, except for Class IIIb, IVb, and VI Landfills, a professional engineer registered in the state of Utah stating why post-closure activities are no longer necessary (i.e., little or no settlement, gas production, or leachate generation).

(c) If the Director finds that post-closure monitoring has established that the facility or unit is stabilized (i.e., little or no settlement, gas production, or leachate generation) the Director may authorize the owner or operator to discontinue any portion or all of the post-closure maintenance and monitoring activities.

KEY: solid waste management, waste disposal, solid waste permit

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Notice of Continuation February 13, 2013	**19-6-105**
	19-6-108
	19-6-109
	40 CFR 258

R317. Environmental Quality, Water Quality.
R317-6. Ground Water Quality Protection.
R317-6-1. Definitions.

"Aquifer" means a geologic formation, group of geologic formations or part of a geologic formation that contains sufficiently saturated permeable material to yield usable quantities of water to wells and springs.

"Background Concentration" means the concentration of a pollutant in ground water upgradient or lateral hydraulically equivalent point from a facility, practice or activity which has not been affected by that facility, practice or activity.

"Best Available Technology" means the application of design, equipment, work practice, operation standard or combination thereof at a facility to effect the maximum reduction of a pollutant achievable by available processes and methods taking into account energy, public health, environmental and economic impacts and other costs.

"Best Available Technology Standard" means a performance standard or pollutant concentration achievable through the application of best available technology.

"Board" means the Utah Water Quality Board.

"Class TDS Limit" means the upper boundary of the TDS range for an applicable class as specified in Section R317-6-3.

"Community Drinking Water System" means a public drinking water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.

"Comparable Quality (Source)" means a potential alternative source or sources of water supply which has the same general quality as the ground water source.

"Comparable Quantity (Source)" means a potential alternative source of water supply capable of reliably supplying water in quantities sufficient to meet the year-round needs of the users served by the ground water source.

"Compliance Monitoring Point" means a well, seep, spring, or other sampling point used to determine compliance with applicable permit limits.

"Contaminant" means any physical, chemical, biological or radiological substance or matter in water.

"Conventional Treatment" means normal and usual treatment of water for distribution in public drinking water supply systems including flocculation, sedimentation, filtration, disinfection and storage.

"Discharge" means the release of a pollutant directly or indirectly into subsurface waters of the state.

"Existing Facility" means a facility or activity that was in operation or under construction after August 14, 1989 and before February 10, 1990.

"Economically Infeasible" means, in the context of a public drinking water source, the cost to the typical water user for replacement water would exceed the community's ability to pay.

"Facility" means any building, structure, processing, handling, or storage facility, equipment or activity; or contiguous group of buildings, structures, or processing, handling or storage facilities, equipment, or activities or combination thereof.

"Gradient" means the change in total water pressure head per unit of distance.

"Ground Water" means subsurface water in the zone of saturation including perched ground water.

"Ground Water Quality Standards" means numerical contaminant concentration levels adopted by the Board in or under R317-6-2 for the protection of the subsurface waters of the State.

"Infiltration" means the movement of water from the land surface into the pores of rock, soil or sediment.

"Institutional Constraints" means legal or other restrictions that preclude replacement water delivery and which cannot be alleviated through administrative procedures or market transactions.

"Interim Action Reports For Petroleum Releases" means plans prepared specifically to document cleanup of petroleum releases resulting primarily from transportation spills not regulated by the Division of Solid and Hazardous Waste or Division of Environmental Response and Remediation that are submitted to the local health department and should include the following information: map of the location where the spill occurred, sketch of where confirmation samples were collected, quantity of fuel spilled, quantity of soil removed, soil disposal location, certified laboratory analysis report including total petroleum hydrocarbons (TPH) analyzed in the appropriate molecular weight range, and actions taken to control the source and protect public safety, public health, and water quality.

"Lateral Hydraulically Equivalent Point" means a point located hydraulically equal to a facility and in the same ground water with similar geochemistry such that the ground water at that point has not been affected by the facility.

"Limit of Detection" means the concentration of a chemical below which it can not be detected using currently accepted sampling and analytical techniques for drinking water as determined by the U.S. Environmental Protection Agency.

"Local Health Department" means a city-county or multi-county local health department established under Title 26A.

"New Facility" means a facility for which construction or modification is initiated after February 9, 1990.

"Non Sensitive Area" means industrial and manufacturing areas previously contaminated and areas not likely to affect human health and exceed groundwater standards or background concentrations.

"Permit Limit" means a ground water pollutant concentration limitation specified in a Ground Water Discharge Permit and may include protection levels, class TDS limits, ground water quality standards, alternate concentration limits, permit-specific ground water quality standards, or limits stipulated in the application and use of best available technology. For facilities permitted by rule under R317-6-6.2, a permit limit is a ground water pollutant concentration limitation specified in R317-6-6.2.B.

"Person" means any individual, corporation, partnership, association, company or body politic, including any agency or instrumentality of the federal, state, or local government.

"Point of Discharge" means the area within outermost location at which effluent or leachate has been stored, applied, disposed of, or discharged; for a diked facility, the outermost edge of the dikes.

"Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, munitions, trash, chemical wastes, petroleum hydrocarbons, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into waters of the state.

"Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the State, or such discharge of any liquid, gaseous, or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

"Professional Engineer" means any person qualified to practice engineering before the public in the state of Utah and professionally registered as required under the Professional Engineers and Professional Land Surveyors Licensing Act rules (UAC 156-22).

"Professional Geologist" means any person qualified to practice geology before the public in the State of Utah and professionally registered as required under the Professional

Geologist Licensing Act rules (UAC R156-76).

"Protection Level" means the ground water pollutant concentration levels specified in R317-6-4.

"Sensitive Area" means those areas that are located near residences, waters of the state, wetlands, or any area where exposure to humans or significant environmental impact is likely to occur.

"Substantial Treatment" means treatment of water utilizing specialized treatment methods including ion exchange, reverse osmosis, electrodialysis and other methods needed to upgrade water quality to meet standards for public water systems.

"Technology Performance Monitoring" means the evaluation of a permitted facility to determine compliance with best available technology standards.

"Total Dissolved Solids (TDS)" means the quantity of dissolved material in a sample of water which is determined by weighing the solid residue obtained by evaporating a measured volume of a filtered sample to dryness; or for many waters that contain more than 1000 mg/l, the sum of the chemical constituents.

"Radius of Influence" means the radial distance from the center of a well bore to the point where there is no lowering of the water table or potentiometric surface because of pumping of the well; the edge of the cone of depression.

"Upgradient" means a point located hydraulically above a facility such that the ground water at that point has not been impacted by discharges from the facility.

"Vadose Zone" means the zone of aeration including soil and capillary water. The zone is bound above by the land surface and below by the water table.

"Waste" see "Pollutant."

"Water Table" means the top of the saturated zone of a body of unconfined ground water at which the pressure is equal to that of the atmosphere.

"Water Table Aquifer" means an aquifer extending downward from the water table to the first confining bed.

"Waters of the State" means all streams, lakes, ponds, marshes, water courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof; except bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition.

"Zone of Influence" means the area contained by the outer edge of the drawdown cone of a water well.

R317-6-2. Ground Water Quality Standards.

2.1 The following Ground Water Quality Standards as listed in Table I are adopted for protection of ground water quality.

TABLE 1
GROUND WATER QUALITY STANDARDS

Parameter	Milligrams per liter (mg/l) unless noted otherwise and based on analysis of filtered sample except for Mercury and organic compounds
PHYSICAL CHARACTERISTICS	
Color (units)	15.0
Corrosivity (characteristic)	noncorrosive
Odor (threshold number)	3.0
pH (units)	6.5-8.5
INORGANIC CHEMICALS	
Bromate	0.01
Chloramine (as Cl_2)	4
Chlorine (as Cl_2)	4
Chlorine Dioxide	0.8
Chlorite	1.0
Cyanide (free)	0.2
Fluoride	4.0
Nitrate (as N)	10.0
Nitrite (as N)	1.0
Total Nitrate/Nitrite (as N)	10.0
METALS	
Antimony	0.006
Asbestos (fibers/l and > 10 microns in length)	$7.0x10^6$
Arsenic	0.05
Barium	2.0
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Copper	1.3
Lead	0.015
Mercury	0.002
Selenium	0.05
Silver	0.1
Thallium	0.002
Zinc	5.0
ORGANIC CHEMICALS	
Pesticides and PCBs	
Alachlor	0.002
Aldicarb	0.003
Aldicarb sulfone	0.002
Aldicarb sulfoxide	0.004
Atrazine	0.003
Carbofuran	0.04
Chlordane	0.002
Dalapon (sodium salt)	0.2
Dibromochloropropane (DBCP)	0.0002
2, 4-D	0.07
Dichlorophenoxyacetic acid (2, 4-) (2,4D)	0.07
Dinoseb	0.007
Diquat	0.02
Endothall	0.1
Endrin	0.002
Ethylene Dibromide (EDB)	0.00005
Glyphosate	0.7
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Lindane	0.0002
Methoxychlor	0.04
Oxamyl (Vydate)	0.2
Pentachlorophenol	0.001
Picloram	0.5
Polychlorinated Biphenyls	0.0005
Simazine	0.004
Toxaphene	0.003
2, 4, 5-TP (Silvex)	0.05
VOLATILE ORGANIC CHEMICALS	
Benzene	0.005
Benzo (a) pyrene (PAH)	0.0002
Carbon tetrachloride	0.005
1, 2 - Dichloroethane	0.005
1, 1 - Dichloroethylene	0.007
1, 1, 1-Trichloroethane	0.200
Dichloromethane	0.005
Di (2-ethylhexyl) adipate	0.4
Di (2-ethylhexyl) phthalate	0.006
Dioxin (2,3,7,8-TCDD)	0.00000003
para - Dichlorobenzene	0.075
o-Dichlorobenzene	0.6
cis-1,2 dichloroethylene	0.07
trans-1,2 dichloroethylene	0.1
1,2 Dichloropropane	0.005
Ethylbenzene	0.7
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Monochlorobenzene	0.1
Styrene	0.1
Tetrachloroethylene	0.005
Toluene	1
Trichlorobenzene (1,2,4-)	0.07
Trichloroethane (1,1,1-)	0.2
Trichloroethane (1,1,2-)	0.005
Trichloroethylene	0.005
Vinyl chloride	0.002
Xylenes (Total)	10
OTHER ORGANIC CHEMICALS	
Five Haloacetic Acids (HAA5)	0.06

(Monochloroacetic acid)
(Dichloroacetic acid)
(Trichloroacetic acid)
(Bromoacetic acid)
(Dibromoacetic acid)
Total Trihalomethanes (TTHM) 0.08

RADIONUCLIDES
The following are the maximum contaminant levels for Radium-226 and Radium-228, and gross alpha particle radioactivity, beta particle radioactivity, photon radioactivity, and uranium concentration:

Combined Radium-226 and Radium-228 5pCi/l

Gross alpha particle activity, including Radium-226 but excluding Radon and Uranium 15pCi/l

Uranium 0.030 mg/l

Beta particle and photon radioactivity
The average annual concentration from man-made radionuclides of beta particle and photon radioactivity from man-made radionuclides shall not produce an annual dose equivalent to the total body or any internal organ greater than four millirem/year.
Except for the radionuclides listed below, the concentration of man-made radionuclides causing four millirem total body or organ dose equivalents shall be calculated on the basis of a two liter per day drinking water intake using the 168 hour data listed in "Maximum Permissible Body Burden and Maximum Permissible Concentration Exposure", NBS Handbook 69 as amended August 1962, U.S. Department of Commerce. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed four millirem/year.
Average annual concentrations assumed to produce a total body or organ dose of four millirem/year:

Radionuclide	Critical Organ	pCi per liter
Tritium	Total Body	20,000
Strontium-90	Bone Marrow	8

2.2 A permit specific ground water quality standard for any pollutant not specified in Table 1 may be established by the Director at a level that will protect public health and the environment. This permit limit may be based on U.S. Environmental Protection Agency maximum contaminant level goals, health advisories, risk based contaminant levels, standards established by other regulatory agencies and other relevant information.

R317-6-3. Ground Water Classes.

3.1 GENERAL

The following ground water classes are established: Class IA - Pristine Ground Water; Class IB - Irreplaceable Ground Water; Class IC - Ecologically Important Ground Water; Class II - Drinking Water Quality Ground Water; Class III - Limited Use Ground Water; Class IV - Saline Ground Water.

3.2 CLASS IA - PRISTINE GROUND WATER

Class IA ground water has the following characteristics:

A. Total dissolved solids of less than 500 mg/l.

B. No contaminant concentrations that exceed the ground water quality standards listed in Table 1.

3.3 CLASS IB - IRREPLACEABLE GROUND WATER

Class IB ground water is a source of water for a community public drinking water system for which no reliable supply of comparable quality and quantity is available because of economic or institutional constraints.

3.4 CLASS IC - ECOLOGICALLY IMPORTANT GROUND WATER

Class IC ground water is a source of ground water discharge important to the continued existence of wildlife habitat.

3.5 CLASS II - DRINKING WATER QUALITY GROUND WATER

Class II ground water has the following characteristics:

A. Total dissolved solids greater than 500 mg/l and less than 3000 mg/l.

B. No contaminant concentrations that exceed ground water quality standards in Table 1.

3.6 CLASS III - LIMITED USE GROUND WATER

Class III ground water has one or both of the following characteristics:

A. Total dissolved solids greater than 3000 mg/l and less than 10,000 mg/l, or;

B. One or more contaminants that exceed the ground water quality standards listed in Table 1.

3.7 CLASS IV - SALINE GROUND WATER

Class IV ground water has total dissolved solids greater than 10,000 mg/l.

R317-6-4. Ground Water Class Protection Levels.

4.1 GENERAL

A. Protection levels are ground water pollutant concentration limits, set by ground water class, for the operation of facilities that discharge or would probably discharge to ground water.

B. For the physical characteristics (color, corrosivity, odor, and pH) and radionuclides listed in Table 1, the values listed are the protection levels for all ground water classes.

4.2 CLASS IA PROTECTION LEVELS

A. Class IA ground water will be protected to the maximum extent feasible from degradation due to facilities that discharge or would probably discharge to ground water.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the greater of 1.25 times the background or background plus two standard deviations.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.1 times the ground water quality standard value, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.25 times the background concentration, 0.25 times the ground water quality standard, or background plus two standard deviations; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.3 CLASS IB PROTECTION LEVELS

A. Class IB ground water will be protected as an irreplaceable source of drinking water.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the lesser of 1.1 times the background value or 2000mg/l.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.1 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.1 times the background concentration or 0.1 times the ground water quality standard; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.4 CLASS IC PROTECTION LEVELS

Class IC ground water will be protected as a source of water for potentially affected wildlife habitat. Limits on increases of total dissolved solids and organic and inorganic chemical compounds will be determined in order to meet applicable surface water standards.

4.5 CLASS II PROTECTION LEVELS

A. Class II ground water will be protected for use as drinking water or other similar beneficial use with conventional treatment prior to use.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the greater of 1.25 times the background value or background plus two standard deviations.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.25 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.25 times the background concentration, 0.25 times the ground water quality standard, or background plus two standard deviations; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.6 CLASS III PROTECTION LEVELS

A. Class III ground water will be protected as a potential source of drinking water, after substantial treatment, and as a source of water for industry and agriculture.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the greater of 1.25 times the background concentration level or background plus two standard deviations.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.5 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.5 times the background concentration or 0.5 times the ground water quality standard or background plus two standard deviations; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard. If the background concentration exceeds the ground water quality standard no increase will be allowed.

4.7 CLASS IV PROTECTION LEVELS

Protection levels for Class IV ground water will be established to protect human health and the environment.

R317-6-5. Ground Water Classification for Aquifers.

5.1 GENERAL

A. When sufficient information is available, entire aquifers or parts thereof may be classified by the Board according to the quality of ground water contained therein and commensurate protection levels will be applied.

B. Ground water sources furnishing water to community drinking water systems with ground water meeting Class IA criteria are classified as Class IA.

5.2 CLASSIFICATION AND RECLASSIFICATION PROCEDURE

A. The Board may initiate classification or reclassification.

B. A petition for classification or reclassification must be performed under the direction, and bear the seal, of a professional engineer or professional geologist.

C. Boundaries for class areas will be delineated so as to enclose distinct ground water classes as nearly as known facts permit. Boundaries will be based on hydrogeologic properties, existing ground water quality and for Class IB and IC, current use. Parts of an aquifer may be classified differently.

D. The petitioner requesting reclassification will provide sufficient information to determine if reclassification is in the best interest of the beneficial users.

E. A petition for classification or reclassification shall include:

1. factual data supporting the proposed classification;

2. a description of the proposed ground waters to be classified or reclassified;

3. potential contamination sources;

4. ground water flow direction;

5. current beneficial uses of the ground water; and

6. location of all water wells in the area to be classified or reclassified.

F. One or more public hearings will be held to receive comment on classification and reclassification proposals.

G. The Board will determine the disposition of all petitions for classification and reclassification, except as provided in R317-6-5.2.H.

H. Ground water proximate to a facility for which an application for a ground water discharge permit has been made may be classified by the Director for purposes of making permitting decisions.

R317-6-6. Implementation.

6.1 DUTY TO APPLY FOR A GROUND WATER DISCHARGE PERMIT

A. No person may construct, install, or operate any new facility or modify an existing or new facility, not permitted by rule under R317-6-6.2, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, including, but not limited to land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, without a ground water discharge permit from the Director. A ground water discharge permit application should be submitted at least 180 days before the permit is needed.

B. All persons who constructed, modified, installed, or operated any existing facility, not permitted by rule under R317-6-6.2, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, including, but not limited to: land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, must have submitted a notification of the nature and location of the discharge to the division before February 10, 1990 and must submit an application for a ground water discharge permit within one year after receipt of written notice from the division that a ground water discharge permit is required.

C. No person may construct, install, or operate any new liquid waste storage facility or modify an existing or new liquid waste storage facility for a large animal feeding operation not permitted by rule under R317-6-6.2A.17, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, without a ground water discharge permit from the Director. A ground water discharge permit application should be submitted at least 180 days before the permit is needed and the applicant must comply with the requirements of R317-1-2 for submitting plans and specifications and obtaining a construction permit.

6.2 GROUND WATER DISCHARGE PERMIT BY RULE

A. Except as provided in R317-6-6.2.C, the following facilities are considered to be permitted by rule and are not required to obtain a discharge permit under R317-6-6.1 or comply with R317-6-6.3 through R317-6-6.7, R317-6-6.9 through R317-6-6.11, R317-6-6.13, R317-6-6.16, R317-6-6.17 and R317-6-6.18:

1. facilities with effluent or leachate which has been demonstrated to the satisfaction of the Director to conform and will not deviate from the applicable class TDS limits, ground water quality standards, protection levels or other permit limits and which does not contain any contaminant that may present a threat to human health, the environment or its potential beneficial uses of the ground water. The Director may require

samples to be analyzed for the presence of contaminants before the effluent or leachate discharges directly or indirectly into ground water. If the discharge is by seepage through natural or altered natural materials, the Director may require samples of the solution be analyzed for the presence of pollutants before or after seepage;

2. water used for watering of lawns, gardens, or shrubs or for irrigation for the revegetation of a disturbed land area except for the direct land application of wastewater;

3. application of agricultural chemicals including fertilizers, herbicides and pesticides including but not limited to, insecticides fungicides, rodenticides and fumigants when used in accordance with current scientifically based manufacturer's recommendations for the crop, soil, and climate and in accordance with state and federal statutes, regulations, rules, permits, and orders adopted to avoid ground water pollution;

4. water used for irrigated agriculture except for the direct land application of wastewater from municipal, industrial or mining facilities;

5. flood control systems including detention basins, catch basins and wetland treatment facilities used for collecting or conveying storm water runoff;

6. natural ground water seeping or flowing into conventional mine workings which re-enters the ground by natural gravity flow prior to pumping or transporting out of the mine and without being used in any mining or metallurgical process;

7. leachate which results entirely from the direct natural infiltration of precipitation through undisturbed materials;

8. wells and facilities regulated under the underground injection control (UIC) program;

9. land application of livestock wastes, within expected crop nitrogen uptake;

10. individual subsurface wastewater disposal systems approved by local health departments or large subsurface wastewater disposal systems approved by the Director;

11. produced water pits, and other oil field waste treatment, storage, and disposal facilities regulated by the Division of Oil, Gas, and Mining in accordance with Section 40-6-5(3)(d) and R649-9, Disposal of Produced Water;

12. reserve pits regulated by the Division of Oil, Gas and Mining in accordance with Section 40-6-5(3)(a) and R649-3-7, Drilling and Operating Practices;

13. storage tanks installed or operated under rules adopted by the Utah Solid and Hazardous Waste Control Board;

14. coal mining operations or facilities regulated under the Coal Mining and Reclamation Act by the Utah Division of Oil, Gas, and Mining (DOGM). The submission of an application for ground water discharge permit under R317-6-6.2.C may be required only if the Director, after consideration of recommendations, if any, by DOGM, determines that the discharge violates applicable ground water quality standards, applicable Class TDS limits, or is interfering with a reasonable foreseeable beneficial use of the ground water. DOGM is not required to establish any administrative or regulatory requirements which are in addition to the rules of DOGM for coal mining operations or facilities to implement these ground water rules;

15. hazardous waste or solid waste management units managed or undergoing corrective action under R315-1 through R315-14;

16. solid waste landfills permitted under the requirements of R315-303;

17. animal feeding operations, as defined in UAC R317-8-3.5(2) that use liquid waste handling systems, which are not located within Zone 1 (100 feet) for wells in a confined aquifer or Zone 2 (250 day time of travel) for wells and springs in unconfined aquifers, in accordance with the Public Drinking Water Regulations UAC R309-600, and which meet either of the following criteria:

a) operations constructed prior to the effective date of this rule which incorporated liquid waste handling systems and which are either less than 4 million gallons capacity or serve fewer than 1000 animal units, or

b. operations with fewer than the following numbers of confined animals:

i. 1,500 slaughter and feeder cattle,

ii. 1,050 mature dairy cattle, whether milked or dry cows,

iii. 3,750 swine each weighing over 25 kilograms (approximately 55 pounds),

iv. 18,750 swine each weighing 25 kilograms or less (approximately 55 pounds),

v. 750 horses,

vi. 15,000 sheep or lambs,

vii. 82,500 turkeys,

viii. 150,000 laying hens or broilers that use continuous overflow watering but dry handle wastes,

ix. 45,000 hens or broilers,

x. 7,500 ducks, or

xi. 1,500 animal units

18. animal feeding operations, as defined in UAC R317-8-3.5(2), which do not utilize liquid waste handling systems;

19. mining, processing or milling facilities handling less than 10 tons per day of metallic and/or nonmetallic ore and waste rock, not to exceed 2500 tons/year in aggregate unless the processing or milling uses chemical leaching;

20. pipelines and above-ground storage tanks;

21. drilling operations for metallic minerals, nonmetallic minerals, water, hydrocarbons, or geothermal energy sources when done in conformance with applicable rules of the Utah Division of Oil, Gas, and Mining or the Utah Division of Water Rights;

22. land application of municipal sewage sludge for beneficial use, at or below the agronomic rate and in compliance with the requirements of 40 CFR 503, July 1, 2000 edition;

23. land application of municipal sewage sludge for mine-reclamation at a rate higher than the agronomic rate and in compliance with 40 CFR 503, July 1, 2000 edition;

24. municipal wastewater treatment lagoons receiving no wastewater from a significant industrial discharger as defined in R317-8-8.2(12); and

25. facilities and modifications thereto which the Director determines after a review of the application will have a de minimis actual or potential effect on ground water quality.

B. No facility permitted by rule under R317-6-6.2.A may cause ground water to exceed ground water quality standards or the applicable class TDS limits in R317-6-3.1 to R317-6-3.7. If the background concentration for affected ground water exceeds the ground water quality standard, the facility may not cause an increase over background. This section, R317-6-6.2B. does not apply to facilities undergoing corrective action under R317-6-6.15A.3.

C. The submission of an application for a ground water discharge permit may be required by the Director for any discharge permitted by rule under R317-6-6.2 if it is determined that the discharge may be causing or is likely to cause increases above the ground water quality standards or applicable class TDS limits under R317-6-3 or otherwise is interfering or may interfere with probable future beneficial use of the ground water.

6.3 APPLICATION REQUIREMENTS FOR A GROUND WATER DISCHARGE PERMIT

Unless otherwise determined by the Director, the application for a permit to discharge wastes or pollutants to ground water shall include the following complete information:

A. The name and address of the applicant and the name and address of the owner of the facility if different than the applicant. A corporate application must be signed by an officer

of the corporation. The name and address of the contact, if different than above, and telephone numbers for all listed names shall be included.

B. The legal location of the facility by county, quarter-quarter section, township, and range.

C. The name of the facility and the type of facility, including the expected facility life.

D. A plat map showing all water wells, including the status and use of each well, Drinking Water source protection zones, topography, springs, water bodies, drainages, and man-made structures within a one-mile radius of the discharge. The plat map must also show the location and depth of existing or proposed wells to be used for monitoring ground water quality. Identify any applicable Drinking Water source protection ordinances and their impacts on the proposed permit.

E. Geologic, hydrologic, and agricultural description of the geographic area within a one-mile radius of the point of discharge, including soil types, aquifers, ground water flow direction, ground water quality, aquifer material, and well logs.

F. The type, source, and chemical, physical, radiological, and toxic characteristics of the effluent or leachate to be discharged; the average and maximum daily amount of effluent or leachate discharged (gpd), the discharge rate (gpm), and the expected concentrations of any pollutant (mg/l) in each discharge or combination of discharges. If more than one discharge point is used, information for each point must be given separately.

G. Information which shows that the discharge can be controlled and will not migrate into or adversely affect the quality of any other waters of the state, including the applicable surface water quality standards, that the discharge is compatible with the receiving ground water, and that the discharge will comply with the applicable class TDS limits, ground water quality standards, class protection levels or an alternate concentration limit proposed by the facility.

H. For areas where the ground water has not been classified by the Board, information on the quality of the receiving ground water sufficient to determine the applicable protection levels.

I. A proposed sampling and analysis monitoring plan which conforms to EPA Guidance for Quality Assurance Project Plans, EPA QA/G-5 (EPA/600/R-98/018, February 1998) and includes a description, where appropriate, of the following:

1. ground water monitoring to determine ground water flow direction and gradient, background quality at the site, and the quality of ground water at the compliance monitoring point;

2. installation, use and maintenance of monitoring devices;

3. description of the compliance monitoring area defined by the compliance monitoring points including the dimensions and hydrologic and geologic data used to determine the dimensions;

4. monitoring of the vadose zone;

5. measures to prevent ground water contamination after the cessation of operation, including post-operational monitoring;

6. monitoring well construction and ground water sampling which conform where applicable to the Handbook of Suggested Practices for Design and Installation of Ground-Water Monitoring Wells (EPA/600/4-89/034, March 1991), ASTM Standards on Ground Water and Vadose Investigations (1996), Practical Guide for Ground Water Sampling EPA/600/2-85/104, (November 1985) and RCRA Ground Water Monitoring Technical Enforcement Guidance Document (1986), unless otherwise specified by the Director;

7. description and justification of parameters to be monitored;

8. quality assurance and control provisions for monitoring data.

J. The plans and specifications relating to construction, modification, and operation of discharge systems.

K. The description of the ground water most likely to be affected by the discharge, including water quality information of the receiving ground water prior to discharge, a description of the aquifer in which the ground water occurs, the depth to the ground water, the saturated thickness, flow direction, porosity, hydraulic conductivity, and flow systems characteristics.

L. The compliance sampling plan which in addition to the information specified in the above item I includes, where appropriate, provisions for sampling of effluent and for flow monitoring in order to determine the volume and chemistry of the discharge onto or below the surface of the ground and a plan for sampling compliance monitoring points and appropriate nearby water wells. Sampling and analytical methods proposed in the application must conform with the most appropriate methods specified in the following references unless otherwise specified by the Director:

1. Standard Methods for the Examination of Water and Wastewater, twentieth edition, 1998; Library of Congress catalogue number: ISBN: 0-87553-235-7.

2. E.P.A. Methods, Methods for Chemical Analysis of Water and Wastes, 1983; Stock Number EPA-600/4-79-020.

3. Techniques of Water Resource Investigations of the U.S. Geological Survey, (1998); Book 9.

4. Monitoring requirements in 40 CFR parts 141 and 142, 2000 ed., Primary Drinking Water Regulations and 40 CFR parts 264 and 270, 2000 ed.

5. National Handbook of Recommended Methods for Water-Data Acquisition, GSA-GS edition; Book 85 AD-2777, U.S. Government Printing Office Stock Number 024-001-03489-1.

M. A description of the flooding potential of the discharge site, including the 100-year flood plain, and any applicable flood protection measures.

N. Contingency plan for regaining and maintaining compliance with the permit limits and for reestablishing best available technology as defined in the permit.

O. Methods and procedures for inspections of the facility operations and for detecting failure of the system.

P. For any existing facility, a corrective action plan or identification of other response measures to be taken to remedy any violation of applicable ground water quality standards, class TDS limits or permit limit established under R317-6-6.4E. which has resulted from discharges occurring prior to issuance of a ground water discharge permit.

Q. Other information required by the Director.

R. All applications for a groundwater discharge permit must be performed under the direction, and bear the seal, of a professional engineer or professional geologist.

S. A closure and post closure management plan demonstrating measures to prevent ground water contamination during the closure and post closure phases of an operation.

6.4 ISSUANCE OF DISCHARGE PERMIT

A. The Director may issue a ground water discharge permit for a new facility if the Director determines, after reviewing the information provided under R317-6-6.3, that:

1. the applicant demonstrates that the applicable class TDS limits, ground water quality standards protection levels, and permit limits established under R317-6-6.4E will be met;

2. the monitoring plan, sampling and reporting requirements are adequate to determine compliance with applicable requirements;

3. the applicant is using best available technology to minimize the discharge of any pollutant; and

4. there is no impairment of present and future beneficial uses of the ground water.

B. The Director may approve an alternate concentration limit for a new facility if:

1. The applicant submits a petition for an alternate

concentration limit showing the extent to which the discharge will exceed the applicable class TDS limits, ground water standards or applicable protection levels and demonstrates that:

a. the facility is to be located in an area of Class III ground water;

b. the discharge plan incorporates the use of best available technology;

c. the alternate concentration limit is justified based on substantial overriding social and economic benefits; and,

d. the discharge would pose no threat to human health and the environment.

2. One or more public hearings have been held by the Director in nearby communities to solicit comment.

C. The Director may issue a ground water discharge permit for an existing facility provided:

1. the applicant demonstrates that the applicable class TDS limits, ground water quality standards and protection levels will be met;

2. the monitoring plan, sampling and reporting requirements are adequate to determine compliance with applicable requirements;

3. the applicant utilizes treatment and discharge minimization technology commensurate with plant process design capability and similar or equivalent to that utilized by facilities that produce similar products or services with similar production process technology; and,

4. there is no current or anticipated impairment of present and future beneficial uses of the ground water.

D. The Director may approve an alternate concentration limit for a pollutant in ground water at an existing facility or facility permitted by rule under R317-6-6.2 if the applicant for a ground water discharge permit shows the extent the discharge exceeds the applicable class TDS limits, ground water quality standards and applicable protection levels that correspond to the otherwise applicable ground water quality standards and demonstrates that:

1. steps are being taken to correct the source of contamination, including a program and timetable for completion;

2. the pollution poses no threat to human health and the environment; and

3. the alternate concentration limit is justified based on overriding social and economic benefits.

E. An alternate concentration limit, once adopted by the Director under R317-6-6.4B or R317-6-6.4D, shall be the pertinent permit limit.

F. A facility permitted under this provision shall meet applicable class TDS limits, ground water quality standards, protection levels and permit limits.

G. The Director may modify a permit for a new facility to reflect standards adopted as part of corrective action.

6.5 NOTICE OF INTENT TO ISSUE A GROUND WATER DISCHARGE PERMIT

The Director shall publish a notice of intent to approve in a newspaper in the affected area and shall allow at least 30 days, and no longer than 60 days, in which interested persons may comment to the Director. Final action will be taken by the Director following the comment period.

6.6 PERMIT TERM

A. The ground water discharge permit term will run for 5 years from the date of issuance. Permits may be renewed for 5-year periods or extended for a period to be determined by the Director but not to exceed 5 years.

B. In the event that new ground water quality standards are adopted by the Board, permits may be reopened to extend the terms of the permit or to include pollutants covered by new standards. The holder of a permit may apply for a variance under the conditions outlined in R317-6-6.4.D.

6.7 GROUND WATER DISCHARGE PERMIT RENEWAL

The permittee for a facility with a ground water discharge permit must apply for a renewal or extension for a ground water discharge permit at least 180 days prior to the expiration of the existing permit. If a permit expires before an application for renewal or extension is acted upon by the Director, the permit will continue in effect until it is renewed, extended or denied. Permit renewals with significant changes to the original permit must be performed under the direction, and bear the seal, of a professional engineer or professional geologist.

6.8 TERMINATION OF A GROUND WATER DISCHARGE PERMIT BY THE DIRECTOR

A ground water discharge permit may be terminated or a renewal denied by the Director if one of the following applies:

A. noncompliance by the permittee with any condition of the permit where the permittee has failed to take appropriate action in a timely manner to remedy the permit violation;

B. the permittee's failure in the application or during the permit approval process to disclose fully all significant relevant facts at any time;

C. a determination that the permitted facility endangers human health or the environment and can only be regulated to acceptable levels by plan modification or termination; or

D. the permittee requests termination of the permit.

6.9 PERMIT COMPLIANCE MONITORING

A. Ground Water Monitoring

The Director may include in a ground water discharge permit requirements for ground water monitoring, and may specify compliance monitoring points where the applicable class TDS limits, ground water quality standards, protection levels or other permit limits are to be met.

The Director will determine the location of the compliance monitoring point based upon the hydrology, type of pollutants, and other factors that may affect the ground water quality. The distance to the compliance monitoring points must be as close as practicable to the point of discharge. The compliance monitoring point shall not be beyond the property boundaries of the permitted facility without written agreement of the affected property owners and approval by the Director.

B. Performance Monitoring

The Director may include in a ground water discharge permit requirements for monitoring performance of best available technology standards.

6.10 BACKGROUND WATER QUALITY DETERMINATION

A. Background water quality contaminant concentrations shall be determined and specified in the ground water discharge permit. The determination of background concentration shall take into account any degradation.

B. Background water quality contaminant concentrations may be determined from existing information or from data collected by the permit applicant. Existing information shall be used, if the permit applicant demonstrates that the quality of the information and its means of collection are adequate to determine background water quality. If existing information is not adequate to determine background water quality, the permit applicant shall submit a plan to determine background water quality to the Director for approval prior to data collection. One or more up-gradient, lateral hydraulically equivalent point, or other monitoring wells as approved by the Director may be required for each potential discharge site.

C. After a permit has been issued, permittee shall continue to monitor background water quality contaminant concentrations in order to determine natural fluctuations in concentrations. Applicable up-gradient, and on-site ground water monitoring data shall be included in the ground water quality permit monitoring report.

6.11 NOTICE OF COMMENCEMENT AND DISCONTINUANCE OF GROUND WATER DISCHARGE

OPERATIONS

A. The permittee shall notify the Division of Water Quality immediately upon commencement of the ground water discharge and submit a written notice within 30 days of the commencement of the discharge.

B. The permittee shall notify the Division of Water Quality of the date and reason for discontinuance of ground water discharge within 30 days.

6.12 SUBMISSION OF DATA

A. Laboratory Analyses

All laboratory analysis of samples collected to determine compliance with these rules shall be performed in accordance with standard procedures by the Utah Division of Laboratory Services or by a laboratory certified by the Utah Department of Health.

B. Field Analyses

All field analyses to determine compliance with these rules shall be conducted in accordance with standard procedures specified in R317-6-6.3.L.

C. Periodic Submission of Monitoring Reports

Results obtained pursuant to any monitoring requirements in the discharge permit and the methods used to obtain these results shall be periodically reported to the Director according to the schedule specified in the ground water discharge permit.

6.13 REPORTING OF MECHANICAL PROBLEMS OR DISCHARGE SYSTEM FAILURES

The permittee shall notify the Director within 24 hours of the discovery of any mechanical or discharge system failures that could affect the chemical characteristics or volume of the discharge. A written statement confirming the oral report shall be submitted to the Director within five days of the failure.

6.14 CORRECTION OF ADVERSE EFFECTS REQUIRED

A. If monitoring or testing indicates that the permit conditions may be or are being violated by ground water discharge operations or the facility is otherwise in an out-of-compliance status, the permittee shall promptly make corrections to the system to correct all violations of the discharge permit.

B. The permittee, operator, or owner may be required to take corrective action as described in R317-6-6.15 if a pollutant concentration has exceeded a permit limit.

6.15 CORRECTIVE ACTION

It is the intent of the Board that the provisions of these rules should be considered when making decisions under any state or federal superfund action; however, the protection levels are not intended to be considered as applicable, relevant or appropriate clean-up standards under such other regulatory programs.

A. Application of R317-6-6.15

1. Generally - R317-6-6.15 shall apply to any person who discharges pollutants into ground water in violation of Section 19-5-107, or who places or causes to be placed any wastes in a location where there is probable cause to believe they will cause pollution of ground water in violation of Section 19-5-107.

2. Corrective Action shall include, except as otherwise provided in R317-6-6.15, preparation of a Contamination Investigation and preparation and implementation of a Corrective Action Plan.

3. The procedural provisions of R-317-6-6.15 shall not apply to any facility where a corrective or remedial action for ground water contamination, that the Director determines meets the substantive standards of this rule, has been initiated under any other state or federal program. Corrective or remedial action undertaken under the programs specified in Table 2 are considered to meet the substantive standards of this rule unless otherwise determined by the Director.

TABLE 2
PROGRAM

Leaking Underground Storage Tank, Sections 19-6-401, et seq.

Federal Comprehensive Environmental Response, Compensation andLiability Act, 42 U.S.C. Sections 9601, et seq.

Hazardous Waste Mitigation Act, Sections 19-6-301 et seq.
Utah Solid and Hazardous Waste Act, Sections 19-6-101 et seq.

B. Notification and Interim Action

1. Notification - A person who spills or discharges any petroleum hydrocarbon or other substance which may cause pollution of ground waters in violation of Section 19-5-107 shall notify the Director within 24 hours of the spill or discharge. A written notification shall be submitted to the Director within five days after the spill or discharge.

2. Interim Actions - A person is encouraged to take immediate, interim action without following the steps outlined in R317-6-6.15 if such action is required to control a source of pollutants. Interim action is also encouraged if required to protect public safety, public health and welfare and the environment, or to prevent further contamination that would result in costlier clean-up. Such interim actions should include source abatement and control, neutralization, or other actions as appropriate. A person that has taken these actions shall remain subject to R317-6-6.15 after the interim actions are completed unless he demonstrates that:

a. no pollutants have been discharged into ground water in violation of 19-5-107; and

b. no wastes remain in a location where there is probable cause to believe they will cause pollution of ground water in violation of 19-5-107, unless, in the case of diesel fuel and oil releases over 25 gallons, the responsible person demonstrates that the pollutant will not affect ground water quality by complying with the following:

(1) remove contaminated soil to the extent possible, or to established background levels, or 500 mg/kg total petroleum hydrocarbons for sensitive areas, or 5000 mg/kg total petroleum hydrocarbons for non sensitive areas as defined by R317-6-1;

(2) collect soil samples at locations and depths sufficient to document that cleanup has been achieved or as directed by the local health department;

(3) treat or dispose contaminated soil at a location approved by the local health department;

(4) submit an interim action report as defined by R317-6-1.23 or as directed by the local health department.

C. Contamination Investigation and Corrective Action Plan - General

1. The Director may require a person that is subject to R317-6-6.15 to submit for the Director's approval a Contamination Investigation and Corrective Action Plan, and may require implementation of an approved Corrective Action Plan. A person subject to this rule who has been notified that the Director is exercising his or her authority under R317-6-6.15 to require submission of a Contamination Investigation and Corrective Action Plan, shall, within 30 days of that notification, submit to the Director a proposed schedule for those submissions, which may include different deadlines for different elements of the Investigation and Plan. The Director may accept, reject, or modify the proposed schedule.

2. The Contamination Investigation or the Corrective Action Plan may, in order to meet the requirements of this Part, incorporate by reference information already provided to the Director in the Contingency Plan or other document.

3. The requirements for a Contamination Investigation and a Corrective Action Plan specified in R317-6-6.15.D are comprehensive. The requirements are intended to be applied with flexibility, and persons subject to this rule are encouraged to contact the Director's staff to assure its efficient application on a site-specific basis.

4. The Director may waive any or all Contamination Investigation and Corrective Action Plan requirements where

the person subject to this rule demonstrates that the information that would otherwise be required is not necessary to the Director's evaluation of the Contamination Investigation or Corrective Action Plan. Requests for waiver shall be submitted to the Director as part of the Contamination Investigation or Corrective Action Plan, or may be submitted in advance of those reports.

D. Contamination Investigation and Corrective Action Plan - Requirements

1. Contamination Investigation - The contamination investigation shall include a characterization of pollution, a characterization of the facility, a data report, and, if the Corrective Action Plan proposes standards under R317-6-6.15.F.2. or Alternate Corrective Action Concentration Limits higher than the ground water quality standards, an endangerment assessment.

a. The characterization of pollution shall include a description of:

(1) The amount, form, concentration, toxicity, environmental fate and transport, and other significant characteristics of substances present, for both ground water contaminants and any contributing surficial contaminants;

(2) The areal and vertical extent of the contaminant concentration, distribution and chemical make-up; and

(3) The extent to which contaminant substances have migrated and are expected to migrate.

b. The characterization of the facility shall include descriptions of:

(1) Contaminant substance mixtures present and media of occurrence;

(2) Hydrogeologic conditions underlying and, upgradient and downgradient of the facility;

(3) Surface waters in the area;

(4) Climatologic and meteorologic conditions in the area of the facility; and

(5) Type, location and description of possible sources of the pollution at the facility;

(6) Groundwater withdrawals, pumpage rates, and usage within a 2-mile radius.

c. The report of data used and data gaps shall include:

(1) Data packages including quality assurance and quality control reports;

(2) A description of the data used in the report; and

(3) A description of any data gaps encountered, how those gaps affect the analysis and any plans to fill those gaps.

d. The endangerment assessment shall include descriptions of any risk evaluation necessary to support a proposal for a standard under R317-6-6.15.F.2 or for an Alternate Corrective Action Concentration Limit.

e. The Contamination Investigation shall include such other information as the Director requires.

2. Proposed Corrective Action Plan

The proposed Corrective Action Plan shall include an explanation of the construction and operation of the proposed Corrective Action, addressing the factors to be considered by the Director as specified in R317-6-6.15.E. and shall include such other information as the Director requires. It shall also include a proposed schedule for completion.

3. The Contaminant Investigation and Corrective Action Plan must be performed under the direction, and bear the seal, of a professional engineer or professional geologist.

E. Approval of the Corrective Action Plan

After public notice in a newspaper in the affected area and a 30-day period for opportunity for public review and comment, the Director shall issue an order approving, disapproving, or modifying the proposed Corrective Action Plan. The Director shall consider the following factors and criteria in making that decision:

1. Completeness and Accuracy of Corrective Action Plan.

The Director shall consider the completeness and accuracy of the Corrective Action Plan and of the information upon which it relies.

2. Action Protective of Public Health and the Environment

a. The Corrective Action shall be protective of the public health and the environment.

b. Impacts as a result of any off-site activities shall be considered under this criterion (e.g., the transport and disposition of contaminated materials at an off-site facility).

3. Action Meets Concentration Limits

The Corrective Action shall meet Corrective Action Concentration Limits specified in R317-6-6.15.F, except as provided in R317-6-6.15.G.

4. Action Produces a Permanent Effect

a. The Corrective Action shall produce a permanent effect.

b. If the Corrective Action Plan provides that any potential sources of pollutants are to be controlled in place, any cap or other method of source control shall be designed so that the discharge from the source following corrective action achieves ground water quality standards or, if approved by the Director, alternate corrective action concentration limits (ACACLs). For purposes of this paragraph, sources of pollutants are controlled "in place" even though they are moved within the facility boundaries provided that they are not moved to areas with unaffected ground water.

5. Action May Use Other Additional Measures

The Director may consider whether additional measures should be included in the Plan to better assure that the criteria and factors specified in R317-6-6.15.E are met. Such measures may include:

a. Requiring long-term ground water or other monitoring;

b. Providing environmental hazard notices or other security measures;

c. Capping of sources of ground water contamination to avoid infiltration of precipitation;

d. Requiring long-term operation and maintenance of all portions of the Corrective Action; and

e. Periodic review to determine whether the Corrective Action is protective of public health and the environment.

F. Corrective Action Concentration Limits

1. Contaminants with specified levels

Corrective Actions shall achieve ground water quality standards or, where applicable, alternate corrective action concentration limits (ACACLs).

2. Contaminants without specified levels

For contaminants for which no ground water quality standard has been established, the proposed Corrective Action Plan shall include proposed Corrective Action Concentration Limits. These levels shall be approved, disapproved or modified by the Director after considering U.S. Environmental Protection Agency maximum contaminant level goals, health advisories, risk-based contaminant levels or standards established by other regulatory agencies and other relevant information.

G. Alternate Corrective Action Concentration Limits

An Alternate Corrective Action Concentration Limit that is higher or lower than the Corrective Action Concentration Limits specified in R317-6-6.15.F may be required as provided in the following:

1. Higher Alternate Corrective Action Concentration Limits

A person submitting a proposed Corrective Action Plan may request approval by the Director of an Alternate Corrective Action Concentration Limit higher than the Corrective Action Concentration Limit specified in R317-6-6.15.F. The proposed limit shall be protective of human health, and the environment, and shall utilize best available technology. The Corrective Action Plan shall include the following information in support of this request:

a. The potential for release and migration of any contaminant substances or treatment residuals that might remain after Corrective Action in concentrations higher than Corrective Action Concentration Limits;

b. An evaluation of residual risks, in terms of amounts and concentrations of contaminant substances remaining following implementation of the Corrective Action options evaluated, including consideration of the persistence, toxicity, mobility, and propensity to bioaccumulate such contaminants substances and their constituents; and

c. Any other information necessary to determine whether the conditions of R317-6-6.15.G have been met.

2. Lower Alternate Corrective Action Concentration Limits

The Director may require use of an Alternate Corrective Action Concentration Limit that is lower than the Corrective Action Concentration Limit specified in R317-6-6.15.F if necessary to protect human health or the environment. Any person requesting that the Director consider requiring a lower Alternate Corrective Action Concentration Limit shall provide supporting information as described in R317-6-6.15.G.3.

3. Protective of human health and the environment

The Alternate Corrective Action Concentration Limit must be protective of human health and the environment. In making this determination, the Director may consider:

a. Information presented in the Contamination Investigation;

b. Other relevant cleanup or health standards, criteria, or guidance;

c. Relevant and reasonably available scientific information;

d. Any additional information relevant to the protectiveness of a Corrective Action; and

e. The impact of additional proposed measures, such as those described in R317-6-6.15.E.5.

4. Good cause

An Alternate Corrective Action Concentration Limit shall not be granted without good cause.

a. The Director may consider the factors specified in R317-6-6.15.E in determining whether there is good cause.

b. The Director may also consider whether the proposed remedy is cost-effective in determining whether there is good cause. Costs that may be considered include but are not limited to:

(1) Capital costs;

(2) Operation and maintenance costs;

(3) Costs of periodic reviews, where required;

(4) Net present value of capital and operation and maintenance costs;

(5) Potential future remedial action costs; and

(6) Loss of resource value.

5. Conservative

An Alternate Corrective Action Concentration Limit that is higher than the Corrective Action Concentration Limits specified in R317-6-6.15.F must be conservative. The Director may consider the concentration level that can be achieved using best available technology if attainment of the Corrective Action Concentration Limit is not technologically achievable.

6. Relation to background and existing conditions

a. The Director may consider the relationship between the Corrective Action Concentration Limits and background concentration limits in considering whether an Alternate Corrective Action Concentration Limit is appropriate.

b. No Alternate Corrective Action Concentration Limit higher than existing ground water contamination levels or ground water contamination levels projected to result from existing conditions will be granted.

6.16 OUT-OF-COMPLIANCE STATUS

A. Accelerated Monitoring for Probable Out-of-Compliance Status

If the value of a single analysis of any compliance parameter in any compliance monitoring sample exceeds an applicable permit limit, the facility shall:

1. Notify the Director in writing within 30 days of receipt of data;

2. Immediately initiate monthly sampling if the value exceeds both the background concentration of the pollutant by two standard deviations and an applicable permit limit, unless the Director determines that other periodic sampling is appropriate, for a period of two months or until the compliance status of the facility can be determined.

B. Violation of Permit Limits

Out-of-compliance status exists when:

1. The value for two consecutive samples from a compliance monitoring point exceeds:

a. one or more permit limits; and

b. the background concentration for that pollutant by two standard deviations (the standard deviation and background (mean) being calculated using values for the ground water pollutant at that compliance monitoring point) unless the existing permit limit was derived from the background pollutant concentration plus two standard deviations; or

2. the concentration value of any pollutant in two or more consecutive samples is statistically significantly higher than the applicable permit limit. The statistical significance shall be determined using the statistical methods described in Statistical Methods for Evaluating Ground Water Monitoring Data from Hazardous Waste Facilities, Vol. 53, No. 196 of the Federal Register, Oct. 11, 1988 and supplemental guidance in Guidance For Data Quality Assessment (EPA/600/R-96/084 January 1998).

C. Failure to Maintain Best Available Technology Required by Permit

1. Permittee to Provide Information

In the event that the permittee fails to maintain best available technology or otherwise fails to meet best available technology standards as required by the permit, the permittee shall submit to the Director a notification and description of the failure according to R317-6-6.13. Notification shall be given orally within 24 hours of the permittee's discovery of the failure of best available technology, and shall be followed up by written notification, including the information necessary to make a determination under R317-6-6.16.C.2, within five days of the permittee's discovery of the failure of best available technology.

2. Director

The Director shall use the information provided under R317-6-6.16.C.1 and any additional information provided by the permittee to determine whether to initiate a compliance action against the permittee for violation of permit conditions. The Director shall not initiate a compliance action if the Director determines that the permittee has met the standards for an affirmative defense, as specified in R317-6-6.16.C.3.

3. Affirmative Defense

In the event a compliance action is initiated against the permittee for violation of permit conditions relating to best available technology, the permittee may affirmatively defend against that action by demonstrating the following:

a. The permittee submitted notification according to R317-6-6.13;

b. The failure was not intentional or caused by the permittee's negligence, either in action or in failure to act;

c. The permittee has taken adequate measures to meet permit conditions in a timely manner or has submitted to the Director, for the Director's approval, an adequate plan and schedule for meeting permit conditions; and

d. The provisions of 19-5-107 have not been violated.

6.17 PROCEDURE WHEN A FACILITY IS OUT-OF-COMPLIANCE

A. If a facility is out of compliance the following is required:

1. The permittee shall notify the Director of the out of compliance status within 24 hours after detection of that status, followed by a written notice within 5 days of the detection.

2. The permittee shall initiate monthly sampling, unless the Director determines that other periodic sampling is appropriate, until the facility is brought into compliance.

3. The permittee shall prepare and submit within 30 days to the Director a plan and time schedule for assessment of the source, extent and potential dispersion of the contamination, and an evaluation of potential remedial action to restore and maintain ground water quality and insure that permit limits will not be exceeded at the compliance monitoring point and best available technology will be reestablished.

4. The Director may require immediate implementation of the contingency plan submitted with the original ground water discharge permit in order to regain and maintain compliance with the permit limit standards at the compliance monitoring point or to reestablish best available technology as defined in the permit.

5. Where it is infeasible to re-establish BAT as defined in the permit, the permittee may propose an alternative BAT for approval by the Director.

6.18 GROUND WATER DISCHARGE PERMIT TRANSFER

A. The permittee shall give written notice to the Director of any transfer of the ground water discharge permit, within 30 days of the transfer.

B. The notice shall include a written agreement between the existing and new permittee establishing a specific date for transfer of permit responsibility, coverage and liability.

6.19 ENFORCEMENT

These rules are subject to enforcement under Section 19-5-115 of the Utah Water Quality Act.

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R317. Environmental Quality, Water Quality.
R317-10. Certification of Wastewater Works Operators.
R317-10-1. Objectives.

The certification program is established in order to assist in protecting the quality of waters in the state of Utah by helping ensure that personnel in charge of wastewater works are trained, experienced, reliable and efficient; protect the public health and the environment; provide for the health and safety of wastewater works operators; and establish standards and methods whereby wastewater works operating personnel can demonstrate competency.

R317-10-2. Scope.

A. These certification rules apply to all wastewater treatment works and sewerage systems, with the exception of Onsite Wastewater Systems and Large Underground Wastewater Disposal Systems as defined in Section R317-1-1. This includes both wastewater collection systems and wastewater treatment systems except underground wastewater disposal systems.

B. Wastewater works operated by political subdivisions must employ certified operators as required in this rule.

C. Operators of wastewater systems not requiring certified operators, such as industrial wastewater treatment systems, may be certified according to provisions of these rules for testing and certification.

R317-10-3. Authority.

The certification program for wastewater works operators is authorized by Section 19-5-104.

R317-10-4. Definitions.

"Board" means the Water Quality Board.

"Category" means type of certification, such as collection or wastewater treatment.

"Certificate" means a certificate issued by the director, with recommendation from the council, stating that the recipient has met the minimum requirements for the specified operator category and grade described in this rule.

"Certified Operator" means a person with the appropriate education and experience, as specified in this rule, who has successfully completed the certification exam or otherwise meets the requirements of this rule.

"Chief Operator" means the supervisor in direct responsible charge of all shift operators for a collection or treatment system.

"Collection System" means the system designed to collect and transport sewage from the beginning points that the collection entity regards as their responsibility to maintain and operate, to the points where the treatment facility assumes responsibility for operation and maintenance.

"Council" means the Utah Wastewater Operator Certification Council, as established in Section R317-10-8.

"Continuing Education Unit (CEU)" means ten contact hours of participation in and successful completion of an organized and approved continuing education experience. College credit in approved courses may be substituted for CEUs on an equivalency basis as defined in this rule.

"Direct Responsible Charge (DRC)" means active on-site charge and performance of operation duties. The person in direct responsible charge is generally a supervisor over wastewater treatment or collection who independently makes decisions affecting all treatment or system processes during normal operation which may affect the quality, safety, and adequacy of treatment of wastewater discharged from the plant. In cases where only one operator is employed, this operator shall be considered to be in direct responsible charge.

"Director" means the Director of the Division of Water Quality.

"Grade Level" means any one of the possible steps within a certification category. There are four levels each for collection and treatment system operators, Grade I being the lowest and Grade IV the highest level. There is one level for lagoon operators.

"Grandfather Certificate" means a certificate issued to an operator, without taking an examination, by virtue of the operator meeting experience and other requirements in Subsection R317-10-11.H of this rule.

"Operating Experience" means experience gained in operating a wastewater treatment plant or collection system which enables the operator to make correct supervisory, operational, safety, and maintenance decisions affecting personnel, water quality, public health, regulatory compliance, and wastewater works operation, efficiency, and longevity.

"Operator" means any person who is directly involved in or may be responsible for operation of any wastewater works or facilities treating wastewater.

"Population Equivalent (P.E.)" means the population which would contribute an equivalent waste load based on the calculation of total pounds of BOD contributed divided by 0.2. This calculation may be used where a significant amount of industrial waste is discharged to a wastewater system.

"Restricted Certificate" means a certificate issued upon passing the certification examination when other requirements have not been met.

"Small Lagoon System" means a Class I wastewater lagoon treatment system with attached collection system serving fewer than 3,500 population equivalent.

"Wastewater Works" means facilities for collecting, pumping, treating, or disposing of sanitary wastewater.

R317-10-5. Wastewater Works Owner Responsibilities.

A. The chief operator and supervisors who make process decisions for the system and are designated to be in direct responsible charge must be certified at no less than the level of the facility classification.

1. All other operators in direct responsible charge must be certified at no less than one grade lower than the facility classification, or at the lowest required facility classification except as provided in Subsection R317-10-5.

2. All facilities must have an operator certified at the facility level on duty or on call.

3. If a facility or system undergoes a re-rating, all operators considered to be in DRC must be certified at the appropriate level within one year after the date of the notification by the division of the new rating.

B. The facility owner must notify the director within 10 working days after the chief operator considered in DRC has terminated employment, or is otherwise unable to perform those duties. The wastewater works must have an appropriately certified operator, or an operator with a restricted certificate at the appropriate level, designated as DRC within one year from the date the vacancy occurred.

C. For newly constructed wastewater works, an appropriately certified operator, or an operator with a restricted certificate at the appropriate level, must be employed within one year after the system is deemed operable.

D. Those required to be certified may operate a system with a restricted certificate of the required grade for up to one year for a Class I or Class II facility, or up to two years for a Class III or Class IV facility, but may not continue to operate a system if they are unable to obtain an unrestricted certificate at the end of the stipulated period.

E. Contracts

1. General. In lieu of employing a DRC operator as part of its workforce, a facility owner may enter into a contract for DRC services with an operator certified at the appropriate level, or with another public or private entity with operators certified at the appropriate level.

2. Any such contract must be reviewed and approved by

the director.

3. If there is a contract, it must include the names of the certified individuals who will be in direct responsible charge of the operation of the facility. At a minimum the contract must contain the following elements:

a. a clear description of the overall duties and responsibilities of the facility owner, and the responsibilities of any contracted DRC operator related to the supervision of the facility's operation, including the frequency of visits and the duties to be performed;

b. identification of the contract period and effective date of the contract;

c. consideration;

d. termination clause; and

e. execution by authorized signatories.

R317-10-6. Facility Classification System.

Treatment plants and collection systems shall be classified in accordance with Table 1.

TABLE 1
FACILITY CLASSIFICATION SYSTEM

FACILITY CATEGORY		CLASS I	CLASS II	CLASS III	CLASS IV
Collection (1)	Pop. Served	3,500 and less	3,501 to 15,000	15,001 to 50,000	50,001 and greater
Treatment Plant (2)	Range of Fac. Points	30 and less	31 to 55	56 to 75	76 and greater
Small Lagoon Systems(3)	Pop. Equiv. Served	3,500 and less			

(1) Simple "in-line" treatment, such as booster pumping, preventive chlorination, or odor control, is considered an integral part of a collection system.

(2) Treatment plants shall be assigned "facility points" in accordance with Table 2 "Wastewater Treatment Plant Classification System".

(3) A combined certificate shall be issued for treatment works and collection system operation.

TABLE 2
WASTEWATER TREATMENT PLANT CLASSIFICATION SYSTEM

Each Unit process should have points assigned only once.

Item	Points
SIZE (2 PT Minimum - 20 PT Maximum)	
Max. Population equivalent (PE) served, peak day(1)	1 - 10
Design flow average day or peak month average, whichever is larger(2)	1 - 10
VARIATION IN RAW WASTE (3)	
Variations do not exceed those normally or typically expected	0
Recurring deviations or excessive variations of 100 - 200% in strength and/or flow	2
Recurring deviations or excessive variations of more than 200% in strength and/or flow	4
Raw wastes subject to toxic waste discharges	6
Acceptance of septage or truck-hauled waste	2
PRELIMINARY TREATMENT	
Plant pumping of main flow	3
Screening, comminution	3
Grit removal	3
Equalization	1
PRIMARY TREATMENT	
Clarifiers	5
Imhoff tanks or similar	5
SECONDARY TREATMENT	
Fixed film reactor	10
Activated sludge	15
Stabilization ponds w/o aeration	5
Stabilization ponds w/aeration	8
TERTIARY TREATMENT	
Polishing ponds for advanced waste treatment	2
Chemical/physical advanced waste treatment w/o secondary	15
Chemical/physical advanced waste treatment following secondary	10
Biological or chemical/biological advanced waste treatment	12
Nitrification by designed extended aeration only	2
Ion exchange for advanced waste treatment	10
Reverse osmosis, electrodialysis and other membrane filtration techniques	15
Advanced waste treatment chemical recovery, carbon regeneration	4
Media Filtration	5
ADDITIONAL TREATMENT PROCESSES	
Chemical additions (2 pts./each for max. of 6 pts.)	2 - 6
Dissolved air flotation (for other than sludge thickening)	8
Intermittent sand filter	2
Recirculating intermittent sand filter	3
Microscreens	5
Generation of oxygen	5
SOLIDS HANDLING	
Solids conditioning	2
Solids thickening (based on technology)	2 - 5
Mechanical dewatering	8
Anaerobic digestion of solids	10
Utilization of digester gas for heating or cogeneration	5
Aerobic digestion of solids	6
Evaporative sludge drying	2
Solids reduction (including incineration, wet oxidation)	12
On-site landfill for solids	2
Solids composting	10
Land application of biosolids by contractor	2
Land application of biosolids under direction of facility operator in DRC	10
DISINFECTION (10 pt. max.)	
Chlorination or ultraviolet irradiation	5
Ozonation	10
EFFLUENT DISCHARGE (10 pt. max.)	
Mechanical Post aeration	2
Direct recycle and reuse	6
Land treatment and disposal (surface or subsurface)	4
INSTRUMENTATION (6 pt. max.)	
Use of SCADA or similar instrumentation systems to provide data with no process operation	0
Use of SCADA or similar instrumentation systems to provide data with limited process operation	2
Use of SCADA or similar instrumentation systems to provide data with moderate process operation	4
Use of SCADA or similar instrumentation systems to provide data with extensive/total process operation	6
LABORATORY CONTROL (15 pt. max)(4)	
Bacteriological/biological (5 pt. max):	
Lab work done outside the plant	0
Membrane filter procedures	3
Use of fermentation tubes or any dilution method (or E. coli determination)	5
Chemical/physical (10 pt. max):	
Lab work done outside the plant	0
Push-button, visual methods for simple tests (i.e. pH, settleable solids)	3
Additional procedures (ie, DO, COD, BOD, gas analysis, titrations, solids volatile content)	5
More advanced determinations (ie, specific constituents; nutrients, total oils, phenols)	7
Highly sophisticated instrumentation (i.e., atomic absorption, gas chromatography)	10

(1) 1 point per 10,000 P.E. or part; maximum of 10 points

(2) 1 point per MGD or part

(3) Key concept is frequency and/or intensity of deviation or excessive variation from normal or typical fluctuations; such deviation may be in terms of strength, toxicity, shock loads, inflow and infiltration, with point values ranging from 0 - 6.

(4) Key concept is to credit laboratory analyses done on-site by plant personnel under the direction of the operator

in direct responsible charge with point values ranging from 0 - 15.

R317-10-7. Qualifications for Operator Grades.

A. General

1. "Qualification Points" means the accumulated points earned through education and experience required to obtain a certification without restriction. Points allocated for relevant education and experience must meet the minimum requirements for each grade. All substitutions are year for year equivalents. A college "year" is considered 45 quarter hours or 30 semester hours of credit.

2. College-level education must be in a job-related field to be credited. However, partial credit may be given for non-job related education at the discretion of the director with the recommendation of the council.

3. Experience may be substituted for a high school education or a graduate equivalence degree in Grades I and II only.

4. Education may be substituted for experience, as specified for each grade.

B. Grade I - minimum 13 points required.

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. One year of operating experience (one point per year).

3. Experience may be substituted for all or any part of the education requirements, on a one-to-one basis.

4. Education may not be substituted for experience.

C. Grade II - minimum 14 points required.

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. Two years of operating experience (one point per year).

3. Up to one year of additional education may be substituted for an equivalent amount of operating experience.

4. Experience may be substituted for all or any part of the education requirement, on a one-to-one basis.

D. Grade III - minimum 16 points required.

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. Four years of operating experience (one point per year).

3. Up to two years of additional education may be substituted for an equivalent amount of operating experience.

4. Relevant and specialized operator training may be substituted for education requirement, where 25 CEUs is equivalent to one year of education.

E. Grade IV - minimum 18 points required.

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. Six years of operating experience (one point per year).

3. Up to two years of additional education may be substituted for an equivalent amount of operating experience.

4. Relevant and specialized operator training may be substituted for education requirement, where 25 CEUs is equivalent to one year of education.

F. An applicant is also required to meet the requirements of Section 63G-12-104 regarding citizenship or alien identification certification.

R317-10-8. Utah Wastewater Operator Certification Council.

A. Membership.

1. Members of the council shall be appointed by the board.

a. Recommendations for appointments may be made by interested individuals or organizations, including the Department of Environmental Quality, Utah League of Cities and Towns, Water Environment Association of Utah, the Rural Water Association of Utah, and the Civil and Environmental Engineering Departments of universities in Utah.

b. The council shall serve at the discretion of the board to oversee the certification program in an advisory capacity to the director as provided in this rule.

2. The council shall consist of seven voting members and should include representation from interest groups as follows:

a. four members who are operators holding valid certificates, with at least two members being wastewater collection system operators and two members being wastewater treatment system operators;

b. one member with at least three years of management experience in either wastewater treatment, collection, or both, who represents municipal wastewater management;

c. two members who are at large and may represent:

(1) an educational institution in Utah;

(2) those who are currently certified as wastewater operators in the private sector; or

(3) vocational training.

3. At least two non-voting division staff should be in attendance at any council meeting.

4. Voting council members shall serve as follows:

a. terms of office shall be for three years with two members retiring each year, except for the third year when three shall retire;

b. any member who does not attend at least 50 percent of the meetings during a year of service may be replaced at the discretion of the board;

c. appointments to succeed a council member who is unable to serve his full term shall be for the remainder of the unexpired term; and

d. council members may be reappointed, but they do not automatically succeed themselves.

5. A majority of voting members shall constitute a quorum for the purpose of transacting council business.

6. Each year the Council shall elect from its membership a Chair and Vice Chair.

B. Duties of the council shall include:

1. evaluating examinations to ensure compatibility with operator responsibilities, accuracy of content, and composition of individual exam databank items;

2. evaluating certification applications, as requested by the director, and making recommendations for approval or disapproval;

3. assisting in administering examinations at various locations;

4. providing a forum for ongoing evaluation of the certification program and recommending changes to the director;

5. providing advice and recommendations for CEU approval; and

6. preparing an annual report of certification program activities for distribution to the board and other interested parties.

R317-10-9. Application for Examination.

A. Prior to taking an examination, an applicant must file an application of intention with the director using an approved form, accompanied by:

1. evidence of qualifications for certification in accordance with the provisions of Section R317-10-11;

2. the appropriate fee; and

3. documentation that requirements for certification of citizenship or alien residency are met.

B. Approved forms are available on the internet at www.waterquality.utah.gov.

R317-10-10. Examination.

A. The time and place of examinations to qualify for a certificate shall be determined by the director upon recommendation of the council.

B. All examinations shall be scored and the applicant notified of the results.

C. Examination fees shall be charged according to the approved division fee schedule to cover the costs of testing.

D. All exams shall be administered in a manner that will ensure the integrity of the certification program.

E. In the event an applicant fails an exam, the applicant may request to review the exam within ten days following receipt of the exam score.

F. The council shall not review examination questions for the purpose of changing individual examination scores.

1. However, recommendations may be made to improve individual questions in the databank for future examinations.

2. If an error is found in the grading of the exam, credit may be given.

R317-10-11. Certificates.

A. Certificates are issued by the director and shall indicate one of the following classifications:

1. Wastewater Treatment Operator - Grades I through IV.

2. Restricted Wastewater Treatment Operator - Grades I through IV.

3. Wastewater Collection Operator - Grades I through IV.

4. Restricted Wastewater Collection Operator - Grades I through IV.

5. Small Lagoon System Operator - Grade I, Wastewater Treatment and Collection System Combined.

6. Restricted Small Lagoon System Operator - Grade I, Wastewater Treatment and Collection System Combined.

B. General.

1. An applicant shall have the opportunity to take any grade of examination.

2. Replacement certificates may be obtained by submitting a written request with payment of a duplicate certificate fee.

c. Restricted and Unrestricted Certificates.

1. A restricted certificate shall be issued if the applicant passes the exam but review of the application form indicates that the applicant lacks the experience or education required for that particular classification.

2. An unrestricted certificate shall be issued if the applicant passes the exam and the experience and education requirements appropriate to the particular grade are met.

3. Restricted certificates shall become unrestricted when an application is submitted to the division showing that the appropriate experience and education requirements are met and a change in status fee is paid.

4. A restricted certificate does not qualify a person as a certified operator for the classification that the restricted certificate is issued, until the limiting conditions are met, except as provided in Section R317-10-5.

5. Upon application, a restricted certificate may be renewed subject to the conditions in Subsection R317-10-11.D.

D. Certificate Expiration and Renewal.

1. Each certificate shall continue in effect for a period of up to three years, unless revoked prior to that time.

2. The certificate must be renewed each three years by payment of a renewal fee and submittal of evidence of required CEUs.

3. The certificate expires on December 31 of the last year of the certificate.

4. Operators considered in DRC must renew by the expiration date in order for the wastewater works to remain in compliance with this rule.

5. Request for renewal shall be made on forms approved by the division.

6. It shall be the responsibility of the operator to make application for certificate renewal.

E. Reinstatement of Expired Certificate.

1. An expired certificate may be reinstated within one year after expiration by payment of a reinstatement fee with the renewal application when other renewal requirements are also met.

2. After one year, an expired certificate cannot be reinstated, and the operator must retest to become certified.

3. The required CEUs for renewal must be accrued before expiration of the certificate.

4. When unusual circumstances exist, an operator may petition the council to request additional time to meet the requirements.

5. Each petition for exception will be considered on its own merits and recommendation made to the director.

F. CEUs must be earned during the 3 year period prior to the expiration date of the certificate.

G. The director may, after appropriate review by the council, waive examination of applicants holding a valid certificate or license issued in compliance with other certification plans having equivalent standards, and issue a comparable Utah certificate upon payment of a reciprocity fee.

1. If the applicant is working in another state at the time of application, or has relocated to Utah but has not yet obtained employment in the corresponding wastewater field in Utah, a letter of intent to issue a certificate by reciprocity may be provided.

2. When the applicant provides proof of employment in that wastewater field in Utah, and meets all other requirements, a certificate may be issued.

H. In the past, certain individuals received a grandfather certificate.

1. A grandfather certificate was originally issued under authority of Subsection 19-5-104(2)(b)(v). The certificate shall be valid only for the wastewater works at which the operator is employed as that facility existed on March 16, 1991. The certificate may not be transferred to another facility or person. If the facility undergoes an addition of a new process, even if the facility classification does not change, or the collection system has a change in rating, the respective operator must obtain a restricted or unrestricted certificate within one year as specified in this rule.

Grandfather certificates were issued for a period of up to three years and must be renewed prior to the expiration date to remain in effect.

2. Renewal shall include:

a. the payment of a renewal fee;

b. submittal of an application form;

c. evidence of required CEUs; and

d. the applicant must meet the requirements of Section 63G-12-104 regarding citizenship or alien identification certification.

3. The renewal fee shall be the same as that charged for renewal of other wastewater operator certificates.

4. If the grandfather certificate is not renewed prior to the expiration date, the wastewater works may be considered to be out of compliance with this rule. The operator would then be required to pass the appropriate certification examination to become a certified operator.

R317-10-12. CEUs and Approved Training.

A. CEUs shall be required for renewal of each certificate according to the following schedule:

TABLE 3
REQUIRED CEUs FOR RENEWAL OF EACH CERTIFICATE

OPERATOR GRADE	CEUs REQUIRED IN A 3-YEAR PERIOD
Grade I	2
Grade II	2
Grade III	3
Grade IV	3

B. All CEUs for certificate renewal shall be subject to review for approval to ensure that the training is applicable to

wastewater works operation.

C. The council shall review training documentation and recommend appropriate CEU or credit assignment to the director for approval.

D. If a person holds multiple categories of wastewater operator certificates, such as treatment and collection, CEU credit may be received for each certificate from one training experience if the training is applicable to each category.

R317-10-13. Recommendations of the Council.

A. Initial recommendations.

1. All decisions of the council shall be in the form of recommendations for action by the director.

2. The council shall notify an applicant of any initial recommendation.

3. Any such applicant may, within 30 days of the date the council's notice was mailed, request reconsideration and an informal hearing before the council by writing to: Wastewater Operator Certification Council, Division of Water Quality, P.O. Box 144870, Salt Lake City, Utah 84114-4870.

4. The council shall notify the person of the time and location for the informal hearing.

B. Following the informal hearing, or the expiration of the period for requesting reconsideration, the council shall notify the director of its final recommendation.

C. A challenge to the director's determination regarding wastewater operator certification may be made as provided in Rule R305-7.

R317-10-14. Certificate Suspension and Revocation Procedures.

A. Grounds for suspending or revoking an operator's certificate may be any of the following:

1. demonstrated disregard for the public health and safety;

2. misrepresentation or falsification of figures, reports, or both, submitted to the State;

3. cheating on a certification exam;

4. falsely obtaining or altering a certificate; or

5. significant negligence, incompetence or misconduct in the performance of duties as an operator.

B. Suspension or revocation may result where it may be shown that circumstances and events relative to the operation of the wastewater works were under the operator's jurisdiction and control. Circumstances beyond the control of an operator shall not be grounds for suspension or revocation action.

C. The council may make recommendations to the director regarding the suspension or revocation of a certificate.

1. Prior to making any such recommendation, the council shall inform the individual in writing of the reasons the council is considering such a recommendation.

2. The council shall provide an opportunity for an informal hearing if requested by the certificate holder in writing within 30 days after the date of the notice.

D. Following an informal hearing, or the expiration of the period for requesting a hearing, the director shall make a final determination, after taking into consideration the final recommendation of the council.

E. A challenge to the director's determination may be made as provided in Rule R305-7.

R317-10-15. Noncompliance.

Noncompliance with these certification rules is a violation under Section 19-5-115 and may be subject to enforcement by the director.

KEY: water pollution, operator certification, wastewater treatment, renewals
April 29, 2015 19-5
Notice of Continuation July 6, 2017

R317. Environmental Quality, Water Quality.
R317-100. Utah State Project Priority System for the Utah Wastewater Project Assistance Program.
R317-100-1. Project Priority System.

This rule is necessary to meet requirements of Federal Water Quality Act, 40 CFR 35.3115 and Section 19-5-104(f) of the Utah Code. Copies of the current Utah State Project Priority List are available at the Utah Department of Environmental Quality, Division of Water Quality.

R317-100-2. General.

A. The Project Priority System is used to prioritize projects to allocate wastewater revolving loan and grant funds which may be available through the state and federal governments. The priority system is intended to identify those projects which will remedy the most severe water quality problems and to provide funds for the most beneficial program of public health protection and water quality improvement.

B. The Project Priority System will prioritize non-point source pollution, point source pollution (both storm water and municipal wastewater), and underground wastewater disposal system projects which are candidates for funding through the Utah State Wastewater Project Assistance Program. All projects considered for funding under this program receive an "alpha" ranking in accordance with R317-100-4. In addition, all point source projects identified on the State Revolving Fund (SRF) Intended Use Plan (IUP) receive a "numeric" ranking under R317-100-3.

R317-100-3. Numeric Project Priority Ranking System.

A. PRIORITY POINT TOTAL

1. A priority number total for a project will be determined by adding the priority points from each of the four priority categories. Total Priority Points = Project Need for Reduction of Water Pollution + Potential for Improvement Factor + Existing Population Affected + Special Consideration. If two or more projects receive an equal number of priority points, such ties shall be broken using the following criteria:

a. The projects shall be ranked in order of the highest "Need for Reduction of Water Pollution."

b. If the tie cannot be broken on the basis of need, the projects shall be ranked in order of the "Potential for Improvement Factor."

c. If the tie cannot be broken on the basis of the above, the project serving the greatest population will be given priority.

B. PROJECT NEED FOR REDUCTION OF WATER POLLUTION

All projects receive the highest applicable point level only.

1. A documented existing substantial health hazard will be eliminated by the project. This may include: (1) discharge of inadequately treated wastewater to an area of immediate public contact where inadequate operation and maintenance is not the primary cause of the condition; (2) an area where a substantial number of failing subsurface disposal systems are causing surfacing sewage in areas of human habitation. The elimination of existing substantial health hazards is of highest priority. The determination of the existence of substantial health hazards shall be based upon the investigation, report, and certification of the local health department and the State Division of Water Quality. Such reports and certifications will be forwarded to EPA with the Priority List. The health hazard designation will normally apply to unsewered communities experiencing widespread septic tank failures and surfacing sewage: 70 points.

2. A raw sewage discharge will be eliminated or prevented: 60 points.

3. The surface water quality standards identified in R317-2 are impaired by an existing discharge. For points to be allotted under this criterion the affected stream segment must be "water quality limited" according to a wasteload analysis and water

quality standards. Water quality standards have been established for the waters of Utah according to designated beneficial use classifications. A stream segment is considered to be "water quality limited" if a higher level of treatment than that which is provided by state effluent limitations is required to meet water quality standards. A stream segment is "effluent limited" if water quality standards are met by state imposed effluent limitations: 50 points.

4. The ground water quality standards identified in R317-6 are impaired by an existing discharge. For points to be allotted under this criterion the affected ground water must be impaired according to the numerical criteria outlined in the ground water protection levels established for Class I and II aquifers: 50 points.

5. Construction is needed to provide secondary treatment, or to meet the requirements of a Utah Pollution Discharge Elimination System (UPDES) Permit or Ground Water Discharge Permit, or the Federal Sludge Disposal Requirements: 50 points.

6. Documented water quality degradation is occurring, attributable to failing individual subsurface disposal systems where inadequate operation and maintenance is not the primary cause of the condition: 45 points.

7. Areas not qualifying as an existing substantial health hazard, but where it is evident that inadequate on-site conditions have resulted in the chronic failure of a significant number of individual subsurface disposal systems, causing an ongoing threat to public health or the environment. Points may be awarded in this category only when the Division of Water Quality determines that existing on-site limitations cannot be overcome through the use of approved subsurface disposal practices, or that the cost of upgrading or replacing failed systems to meet the minimum requirements of the local health department are determined to be excessive: 45 points.

8. Treatment plant loading has reached or exceeded 95 percent of design requirements needed to meet conditions of an UPDES Permit or needed to restore designated water use, or design requirements are projected to be exceeded within 5 years by the Division of Water Quality. Points will not be allocated under this criterion where excessive infiltration or inflow is the primary cause for the loading to the system to be at 95 percent or greater of design requirements: 40 points.

9. Existing facilities that do not meet the design requirements in R317-3. Points may be allocated under this category only if the design requirements that are not being met are determined to be fundamental to the ability of the facility to meet water quality standards: 40 points.

10. Interceptor sewers, collection systems, pump stations and treatment, where applicable, are needed to solve existing pollution, ground water, or public health concerns: 35 points.

a. Points may be awarded under this category only if they will primarily serve established residential areas and only if they are needed to solve existing pollution or public health problems.

b. Points shall not be awarded under this category where an interceptor is proposed for newly developing recreational communities, resorts, or unincorporated subdivisions.

c. Points may be awarded under this category when the majority of existing septic systems are located in defined well head protection zones or principal ground water recharge areas to Class I and II aquifers.

11. Interceptor sewers, collection systems, pump stations and treatment, where applicable, are needed to accomplish regionalization or eliminate existing treatment facilities. Points shall not be awarded under this category where an interceptor is proposed for newly developing recreational communities, resorts, or unincorporated subdivisions: 25 points.

12. Communities having future needs for wastewater facilities construction at existing wastewater systems, not included above, which are consistent with the goals of the Federal Water Pollution Control Act: 10 points.

13. Communities having future needs for new treatment plants and interceptors, not included above, which are consistent with the goals of the Federal Water Pollution Control Act: 5 points.

C. POTENTIAL FOR IMPROVEMENT FACTOR (PIF)

The PIF priority point sub-total is obtained by adding the points obtained in each of the four subcategories. Total PIF points = Classified Water Use + Discharge Standard Factor + Restoration from Water Quality Standard Violation + Estimated Improvement.

1. Classified Water Use. Priority points under this subcategory are allotted in accordance with segment designations listed in R317-2-13, Classifications of Waters of the State. Points are cumulative for segments classified for more than one beneficial use.

a. Protected as a raw water source of culinary water supply; R317-2-13 Use Classes: 1A, 1B, or 1C: 4 points.

b. Protected for primary contact recreation (swimming); R317-2-13: 2A: 4 points.

c. Protected for secondary contact recreation (water skiing, boating and similar uses); R317-2-13: 2B: 3 points.

d. Protected for cold water species of game fish and other cold water aquatic life, including the necessary aquatic organisms in their food chain; R317-2-13: 3A: 3 points.

e. Protected for warm water species of game fish and other warm water aquatic life, including the necessary aquatic organisms in the food chain; R317-2-13: 3B: 3 points.

f. Protected for non-game fish and other aquatic life, including the necessary aquatic organisms in their food chain; R317-2-13: 3C: 2 points.

g. Protected for waterfowl, shore birds and other water-oriented wildlife not included above, including the necessary aquatic organisms in their food chain; R317-2-13: 3D: 2 points.

h. Protected for agricultural, industrial, and "special" uses; R317-2-13: 4, 5, and 6: 1 point.

2. Discharge Standard Factor. Priority points are allotted as follows:

a. Project discharge standards are water quality based: 5 points.

b. Project must meet secondary effluent treatment standards: 2 points.

c. Project does not discharge to surface waters: 0 points.

3. Restoration from Water Quality Standard Violation.

a. Project WILL RESTORE Designated Water Use: 5 points.

b. Project WILL NOT RESTORE Designated Water Use: 0 points.

c. Points under this subcategory are assigned on the basis of whether appropriate water quality standard(s) can be restored if the respective project is constructed and any other water quality management controls are maintained at present levels. For a project to receive points under this subcategory, data from a State-approved waste load analysis must generally show that the designated water use is substantially impaired by the wastewater discharge and that the proposed project will likely restore the numerical water quality standards and designated use(s) identified in R317-2-12 and R317-2-14 for the waterbody.

d. Points may not be assigned under this subcategory if nonpoint source pollution levels negate water quality improvement from the proposed construction, if numerical standards or actual levels of pollutants being discharged are questionable, if serious consideration is being given to the redesignation of the stream segment to a lower classification, or if numerical standards for specific pollutants are inappropriately low for the classified water use.

4. Estimated Improvement in Stream Quality or Estimated

Improvement in Environmental Quality including Presently Unsewered Communities and Sewered Communities with Raw Sewage Discharges. Points in this category shall be allocated based upon the judgment of the Division of Water Quality Staff and on the nature of the receiving water and surrounding watershed. Consideration shall be given to projects which discharge into Utah priority stream segments as identified in the biennial water quality report (305(b)). The criteria used to develop the Stream Segment Priority List may be used to evaluate projects on other streams not on the Stream Segment Priority List. These criteria include the existing use impairment, the overall index from a use impairment analysis, the potential for use impairment, the downstream use affected, the population affected, the amount of local interest and involvement toward improving the stream quality, the presence of endangered species, and the beneficial use classification. Activities within the watershed that are aimed at reducing point and nonpoint sources of pollution may also be considered in the allocation of points. In addition, the effect of a discharge or proposed change in a discharge on the chemical and biological quality of the receiving stream may be considered in the determination of points. Only those projects which will significantly improve water quality or environmental quality and will restore or protect the designated uses or eliminate public health hazards shall be given the maximum points allowable. Fewer points can be given in instances where some significant improvement will be achieved if a project is constructed.

a. The project is essential immediately, and must be constructed to protect public health or attain a high, measurable improvement in water quality: 20 points.

b. The project will likely result in a substantial level of improvement in water quality or public health protection: 10 points.

c. Some level of water quality improvement or public health protection would likely be provided by the construction of the project, but the effect has not yet been well established. Also, present facilities lack unit processes needed to meet required discharge standards: 5 points.

d. No significant improvement of water quality or public health protection would likely be achieved, at present, by a project: 0 points.

D. EXISTING POPULATION AFFECTED

For sewered communities, priority points are based on the population served by a treatment facility. For unsewered areas, points are based on the population of the affected community.

1. Greater than 80,000: 10 points.
2. 40,000 - 80,000: 9 points.
3. 20,000 - 40,000: 8 points.
4. 10,000 - 20,000: 7 points.
5. 5,000 - 10,000: 6 points.
6. 4,000 - 5,000: 5 points.
7. 3,000 - 4,000: 4 points.
8. 2,000 - 3,000: 3 points.
9. 1,000 - 2,000: 2 points.
10. Less than 1,000: 1 point.

E. SPECIAL CONSIDERATION

1. The proposed project is an interceptor sewer which is part of a larger regional plan and is necessary to maintain the financial, environmental or engineering integrity of that regionalization plan: 20 points, or

2. The project is needed to preserve high quality waters such as prime cold water fishery and anti-degradation segments: 20 points.

3. The proposed project will change the facility's sludge disposal practice from a non-beneficial use to a beneficial use method: 20 points.

4. The users of the proposed project are subject to a documented water conservation plan: 20 points.

5. The sponsor of the proposed project has completed and submitted the most recent Municipal Wastewater Planning Program (MWPP) questionnaire: 20 points.

6. The sponsor of the proposed project, or its member entities, is certified as meeting the requirements for a Quality Growth Community: 20 points.

R317-100-4. Alpha Project Priority System.

All projects receive the highest applicable designation only. Projects will be included in one of three categories: A. Underground Wastewater Disposal Systems; B. Non-Point Source Pollution Projects, and C. Point Source Pollution Projects. The projects shall be ranked in order of: 1. Public Health Protection; 2. Water Quality Improvement; 3. Potential for Improvement; and, in the case of point source pollution projects, 4. Future Needs. Funding will be allocated as identified in R317-101, Utah Wastewater Project Assistance Program and R317-102, Utah Wastewater State Revolving Fund (SRF) Program for the categories of projects identified below.

A. UNDERGROUND WASTEWATER DISPOSAL SYSTEM PROJECTS:

1. Public Health Protection

a. Projects that improve or prevent a discharge of inadequately treated wastewater to an area of immediate public contact.

b. Projects that improve or prevent a discharge of inadequately treated wastewater within a zone of protection of a municipal or private drinking water well or that eliminate a drinking water impairment.

2. Water Quality Improvement

a. Projects that restore beneficial uses to surface water identified on the 303(d) Water Quality Impaired Waters list.

b. Projects that improve or prevent pollution to ground water.

3. Potential for Improvement

a. Projects that include improvement or replacement of underground wastewater disposal systems that may prevent degradation to surface water or ground water.

b. Projects that are necessary to comply with state or local underground wastewater disposal rules or regulations, e.g., existing systems that have inadequate ground water separation or are installed in unsuitable soil.

c. Projects that may improve underground wastewater disposal system reliability and function.

B. NON-POINT SOURCE POLLUTION PROJECTS:

1. Public Health Protection

a. Projects that improve or prevent a discharge of inadequately treated wastewater or other polluted water to an area of immediate public contact.

b. Projects that improve or prevent a discharge of inadequately treated wastewater or other polluted water within a zone of protection of a municipal or private drinking water well or that eliminate a drinking water impairment.

2. Water Quality Improvement

a. Projects that restore beneficial uses to surface water identified on the 303(d) Water Quality Impaired Waters list.

b. Projects that improve or prevent other surface water pollution.

c. Projects that improve or prevent ground water pollution.

3. Potential for Improvement

a. Projects that improve non-point sources of pollution from industrial, municipal, private or agricultural systems that may prevent degradation to surface water or ground water.

b. Projects that may prevent degradation to riparian areas, wetlands or that preserve the natural environment.

c. Projects that encourage conservation including wastewater reuse, biosolids reuse or new conservation technologies.

d. Projects that encourage Best Management Practices that may directly or indirectly improve or prevent degradation to

surface water or ground water.

C. POINT SOURCE POLLUTION PROJECTS:

1. Public Health Protection

a. Projects that improve or prevent a discharge of inadequately treated wastewater to an area of immediate public contact.

b. Projects that improve or prevent a discharge of inadequately treated wastewater or storm water within a zone of protection of a municipal or private drinking water well or that eliminate a drinking water impairment.

2. Water Quality Improvement

a. Projects that restore beneficial uses to surface water identified on the 303(d) Water Quality Impaired Waters list.

b. Projects that improve or prevent other surface water pollution.

c. Projects that improve or prevent ground water pollution.

d. Projects necessary to achieve water quality standards more stringent than secondary treatment standards.

e. Projects needed to meet secondary treatment standards or that expand systems that are beyond 95 percent of the design capacity or that do not meet current design criteria.

3. Potential for Improvement

a. Projects that improve collection, treatment and disposal systems that may prevent degradation to a surface water or ground water aquifer.

b. Projects that may prevent degradation to riparian areas, wetlands or that preserve the natural environment.

c. Projects that encourage regionalization of treatment systems.

d. Projects that encourage conservation including wastewater reuse, biosolids reuse, or new conservation technologies

4. Future Needs. Projects that may have future needs for the construction, expansion or replacement of collection and treatment systems.

KEY: grants, state assisted loans, wastewater
June 1, 2004 19-5
Notice of Continuation July 6, 2017 19-5-104
40 CFR 35.915 and 40 CFR 35.2015

R331. Financial Institutions, Administration.

R331-5. Rule Governing Sale of Securities by Persons Issuing Securities, Who Are Under the Jurisdiction of the Department of Financial Institutions.

R331-5-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301(13) and 7-1-503.

(2) This rule governs the issuance, offer, offer to sell, offer for sale or sale of any security issued by a person or institution under the jurisdiction of the Department of Financial Institutions.

(3) The rule establishes uniform rules for securities offerings applicable to all persons and institutions subject to the jurisdiction of the department and minimum standards of disclosure to protect the public interest.

R331-5-2. Definitions.

(1) "Issuer" means any person under the jurisdiction of the department who issues or proposes to issue any security.

(2) "Offer, offer to sell, offer for sale or sale" means:

(a) every attempt or offer to dispose of, or solicitation of an offer to buy;

(b) every contract of sale of, contract to sell, or disposition of a security or interest in a security for value;

(c) every sale or offer of a warrant or right to purchase or subscribe to another security of the same issuer or an affiliate of the issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same issuer or an affiliate of the issuer.

(3) "Restricted Securities" means:

(a) securities that are acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering;

(b) securities acquired from the issuer that are subject to the resale limitations of SEC Regulation D, Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933, 17 CFR 230.501-508 (1993), or securities issued pursuant to Utah Division of Securities Rule R164-14-2n, Uniform Limited Offering Exemption (1994);

(c) securities that are subject to the resale limitations of SEC Regulation D, Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933, 17 CFR 230.501-508 (1993) or Utah Division of Securities Rule R164-14-2n (1994) and are acquired in a transaction or chain of transactions not involving any public offering.

(4) "SEC" means the United States Securities and Exchange Commission.

(5) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; pre-organization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The word "security" does not include:

(a) Certificates of deposit or similar instruments issued by a bank, savings and loan association, credit union, or industrial loan corporation authorized or approved by the commissioner;

(b) A loan participation, letter of credit, or other form of indebtedness incurred in the ordinary course of business by a bank, savings and loan association, credit union, or industrial loan corporation; or

(c) Promissory notes or other evidences of indebtedness, and the security therefor, leases of personal property, contracts to sell real or personal property, or other loans or investments

sold by a depository institution in the secondary market.

R331-5-3. Registration with the Department.

(1) Any person under the jurisdiction of the department who issues, offers, offers to sell, offers for sale or sells any security, the issuer of which is also a person under the jurisdiction of the department, after the effective date of this rule, shall register with the department on forms as the department may require.

(2) No person may issue, offer, offer to sell, offer for sale or sell any security of which the issuer is also a person under the jurisdiction of the department, unless and until the department has provided notice to the issuer that the securities have been registered with the department and an offering circular containing, at a minimum, the information required in Rule R331-5-4, has been approved by the department.

R331-5-4. Offering Circular Requirements.

(1) General

No person subject to the jurisdiction of the department shall issue, offer, offer to sell, offer for sale or sell, directly or indirectly, any security issued by it unless the offer or sale is made through the use of an offering circular which has been filed and declared effective pursuant to this rule.

(2) Communications not deemed an offer

The following communications shall not be deemed an offer:

(a) Prior to filing an offering circular, any notice of a proposed offering which satisfies the requirements of SEC Rule 135, Notice of Certain Proposed Offerings , 17 CFR 230.135 (1993); and

(b) Subsequent to filing an offering circular, any notice, circular, advertisement, letter, or other communication published or transmitted to any person which satisfies the requirements of SEC Rule 134, Communications Not Deemed a Prospectus , 17 CFR 230.134 (1993).

(3) Preliminary offering circular

A preliminary offering circular may be used prior to the effective date of the offering circular if:

(a) The preliminary offering circular has been filed pursuant to this rule;

(b) The preliminary offering circular includes the information required by this rule, except for the information relating to offering price, discounts or commissions, amount of proceeds, conversion rates, call prices, or other matters dependent on the offering price; and

(c) The offering circular declared effective by the department is furnished to the purchaser prior to any sale.

(4) Form and Content

Any offering circular or amendment filed pursuant to this rule shall comply with the information requirements of Section (b) of the Securities and Exchange Commission Rule 502, General Conditions to be Met, 17 CFR 230.502 (1993).

(5) Number of Copies

Any filing shall include three copies of each document to be filed with the department. After the effective date of an offering circular, an offering circular which varies from the form previously filed shall not be used, unless it includes only non-material supplemental or additional information and until three copies have been filed with the department.

(6) Effective Date

An offering circular filed with the department is effective on the tenth day after filing. Upon request, the commissioner may declare an earlier effective date if he is satisfied that the offering circular is adequate and that the earlier effective date does not materially prejudice any party in interest. Exceptions include:

(a) If any amendment is filed prior to the effective date, the offering circular shall be deemed to have been filed when such amendment was filed;

(b) If a duly authorized amendment, telegram confirmed in writing, or letter states that the effective date is delayed until a further amendment is filed stating specifically that the offering circular will become effective in accordance with this paragraph; or

(c) If it appears to the department at any time that the offering circular is incomplete or inaccurate in any material respect, the department may determine to declare the offering circular not effective until a materially complete and accurate amendment is filed.

(7) Use of the offering circular

(a) An offering circular or amendment declared effective by the department shall not be used more than nine months after the effective date, unless the information contained therein is as of a date not more than sixteen months prior to such use.

(b) An offering circular filed under this rule shall not extend the period for which an effective offering circular or amendment may be used under Subsection (c).

(c) No offering circular shall be used and no offer or sale of securities subject to the offering circular requirements of this department shall be made subsequent to any material change in an issuer's business operations or financial condition, until the offering circular has been amended to include information as to the material changes and the amended offering circular has been filed with and declared effective by the department.

(8) Withdrawal or abandonment

(a) Any offering circular, amendment, or exhibit may be withdrawn prior to the effective date. A withdrawal shall be signed and state fully the grounds upon which it is made. Any documents withdrawn will not be removed from the files of the department, but will be marked "Withdrawn upon the request of the issuer on (date)."

(b) When an offering circular or amendment has been on file with the department for a period of nine months and has not become effective the department may, in its discretion, determine whether the filing has been abandoned, after notifying the issuer that the filing is out of date and must either be amended to comply with the applicable requirements of this rule or be withdrawn within 30 days after the date of such notice. Where a filing is abandoned, the documents will not be removed from the files of the department, but will be marked "Declared abandoned by the department on (date)."

R331-5-5. Securities Sale Report.

Within ten days after the termination of an offering pursuant to this rule, the issuer shall file a report with the department describing the sale of its securities which shall include:

(1) The name and address of the issuer;

(2) The title, number, aggregate and per-unit offering price of the securities sold;

(3) The aggregate and per-unit dollar amounts of actual itemized expenses, discounts or commissions, and other fees;

(4) The aggregate and per-share dollar amounts of the net proceeds raised; and

(5) The number of purchasers of each class of securities sold and the number of beneficial owners of each class of the issuer's equity securities at the termination of the offering.

R331-5-6. Limitations on Resale of "Restricted Securities".

(1) "Restricted Securities" acquired in a transaction pursuant to this rule, shall not be resold or otherwise disposed of for a period of two years without the prior written consent of the department. The issuer shall exercise reasonable care to ensure that the purchasers of the securities are not purchasing for resale or distribution.

(2) Reasonable care shall include the following:

(a) Reasonable inquiry to determine if the purchaser is

acquiring the securities for himself or for other persons;

(b) Written disclosure to each purchaser prior to sale that the securities cannot be resold or otherwise disposed of for a period of two years without the prior written consent of the department;

(c) Placement of a legend on the certificate or other document that evidences the securities which states that: "The securities evidenced by this certificate are restricted as to transfer for a period of two years from the date of this certificate pursuant to the rules of the Utah Department of Financial Institutions and may not be sold or otherwise disposed of without the prior written consent of the department";

(d) The determination of the period securities have been held after acquisition for the purposes of this Section shall be made as would be determined under the provisions of the SEC Rule 144(d), Holding Period for Restricted Securities, 17 CFR 230.144(d); and

(e) Where securities of the issuer are exchanged for other securities in any business combination, securities of the issuer which are restricted under this Section may be exchanged for other securities which are similarly restricted and have the legend required by Subsection (c), and the holding periods may run concurrently.

R331-5-7. Remuneration Paid for Solicitation or for Sales.

No commission or similar remuneration shall be paid or given directly or indirectly for soliciting any prospective investor or in connection with the offer or sale of the securities in reliance on this rule unless such commission or similar transaction-related remuneration is paid or given to a broker-dealer licensed pursuant to Section 61-1-4 or an issuer's agent licensed to sell as an agent of this issuer pursuant to Section 61-1-4.

R331-5-8. Manipulative and Deceptive Devices.

(1) In any offer, purchase, or sale in connection with an issuer's offering of its securities, under this rule, no person, directly or indirectly, shall:

(a) Employ any device, scheme, or artifice to defraud;

(b) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, or make any misleading statement; or

(c) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) All documents used in connection with an issuer's offering of securities including, but not necessarily limited to, written promotional materials, offering circulars, and reports of financial condition furnished to prospective purchasers must be accurate and contain no material misstatements or omit to state facts necessary in order to make the statement not misleading.

(3) No person is authorized to make any statement not contained in the disclosure statement.

R331-5-9. Waiver.

The department may waive any or all of the requirements of this rule or the filing of any required information if:

(1) the department determines the requirements or information is unnecessary; or

(2) the issuer is subject to supervisory actions of the commissioner.

R331-5-10. Penalties for Violation.

Penalties for the violation of this rule shall be the same as those imposed by the provisions of Sections 61-1-21 and 61-1-22.

KEY: financial institutions, securities
1995 7-1-301(13)

Notice of Continuation July 20, 2017 7-1-503
61-1-21
61-1-22

R331. Financial Institutions, Administration.
R331-7. Rule Governing Leasing Transactions by Depository Institutions Subject to the Jurisdiction of the Department of Financial Institutions.
R331-7-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301(15), and 7-1-501.

(2) This rule applies to all depository institutions and their subsidiaries subject to the jurisdiction of the Department of Financial Institutions.

(3) The purpose of this rule is to clarify acceptable employment of deposits and other funds involved in leasing or leasing related transactions.

R331-7-2. Definitions.

(1) "Affiliate" means any company under common control with the depository institution excluding any subsidiary.

(2) "Assigned lease" means a lease having all of the following characteristics:

(a) Residual dependence greater than 5% of original equipment cost;

(b) Originated by a lessor - assignor who subsequently assigned its rights or sold a participation in the lease, payments, or ownership rights to the depository institution - assignee;

(c) The assigned lease is either a tax or non-tax lease;

(d) The depository institution may or may not have recourse to the assignor in addition to lessee recourse;

(e) The assigned lease is accounted for in accordance with R331-7-9.

(3) "Bargain call purchase option" means a written call purchase option which is a lessee option to purchase the asset as contrasted with a put purchase option which is a lessor right to force the lessee to purchase the asset. An option is considered a bargain if at the inception of the lease the purchase option exercise price is considered to be significantly less than the expected future fair market value of the property at the time the option becomes exercisable.

(4) "Capital lease vs. operating lease" means if at its inception a lease meets one or more of the (a) through (d) criteria and both of the (e) and (f) criteria, the lease shall be classified as a sales-type capital lease or a direct-financing capital lease, whichever is appropriate, by the lessor. Otherwise, it shall be classified as an operating lease.

(a) The lease automatically transfers ownership of the property to the lessee during or by the end of the lease term.

(b) The lease contains a bargain call purchase option.

(c) The lease term is equal to 75% or more of the estimated economic life of the leased property. However, if the beginning of the lease term falls within the last 25% of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used for purposes of classifying the lease.

(d) The present value at the beginning of the lease term of the minimum lease payments, excluding that portion of the payments representing executory costs to be paid by the lessor, including any profit thereon, equals or exceeds 90% of the excess of the fair value of the leased property to the lessor at the inception of the lease over any related investment tax credit retained by the lessor and expected to be realized by him.

(i) However, if the beginning of the lease terms falls within the last 25% of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used to classify the lease.

(ii) A lessor shall compute the present value of the minimum lease payments using the interest rate implicit in the lease.

(e) The collectability of the minimum lease payments shall be reasonably predictable. A lessor shall not be precluded from classifying a lease as a sales-type lease or as a direct financing lease simply because the receivable is subject to an estimate of uncollectability based on experience with groups of similar receivables.

(f) No important uncertainties surround the amount of unreimbursable costs yet to be incurred by the lessor under the lease. Important uncertainties might include commitments by the lessor to guarantee performance of the leased property in a manner more extensive than the typical product warranty or to effectively protect the lessee from obsolescence of the leased property. However, the necessity of estimating executory costs to be paid by the lessor shall not by itself constitute an important uncertainty as referred to herein.

(5) "Company" means a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any form of business entity.

(6) "Control" means control as defined in Section 7-1-103.

(7) "Department" means the Department of Financial Institutions.

(8) "Depository institution" means depository institution as defined in Section 7-1-103, and any subsidiary.

(9) "Direct financing lease" means a capital lease other than a leveraged lease that does not give rise to a dealer's profit or loss to the lessor but that meets one or more of the first four criteria and both criteria (e) and (f) in Subsection (4) above. In a direct financing lease, the cost and fair market value of the leased property is the same at the inception of the lease.

(10) "FASB 13" means the Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standards No. 13, Accounting for Leases, as amended, which outlines the required accounting procedures for accounting for leases by a lessor and is incorporated by reference. Other statements by the FASB, which are incorporated by reference, concerning leasing shall similarly be referred to by number such as "FASB 17" which defines initial direct costs of a lessor.

(11) "Gross investment in the lease" means the aggregate of the total minimum lease payments receivable and the unguaranteed residual in the lease.

(12) "Implicit interest rate" means the discount interest rate in a lease which when applied to the minimum lease payments, excluding that portion of the payments representing executory costs to be paid by the lessor, together with any profit thereon, and the unguaranteed residual value accruing to the benefit of the lessor, causes the aggregate present value at the beginning of the lease term to be equal to the fair value of the leased property to the lessor at the inception of the lease, minus any investment tax credit retained by the lessor and expected to be realized by him. This definition does not necessarily purport to include all factors that a lessor might recognize in determining his rate of return.

(13) "Leveraged lease" means a lease having all of the following characteristics:

(a) The lease involves at least three parties: a lessee, a long-term non-recourse creditor, and a lessor, commonly called the equity participant. A depository institution could be either the long-term non-recourse creditor or the equity participant;

(b) The financing provided by the long-term non-recourse creditor is non-recourse as to the general credit of the lessor although the creditor may have recourse to the specific property leased and the unremitted rentals relating to it. The amount of the non-recourse financing is sufficient to provide the lessor with substantial "leverage" in the transaction;

(c) Except for the exclusion of leveraged leases from the definition of a direct financing lease as set forth in R331-7-2(9), the lease otherwise meets the direct financing lease definition. A participation in a net, limited residual dependent lease purchased by a depository institution and a lease that meets the definition of a sales-type lease set forth in R331-7-2(4) shall not be considered a leveraged lease.

(14) "Limited residual dependent" means a lease from

which the lessor can reasonably expect to realize a return of its investment in the leased property, plus the estimated cost of financing the property over the term of the lease, plus a reasonable profit, all of which are derived from:

(a) Lease rental payments;

(b) Estimated tax benefits; and

(c) The limited in amount estimated residual value of the property at the expiration of the initial non-cancelable term of the lease. The degree to which a depository institution may depend upon residual value to derive a profit from a lease transaction is subject to certain residual dependence restrictions set forth at Rule R331-7-4(1).

(15) "Minimum lease payments" means the minimum payments received on a lease which include any or all of the following:

(a) Guaranteed residual value by lessee or related party whether or not title transfers;

(b) Basic rentals during the non-cancelable lease term;

(c) Renewal rentals preceding a bargain call purchase option;

(d) Bargain call purchase options;

(e) Purchase option puts whether bargain or not;

(f) Third party residual guarantee, excluded by lessee as a criterion;

(g) Non-renewal penalties; and

(h) Unguaranteed residuals, including non-bargain purchase options, are excluded from minimum lease payments.

(16) "Net investment in the lease" means the gross investment less the unearned income.

(17) "Net lease" means a lease under which the depository institution will not directly provide or be obligated to provide for:

(a) The servicing, repair, or maintenance of the leased property during the lease term; however, the depository institution shall not be precluded from offering these same "full-service" benefits indirectly by subcontracting such service, repair, or maintenance to independent sub-contracting firms provided that such firms have the resources to meet the terms of the service contract;

(b) The purchasing of parts and accessories for the leased property, provided however, that improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the net, limited residual dependence requirements;

(c) The loan of replacement or substitute property while the leased property is being serviced or repaired unless such loan or substitution of property is provided by an independent firm whose loan or replacement services have been subcontracted;

(d) The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance;

(e) The renewal of any license or registration for the property unless such action by the depository institution is necessary to protect its interest as an owner or financier of the property.

(18) "Non-tax lease" means a lease wherein the depository institution as a lessor does not receive the tax benefits of ownership of the leased property, and the residual dependence of the lessor is greater than 5% of the cost of the property.

(19) "Purchase option put" means a lessor right to force the lessee to purchase the asset.

(20) "Residual" means a residual payment or residual value in a lease which is represented by any of the following:

(a) A fixed purchase option fixed either as a dollar amount or as a percentage of cost of the leased property;

(b) A guaranteed residual where the residual value is guaranteed by the lessee, a third party, or the manufacturer or vendor;

(c) A fair market value purchase option where the option price is determined at the end of the lease based on the prevailing appraised market value;

(d) An unguaranteed residual such as in a closed end lease where the property reverts back to the lessor at the end of the lease term at which time the lessor has no guarantee as to the value of the property upon resale or release of the property. Fixed call purchase options that are not considered "bargain" will also be referred to as unguaranteed residuals.

(21) "Residual dependence" means depending upon residual value, including rentals and tax benefits, in a lease transaction in order to earn a required profit, recoup original capital investment, and cover financing costs. Full payout leases do not depend upon residual for profit whereas residual dependent leases do.

(22) "Sales-type lease" means a capital lease that gives rise to dealer's profit or loss to the lessor, in other words, the fair value of the leased property at the inception of the lease is greater or less than its cost, and that meets one or more of the criteria (a) through (d) and both criteria (e) and (f) in R331-7-2(4).

(a) Normally, a sales-type lease will arise when the depository institution acts as a dealer using leasing as a means of improving profit margins. Leases involving lessors that are primarily engaged in financing operations normally will not be sales-type leases if they qualify under R331-7-2(4), but will most often be direct financing leases, as described in R331-7-2(9).

(b) However, a lessor need not be a dealer to realize dealer's profit or loss on a transaction. For example, if a lessor, who is not a dealer, leases an asset that at the inception of the lease has a fair value that is greater or less than its cost or carrying amount, if different, such a transaction is a sales-type lease, assuming the criteria referred to are met.

(23) "Subsidiary" means subsidiary as defined in Section 7-1-103.

(24) "Tax lease" means a lease where the depository institution as a lessor is construed to be the tax owner of the property for income tax purposes and thereby receives the tax benefits of ownership including tax credits and depreciation, and the residual dependence of the lessor is greater than 5% of the cost of the property.

(25) "Total Capital" means the sum of capital stock, surplus, undivided profits, reserve for contingencies, reserves for loan losses, and subordinated notes and debentures with more than one year maturity.

(26) "Unearned income" means the difference between the gross investment in the lease and the cost or carrying amount, if different, of the leased property. Unearned income shall be increased by any deferral of the investment tax credit or any other tax credits and decreased by any initial direct costs incurred on direct financing leases.

(27) "Unguaranteed residual value" means the estimated residual value of the leased property exclusive of a portion guaranteed by the lessee, by any party related to the lessee or by a third party unrelated to the lessor. If the guarantor is related to the lessor, the residual value shall be considered as unguaranteed.

(28) "Used property" means property which has been in use for 90 days or more.

R331-7-3. Acceptable Leases and Leasing Transactions for Depository Institutions.

(1) A depository institution may enter into or purchase a participation in net, limited residual dependent leases wherein the depository institution:

(a) Becomes the legal or beneficial owner and lessor of specific real or personal property or otherwise acquires such property at the request of a lessee who wishes to lease it from

the depository institution; or

(b) Becomes the owner and lessor of real or personal property by purchasing the property from another lessor in connection with its purchase of the related lease; and

(c) Incurs obligations incidental to its position as the legal or beneficial owner and lessor of the leased property, if the lease is a net, limited residual dependent lease representing a non-cancelable obligation of the lessee, notwithstanding the possible early termination of that lease; or

(d) Becomes the assignee of the lease payments from another lessor where the depository institution is not the legal owner or tax owner of such property.

(2) This rule shall apply to any tax lease, non-tax lease, or assigned lease irrespective of whether the depository institution funded such lease or assignment with deposits or private funds, debt or equity.

(3) The classification of whether this rule applies to any lease and the related terminology should not be confused with other accounting or tax terminology; but should be applied only for the purposes of this rule. Any depository institution and especially any savings and loan association should consult its tax accountant before entering into any lease transaction.

(4) A depository institution, when acting as a lessor of property, may assign leases to a third party funding source. A depository institution shall be considered an assignor of lease payments, residual of assigned leases, or both, if after entering into a lease as a lessor of property, it then borrows against the lease payments, residual, or both, by assigning them to another funding source. A depository institution shall be considered an assignee of lease payments, residual of assigned leases, or both, if another lessor assigns the lease payments, residual, or both, of its own lease to the depository institution in order to fund the lease.

R331-7-4. Residual Dependence Restrictions for Depository Institutions.

(1) The residual dependence by a depository institution as a lessor of property on leases other than leases with terms of 24 months or less or automobiles and small trucks of one ton or less shall not exceed 30% of the acquisition cost of the property to the lessor unless the estimated residual value is guaranteed by a manufacturer of such property, or by a third party which is not an affiliate of the depository institution and the depository institution makes the determination that the guarantor has the resources to meet the guarantee.

(a) Any such guarantee of residual value by a third party is to be considered in addition to the requirement that the unguaranteed residual value estimate shall not exceed 30% of the acquisition cost of the property.

(b) However, the combined total of the 30% unguaranteed residual value and the guaranteed residual value may not exceed 50% of the leased property's acquisition cost without the prior written approval of the commissioner.

(2) In all cases, however, both the estimated residual value of the property and that portion of the guaranteed residual value relied upon by the lessor to satisfy the requirements of a limited residual dependent lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property primarily depends on the credit worthiness of the lessee and any guarantor of the residual value, and only secondarily on the residual market value of the leased property.

R331-7-5. Salvage Powers for Depository Institutions.

(1) If, in good faith, a depository institution believes that there has been an unanticipated change in conditions which threatens its financial position by significantly increasing its exposure to loss, the provisions of this rule shall not prevent the depository institution:

(a) As the owner, lessor, or both, under a net, limited residual dependent lease from taking reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(b) As the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(c) Upon return of the leased property by the lessee to the depository institution at the expiration of the lease term or at any other time that the depository institution has possession of the property upon default by the lessee; the depository institution in order to avoid the cost and inherent liability of maintaining the property and to recoup its investment in the lease plus financing costs shall:

(i) Sell the property;

(ii) Release the property by entering into a new and separate net, limited residual dependent lease with a lessee;

(iii) Rent the property in which case the depository institution may be required to maintain the property in suitable condition to be used by another party on a rental basis. Such maintenance must be performed by an independent firm on a sub-contract basis only;

(iv) Transfer the property to a separately identified holding or repossessed property account within the depository institution.

(2) The provisions of this section do not prohibit a depository institution from including any provisions in a lease, or from making any additional agreements to protect its financial position or investment in the circumstances.

R331-7-6. Sales-Type Capital Lease Restrictions for Depository Institutions.

(1) Within the limitations of this rule, a depository institution, as lessor, shall be permitted to enter into a sales-type capital lease. Although a depository institution shall be allowed to earn a gross profit in a lease transaction in addition to interest income from the rentals and residual, it shall be precluded from inventorying property except for sample or display purposes.

(2) Although many equipment manufacturers and vendors require their dealers to inventory products prior to sale in order for the depository institution to be allowed to receive a wholesale price or comparable discount, the inventory of equipment prior to leasing the equipment is not permitted.

(3) A depository institution may purchase or acquire property in a direct lease situation only in response to a lessee's request for that specific property and any gross profit derived from volume discounts shall be accounted for separately from the lease.

R331-7-7. Sale-Leaseback Restrictions for Depository Institutions.

A depository institution acting as a lessor may lease used property in a sale-leaseback transaction provided that:

(1) The aggregate of the total net investment in such sale-leaseback transactions, at any point, in time does not exceed 50% of the depository institution's total capital; and

(2) The sale-leaseback transactions are separately identified.

R331-7-8. Leveraged Lease Restrictions for Depository Institutions.

(1) Due to increased risk inherent in leveraged leasing, a depository institution may invest as a lessor in a leveraged lease provided that:

(a) The aggregate of such leveraged leases does not exceed 30% of the depository institution's total capital at any point in

time; and

(b) The leveraged leases are separately identified.

(2) A depository institution shall not enter into a leveraged lease as a lessor, equity-participant unless the inherent tax benefits are useable by the depository institution.

(3) This rule does not preclude a depository institution from purchasing non-recourse interests in leveraged lease pools or joint ventures, provided that:

(a) The aggregate of such participations or interests does not exceed 30% of the depository institution's total capital; and

(b) The participations or interests are separately identified.

R331-7-9. Accounting Requirements for Depository Institutions.

(1) The following restrictions and procedures shall be adhered to by a depository institution in accounting and reporting for acceptable leases and leasing transactions whether the depository institution is the assignor or the assignee. All other accounting and reporting procedures concerning leasing not covered by this rule shall be in accordance with generally accepted accounting principles as promulgated by the FASB, as amended.

(a) As lease payment revenue is received by the depository institution under a direct financing or sales-type capital lease, the lease payments shall be amortized or allocated between principal and interest income actuarially using the effective interest method over the lease term. A depository institution shall be precluded from using other approximations to the effective interest method such as the "Rule of 78's" method of amortizing lease payments.

(b) In accounting for a capital lease whether a sales-type or direct financing lease, a depository institution shall record the gross investment in the lease on the balance sheet allocated into its two components:

(i) Total minimum lease payments receivable; and

(ii) Unguaranteed residuals.

(c) The difference between the gross investment in the lease and the cost or carrying amount, if different, of the leased property shall be recorded as unearned income. Such unearned income shall be increased by any deferral of the investment tax credit or any other tax credits if the lessor elects deferral or if deferral is required by generally accepted accounting principles and decreased by any initial direct costs incurred on direct financing leases.

(d) Initial direct costs are limited to those costs incurred by the lessor that are directly associated with negotiating and consummating completed leasing transactions. Those costs include commissions, legal fees, cost of credit investigations, and costs of preparing and processing documents for new leases acquired.

(i) In addition, that portion of salespersons' compensation, other than commissions, and the compensation of other employees that is applicable to the time spent in the activities described above with respect to completed leasing transactions shall also be included in initial direct costs. That portion of salespersons' compensation and the compensation of other employees that is applicable to the time spent in negotiating leases that are not consummated shall not be included in initial direct costs.

(ii) No portion of supervisory and administrative expenses or other indirect expenses, such as rent and facilities cost, shall be included in initial direct costs.

(iii) In order to prevent initial overstatement by a depository institution of reported earnings and subsequent understatement of reported earnings throughout the remainder of the lease term, the depository institution shall not recognize initial direct costs in excess of 8% of the unearned income for leases which cost less than $10,000 at their inception; or initial direct costs in excess of 6% of the unearned income for leases which cost $10,000 or more at the inception of the lease. Initial direct costs shall include all costs directly attributable to consummating a lease as defined above.

(e) In accounting for the amount of initial direct costs associated with consummated direct financing capital leases, a depository institution is not required to treat as an initial direct cost the estimate of bad debt expense pertaining to a lease subject to the limitations of R331-7-9(d)(iii) which limits the maximum amount of initial direct costs.

(f) At any time during the lease term when it has been determined by a depository institution that there has been an impairment of the estimated residual value as initially recorded then such impairment of value shall be recognized in the period that the impairment of value has been determined.

(i) Any such impairment of guaranteed or unguaranteed residual value shall be recognized by a debit charge to income and a corresponding credit reduction to the unearned residual component of the gross investment in the lease.

(ii) A new implicit rate is to be computed for the lease using the reduced residual value and any remaining unearned income is to be recognized actuarially over the remaining lease term using the newly computed implicit rate.

(g) Differences between reported accounting net income for book purposes of a depository institution and its taxable income for the same period caused by the application of different accounting principles such as depreciation methods; or differences in how revenue is recognized; or because of any other timing differences, shall be shown in the depository institution's financial statements as a deferred tax credit or charge as required by interperiod tax allocation procedures explained in Accounting Principles Board Opinion No. 11, Accounting for Income Taxes, as amended, which is incorporated by reference.

(2) The following restrictions and procedures shall be adhered to by a depository institution in accounting and reporting for assigned leases whether the depository institution is the assignor or the assignee.

(a) A depository institution, after having entered into a lease as a lessor, may assign the lease payment stream to a third party in order to fund the lease. To such an assignment, the depository institution becomes the assignor.

(i) If the assignment is non-recourse to the depository institution any profits or loss on the assignment shall be recognized at the time of the transaction except when the assignment is between related parties. The profit or loss is the difference between the net investment in the assigned lease and the loan funds received from the lender.

(ii) If the assignment is recourse to the depository institution or if it is non-recourse but between related parties, both the lease and the related loan should be shown separately in the financial statements of the depository institution.

(iii) The lease shall be shown on the balance sheet by recording the gross investment in the lease receivable and the unearned income account relating to the lease. The net of these two accounts represents the net investment in the lease. The gross investment in the lease receivable shall be further allocated and shown in the financial statements in its two separate components:

(A) Minimum lease payments, and

(B) Residual.

(b) A depository institution which has funded a lease originated by another lessor and taken an assignment of the lease may have funded the lease on either a recourse or a non-recourse basis to the lessor. In either case, the assignment shall be regulated by this rule only if the residual dependence is greater than 5% of the cost of the leased property, in which case the assignment shall be accounted for as described in R331-7-9(2)(a) above. If the residual dependence is equal to or less than 5% of the cost of the leased property then such assignment

shall not be regulated by this rule and shall be accounted for as a loan.

(3) The following restrictions and procedures shall be adhered to by a depository institution in accounting and reporting for operating leases:

(a) Leases other than sales-type, direct financing, or leveraged capital leases are classified as operating leases.

(b) Revenue in an operating lease shall be recognized in conformity with FASB 13 paragraph 19.b.

(4) Accounting for leveraged leases, sale-leasebacks, and real estate sales shall be in conformity with FASB 13 procedures:

(a) Leveraged leases, FASB 13 paragraphs 41-47;

(b) Sale-leasebacks, FASB 13 paragraphs 32-34;

(c) Real estate leases, FASB 13 paragraphs 24-28.

KEY: financial institutions, leases

March 9, 2012	**7-1-301(4)**
Notice of Continuation July 20, 2017	**7-1-301(8)(a)**
	7-1-501

R331. Financial Institutions, Administration.
R331-9. Rule Prescribing Rules of Procedure for Hearings Before the Commissioner of Financial Institutions of the State of Utah.
R331-9-1. Authority, Scope, and Purpose.

(1) This rule is adopted pursuant to Sections 7-1-301 and 7-1-309.

(2) This rule will apply to administrative hearings conducted before the Commissioner or his designee.

R331-9-2. Definitions.

(1) "Commissioner" means the Commissioner of Financial Institutions.

(2) "Department" means the Department of Financial Institutions.

(3) "Interested party" means a party who may be affected by the outcome of any proceeding but who, in the case of a dispute or adjudicative hearing, is not named as a party or does not seek to participate as a named party.

(4) "Party" shall mean the same as a "person" as defined in Section 7-1-103, and shall also include any governmental subdivision or agency.

(5) "Proceeding" shall mean any hearing, whether formal or informal, before the Commissioner or his designee and any and all required and permitted actions precedent thereto.

(6) "U.R.C.P." means the Utah Rules of Civil Procedure.

R331-9-3. Commissioner's Discretion to Commence Hearings.

(1) Except when required by statute, the commissioner shall have sole and complete discretion as to whether any kind of hearing procedure shall be employed in connection with any matter pending before the department.

(2) Nothing in this rule shall be construed as creating any right to a hearing on any matter apart from those rights separately conferred by statute or required by due process of law.

R331-9-4. Types of Hearing.

All hearings conducted before the commissioner or his designee shall be classified in one of the following categories:

(1) Comment Hearing.

This type of hearing is generally characterized as one where:

(a) The primary purpose for the hearing is to receive information and comments from interested parties concerning a particular subject pending in the department.

(b) Witness statements are unsworn, voluntary and normally delivered in a narrative manner subject to no restriction on the content of the statement except that it be relevant to the matter being heard.

(c) There is no proof to be made and so no burden on any party.

(d) The presentation of evidence may be subject to time restrictions both as to the length of individual statements and the number of statements that can be made.

(e) The hearing is always public.

(2) Dispute Hearing.

This type of hearing is generally characterized as one where:

(a) The primary purpose is to receive and examine evidence concerning a disputed application or other discretionary matter pending before the department.

(b) The burden of proof is upon the party requesting the approval of the matter at issue.

(c) All testimony is taken under oath and subject to cross-examination but the evidence itself is generally not restricted except as to relevancy.

(d) The hearing is usually public, but may be closed when special circumstances warrant.

(3) Adjudicative Hearing.

This type of hearing is generally characterized as one where:

(a) The primary purpose is to adjudicate specific charges directed against an individual party or parties.

(b) Evidence is received generally in accordance with rules patterned on those applicable to the admission of evidence and the conduct of trials in the judicial courts of this state.

(c) No time restriction is imposed which would deprive any party of an opportunity to present all proper evidence in the case.

(d) The hearing may be closed to the public and the record treated confidentially.

(4) The commissioner shall have complete discretion to designate a particular hearing as being for comment, dispute, or adjudicative purposes, and shall so indicate in the first notice of the hearing. Any party to the hearing or, in the case of a comment hearing, any interested party who disagrees with the commissioner's classification may file a motion to change the designation of the hearing from one type to the other within ten days after public notice of a comment hearing is first published, or notice of a dispute or adjudicative proceeding is first mailed to a party to the proceeding who objects to its designation, whichever applies.

R331-9-5. Commencement of Proceedings.

(1) Comment Hearing.

Proceedings incident to a comment hearing shall be commenced by the department issuing public notice of the hearing. The notice shall specify:

(a) The subject matter of the hearing,

(b) That it is to be a comment hearing,

(c) The date, time and place of the hearing,

(d) The person or persons who will preside at the hearing, and

(e) Any special provisions or requirements concerning the hearing such as advance notice by any party wishing to speak at the hearing or limits on speaking time.

(2) Dispute Hearing.

(a) A dispute hearing shall be commenced by issuing Notice to the party which filed the application or request at issue and to any party or parties that may have protested or otherwise objected to the same prior to issuance of the Notice.

(b) The Notice shall specify the matters relating to the application or request which are in dispute and advise the party who filed the application or request that it will have the initial burden at the hearing of showing that the application or request should be granted.

(3) Adjudicative Hearing.

(a) An adjudicative hearing shall be commenced when the department issues Notice to the parties named in the proceeding.

(b) If a party to a hearing refuses to sign an acknowledgment of having received a copy of a Notice then such Notice shall be served upon the party in the manner prescribed for service of process in Rule 4 of the U.R.C.P. If personal service is not possible then the commissioner upon motion may authorize alternative forms of service similar to those specified in Rule 4 of the U.R.C.P. If a party resides out of state and cannot be served in this state, a copy of the Notice may be mailed to the party at the party's last known address by certified mail without having to obtain an order from the commissioner.

(c) The Notice of the adjudicative proceeding shall contain at a minimum the following information:

(i) The names of all individual parties to the proceeding.

(ii) A reasonably specific description of the department's allegations against each of the named parties.

(iii) A reasonably specific description of any and all

actions the department intends to take against each named party with respect to the matters alleged.

(iv) A statement that within 30 days following service of the department's Notice each party must file an Answer specifically admitting or denying the department's allegations and separately describing in reasonable detail any affirmative defenses the party may claim with respect to the department's allegations.

(v) An express warning that failure to file an Answer within 30 days following service of the Notice will entitle the commissioner to accept the department's allegations as true in their entirety and immediately enter a final order with respect to the matters alleged in the Notice.

(d) If any party named in an adjudicative hearing files a timely and proper Answer then a hearing shall be scheduled before an independent hearing examiner and notice thereof stating the time, date, place of the hearing and identifying the hearing examiner shall be mailed to the answering party. Named parties to a proceeding who do not file a timely and proper Answer shall not be entitled to participate in any subsequent hearing as a party except by leave of the hearing examiner and the commissioner may immediately enter a final order as to such party with respect to the matters alleged in the department's Notice without further adjudicative proceedings.

(e) Proceeding Involving Temporary Cease and Desist Order.

(i) In a proceeding involving a Temporary Cease and Desist Order issued pursuant to Section 7-1-307, the Notice to be served on a party to the proceeding shall include notice that the party is entitled to a show cause hearing concerning the Temporary Cease and Desist Order but must request the same within ten days following service of receipt of the Temporary Cease and Desist Order, in which event the show cause hearing shall be scheduled within ten days after the party's request is received by the department unless the party and the department mutually agree on another time for the hearing.

(ii) In a proceeding involving a Temporary Cease and Desist Order issued pursuant to Section 7-1-307(2), the Order shall state a date, time and place for a hearing before the commissioner, or, if he is unable to preside, before, within ten days after the date the Temporary Cease and Desist Order is signed. The notice shall also advise any interested party that it shall be its burden at the hearing to show cause why the Temporary Cease and Desist Order should not remain in full force and effect for 30 days after it was signed, should not be extended for no more than two successive 15-day periods thereafter, or both.

(f) Upon motion and notice to all other parties to the proceeding, the commissioner or his designee may, for good cause shown, shorten or enlarge any time limits specified herein, including that for scheduling a show cause hearing on a Temporary Cease and Desist Order but excepting the time limits set forth in the foregoing subsection (e)(ii), permit amendments to the department's Notice or any Answer, reschedule a hearing, bifurcate a hearing, permit the joinder of a party, or enter such other preliminary or procedural Order as the commissioner or his designee considers proper and equitable to protect the rights and interests of the parties to the proceeding, expedite the hearing procedure, or both.

R331-9-6. Confidential Proceedings.

(1) If the commissioner deems a proceeding confidential then all pleadings and documents filed in the matter, including the department's initial Notice of the proceedings, shall be conspicuously so designated, and thereafter all such documents shall be made available only to the parties to the proceeding, their legal representatives, and such other parties as may be specifically authorized to examine the documents by the commissioner or his designee.

(2) The only persons who may be present during a confidential hearing are named parties, parties determined by the commissioner or his designee to have a direct interest equivalent to judicial standing in the subject matter of the hearing, the legal representatives of the parties or persons, persons employed by or acting on behalf of the department, the commissioner or his designee, persons necessary to transcribe the proceedings, and any witness then testifying.

R331-9-7. Form of Pleadings.

(1) All pleadings filed with the department shall comply with the requirements of Rule 10 of the U.R.C.P. except for the caption specified in subparagraph (a) thereof. The caption for all pleadings filed with the department shall indicate that the matter is before the Department of Financial Institutions of the State of Utah. In the case of a comment hearing, the documents shall identify the subject matter of the hearing and the subject matter of the particular pleading. In the case of a dispute or adjudicative hearing, the pleadings shall identify all parties to the proceeding, shall separately state that the proceeding is dispute or adjudicative, that it is confidential or not confidential, the subject matter of the pleading, and any case number which may have been assigned to that proceeding by the department. A document that substantially complies with Rule 10 of the U.R.C.P. will be acceptable.

(2) The provisions of Rule 11 of the U.R.C.P. shall apply to all pleadings filed with the department by any attorney representing a party.

R331-9-8. Discovery.

(1) Discovery rights and procedures as specified below shall only be available to parties in a dispute or adjudicative proceeding.

(2) Parties may obtain discovery in any manner authorized by Rules 27, 28, 29, 30, 31, 33, 34, and 36 of the U.R.C.P. Depositions may be used in a hearing before the commissioner or his designee in the same manner as specified for judicial proceedings in Rule 32 of the U.R.C.P.

(3) The commissioner or his designee may impose sanctions for failure to comply with a proper discovery request similar to those specified in Rule 37 of the U.R.C.P.

R331-9-9. Subpoenas.

The commissioner or his designee shall issue subpoenas as authorized by Section 7-1-310 for the purpose of facilitating a proper discovery request or to compel the attendance of a witness at a dispute or adjudicative hearing. Each subpoena shall be obtained by filing a written request with the commissioner or his designee describing the purpose for which the subpoena is sought. If the commissioner or his designee determines that any specific request is objectionable or possibly so then he may either deny the request without further proceedings or schedule a hearing to receive evidence concerning the objection prior to making a final decision on the request.

R331-9-10. Hearings.

(1) Comment Hearings.

Comment hearings shall be held before the commissioner or his designee. A recording shall be made of such hearings capable of being transcribed verbatim. Persons entering statements into the record shall not be sworn on oath and the content of the statements made shall not be restricted except as to irrelevant, scandalous or inappropriate matters. The commissioner or his designee may limit the number of speakers or prescribe time limits for each speaker, or both. After each speaker has made his statement, the commissioner may ask questions of the speaker and permit other participants of the hearing to ask questions of the speaker.

(2) Dispute Hearings.

(a) Dispute hearings shall be heard before the commissioner or his designee.

(b) At the hearing it shall be the burden of the party named in the proceeding to show, by a preponderance of the evidence, that matters in dispute should be resolved in the named party's favor and the application or request at issue should be granted. Similarly, it shall be the burden of any interested party to support each claim made by it concerning the matter at issue by a preponderance of the evidence.

(c) The commissioner or his designee may receive any evidence he deems relevant and of probative value in understanding and deciding the matters at issue. However, all testimony shall be given under oath subject to cross-examination, and whenever possible the rules of evidence and trial procedure applicable to the courts of this state shall be generally complied with.

(d) No findings, conclusions, order or other decision shall be prepared concerning the hearing itself. If a designee of the commissioner presides then he shall prepare a report to the commissioner summarizing the evidence presented for the purpose of assisting the commissioner in reaching a final decision on the matter to which the hearing pertained.

(3) Adjudicative Hearings.

(a) Except for a show cause hearing concerning a Temporary Order or a Temporary Cease and Desist Order, all adjudicative hearings shall be held before an independent hearing officer selected by the commissioner.

(b) At the hearing it shall be the department's responsibility to establish by a preponderance of the evidence the allegations it has made against each party named in the proceeding. Similarly, any named party shall prove any affirmative defense it has claimed by a preponderance of the evidence. All evidence shall be presented, rebutted and received or excluded in accordance with the Rules of Evidence and the U.R.C.P. except the hearing officer may receive other evidence when, in the examiner's discretion, taking into account its lesser probative value, such other evidence would be of use in supplementing or tending to confirm any admitted evidence or proffered evidence subject to its admission.

(c) After the hearing has been concluded, the hearing officer shall prepare Findings, Conclusions and Recommendations for the commissioner. At the same time as the original is delivered to the commissioner, copies of the Findings, Conclusions and Recommendations shall be mailed to all attorneys and named parties who participated in the proceedings.

(d) After receiving the Findings, Conclusions and Recommendations, the commissioner shall enter an Order, or remand the matter back to the hearing officer to conduct further proceedings on the subjects as may be specified by the commissioner, or dismiss the proceedings in whole or in part.

(e)(i) Within 15 days after the hearing officer's Findings, Conclusions and Recommendations are mailed to a party, that party shall file a notice of any objections the party may have specifying each Finding, Conclusion or Recommendation objected to and describing in reasonable detail the basis for each objection.

(ii) A party may request reconsideration of any Order resulting from an adjudicative proceeding within 30 days after a copy of the Order is mailed to the party by the department. Each request shall specify in reasonable detail the party's reasons supporting the request and may, with leave from the commissioner, be accompanied by a memo of points and authorities to which all other parties may respond, all within deadlines to be specified in the commissioner's grant of leave.

(iii) The commissioner may enter an Order whether or not the deadline for filing objections to Findings, Conclusions and Recommendations has elapsed. The timely filing of objections shall not affect the implementation of any Order already entered, or bar the entry of an Order based in any degree on any Finding, Conclusion or Recommendation objected to before ruling on the objection, except the Order shall not be deemed final until the objections have been ruled on by the commissioner. The 30 days allowed for requesting reconsideration of any Order shall not be tolled by the filing of objections to precedent Findings, Conclusions and Recommendations.

(f) The commissioner may require the parties to the proceeding to pay any costs and expenses incident to the hearing as he deems proper including reporter or other transcription expenses, fees of the hearing officer, witness costs, fees for examiner time based on the normal rate charged for examinations, and attorney's fees.

(g) A show cause hearing on a Temporary Order or a Temporary Cease and Desist Order shall be held before the commissioner or his designee. If neither the commissioner nor the commissioner's designee is available to preside at the hearing within the required period then the Temporary Order shall be dissolved, without prejudice.

KEY: financial institutions, government hearings
1995 7-1-301
Notice of Continuation July 20, 2017 7-1-309

R331. Financial Institutions, Administration.
R331-10. Schedule for Retention or Destruction of Records of Financial Institutions Under the Jurisdiction of the Department of Financial Institutions.
R331-10-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Section 7-1-301(7).

(2) This rule establishes a schedule for the retention of records of financial institutions under the jurisdiction of the Department of Financial Institutions. Each financial institution may deem it prudent from a business, legal, or other regulatory reason to retain records not identified in this rule.

(3) It is the purpose of this rule to require the maintenance of appropriate types of records where such records have a high degree of usefulness and prescribe the period for which records of each class are retained.

(4) This rule does not prescribe the method of retention other than that the method selected by each financial institution must ensure the records be readily retrieved in an unaltered state.

R331-10-2. Definitions.

Key to Abbreviations:
Figures - Years

R331-10-3. Retention of Records.

(1) CORPORATE AND LEGAL

TABLE 1

Regulation S (domestic and international funds transfer	5
Annual Disclosures Statements/Annual Reports	2
Minute books of directors, executive committee an other records reflecting corporate governance documentation, (e.g., minutes, articles, bylaws, stock records)	10
Superceded policies and procedures	2
Business licenses	1
Service agreements with vendors	2
Litigation documents (after resolution)	2
Affidavits	2
Attachments, garnishments	6

(2) DEPOSITORY PRODUCTS

TABLE 2

Records of checks, drafts and other instruments presented for payment or deposit	6
Deposit records showing relationship of insurance claimants to insurance funds	1
Deposit records disclosing a relationship which might provide the basis for additional insurance	1
Records evidencing compliance with Truth in Savings Act	2
Records of purchases and purchasers of bank checks, drafts, cashier's checks, money orders, and traveler's checks	5
Tax identification numbers of deposit/share/ transaction accounts	5
Deposit account trial balance records	5
Each check, deposit, money order issued or payable by bank in excess of $100	5
Records of debits to customers' account in excess of $100	5
Records of purchaser of certificate of deposit	5
Records of tax identification number of any person presenting certificate of deposit for payment	5
Deposit slips and credit tickets in excess of $100	5
Records of receipts of currency in excess of $10,000 received from persons outside United States	5
Cash letters	1
Account documentation, (e.g., signature card, resolutions, power of attorney, guardianship)	6
Stop payment orders (after release)	1

(3) FIDUCIARY

TABLE 3

Safe deposit documentation, (e.g., access records, contracts)	5
Records relating to municipal securities dealing: copies of filings to any associated person following termination of association	3
Record of all brokers/dealers selected by bank to effect transactions and amount of commission paid or allocated each year	3
Tax identification number of customers having securities	5
Records of securities authority from customer	5
Records of amounts expended and adjustments made to property acquired and held for investment or to verify exercise of qualified stock option, debts written off, amount of loans outstanding with regard to reserves for losses on bad debts of financial institutions for last five taxable years	6
Fiduciary authority documentation, (e.g., trust agreements, court orders, powers of attorney, directives, authorizations)	6
Fiduciary account documentation, (e.g., cash and asset records, tax returns)	6
Fiduciary management committee meeting records	5
Escrow records (after closing)	6
Safekeeping records and receipts	2
Fiduciary account documentation, (e.g., chronological logs of itemized daily records, account records for each customer, order ticket of each buy/sell, record of all brokers used	3

(4) LENDING/LEASING

TABLE 4

Lending and leasing documents after closed, (e.g., credit application, appraisal, credit report, signatory)	6
Card applications, documentation from date of application	2
Open or closed-end credit document files excluding card application documentation	6

(5) REGULATORY

TABLE 5

Credit record of transfers of credit more than $10,000 to outside the United States	5
Credit record of transfers of funds more than $10,000 to outside the United States	5
Checks or records of drafts in excess of $10,000 drawn on foreign banks	5
Checks, drafts in excess of $10,000 from bank, broker or exchange dealer outside United States	5
Utah Bureau of Criminal Identification report or background check (after termination)	2

(6) FINANCIAL

TABLE 6

Escheatment documentation (abandoned deposit accounts, unpaid cashier's checks, unpaid expense checks)	7
Internal audit reports	5
Investment confirmations, statements, buy and sell orders	6
Financial records, (e.g., journals, ledgers, statements, source documents)	7
Reconcilements, (e.g., General ledger account and supporting documentation)	2
Notes on contracts payable documentation (after closing)	2

R331-10-4. Exemptions.

The Commissioner of Financial Institutions may make exemptions from any requirement otherwise imposed under this rule and as are consistent with the purposes of this rule.

R331-10-5. Reproduction of Records.

Any institution subject to this rule may cause records in its custody to be reproduced by the micro-photographic or other equivalent process. Any reproduction shall have the same force

and effect as the original and shall be admissible into evidence as if it were the original.

R331-10-6. Relationship to other Laws.

This rule will not pre-empt any other retention requirement longer than that specified herein imposed by any other state or federal statute or rule.

KEY: financial institutions
July 10, 2017 **7-1-301(7)**
Notice of Continuation July 20, 2017

R331. Financial Institutions, Administration.
R331-12. Guidelines Governing the Purchase and Sale of Loans and Participations in Loans by all State Chartered Financial Institutions.
R331-12-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Section 7-1-301.

(2) This rule applies to all state chartered financial institutions.

(3) The purpose of this rule is to establish guidelines for the purchase and sale of loans and participations in loans by state chartered financial institutions.

R331-12-2. Definitions.

(1) "Participation" means the purchase or sale by a lender of a loan or part of a loan under circumstances in which the acquiring institution

(a) has no formal or direct role in establishing the terms and conditions binding the borrower, or

(b) is not a signatory of the loan agreement binding the borrower.

(2) "Participation agreement" means an agreement between the lead financial institution and the participant financial institution spelling out in detail the terms, conditions, and understandings between the parties to a loan participation.

(3) "Recourse" means an oral or written agreement whereby a selling institution of a loan or participation in a loan agrees to repurchase in whole or in part upon request of the purchaser or the seller.

R331-12-3. General Rule.

(1) A written participation agreement covering multiple or individual participations will be on record at each participating institution, and shall include, at a minimum, the following:

(a) The party to the agreement to be paid first from the loan repayment proceeds;

(b) Party responsible for collection of the note in the event of default;

(c) How collection or other expenses related to the participation will be divided among the participants;

(d) Recourse arrangements in writing outlining the rights and obligations of each party. Generally, loans will not be sold on a recourse basis except in cases where the sale is made for the purpose of obtaining temporary funds for operations.

(2) In addition, a financial institution which buys and sells loans or participations in loans shall establish written policies setting forth satisfactory controls over such sales and purchases. At a minimum, the following conditions shall be met:

(a) The loan must comply with applicable state and federal laws;

(b) The purchased loan must conform to the financial institution's lending and loan approval standards;

(c) Complete and current credit information must be maintained during the term of the loan;

(d) The financial institution must maintain evidence of sufficient overall loan documentation including an analysis of the value and lien status of collateral;

(e) The status of principal and interest payments including accrual status must be available.

KEY: financial institutions
1987 **7-1-301**
Notice of Continuation July 20, 2017

R331. Financial Institutions, Administration.
R331-22. Rule Governing Reimbursement of Costs of Financial Institutions for Production of Records.
R331-22-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301(6) and 7-1-1004.

(2) This rule applies to both federal and state chartered financial institutions.

(3) The purpose of this rule is to set consistent and reasonable rates of reimbursement for costs to financial institutions for their production of records.

R331-22-2. Definitions.

(1) "Financial institutions" means "financial institutions" as defined in Section 7-1-103(10).

(2) "Financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution.

(3) "Party" shall mean an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any form of business entity. Party also includes any authorized representative of that party who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the party's name.

(4) "Direct incurred costs" means costs incurred solely and necessarily as a consequence of searching for, reproducing or transporting books, papers, records, or other data in order to comply with legal process or a formal written request or a party's authorization to produce a party's financial records. The term does not include any allocation of fixed costs including overhead, equipment, and depreciation. If a financial institution has financial records that are stored in an independent storage facility that charges a fee to search for, reproduce, or transport particular records requested, these costs are considered to be directly incurred by the financial institution.

R331-22-3. Costs Reimbursement.

As hereinafter provided, a party requiring or requesting access to financial records pertaining to a party shall pay to the financial institution that assembles or provides the financial records a fee for reimbursement of reasonably necessary costs which have been directly incurred according to the following schedule:

(1) Search and processing costs.

(a) Manual Search and Processing Cost. Reimbursement of search and processing costs shall be the total amount of direct personnel time spent in locating and retrieving, reproducing, packaging and preparing financial records for shipment. The rate for search and processing costs is $11.00 per hour per clerical/technical person and $17.00 per hour per manager/supervisory person, computed per quarter hour and is limited to the total amount of actual time spent in locating and retrieving documents or information or reproducing or packaging and preparing documents for shipment which were required or requested by a party. If less than a quarter hour is spent, the minimum charge shall be for a quarter hour.

(b) Data Processing Search and Processing Cost. Search and processing costs reflecting the actual costs of extracting information stored by computer in the format in which it is normally produced, based on computer time and necessary supplies will be charged. Personnel time for computer search shall be paid for only at the rates specified in this section.

(2) Reproduction costs. Reimbursement for reproduction costs shall be the costs incurred in making the copies of documents required or requested. The rate for reproduction costs for making copies of required or requested documents is 25 cents for each page, including copies produced by reader/printer reproduction process, photographs and films. Duplicate microfiche is 50 cents per microfiche and computer diskette is $5.00 per diskette. Other materials are reimbursed at actual costs.

(3) Transportation costs. Reimbursement for transportation costs shall be for reasonably necessary costs directly incurred to transport personnel to locate and retrieve the information required or requested and necessary costs directly incurred solely by the need to convey the required or requested material to the place of examination.

R331-22-4. Conditions for Payment.

(1) Limitations. Payment for reasonably necessary, directly incurred costs to financial institutions shall be limited to material required or requested.

(2) Separate consideration for component costs. Payment shall be made only for costs that are both directly incurred and reasonably necessary. In determining whether costs are reasonably necessary, search and processing, reproduction and transportation costs shall be considered separately.

(3) Compliance with legal process, requests, or authorization. No payment shall be made until the financial institution satisfactorily complies with the legal process or formal written request, or party authorization, except that in the case where the legal process or formal written request is withdrawn, or the party authorization is revoked, the financial institution shall be reimbursed for reasonably necessary costs directly incurred in the assembling of financial records required or requested to be produced prior to the time that the financial institution is notified that the legal process or request is withdrawn or defeated or that the party has revoked his or her authorization.

(4) Itemized bill or invoice. No payment shall be made unless the financial institution submits an itemized bill or invoice showing specific details concerning the search and processing, reproduction and transportation costs.

KEY: financial institutions, costs
November 17, 1998 7-1-301(6)
Notice of Continuation July 20, 2017 7-1-1004

R357. Governor, Economic Development.
R357-20. Education Computing Partnerships.
R357-20-1. Authority.

(1) Utah Code Annotated 63N-12-214(4) requires the STEM Action Center in consultation with the Utah State Board of Education makes rules for the administration of the grant program and awarding of grants; and to define outcome-based measures appropriate to the type of grant awarded under this part of the Utah Code.

R357-20-2. Definitions.

(1) This rule adopts the definitions found in Utah Code Section 63N-12-201 et seq.

(2) "USBE" means Utah State Board of Education.

R357-20-3. Grant Requirements and Review Process.

(1) The STEM Action Center, in consultation with the USBE, will determine the maximum amount of the award during any application cycle.

(2) The number of awards in each grant cycle can vary.

(3) The STEM Action Center, in consultation with the USBE, shall determine applicant eligibility criteria during any application cycle and all criteria will be posted in the applications for that grant cycle.

(4) The STEM Action Center, with input from the established review committee and the USBE and in accordance with statute, will determine allowed and disallowed costs during any application period and a list of all allowable and disallowed costs will be included in the application for each grant cycle.

(5) Applicants may request funds for activities that represent a critical component of a full pathway, as long as they indicate where the activities or efforts fit into a pathway, or are envisioned to fit within a pathway.

(6) Hardware and capital infrastructure funding requests may not exceed 10% of the total budget request. Hardware and capital infrastructure shall be defined by the grant agreement received by a successful applicant.

(7) The STEM Action Center Board, with recommendations by the STEM AC staff and in consultation with the USBE, shall have final funding approval rights for all successful applicants.

(8) Eligible applicants shall include Local Education Agencies and individual schools.

(9) Fiscal agents may sub-contract with partners that are approved for funding and they shall use their organization's approved procurement procedures and policies for sub-contract awards.

(10) The type of grants (one year versus multiple years; pilot versus scale and replication) are allowed and can vary with each application cycle and clear indications of what type of grant is and are available will be provided on the STEM Action Center's website or wherever the application is made available.

(11) The competitive application process will include a Request for Grants solicitation, subsequent review and recommended selection for funding by an independent committee and final awards to be made by the STEM Action Center, in consultation with the USBE and with approval of the STEM Action Center Advisory Board. Awards will be administered by the STEM Action Center, using an established Grant Agreement process that has been approved by the State Procurement office.

(12) The review committee, with the organizational representation defined in 63N-12-214, shall consist of four K-16 education representatives (with equal representation from elementary and secondary), two higher education representatives, one USBE representative, one Talent Ready Utah representative and three industry representatives. The STEM Action Center, in consultation with USBE, shall select the representatives for the review committee.

R357-20-4. Outcome Based Measures.

(1) The measures can be quantitative and/or qualitative in nature

(2) The STEM Action Center, with input from the review committee, shall define the outcome-based measures for each application cycle and make such measures available online or in the application for each grant cycle.

(3) The STEM Action Center shall provide evaluation, monitoring and reporting support for the grants through its third party evaluation partners (Utah Valley University and the University of Utah).

KEY: STEM action center, computing partnerships, pathways
July 14, 2017 63N-12-214

R380. Health, Administration.
R380-41. Governance Committee Electronic Meetings.
R380-41-1. Authority and Purpose.

(1) Utah Code Section 52-4-207 requires a state public body that holds electronic meeting to have a rule governing the use of electronic meetings. This rule establishes procedures for conducting electronic meetings by the Governance Committee.

(2) This rule is authorized by Sections 52-4-207, 63G-3-201 and 26-1-5.

R380-41-2. Definitions.

The definitions found in Section 52-4-103 apply to this rule. In addition, the following definitions apply:

(1) "Committee meeting" means a meeting of the Governance Committee that is required to be public by the provisions of the Open and Public Meetings Act, Utah Code Title 52, Chapter 4.

(2) "Electronic meeting" includes any meeting where at least one member of the Governance Committee participates in the public meeting by telephonic or other electronic means.

(3) "Governance Committee" means the committee established in Section 26-1-4(2).

R380-41-3. Designation of Electronic Meetings.

The person scheduled to preside at the Governance Committee meeting shall schedule any committee meeting as an electronic meeting upon request of any member of the committee.

(1) A member of the Governance Committee may request that the member's participation in the meeting be allowed electronically up to 24 hours prior to the commencement of the meeting.

(2) No vote of the Governance Committee is necessary to include other members of the committee to join the meeting through an electronic connection.

R380-41-4. Anchor Location.

(1) Unless otherwise designated in the posted public notice of the Governance Committee meeting, the anchor location for an electronic meeting held by the Governance Committee is the Cannon Health Building located at 288 North 1460 West, Salt Lake City, Utah.

(2) The person presiding at the meeting may restrict the number of separate connections for members of the committee that are allowed for an electronic meeting based on available equipment capability.

R380-41-5. Quorum, Member Participation.

(1) A quorum is not required to be present at the anchor location.

(2) A member of the committee who participates in the meeting via electronic means shall be counted as present at the meeting for quorum, participation, and voting requirements.

R380-41-6. Public Participation.

(1) Interested persons and the public may attend and monitor the open portions of the meeting at the anchor location.

(2) At the discretion of the person presiding at the committee meeting, interested persons and the public may be allowed to observe the meeting via electronic means. As in any public meeting, the person presiding at the meeting may determine whether comments from the public will be accepted during the electronic meeting.

KEY: electronic meetings
July 15, 2012 **52-4-207**
Notice of Continuation July 13, 2017

R382. Health, Children's Health Insurance Program.
R382-2. Electronic Personal Medical Records for the Children's Health Insurance Program.
R382-2-1. Introduction and Authority.

This rule is promulgated under authority granted in Section 26-40-103, as last amended by Laws of Utah 2012, Chapters 28 and 369.

R382-2-2. Purpose.

This rule establishes requirements for enrolling Children's Health Insurance Program (CHIP) beneficiaries in the electronic exchange of clinical health information unless the beneficiary or the beneficiary's parent or legal guardian opts the beneficiary out.

R382-2-3. Definitions.

These definitions apply to Rule R382-2:

(1) "Technical Specifications" means the technical specifications document published by the Utah Health Information Network (UHIN) that describes the variables and formats of the data to be submitted as well as submission directions and guidelines.

(2) "Program Website" means the Department of Health, Department of Workforce Services, Division of Medicaid and Health Financing, and the CHIP websites.

R382-2-4. Enrollment Notification.

(1) Prior to the enrollment process in the Clinical Health Information Exchange (cHIE), the Department will provide Notice of Intent to enroll CHIP beneficiaries in cHIE and the right of beneficiaries to opt out.

(2) The Department will provide additional education regarding the beneficiary's right to opt out on the program websites.

R382-2-5. Enrollment Process.

(1) The Department will provide cHIE an enrollment file of all CHIP beneficiaries.

(2) The enrollment file will contain the succeeding month's CHIP enrollment.

(3) cHIE will enroll CHIP beneficiaries on the first day of the succeeding month.

(4) Submission procedures and guidelines, including required data elements, will be described in detail in the technical specifications published by UHIN and will be included in the Department's Operating Agreement with cHIE.

(5) The Department will use a secure format to transfer any enrollment files to cHIE.

R382-2-6. Exemptions.

(1) An individual's previous consent status in cHIE will be honored by cHIE and will not be overridden by the CHIP enrollment file.

KEY: CHIP, cHIE
September 1, 2012 26-1-5
Notice of Continuation July 31, 2017 26-40-103

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-8. Electronic Personal Medical Records for the Medicaid Program.
R414-8-1. Introduction and Authority.

This rule is promulgated under authority granted in Section 26-18-3, as last amended by Laws of Utah 2012, Chapters 28 and 242.

R414-8-2. Purpose.

This rule establishes requirements for enrolling Medicaid beneficiaries in the electronic exchange of clinical health information unless the individual opts out.

R414-8-3. Definitions.

These definitions apply to Rule R414-8:

(1) "Medicaid beneficiaries" mean individuals who receive assistance through the following programs:

(a) Medicaid;

(b) Primary Care Network;

(c) Utah's Premium Partnership for Health Insurance;

(d) Baby Your Baby;

(e) Cost sharing programs that include Qualified Medicare Beneficiary (QMB), Specified Low-Income Medicare Beneficiary (SLMB), and Qualified Individual (QI).

(2) "Technical Specifications" means the technical specifications document published by the Utah Health Information Network (UHIN) that describes the variables and formats of the data to be submitted as well as submission directions and guidelines.

(3) "Program Website" means the Department of Health, Department of Workforce Services, Division of Medicaid and Health Financing, Utah's Premium Partnership for Health Insurance, and Primary Care Network websites.

R414-8-4. Enrollment Notification.

(1) Prior to the enrollment process in the Clinical Health Information Exchange (cHIE), the Department will provide Notice of Intent to Medicaid beneficiaries in cHIE and the right of individuals to opt out.

(2) The Department will provide additional education regarding the individual's right to opt out on the program websites.

R414-8-5. Enrollment Process.

(1) The Department will provide cHIE an enrollment file of all Medicaid beneficiaries.

(2) The enrollment file will contain the succeeding month's Medicaid enrollment.

(3) cHIE will enroll Medicaid beneficiaries on the first day of the succeeding month.

(4) Submission procedures and guidelines, including required data elements, will be described in detail in the technical specifications published by UHIN and will be included in the Department's Operating Agreement with cHIE.

(5) The Department will use a secure format to transfer any enrollment files to cHIE.

R414-8-6. Exemptions.

(1) An individual's previous consent status in cHIE will be honored by cHIE and will not be overridden by the Medicaid enrollment file.

KEY: Medicaid, cHIE
September 1, 2012 26-1-5
Notice of Continuation July 28, 2017 26-18-3

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-8. Emergency Medical Services Ground Ambulance Rates and Charges.
R426-8-1. Authority and Purpose.

(1) This rule is established under Title 26, Chapter 8a.

(2) The purpose of this rule is to provide for the establishment of maximum ambulance transportation and rates to be charged by licensed ground ambulance providers in the State of Utah.

R426-8-2. Ground Ambulance Transportation Revenues, Rates, and Charges.

(1) Licensed ground ambulance providers operating under R426-3 shall not charge more than the rates described in this rule. In addition, the net income of licensed ground ambulance providers, including subsidies of any type, shall not exceed ten percent of gross revenue.

(a) Licensed ground ambulance providers may change rates at their discretion after notifying the Department, provided that the rates do not exceed the maximums specified in this rule.

(b) A licensed ground ambulance provider may not charge a transportation fee for patients who are not transported.

(2) The initial regulated rates established in this rule shall be adjusted annually on July 1, based on financial data as delineated by the Department to be submitted as detailed under R426-8-2(10). This data shall then be used as the basis for the annual rate adjustment.

(3) Base Rates for ground transport of a patient to a hospital or patient receiving facility are as follows:

(a) Ground Ambulance - $746.00 per transport;

(b) Advanced EMT Ground Ambulance - $984.00 per transport;

(c) Advanced EMT Ground Ambulance who was prior to June 30, 2016 licensed as an EMT-IA provider - $1,212.00 per transport;

(d) Paramedic Ground Ambulance - $1,440.00 per transport;

(e) Ground Ambulance with Paramedic on-board - $1,440.00 per transport if:

(i) a designated Emergency Medical Service dispatch center dispatches a licensed paramedic provider to treat the individual;

(ii) the licensed paramedic provider has initiated advanced life support;

(iii) on-line medical control directs that a paramedic remain with the patient during transport; and

(iv) a licensed ground ambulance provider who interfaces with a licensed paramedic rescue service and has an inter-local or equivalent agreement in place, dealing with reimbursing the paramedic ground ambulance licensed provider for services provided up to a maximum of $456.00 per transport.

(4) Mileage rates may be charged at a rate of $31.65 per mile or fraction thereof, and computed from the point of patient pick-up to the point of patient delivery. Fuel fluctuation surcharges of $0.25 per mile may be added when diesel fuel prices exceed $5.10 per gallon, or gasoline prices exceed $4.25 per gallon as invoiced.

(5) A surcharge of $1.50 per mile may be assessed if an ambulance is required to travel ten or more miles on unpaved roads.

(6) If more than one patient is transported from the same point of origin to the same point of delivery in the same ambulance, the charges to be assessed to each individual will be determined as follows:

(a) Each patient will be assessed the transportation rate;

(b) The mileage rate will be computed as specified, the sum to be divided equally between the total number of patients.

(7) A round trip may be billed as two one-way trips. A licensed ground ambulance provider shall provide 15 minutes of time at no charge at both point of pickup and point of delivery, and may charge $22.05 per quarter hour or fraction thereof thereafter. On round trips, 30 minutes at no charge will be allowed from the time the ambulance reaches the point of delivery until starting the return trip. At the expiration of the 30 minutes, the ambulance service may charge $22.05 per quarter hour or fraction thereof thereafter.

(8) A licensed ground ambulance provider may charge for supplies, providing supplies, medications, and administering medications on a response if:

(a) supplies shall be priced fairly and competitively with similar products in the local area;

(b) the individual does not refuse services; and

(c) the licensed ground ambulance personnel assess or treats the individual.

(9) In the event of a temporary escalation of costs, a licensed ground ambulance provider may petition the Department for permission to make a temporary service-specific surcharge. The petition shall specify the amount of the proposed surcharge, the reason for the surcharge, and provide sufficient financial data to clearly demonstrate the need for the proposed surcharge. Since this is intended to only provide temporary relief, the petition shall also include a recommended time limit. The Department will make a final decision on the proposed surcharge within 30 days of receipt of the petition.

(10) The licensed ground ambulance provider shall file with the Department within 90 days of the end of each licensed provider's fiscal year, an operating report in accordance with the instructions, guidelines and review criteria as specified by the Department. The Department shall provide a summary of operating reports received during the previous state fiscal year to the EMS Committee in the October quarterly meeting.

(11) The Department shall review licensed ground ambulance provider fiscal reports for compliance to Department established standards. The Department may perform financial audits as part of the review. If the Department determines that a licensed ground ambulance provider is not in compliance with this rule, the Department shall proceed in accordance with Utah Code Title 26-8a-504.

(12) All licensed ground ambulance providers shall submit a written total number of patient transports for each calendar year to the Department for calculating Medicaid assessments.

(a) A written patient transport number shall be submitted within 90 days after the end of the calendar year.

(b) The submission shall include a written justification when patient transport numbers are not in agreement with patient care reports submitted to the Department as described in R426-7. Written justifications shall include a description of data reporting errors, and a plan to correct future data submission.

(c) The Department shall use submitted patient transport numbers to calculate ambulance service providers assessments as described in Utah Code Title 26-37a-104(5).

(d) Submitted patient transport numbers and justifications for patient transport numbers not in agreement with patient care report data may be evaluated, corrected, or audited by the Department. If the Department determines that a licensed ground ambulance provider is not in compliance with this rule, the Department may proceed in accordance with Utah Code Title 26-8a-504.

KEY: emergency medical services, rates
July 10, 2017 26-8a
Notice of Continuation November 10, 2015

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-1. General Licensing, Certificate, and Enforcement Provisions, Child Care Facilities.
R430-1-1. Authority and Purpose.

This rule is adopted pursuant to Title 26, Chapter 39. It defines the general procedures and requirements that a person must follow to obtain and maintain a license or certificate to provide child care.

R430-1-2. Definitions.

(1) "Department" means the Utah Department of Health.

R430-1-3. Initial Application and License or Certificate Issuance or Denial.

(1) An applicant for a license or certificate shall submit to the Department a complete application, which shall include all required documentation listed on the application, on a form furnished by the Department.

(2) Each applicant shall comply with all regulations, ordinances, and codes of the city and county in which the facility is located. The applicant shall obtain and submit to the Department the following clearances as part of the application:

(a) a certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes;

(b) a satisfactory report by the local health department for facilities providing food service; and

(c) a current local business license if required.

(3) The applicant shall submit background clearance documents as required in R430-6.

(4) The applicant shall submit with the completed application a non-refundable application fee as established in accordance with Subsection 26-39-301(1)(c).

(5) The applicant shall submit documentation of attendance at the Department's new provider orientation.

(6) The Department shall render a decision on an initial license or certificate application within 60 days of receipt of a complete application.

(7) The applicant must pay fees and reapply for a license or certificate if the applicant does not complete the application process, including all necessary submissions and inspections, within six months of first submitting any portion of an application.

(8) The Department may deny an application for a license or certificate if, within the five years prior to the date of the application, the applicant:

(a) held a license or certificate which was:

(i) closed under an immediate closure as specified in subsection R430-1-10 ;

(ii) revoked;

(iii) closed as a result of a settlement agreement resulting from a notice of intent to revoke or a notice of revocation; or

(iv) voluntarily closed after an inspection of the facility resulted in findings of rule violations that would have resulted in a notice of intent to revoke or a notice of revocation had the facility not voluntarily closed.

(b) has unpaid fees or civil money penalties owed to the Department.

(9) Pursuant to R501-12-4(8)(h), a provider may not be licensed to provide child care in a facility that is also licensed to provide foster care, proctor care, or another licensed human service program.

R430-1-4. License or Certificate Expiration and Renewal.

(1) Each license or certificate expires at midnight on the day designated on the license or certificate as the expiration date, unless previously revoked by the Department, or voluntarily closed by the licensee or certificate holder.

(2) At least 30 days prior to the expiration of the current license or certificate, the licensee or certificate holder shall submit a completed application, applicable fees and, for facilities providing food service, a satisfactory report by the local health department.

(3) A licensee or certified provider who fails to renew his or her license by the expiration date may have an additional 30 days to complete the renewal if he or she pays a late fee.

(4) The Department shall not renew a license or certificate for a child care facility that discontinues child care services.

R430-1-5. Change in License or Certificate.

(1) A licensee whose ownership or controlling interest will change must submit to the Department, at least 30 days prior to the proposed change in ownership, an initial license or certificate application.

(2) A change in ownership that requires action under subsection (1) includes any change that:

(a) transfers the business enterprise to another person or entity;

(b) is a merger with another business entity if the directors or principals in the merged entity differs by 49 percent or more from the directors or principals of the original licensee; or

(c) creates a separate corporation, including a wholly owned subsidiary, if the board of directors of the separate corporation differs by 49 percent or more from the board of the original licensee.

(3) The licensee or certificate holder shall submit to the Department a completed application to amend or modify an existing license at least 30 days before any of the following proposed or anticipated changes:

(a) an increase or decrease of licensed or certified capacity, including when remodeling of the facility changes the amount of usable indoor or outdoor space where care is provided;

(b) a change in the name of the facility;

(c) a change in the regulation category of the facility;

(d) a change in the center director; or

(e) a change in the name of the licensee or certificate holder.

(4) An increase of capacity may require payment of an additional fee. This fee is the difference in the fee for the existing and proposed capacities.

(5) The Department may issue an amended license or certificate when the Department verifies that the applicant and facility are in compliance with all applicable rules. The expiration date of the amended license or certificate remains the same as the prior license or certificate.

R430-1-6. License or Certificate Capacity, Transferability, and Posting.

(1) The number of children in care at any given time shall not exceed the capacity identified on the license or certificate.

(2) A license or certificate is not assignable or transferable.

(3) The licensee or certificate holder shall post the license or certificate on the facility premises in a place readily visible and accessible to the public.

R430-1-7. Compliance Assurance.

(1) The Department shall conduct an annual announced and an annual unannounced inspection of each licensed or certified facility to:

(a) determine compliance with rules; and

(b) verify compliance with variance conditions, if applicable.

(2) If allegations of rule violations are reported to the Department, the Department shall conduct a complaint investigation as specified in Utah Code, 26-39-501.

(3) If the Department finds that a rule violation has

occurred, the Department shall issue a Statement of Findings to the provider. The Statement of Findings shall include:

(a) the specific rule(s) violated;

(b) a description of the violation with the facts which constitute the violation; and

(c) the date by which the finding of noncompliance must be corrected.

(4) The Department may conduct follow-up inspections as needed to verify correction of noncompliance.

(5) Information regarding cited findings and substantiated complaints shall be available to the public on the Department's website.

R430-1-8. Conditional Status.

(1) The Department may place a license or certificate on a conditional status for the following causes:

(a) chronic, ongoing noncompliance with rules; or

(b) a single serious rule violation which places children's health or safety in immediate jeopardy;

(2) The Department shall establish the length of the conditional status and set the conditions that the licensee or certificate holder must satisfy to remove the conditional status.

(3) During the period of the conditional license or certificate the Department shall conduct increased monitoring of the facility to ensure compliance with the rules.

R430-1-9. Revocation.

(1) The Department may revoke a license or certificate if the licensee or certificate holder:

(a) fails to meet the conditions of a license or certificate on conditional status;

(b) violates the Child Care Licensing Act;

(c) provides false or misleading information to the Department;

(d) refuses to allow authorized representatives of the Department access to the facility to ascertain compliance with rules;

(e) refuses to submit or make available to the Department any written documentation required to verify compliance with rules;

(f) commits one or more serious rule violations which result in death or serious harm to a child, or which place children at risk of death or serious harm; or

(g) has committed acts that would exclude a person from being licensed or certified under R430-6.

(2) Within 10 working days after receipt of notice of revocation, the licensee or certificate holder must provide the Department with the names and mailing addresses of parents or legal guardians of each child cared for at the facility so the Department can notify the parents and guardians of the notice of revocation.

R430-1-10. Immediate Closure.

(1) The Department may order the immediate closure of a facility if conditions create a clear and present danger to children in care and require immediate action to protect their health or safety.

(2) Within 10 working days after receipt of an immediate closure, the licensee or certificate holder must provide the Department with the names and mailing addresses of parents or legal guardians of each child cared for at the facility so the Department can notify the parents and guardians of the notice of immediate closure.

R430-1-11. Death or Serious Injury of a Child in Care.

The Department may order a provider to temporarily suspend child care services and/or prohibit new enrollments if the Department learns of the death or serious injury of a child in care, pending a review by the Child Fatality Review Committee or receipt of a medical report determining the probable cause of the death or injury.

R430-1-12. Variances.

(1) If an applicant, licensee, or certificate holder cannot comply with a rule but can meet the intent of the rule in another way, he or she may apply for a variance to that rule.

(2) An applicant, licensee, or certificate holder requesting a variance shall submit a completed variance request form to the Department.

(3) If needed, the Department may require additional information before acting on the request.

(4) The Department shall act upon each request for a variance within 60 days of the receipt of the completed request and all additional information required by the Department.

(5) If the Department approves the request, the licensee or certificate holder shall keep a copy of the approved variance on file in the facility and make it publicly available.

(6) The Department may grant variances for up to 12 months.

(7) The Department may impose health and safety requirements as a condition of granting a variance.

(8) The Department may revoke a variance if:

(a) the licensee or certificate holder is not meeting the intent of the varied rule by the documented alternative means;

(b) the licensee or certificate holder fails to comply with the conditions of the variance; or

(c) a change in statute, rule, or case law affects the justification for the variance.

(9) The Department shall not issue a variance to the background screening requirements of Utah Code, 26-39-404 and administrative rule R430-6.

R430-1-13. Operating Without a License.

(1) If a person is providing care for more than four unrelated children without the appropriate license or certificate, the Department may:

(a) issue a cease and desist order; or

(b) allow the person to continue operation if:

(i) the person was unaware of the need for a license or certificate;

(ii) conditions do not create a clear and present danger to the children in care; and

(iii) the person agrees to apply for the appropriate license or certificate within 30 calendar days of notification by the Department.

(2) If a person providing care without the appropriate license or certificate agrees to apply for a license or certificate as specified above in Subsection (1)(b)(iii) but does not submit the required application within 30 days, the Department shall issue a cease and desist order.

R430-1-14. Penalties.

(1) A violation of any rule is punishable by administrative civil money penalty of up to $5,000 per day as provided in Utah Code Section 26-39-601.

(2) Assessment of any civil money penalty does not preclude the Department from also taking action to deny, place on conditional status, revoke, immediately close, or refuse to renew a license or certificate.

(3) Assessment of any administrative civil money penalty under this section does not preclude injunctive or other equitable remedies.

R430-1-15. Informal Discussions.

Independent of any administrative proceeding, an applicant, licensee, or certificate holder may request, within 30 days, to discuss a Department decision with Department staff.

KEY: child care facilities
May 1, 2012 26-39
Notice of Continuation August 1, 2017 26-21-12
26-21-13

R430. Health, Family Health and Preparedness, Child Care Licensing.
R430-6. Background Screening.
R430-6-1. Authority and Purpose.

This rule is promulgated pursuant to Title 26, Chapter 39. It establishes requirements for background screenings for child care programs.

R430-6-2. Definitions.

Terms used in this rule are defined in Title 26, Chapter 39. In addition:

(1) "Applicant" means a person who has applied for a new child care license, residential, certificate, or license exemption from the Department, or a currently licensed, certified, or license exempt child care provider who is applying for a renewal of their child care license, certificate, or exemption.

(2) "Background finding" means a determination by the Department that an individual:

(a) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor;

(b) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor; or

(c) is listed on the Utah or national sex offender registry.

(3) "Covered individual" means:

(a) owners;

(b) directors;

(c) members of the governing body;

(d) employees;

(e) providers of care, including children residing in a home where child care is provided;

(f) volunteers, excluding parents of children enrolled in the program;

(g) all individuals age 12 and older residing in a residence where child care is provided; and

(h) anyone who has unsupervised contact with a child in care.

(4) "Department" means the Utah Department of Health.

(5) "Exempt Child Care Provider" means a person who provides care as described in the Utah Code 26-39-403(2).

(6) "Involved with child care" means to do any of the following at or for a facility with a child care license, certificate, or exemption issued by the Department:

(a) provide child care;

(b) volunteer at a child care facility;

(c) own, operate, direct, or be employed at a child care facility;

(d) reside at a facility where care is provided;

(e) function as a member of the governing body of a child care facility; or

(e) be present at a facility while care is being provided, except for parents dropping off or picking up their child, or attending a scheduled event at the child care facility.

(7) "Supported finding" means an individual is listed on the Licensing Information System child abuse and neglect database maintained by the Utah Department of Human Services, or listed on the Utah or national sex offender registry.

(8) "Unsupervised Contact" means contact with children that provides the person opportunity for personal communication or touch when not under the direct supervision of a child care provider or employee who has passed a background screening.

(9) "Volunteer" means an individual who receives no form of direct or indirect compensation for providing care.

R430-6-3. Submission of Background Screening Information.

(1) Each applicant requesting a new or renewal child care license, residential certificate, or exemption must submit to the Department the name and other required identifying information on all covered individuals.

(a) Unless an exception is granted under Subsection (4) below, the applicant shall ensure that the identifying information submitted for all individuals age 18 and older includes a fingerprint card and fee.

(b) The fingerprint card must be prepared either by a local law enforcement agency or an agency approved by local law enforcement.

(c) If fingerprints are submitted via life scan, the provider processing the fingerprints shall be in compliance with the Department's guidelines.

(2) The applicant shall state, based upon the applicant's information and belief, whether each covered individual:

(a) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.

(b) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor;

(c) has ever had a supported finding by the Department of Human Services, or a substantiated finding from a juvenile court, of abuse or neglect of a child.

(3) Within ten working days of a new covered individual beginning work at a licensed, certified, or exempt child care facility or moving into a licensed or certified home, or a child turning 12 who resides in the facility where care is provided, the licensee, certificate holder, or exempt child care provider must submit to the Department the name and other required identifying information for that individual.

(a) Unless an exception is granted under Subsection (4) below, the licensee or certificate holder shall ensure that the identifying information submitted for all individuals age 18 and older includes a fingerprint card and fee.

(b) The fingerprint card must be prepared either by a local law enforcement agency or an agency approved by local law enforcement.

(4) Fingerprint cards are not required if:

(a) the covered individual has resided in Utah continuously for the past five years, or since the individual's 18th birthday; and

(b) the covered individual will only be involved with child care in a facility that was licensed or certified prior to 1 July 2013; or

(c) the covered individual has previously submitted to the Department a fingerprint card under this section for a national criminal history record check and has resided in Utah continuously since that time.

(5) Each year, before the last day of the expiration month on the covered individual's background screening card, the licensee, certificate holder, or exempt child care provider shall submit to the Department the required information and fees to renew each covered individual's background screening.

R430-6-4. Criminal Background Screening.

(1) Regardless of any exception under R430-6-4(4), if an in-state criminal background screening indicates that a covered individual age 18 or older has a background finding, the Department may require that individual to submit a fingerprint card and fee from which the Department may conduct a national criminal background screening on that individual.

(2) Except for the offenses listed under Subsection (3), if a covered individual has a background finding, that individual may not be involved with child care. If such a covered individual resides in a home where child care is provided, the Department shall revoke an existing license or certificate or refuse to issue a new license or certificate.

(3) A background finding for any of the following offenses

does not prohibit a covered individual from being involved with child care:

(a) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for an offense under section 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, that is punishable as a Class A misdemeanor under subsection 41-6a-503(1)(b);

(c) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for:

(i) 76-4-401, Enticing a Minor;

(g) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 6, Offenses Against Property;

(h) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 6a, Pyramid Scheme Act;

(i) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 8, Offenses Against the Administration of Government;

(k) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 9, Offenses Against Public Order and Decency, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 10, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor.

(4) A covered individual with a Class A misdemeanor background finding may be involved with child care if either of the following conditions is met:

(a) if the Class A misdemeanor background finding is for any of the excluded misdemeanor offenses in Subsection (3), and:

(i) ten or more years have passed since the Class A misdemeanor offense; and

(ii) there is no other background finding for the individual in the past ten years; or

(b) if the Class A misdemeanor background finding is for any of the excluded misdemeanor offenses in Subsection (3) and five or more years have passed, but ten years have not passed since the Class A misdemeanor offense, and there is no other background finding since the Class A misdemeanor offense, then the individual may be involved with child care as an employee of an existing licensed, certified, or exempt child care program for up to six months if:

(i) the individual provides documentation for an active petition for expungement of the disqualifying offense within 30 days of the notice of the disqualifying background finding; and

(ii) the licensee, certificate holder, or exempt child care provider ensures that another employee who has passed the background screening is always present in the same room as the individual, and ensures that the individual has no unsupervised contact with any child in care.

(5) If the court denies a petition for expungement from an individual who has petitioned for expungement and continues to be involved with child care as an employee under Subsection (4)(b), that individual may no longer be employed in an existing licensed, certified, or exempt child care program, even if six months have not passed since the notice of the disqualifying background finding.

(6) The Department may rely on the criminal background screening as conclusive evidence of the arrest warrant, arrest, charge, or conviction, and the Department may revoke or deny a license, certificate, or employment based on that evidence.

(7) If a covered individual is denied a license, certificate or employment based upon the criminal background screening and the covered individual disagrees with the information provided by the Department of Public Safety, the covered individual may challenge the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

(8) If the Department takes an action adverse to any covered individual based upon the criminal background screening, the Department shall send a written decision to the licensee or certificate holder and the covered individual explaining the action and the right of appeal.

(9) All licensees, certificate holders, exempt child care providers, and covered individuals must report to the Department any felony or misdemeanor arrest, charge, or conviction of a covered individual within 48 hours of becoming aware of the arrest warrant, arrest, charge, or conviction. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license or certificate.

(10) The Executive Director of the Department of Health may consider and exempt individual cases under the following conditions:

(a) the background finding is not for a felony; and

(b) the Executive Director determines that the nature of the background finding, or mitigating circumstances related to the background finding, are such that the individual with the background finding does not pose a risk to children.

R430-6-5. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If a covered individual has an outstanding arrest warrant for, or has been arrested or charged with a felony or a misdemeanor that would not be excluded under R430-6-4(3), the Department may revoke or suspend any license or certificate of a provider, or deny employment, if necessary to protect the health and safety of children in care.

(2) If the Department denies or revokes a license or certificate or denies employment based upon the arrest warrant, arrest, or charge, the Department shall send a written decision to the licensee, certificate holder, exempt child care provider, and the covered individual notifying them that a hearing with the Department may be requested.

(3) The Department may hold the license, certificate, or employment denial in abeyance until the arrest warrant, arrest, or felony or misdemeanor charge is resolved.

R430-6-6. Child Abuse and Neglect Background Screening.

(1) If the Department finds that a covered individual has a supported finding on the Department of Human Services Licensing Information System, that individual may not be involved with child care.

(a) If such a covered individual resides in a home where child care is provided the Department shall revoke the license or certificate for the child care provided in that home.

(b) If such a covered individual resides in a home for which an application for a new license or certificate has been made, the Department shall refuse to issue a new license or certificate.

(2) If the Department denies or revokes a license, certificate, or employment based upon the Licensing Information System maintained by the Utah Department of Human Services, the Department shall send a written decision to the licensee, certificate holder, or exempt child care provider, and the covered individual.

(3) If the covered individual disagrees with the supported finding on the Licensing Information System, the individual cannot appeal the supported finding to the Department of Health but must direct the appeal to the Department of Human Services and follow the process established by the Department of Human Services.

(4) All licensees, certificate holders, exempt child care providers, and covered individuals must report to the Department any supported finding on the Department of Human Services Licensing Information System concerning a covered individual within 48 hours of becoming aware of the supported finding. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license or certificate.

R430-6-7. Emergency Providers.

(1) In an emergency, not anticipated in the licensee or certificate holder's emergency plan, a licensee or certificate holder may assign a person who has not had a criminal background screening to provide emergency care for and have unsupervised contact with children for no more than 24 hours per emergency incident.

(a) Before the licensee or certificate holder may leave the children in the care of the emergency provider, the licensee or certificate holder must first obtain a signed, written declaration from the emergency provider that the emergency provider has not been convicted of, pleaded no contest to, and is not currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, does not have a supported finding from the Department of Human Services, and is not listed on the Utah or national sex offender registry.

(b) During the term of the emergency, the emergency provider may be counted as a provider of care for purposes of maintaining the required care provider to child ratios.

(c) The licensee or certificate holder shall make reasonable efforts to minimize the time that the emergency provider has unsupervised contact with children.

R430-6-8. Restrictions on Volunteers.

A parent volunteer who has not passed a background screening may not have unsupervised contact with any child in care, except the parent's own child.

R430-6-9. Statutory Penalties.

(1) A violation of any rule is punishable by an administrative civil money penalty of up to $5,000 per day as provided in Utah Code Section 26-39-601.

(2) Assessment of any civil money penalty does not preclude the Department from also taking action to deny, place on conditional status, revoke, immediately close, or refuse to renew a license or certificate.

(3) Assessment of any administrative civil money penalty under this section does not preclude injunctive or other equitable remedies.

KEY: child care facilities, background screening
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R523. Human Services, Substance Abuse and Mental Health.
R523-5. Peer Support Specialist Training and Certification.
R523-5-1. Purpose, Authority and Intent.

(1) Purpose. This rule prescribes standards for certification of Peer Support Specialist Training programs; the qualifications required of instructors for providing Peer Support Training; and the requirements to become an Peer Support Specialist and establishes guidelines for population specific peer support services.

(2) Statutory Authority. These standards are promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health, hereinafter referred to as "Division", as authorized by Section 62A-15-103(h).

(3) Intent. The objective of the peer support specialist training is to establish training programs to certify individuals that have completed requisite training to work as substance use disorder and/or mental health peer support specialists and provide services based on service guidelines.

R523-5-2. Definitions.

(1) "Peer Support Specialist (PSS)" is an individual who has successfully completed an approved Peer Support Specialist Training Program and for ongoing certification has met the requirements outlined in paragraph R523-5-6.

(2) "Approved Curriculum" means a curriculum which has been approved by the Division in accordance with these rules.

(3) "Certification" means that the Division verifies the individual has met the requirements outlined in this rule to be a peer support specialist and has completed the required training.

(4) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(5) "Division" means the Division of Substance Abuse and Mental Health.

(6) "Peer Support Specialist Training Program" is an instructional series operated by an approved agency or organization which satisfies the standards established by the Division and is herein referred to as a "Peer Support Specialist Training Program".

(7) "Program Certificate" is a written authorization issued by the Division to the training entity which indicates that the Program has been found to be in compliance with these Division standards.

(8) "Recovery" is a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(9) "Youth-In-Transition" means young people who are between the ages of 16 and 25, or those outside of this age range for which peer support services have been deemed developmentally and socially appropriate by a licensed mental health therapist.

R523-5-3. Certification Requirements for Peer Support Specialist Training Programs.

(1) An application for Program Certification will require that the program provide, among other things:

(a) Qualifications of individuals who will be providing the training.

(b) A curriculum that outlines no less than forty (40) hours of face-to-face instruction covering the curriculum requirements outlined in paragraph R523-5-5 for a PSS.

(c) A plan to ensure that instructors continue to meet reported qualifications and adhere to the approved curriculum.

(d) An agreement to maintain records of the individual's attendance and completion of all program requirements for at least seven years.

(e) An agreement to comply with all applicable local, state and federal laws and regulations.

(2) The Division Director has the authority to grant exceptions to any of the certification requirements.

R523-5-4. Division Oversight of Program.

(1) The Division may enter and survey the physical facility, program operation, review curriculum and interview staff to determine compliance with this rule or any applicable contract to provide such services.

(2) The PSS Training Program shall also allow representatives from the Division and from the local authorities as authorized by the Division to attend the classes held. Such visits may be announced or unannounced.

(3) The Division will establish an application process to review and approve applicants for the PSS Training Program. This process will:

(a) Develop and publish an application to be a PSS.

(b) Solicit input from stakeholders, PSS's and other individuals on the review process.

(c) Establish further criteria for acceptance into the PSS program as needed.

R523-5-5. Curriculum Requirements for Adult Peer Support Specialist Training Programs.

(1) This curriculum shall provide at least forty (40) hours of instruction for original certification and twenty (20) hours for any and all re-certifications. The curriculum shall include the following components as they relate to the PSS's lived experience and recovery in order to assist in the identified client's strengths working towards recovery:

(a) Etiology of mental illness and substance use disorders;

(b) The stages of recovery from mental illness and substance use disorders;

(c) The relapse prevention process;

(d) Combating negative self-talk;

(e) The Role of peer support in the recovery process and using your recovery story as a recovery tool;

(f) Dynamics of change;

(g) Ethics of peer support;

(h) Professional relationships, boundaries and limits;

(i) Scope of peer support;

(j) Cultural competence: self-awareness - cultural identity;

(k) Stigma and labeling;

(l) Community resources to support individuals in recovery;

(m) Assisting individuals in accomplishing recovery goals;

(n) Coach, mentor, and role model recovery;

(o) Assist in identification of natural, formal and informal supports;

(p) Stress management techniques;

(q) Assist individuals in reaching educational and vocational goals;

(r) Crisis prevention; and

(s) Assist with physical health and wellness.

(2) The curriculum shall include:

(a) Active listening and communication skills; and

(b) Basic motivational interviewing skills.

(3) The curriculum must include a strong emphasis on ethical behavior, dual relationships, scope of peer support and professional boundaries and should include case studies, role plays and experiential learning.

R523-5-6. Requirements to Become a PSS.

(1) Be an individual who participated in substance use disorder or mental health treatment services who is now in sustained recovery, or

(2) Be an individual in recovery from substance use or mental health disorders through means other than treatment services who is now in sustained recovery.

(3) Be at least 18 years of age.

(4) Complete the application process with the Division.
(5) Pass the qualification exam with score of 70% or above.
(6) Have attended and successfully completed a Division approved PSS training program and have a valid certificate from that training.

R523-5-7. Requirements to Remain Qualified as a PSS.
(1) Complete at least twenty (20) hours of continuing education every two (2) years including two (2) hours of ethics training, six (6) hours pertaining specifically to peer support services, one (1) hour of suicide prevention training and eleven (11) hours of general mental health and/or substance use disorder training.
(2) Each PSS shall maintain adequate documentation as proof of compliance with this Section, such as a certificate of completion, school transcript, course description, or other course materials. The PSS shall retain this proof for a period of three years after the end of the renewal cycle for which the continuing education is due; and
(a) At a minimum, the documentation shall contain the following:
(i) Date of the course;
(ii) Name of the course provider;
(iii) Name of the instructor;
(iv) Course title;
(v) Number of hours of continuing education credit; and
(vi) Course objectives.

R523-5-8. Population Specific Guidelines.
(1) Typically a PSS works with individuals age 18 and older.
(2) A PSS may work with Youth-In-Transition if the PSS has completed Youth-In-Transition training, in addition to any other PSS training, of no less than 8 hours, and receives a Youth-In-Transition endorsement from the Division on their PSS certification.

R523-5-9. Curriculum Requirements for Youth-In-Transition Training Programs.
(1) This curriculum shall provide at least eight (8) hours of instruction for the Youth-In-Transition endorsement of PSS certification. The curriculum, which shall be approved by the Division, shall include, but not be limited to, the following components as they relate to Youth-In-Transition:
(a) Meaning of Youth-In-Transition and specific challenges related to this population;
(b) Preferred practice models and tools;
(c) Population specific material regarding: common challenges, barriers, resources, relationship issues, recovery, housing, employment, legal, crisis, cultural and self-care.
(d) Professional relationships, boundaries and limits.
(2) The curriculum must be strength based and shall include:
(a) Active listening and communication skills; and
(b) Basic motivational interviewing skills.
(3) The curriculum shall include a strong emphasis on ethical behavior, dual relationships, scope of peer support and professional boundaries and shall include case studies, role plays and experiential learning specific to Youth-In-Transition.
(4) The Division, PSS, mental health and substance use disorder professionals and advocate organizations shall regularly review and make evidence-based updates to the curriculum at least every two years. Final determination on curriculum changes or updates shall be made by the Division.

KEY: peer support specialists, PSS program, certification of programs, substance use disorder
August 1, 2017 62A-15-402

R547. Human Services, Juvenile Justice Services.
R547-13. Guidelines for Admission to Secure Youth Detention Facilities.
R547-13-1. Authority.

Section 62A-1-111 authorizes the Department of Human Services to adopt administrative rules.

R547-13-2. Purpose and Scope.

(1) This rule establishes guidelines for admission to secure detention to meet the requirements of Section 62A-7-202.

(2) This rule shall be applied to youth candidates for placement in all secure detention facilities operated by the Division of Juvenile Justice Services.

R547-13-3. Definitions.

(1) Terms used in this rule are defined in Sections 62A-7-101 and 78A-6-105.

(2) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

(3) "Youth" means a person age 10 or over and under the age of 21.

R547-13-4. General Rules.

(1) A youth age 10 or 11 may be detained in a secure detention facility if:

(a) A youth is charged with any felony of Section 76-3-203.5(c), violent felony

(2) A youth age 12 or over may be detained in a secure detention facility if:

(a) A youth is charged with any of the following State or Federal offenses:

(i) Any felony offense

(ii) Any attempt, conspiracy, or solicitation to commit a felony offense

(iii) Any class A misdemeanor of Section 76-5-1, offense against the person; assault and related offenses

(iv) Any class A or B misdemeanor of Section 76-10-5, offenses against public health, safety, welfare, and morals; weapon offenses

(v) A class A misdemeanor of Section 76-5-206, negligent homicide

(vi) A class A misdemeanor of Section 58-37-8(1)(b)(iii), distribution of a controlled substance violation

(vii) Domestic violence (Cohabitant)77-36-1(4), as defined in 78B-7-102(2) and (3)

(viii) Section 76-6-104(1)(a) or (b), reckless burning which endangers human life

(ix) A class A misdemeanor violation of Section 76-6-105, causing a catastrophe

(x) Section 76-6-106(2)(b)(i)(a), criminal mischief involving tampering with property that endangers human life

(xi) A class A misdemeanor violation of Section 76-6-406, theft by extortion

(xii) A class A misdemeanor of Section 76-9-702.1, sexual battery

(xiii) A class A misdemeanor of Section 76-5-401.3(2)(c) or (d), unlawful adolescent sexual activity

(xiv) A class A misdemeanor of Section 76-9-702.5, lewdness involving a child

(xv) A class A misdemeanor of Section 76-9-702.7(1), voyeurism with recording device

(xvi) A class A misdemeanor of Section 41-6A-401.3(2), leaving the scene of an accident involving injury

(xvii) A class A misdemeanor of Section 41-6A-503(1)(b)(i) or (ii), driving under the influence involving injury; driving under the influence with a passenger under 16 years of age

(b) The youth is an escapee or absconder from a Juvenile Justice Services secure institution, or community placement.

(c) The youth has been verified as a fugitive (absconder from probation or parole) or a runaway from another state and a formal request has been received (such as a TWX/National Crime Information Center (NCIC) or a telephone call/FAX from a law enforcement officer or a verified call/FAX from the institution) to hold pending return to the other jurisdiction, whether or not an offense is currently charged.

(3) A youth not otherwise qualified for detention in a secure detention facility shall not be detained for any of the following:

(a) ungovernable or runaway behavior;

(b) neglect, abuse, abandonment, dependency, or other status requiring protection for any other reason;

(c) status offenses such as curfew, possession/consumption of alcohol, tobacco, minor-in-a-tavern, truancy;

(d) Attempted suicide.

(4) No youth under the age of ten years may be detained in a secure detention facility.

R547-13-5. Juvenile Justice Services' Cases.

A youth who is on parole or involved in a trial placement from a secure facility, and who is detained solely on a warrant from the Division of Juvenile Justice Services may be held in a secure detention facility up to 48 hours excluding weekends and legal holidays.

R547-13-6. DCFS Cases.

A youth in the custody or under the supervision of the Division of Child and Family Services (DCFS) cannot be held in a secure detention facility unless the youth qualifies for detention under some section of this rule.

R547-13-7. Traffic Cases.

A youth brought to detention for traffic violation(s) cannot be held in a secure detention facility unless the youth qualifies for detention under some section of this rule.

R547-13-8. Interstate Cases.

(1) Out-of-state youth who are escapees, absconders, and runaways shall be detained in accordance with the provisions of Subsection R547-13-4(1)(d).

(2) Youth who are out-of-state runaways who commit any non-status criminal offense(s) may be admitted to a secure detention facility.

(3) Non-runaways, when brought to a secure detention facility with an alleged criminal offense, may be detained or released based on the same criteria which applies to resident youth.

R547-13-9. Immigration Cases.

(1) A youth shall be detained at a secure detention facility when admission is requested by United States Immigration and Customs Enforcement (ICE).

R547-13-10. AWOL Military Personnel.

Absent without leave (AWOL) military personnel that are minors shall be admitted to a secure detention facility.

R547-13-11. Home Detention Cases.

(1) If a home detention violation is alleged, the home detention counselor may cause the alleged violator to be brought to a secure detention facility. If the case involves a violator who is a runaway where a pickup order (Warrant for Custody) has not yet been issued, a law enforcement officer may bring the violator to a secure detention facility. The home detention counselor may then transfer the minor back to the status of home detention, if appropriate, or may authorize the youth to be held in secure detention for a re-hearing.

(2) A youth placed on home detention who is arrested by

a law enforcement officer for an alleged non-status criminal code offense(s) shall be admitted to a secure detention facility.

R547-13-12. Juvenile Court Warrants for Custody or Pickup Orders.

A youth shall be admitted to a secure detention facility when a juvenile court judge or commissioner has issued a warrant for custody.

R547-13-13. Probation Violation - Contempt of Court - Stayed Order for Detention.

A youth may be admitted to a secure detention facility for conditions such as: an alleged probation violation, contempt of court, or a stayed order for detention when it has been ordered by a judge. When it is not possible to get a written order, verbal authorization from a judge to detention is sufficient to hold a youth in a secure detention facility.

R547-13-14. Other Court Orders for Detention.

A youth brought to a secure detention facility pursuant to either federal or out-of-state court orders shall be admitted unless otherwise directed by a juvenile court judge.

KEY: juvenile corrections, juvenile detention, admission guidelines, juvenile justice services

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R590. Insurance, Administration.
R590-148. Long-Term Care Insurance Rule.
R590-148-1. Authority.

This rule is issued pursuant to the authority vested in the commissioner under Sections 31A-2-201 and 31A-22-1404.

R590-148-2. Purpose.

The purpose of this rule is to implement standards for full and fair disclosure of the manner, content, and required disclosures for long-term care insurance to promote the public interest, to promote the availability of long-term care insurance coverage, to protect applicants for long-term care insurance, as defined, from unfair or deceptive sales enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverages, and to facilitate flexibility and innovation in the development of long-term care insurance.

R590-148-3. Applicability and Scope.

Except as otherwise specifically provided, this rule applies to all long-term care insurance, as defined in 31A-1-301, delivered or issued for delivery in this state on or after January 1, 1993, by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations; prepaid health plans; health maintenance organizations and all similar organizations.

Additionally, this rule is intended to apply to policies having indemnity benefits that are triggered by activities of daily living and sold as disability income insurance, if:

(1) The benefits of the disability income policy are dependent upon or vary in amount based on the receipt of long-term care services;

(2) The disability income policy is advertised, marketed or offered as insurance for long-term care services; or

(3) Benefits under the policy may commence after the policyholder has reached Social Security's normal retirement age unless benefits are designed to replace lost income or pay for specific expenses other than long-term care services.

R590-148-4. Incorporation by Reference.

The following tables and appendices are hereby incorporated by reference within this rule and are available for public inspection at the Insurance Department during normal business hours or at http://www.insurance.utah.gov/ruleindex.html. These tables and appendices were adopted by the National Association of Insurance Commissioners' Long-Term Care Insurance Model Regulation #641, as approved April 2000.

(1) Table I, Notice to Applicant Regarding Replacement of Individual Accident and Sickness or Long-Term Care Insurance.

(2) Table II, Notice to Applicant Regarding Replacement of Accident and Sickness or Long-Term Care Insurance.

(3) Table III, Triggers for a Substantial Premium Increase.

(4) Table IV, Long-Term Care Insurance Outline of Coverage.

(5) Appendix A, Rescission Reporting Form.

(6) Appendix B, Long-Term Care Insurance Personal Worksheet.

(7) Appendix C, Things You Should Know Before You Buy Long-Term Care Insurance.

(8) Appendix D, Long-Term Care Insurance Suitability Letter.

(9) Appendix E, Claims Denial Reporting Form Long-Term Care Insurance.

(10) Appendix F, Worksheet Potential Rate Increase Disclosure Form.

(11) Appendix G, Replacement and Lapse Reporting Form.

R590-148-5. Definitions.

(1) For the purpose of this rule, the terms "applicant," "long-term care insurance," "certificate," "commissioner," and "policy" shall have the meanings set forth in Sections 31A-1-301 and 31A-22-1402.

(2) In addition, the following definitions apply:

(a) "Activities of daily living" means at least bathing, continence, dressing, eating, toileting and transferring.

(b) "Acute condition" means that the individual is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain the individual's health status.

(c) "Adult day care" means a program for three or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or disabled adults who can benefit from care in a group setting outside the home.

(d) "Bathing" means washing oneself by sponge bath; or in either a tub or shower, including the task of getting into or out of the tub or shower.

(e) "Cognitive impairment" means a deficiency in a person's short or long-term memory, orientation as to person, place and time, deductive or abstract reasoning, or judgment as it relates to safety awareness.

(f) "Continence" means the ability to maintain control of bowel and bladder function; or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene, including caring for catheter or colostomy bag.

(g)(i) "Chronically ill individual" has the meaning prescribed for this term by section 7702B(c)(2) of the Internal Revenue Code of 1986, as amended. Under this provision, a chronically ill individual means any individual who has been certified by a licensed health care practitioner as:

(A) Being unable to perform, without substantial assistance from another individual, at least two activities of daily living for a period of at least 90 days due to a loss of functional capacity; or

(B) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

(ii) The term "chronically ill individual" shall not include an individual otherwise meeting these requirements unless within the preceding 12-month period a licensed health care practitioner has certified that the individual meets these requirements.

(h) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners or artificial limbs.

(i) "Eating" means feeding oneself by getting food into the body from a receptacle, such as a plate, cup or table, or by a feeding tube or intravenously.

(j)(i) "Exceptional increase" means only those increases filed by an insurer as exceptional for which the Commissioner determines the need for the premium rate increase is justified:

(A) due to changes in laws and rules applicable to long-term care coverage in this state; or

(B) due to increased and unexpected utilization that affects the majority of insurers of similar products.

(ii) Except as provided in Section R590-148-24, exceptional increases are subject to the same requirements as other premium rate schedule increases.

(iii) The commissioner may request review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase.

(iv) The commissioner, in determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claims costs.

(k) "Hands-on assistance" means physical assistance, minimal, moderate or maximal, without which the individual would not be able to perform the activity of daily living.

(l) "Home health care services" means medical and nonmedical services, provided to ill, disabled or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living and respite care services.

(m) "Incidental" means that the value of the long-term care benefits provided is less than 10% of the total value of the benefits provided over the life of the policy. These values shall be measured as of the date of issue.

(n) "Licensed health care practitioner" means a physician, as defined in Section 1861(r)(1) of the Social Security Act, a registered professional nurse, licensed social worker or other individual who meets requirements prescribed by the Secretary of the Treasury.

(o) "Maintenance or personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual, including the protection from threats to health and safety due to severe cognitive impairment.

(p) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(q) "Mental or nervous disorder" may not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or any other mental or emotional disease or disorder which does not have a demonstrable organic cause.

(r) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living, for example bathing, eating, dressing, transferring and toileting.

(s) "Qualified actuary" means a member in good standing of the American Academy of Actuaries.

(t) "Qualified long-term care services" means services that meet the requirements of Section 7702(c)(1) of the Internal Revenue Code of 1986, as amended, as follows: necessary diagnostic, preventive, therapeutic, curative, treatment, mitigation and rehabilitative services, and maintenance or personal care services which are required by a chronically ill individual, and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(u) "Similar policy forms" means all of the long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered. Certificates of groups are not considered similar to certificates or policies otherwise issued as long-term care insurance, but are similar to other comparable certificates with the same long-term care benefit classifications. For purposes of determining similar policy forms, long-term care benefit classifications are defined as follows:

(i) institutional long-term care benefits only;

(ii) non-institutional long-term care benefits only; or

(iii) comprehensive long-term care benefits.

(v) "Skilled nursing care," "intermediate care," "personal care," "home care," and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.

(w) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

(x) "Transferring" means moving into or out of a bed, chair or wheelchair.

(3) All providers of services, including but not limited to "skilled nursing facility," "extended care facility," "intermediate care facility," "convalescent nursing home," "personal care facility," and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

R590-148-6. Required Provisions and Practices.

(1) Renewability.

The terms "guaranteed renewable" and "noncancellable" may not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Subsection R590-148-6(1)(b).

(a) No policy issued to an individual may contain renewal provisions other than "guaranteed renewable" or "noncancellable."

(i) The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(ii) The term "noncancellable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(b) Individual long-term care insurance policies shall contain a renewability provision. This provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed. This provision may not apply to policies which do not contain a renewability provision, and under which the right to non-renew is reserved solely to the policyholder.

(c) In addition to the other requirements of this subsection, a qualified long-term care insurance contract shall be guaranteed renewable, within the meaning of Section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended.

(2) Limitations and Exclusions.

(a) No policy may be delivered or issued for delivery in this state as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:

(i) preexisting conditions or diseases;

(ii) mental or nervous disorders; however, this may not permit exclusion or limitation of benefits on the basis of Alzheimer's Disease, or any other mental or nervous disorder of organic origin;

(iii) alcoholism and drug addiction;

(iv) illness, treatment or medical condition arising out of:

(A) war or act of war, whether declared or undeclared;

(B) participation in a felony, riot or insurrection;

(C) service in the armed forces or auxiliary units;

(D) suicide, sane or insane, attempted suicide or intentionally self-inflicted injury; or

(E) aviation for non-fare-paying passengers;

(v) treatment provided in a government facility, unless otherwise required by law,

(vi) services for which benefits are paid under:

(A) Medicare or other governmental program, except Medicaid;

(B) any state or federal workers' compensation;

(C) employer's liability or occupational disease law; or

(D) any motor vehicle no-fault law;

(vii) services provided by a member of the covered person's immediate family;

(viii) services for which no charge is normally made in the absence of insurance;

(ix) benefits provided for a level of care cannot be conditioned on a requirement that the care be in a facility licensed for higher levels of care.

(b) Subsection R590-148-6(2)(a) is not intended to prohibit exclusions and limitations by type of provider or territorial limitations outside the United States.

(3) Preexisting Condition Limitation. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

(4) Benefit Triggers. Activities of daily living and cognitive impairment may be used to measure an insured's need for long-term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in this paragraph. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified.

(5) Extension of Benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination. The extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

(6) Discontinuance and Replacement. If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

(a) may not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

(b) may not vary or otherwise depend on the individual's health or disability status, claim experience or use of long-term care services.

(7) Premiums.

(a) The term "level premium" may only be used when the insurer does not have the right to change the premium.

(b) A long-term care insurance policy or certificate, other than one where the insurer does not have the right to change the premium, shall include a statement that premium rates may change.

(c) The purchase of additional coverage shall not be considered a premium rate increase, but for purposes of the calculation required under Section R590-148-14, the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium.

(d) A reduction in benefits shall not be considered a premium change, but for purpose of the calculation required under Section R590-148-14, the initial annual premium shall be based on the reduced benefits.

(8) Riders and Endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, this premium charge shall be set forth in the policy, rider or endorsement.

(9) Payment of Benefits. A long-term care insurance policy or certificate that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import shall include a definition of these terms and an explanation of the terms in its accompanying outline of coverage.

(10) Eligibility for Benefits Limitations and Conditions. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in Section 31A-22-1407 shall set forth a description of these limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label the paragraph "Limitations or Conditions on Eligibility for Benefits."

(11) Disclosure of Tax Consequences. With regard to life insurance policies which provide for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the benefit payment request is submitted that receipt of these benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents. This subsection shall not apply to qualified long-term care insurance contracts.

(12) Qualified Contracts. A qualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage that the policy is intended to be a qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

(13) Nonqualified Contracts. A nonqualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage that the policy is not intended to be a qualified long-term care insurance contract.

(14) Long-term care insurance sold in conjunction with another insurance product, including but not limited to life insurance or annuities shall be in the form of a separate rider complying with all provisions of this Rule. Long-term care insurance shall not be incorporated into a life insurance policy or annuity contract.

R590-148-7. Minimum Standards for Home Health and Community Care Benefits in Long-Term Care Insurance Policies.

(1) A long-term care insurance policy or certificate shall not, if it provides benefits for home health care services, limit or exclude benefits:

(a) by requiring that the insured would need care in a skilled nursing facility if home health care services were not provided;

(b) by requiring that the insured first or simultaneously receive nursing or therapeutic services, or both, in a home, community or institutional setting before home health care services are covered;

(c) by limiting eligible services to services provided by registered nurses or licensed practical nurses;

(d) by requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of the aid or worker's licensure or certification;

(e) by excluding coverage for personal care services provided by a home health aide;

(f) by requiring that the provision of home health care services be at a level of certification or licensure greater than that required for the eligible service;

(g) by requiring that the insured have an acute condition before home health care services are covered;

(h) by limiting benefits to services provided by Medicare-certified agencies or providers; or

(i) by excluding coverage for adult day care services.

(2) Home health care coverage may be applied to the non-home health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

(3) A long-term care insurance policy or certificate, if it provides for home health or community care services, shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half of one year's coverage available for nursing home benefits under the policy or certificate, at the time covered home health or community care services are being received. This requirement may not apply to policies or certificates issued to residents of continuing care retirement communities.

R590-148-8. Standards for Benefit Triggers.

(1) A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than 3 of the activities of daily living or the presence of cognitive impairment.

(2) Insurers may use activities of daily living to trigger covered benefits in addition to those contained in Subsection R590-148-5(2)(a) as long as they are defined in the policy.

(3) An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate; however the provisions shall not restrict, and are not in lieu of, the requirements contained in Subsections R590-148-8(1) and (2).

(4) For purposes of this section the determination of a deficiency shall not be more restrictive than:

(a) requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

(b) if the deficiency is due to the presence of a cognitive impairment, supervision or verbal cuing by another person is needed in order to protect the insured or others.

(5) Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses or social workers.

(6) Long-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

(7) The requirements set forth in this section shall be effective January 1, 2003 and shall apply as follows:

(a) Except as provided in Subsection R590-148-8(7)(b), the provisions of this section apply to a long-term care policy issued in this state on or after July 1, 2002.

(b) For certificates issued on or after July 1, 2002, under a group long-term care insurance policy that was in force at the time this rule became effective, the provisions of this section shall not apply.

R590-148-9. Additional Standards for Benefit Triggers for Qualified Long-Term Care Insurance Contracts.

(1) A qualified long-term care insurance contract shall pay only for qualified long-term care services received by a chronically ill individual provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(2) A qualified long-term care insurance contract shall condition the payment of benefits on a determination of the insured's inability to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity or to severe cognitive impairment.

(3) Certifications regarding activities of daily living and cognitive impairment required pursuant to Subsection R590-148-9(2) shall be performed by the following licensed or certified professionals: physicians, registered professional nurses, licensed social workers, or other individuals who meet requirements prescribed by the Secretary of the Treasury.

(4) Certifications required pursuant to Subsection R590-148-9(2) may be performed by a licensed health care professional at the direction of the carrier as is reasonably necessary with respect to a specific claim, except that when a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity and the insured is in claim status, the certification may not be rescinded and additional certifications may not be performed until after the expiration of the 90-day period.

(5) Qualified long-term care insurance contracts shall include a clear description of the process for appealing and resolving disputes with respect to benefit determinations.

R590-148-10. Continuation and Conversion.

(1) Group long-term care insurance issued in this state on or after July 1, 2002 shall provide covered individuals with a basis for continuation or conversion of coverage.

(2) For the purposes of this section:

(a) "a basis for continuation of coverage" means a policy provision which maintains coverage under the existing group policy when the coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. Group policies which restrict provision of benefits and services to, or contain incentives to use certain providers, facilities, or both, may provide continuation benefits which are substantially equivalent to the benefits of the existing group policy. The commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(b) "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy, and any group policy which it replaced, for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy the individual is covered, without evidence of insurability.

(c) "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers, facilities, or both, the commissioner, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including provider system arrangements, service availability, benefit levels and administrative complexity.

(d) a "Managed-Care Plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.

(3) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than 60 days after termination of coverage under the group policy. The converted policy shall be

issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

(4) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(5) The premium for the individual converted policy shall not exceed the insurer's customary rate at the time of the termination, which is applicable to the form and amount of the individual policy, and to the class of risk to which the person belonged when terminated from the group policy.

(6) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

(a) termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(b) the terminating coverage is replaced not later than 31 days after termination, by group coverage effective on the day following the termination of coverage:

(i) providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

(ii) the premium for which is calculated in a manner consistent with the requirements of Subsection R590-148-10(4).

(7) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100% of incurred expenses. This provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(8) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, may not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(9) Notwithstanding any other provision of this section, any insured individual whose eligibility for group long-term care coverage is based upon the individual's relationship to another person, shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

R590-148-11. Unintentional Lapse and Reinstatement.

Each insurer offering long-term care insurance shall, as a protection against unintentional lapse, comply with the following:

(1)(a) Notice before lapse or termination. No individual long-term care policy or certificate shall be issued until the insurer has received from the applicant either a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice. The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation must provide space clearly designated for listing at least one person. The designation shall include each person's full name and home address. In the case of an applicant who elects not to designate an additional person, the waiver shall state: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until 30 days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."

(b) The insurer shall notify the insured of the right to change this written designation, no less often than once every two years.

(c) When the policyholder or certificateholder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan the requirements contained in Subsection R590-148-11(1)(a) need not be met until 60 days after the policyholder or certificateholder is no longer on a payroll or pension deduction plan.

(d) Lapse or termination for nonpayment of premium. No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least 30 days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to Subsection R590-148-11(1)(a), at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first class United States mail, postage prepaid; and notice may not be given until 30 days after a premium is due and unpaid. Notice shall be deemed to have been given as of five days after the date of mailing.

(2) Reinstatement. In addition to the requirement in Subsection R590-148-11(1)(a), a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage in the event of lapse if the insurer is provided proof that the policyholder or certificateholder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured if requested within five months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

R590-148-12. Applications, Enrollment and Replacement of Coverage.

(1) All applications for long-term care insurance policies or certificates except those which are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

(2)(a) If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.

(b) If the medications listed in the application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate may not be rescinded for that condition.

(3) All applications shall clearly indicate the payment plan selected by the applicant.

(4) Except for policies or certificates which are guaranteed issue:

(a) the following language shall be set out conspicuously

and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate:

Caution: If your answers on this application are incorrect or untrue, (company) has the right to deny benefits or rescind your policy.

(b) the following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery:

Caution: The issuance of this long-term care insurance (policy) (certificate) was based upon your responses to the questions on your application. A copy of your (application) (enrollment form) (is enclosed) (was retained by you when you applied). If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: (insert address)

(5) Prior to issuance of a long-term care policy or certificate to an applicant age 80 or older, the insurer shall obtain one of the following:

(a) a report of a physical examination;

(b) an assessment of functional capacity;

(c) an attending physician's statement; or

(d) copies of medical records.

(6) A copy of the completed application or enrollment form, whichever is applicable, shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

(7) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except where the coverage is sold without an agent, containing these questions may be used. With regard to a replacement policy issued to a group, other than employee and labor union groups, the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced; provided, however, that the certificateholder has been notified of the replacement.

(a) Do you have another long-term care insurance policy or certificate in force, including health care service contract, health maintenance organization contract?

(b) Did you have another long-term care insurance policy or certificate in force during the last 12 months?

(i) If so, with which company?

(ii) If that policy lapsed, when did it lapse?

(c) Are you covered by Medicaid?

(d) Do you intend to replace any of your medical or health insurance coverage with this policy/certificate?

(8) Agents shall list any other health insurance policies they have sold to the applicant.

(a) List policies sold which are still in force.

(b) List policies sold in the past five years which are no longer in force.

(9) Solicitations Other than Direct Response. Upon determining that a sale will involve replacement, an insurer; other than an insurer using direct response solicitation methods, or its agent; shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of this notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the manner detailed in Table I, Notice to Applicant Regarding Replacement of Individual Accident and Sickness or Long-Term Care Insurance.

(10) Direct Response Solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the manner detailed in Table II, Notice to Applicant Regarding Replacement of Accident and Sickness or Long-Term Care Insurance.

(11) Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured and policy number or address including zip code. The notice shall be made within five working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

(12) Life insurance policies and certificates that provide benefits for long-term care shall comply with this section if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of R590-93, Replacement of Life Insurance and Annuities. If a life insurance policy that provide benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements.

(13) Electronic Enrollment for Group Policies:

(a) In the case of a group policy, any requirement that a signature of an insured be obtained by an agent or insurer shall be deemed satisfied if:

(i) the consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer. A verification of enrollment information shall be provided to the enrollee;

(ii) the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention and prompt retrieval of records; and

(iii) the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the confidentiality of individually identifiable information and "privileged information" as defined by the Utah Government Records Access and Management Act, Section 63G-2-202, is maintained.

(b) The insurer shall make available, upon request of the commissioner, records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.

R590-148-13. Requirement to Offer Inflation Protection.

(1) No insurer may offer a long-term care insurance policy unless the insurer also offers to the policyholder in addition to any other inflation protection the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

(a) increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than 5%;

(b) guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The premium rate for the additional benefit shall not exceed the insurer's customary rate at the time the offer is made, which is applicable to the form and amount of the policy, the class of risk to which the person belonged at the time of issue of the policy, and to the age attained on the effective date of the increase. The amount of the

additional benefit may be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least 5% for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or

(c) covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(2) Where the policy is issued to a group, except a continuing care retirement community center, the required offer in Subsection R590-148-13(1) shall be made to the group policyholder and to each proposed certificateholder.

(3) Insurers shall include the following information in or with the outline of coverage:

(a) a graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a 20 year period; and

(b) any expected premium increases or additional premiums to pay for automatic or optional benefit increases. An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

(4) Inflation protection benefit increases under a policy which contains this benefit shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

(5) An offer of inflation protection which provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(6)(a) Inflation protection as provided in Subsection R590-148-13(1)(a) shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this subsection. The rejection may be either in the application or on a separate form.

(b) The rejection shall be considered a part of the application and shall state:

I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans (indicate), and I reject inflation protection.

R590-148-14. Nonforfeiture and Contingent Benefit Requirements.

(1) To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of Section 31A-22-1412:

(a) a policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in Subsection R590-148-14(4); and

(b) the offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder.

(2) If the offer required to be made under Section 31A-22-1412 is rejected, the insurer shall provide the contingent benefit upon lapse described in this section.

(3)(a) After rejection of the offer required under Section 31A-22-1412, for individual and group policies without nonforfeiture benefits issued after July 1, 2002, the insurer shall provide a contingent benefit upon lapse.

(b) In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

(c) The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in Table III, Triggers for a Substantial Premium Increase, based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least 30 days prior to the due date of the premium reflecting the rate increase.

(d) On or before the effective date of a substantial premium increase as defined in Subsection R590-148-14(3)(c), the insurer shall:

(i) offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

(ii) offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of Subsection R590-148-14(4). This option may be elected at any time during the 120-day period referenced in Subsection R590-148-14(3)(c); and

(iii) notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in Subsection R590-148-14(3)(c) shall be deemed to be the election of the offer to convert in Subsection R590-148-14(3)(d)(ii).

(4) Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse, are described in this subsection:

(a) For purposes of this subsection, attained age rating is defined as a schedule of premiums starting from the issue date which increases with age at least 1% per year prior to age 50, and at least 3% per year beyond age 50.

(b) For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits, amounts and frequency in effect at the time of lapse but not increased thereafter, will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in Subsection R590-148-14(4)(c).

(c) The standard nonforfeiture credit will be equal to 100% of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of Subsection R590-148-14(5).

(d)(i) The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years as well as thereafter.

(ii) Notwithstanding Subsection R590-148-14(4)(d)(i), for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:

(A) the end of the tenth year following the policy or certificate issue date; or

(B) the end of the second year following the date the policy or certificate is no longer subject to attained age rating.

(e) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

(5) All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up status will not exceed the maximum benefits, which would be payable if the policy or certificate had remained in premium paying status.

(6) There shall be no difference in the minimum

nonforfeiture benefits as required under this section for group and individual policies.

(7) The requirements set forth in this section shall become effective January 1, 2003 and shall apply as follows:

(a) Except as provided in Subsection R590-148-14(7)(b), the provisions of this section apply to any long-term care policy issued in this state on or after July 1, 2002.

(b) For certificates issued on or after July 1, 2002, under a group long-term care insurance policy, which policy was in force at the time this rule became effective, the provisions of this section shall not apply.

(8) Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of Section R590-148-22 treating the policy as a whole.

(9) To determine whether contingent nonforfeiture upon lapse provisions are triggered under Subsection R590-148-14(3)(c), a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

(10) A nonforfeiture benefit for qualified long-term care insurance contracts that are level premium contracts shall be offered that meets the following requirements:

(a) the nonforfeiture provision shall be appropriately captioned;

(b) the nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency and interest as reflected in changes in rates for premium paying contracts approved by the commissioner for the same contract form; and

(c) the nonforfeiture provision shall provide at least one of the following:

(i) reduced paid-up insurance;

(ii) extended term insurance;

(iii) shortened benefit period; or

(iv) other similar offerings approved by the commissioner.

R590-148-15. Standard Format Outline of Coverage.

This section of the rule implements, interprets and prescribes a standard format of an outline of coverage for the provisions in Subsection 31A-22-1409(2).

(1) The outline of coverage shall be a free-standing document, using no smaller than ten point type.

(2) The outline of coverage may contain no material of an advertising nature.

(3) Text which is capitalized or underscored in the standard format outline of coverage may be emphasized by other means which provide prominence equivalent to capitalization or underscoring.

(4) Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

(5) The format for outline of coverage can be found in Table IV, Long-Term Care Insurance Outline of Coverage.

R590-148-16. Requirement to Deliver Shopper's Guide.

(1) A long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners, or a guide developed or approved by the commissioner, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.

(a) In the case of agent solicitations, an agent must deliver the shopper's guide prior to the presentation of an application or enrollment form.

(b) In the case of direct response solicitations, the shopper's guide must be presented in conjunction with any application or enrollment form.

(2) Life insurance policies or riders that provide long-term care benefits are not required to furnish the above-referenced guide if the long term care benefits are incidental, but shall furnish the policy summary required under Subsection 31A-22-1409(8).

R590-148-17. Suitability.

(1) Every insurer shall:

(a) develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

(b) train its agents in the use of its suitability standards; and

(c) maintain a copy of its suitability standards and make them available for inspection upon request by the commissioner.

(2)(a) To determine whether the applicant meets the standards developed by the insurer, the agent and insurer shall develop procedures that take the following into consideration:

(i) the ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

(ii) the applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and

(iii) the values, benefits and costs of the applicant's existing insurance, if any, when compared to the values, benefits and costs of the recommended purchase or replacement.

(b) The insurer, and where an agent is involved, the agent shall make reasonable efforts to obtain the information set out in Subsection R590-148-17(2)(a). The efforts shall include presentation to the applicant, at or prior to application, the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the insurer shall contain, at a minimum, the information in the format contained in Appendix B, in not less than 12 point type. The insurer may request the applicant to provide additional information to comply with its suitability standards. A copy of the insurer's personal worksheet shall be filed with the commissioner.

(c) A completed personal worksheet shall be returned to the insurer prior to the insurer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

(d) The sale or dissemination outside the company or agency by the insurer or agent of information obtained through the personal worksheet in Appendix B is prohibited.

(3) The insurer shall use the suitability standards it has developed pursuant to this section in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

(4) Agents shall use the suitability standards developed by the insurer in marketing long-term care insurance.

(5) At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall be provided. The form shall be in the format contained in Appendix C in not less than 12 point type.

(6) If the insurer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the insurer may reject the application. In the alternative, the insurer shall send the applicant a letter similar to Appendix D, Long-Term Care Insurance Suitability Letter. However, if the applicant has declined to provide financial information, the insurer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

(7) If a long-term care insurance policy or certificate

replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

R590-148-18. Marketing Standards.

(1) Every insurer shall:

(a) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy the following:

"Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

(d) Provide copies of the disclosure forms required in Subsection R590-148-19(2) to the applicant. See Appendix B, Long-Term Care Insurance Personal Worksheet, and Appendix F, Potential Rate Increase Disclosure Form.

(e) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of this insurance, except that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance is not required.

(f) Every insurer or entity marketing long-term care insurance shall establish audit able procedures for verifying compliance with this Subsection R590-148-18(1).

(g) If the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program approved by the commissioner, the insurer shall, at solicitation, provide written notice to the prospective policyholder and certificateholder that the program is available and the name, address and telephone number of the program.

(h) For long-term care health insurance policies and certificates, use the terms "noncancellable" or "level premium" only when the policy or certificate conforms to Subsections R590-148-6(1)(a)(ii) and R590-148-6(6)(a).

(i) Provide an explanation of contingent benefit upon lapse provided for in Subsection R590-148-14(3)(c).

(2) In addition to the practices prohibited in Part 3, Chapter 23 of Title 31A, the following acts and practices are prohibited:

(a) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(d) Misrepresentation. Misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.

R590-148-19. Required Disclosure of Rating Practices to Consumer.

(1) This section shall apply as follows:

(a) Except as provided in Subsection R590-148-19(1)(b), this section applies to any long-term care policy or certificate issued in this state on or after January 1, 2003.

(b) For certificates issued on or after July 1, 2002, under a group long-term care insurance policy, which policy was in force at the time this rule became effective, the provisions of this section shall apply on the policy anniversary following January 1, 2003.

(2) Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall provide all of the information listed in this subsection to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, an insurer shall provide all of the information listed in this section to the applicant no later than at the time of delivery of the policy or certificate.

(a) A statement that the policy may be subject to rate increases in the future;

(b) an explanation of potential future premium rate revisions, and the policyholder's or certificateholder's option in the event of a premium rate revision;

(c) the premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase;

(d) a general explanation for applying premium rate or rate schedule adjustments that shall include:

(i) a description of when premium rate or rate schedule adjustments will be effective, e.g., next anniversary date, next billing date, etc.; and

(ii) the right to a revised premium rate or rate schedule as provided in Subsection R590-148-19(2)(b) if the premium rate or rate schedule is changed.

(e)(i) Information regarding each premium rate increase on this policy form or similar policy forms over the past ten years for this state or any other state that, at a minimum, identifies:

(A) the policy forms for which premium rates have been increased;

(B) the calendar years when the form was available for purchase; and

(C) the amount, percent, and date of implementation for each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase, and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.

(ii) The insurer may, in a fair manner, provide additional explanatory information related to the rate increases.

(iii) An insurer shall have the right to exclude from the disclosure premium rate increases that only apply to blocks of business acquired from other nonaffiliated insurers or the long-term care policies acquired from other nonaffiliated insurers when those increases occurred prior to the acquisition.

(iv) If an acquiring insurer files for a rate increase on a long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers on or before the effective date of this section, or the end of a 24-month period following the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with Subsection R590-148-19(2)(e)(i).

(v) If the acquiring insurer in Subsection R590-148-19(2)(e)(iv) files for a subsequent rate increase, even within the 24-month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers referenced in Subsection R590-148-19(2)(e)(iv), the acquiring insurer shall make all disclosures

required by Subsection R590-148-19(2)(e), including disclosure of the earlier rate increase referenced in Subsection R590-148-19(2)(e)(iv).

(3) An applicant shall sign an acknowledgment at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under Subsections R590-148-19(2)(a) and (e). If due to the method of application the applicant cannot sign an acknowledgment at the time of application, the applicant shall sign no later than at the time of delivery of the policy or certificate.

(4) An insurer shall use the forms in Appendix B, Personal Worksheet, and Appendix F, Potential Rate Increase Disclosure Form, to comply with the requirements of Subsections R590-148-19(1) and (2).

(5) An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, if applicable, at least 45 days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required by Subsection R590-148-19(2) when the rate increase is implemented.

R590-148-20. Filing Requirements.

(1) Prior to an insurer or similar organization offering group long-term care insurance to a resident of this state pursuant to Section 31A-22-1403, it shall file with the commissioner evidence that the group policy or certificate thereunder has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those adopted in this state.

(2)(a) Every insurer shall provide a copy of any long-term care insurance advertisement intended for use in Utah whether through written, radio or television medium to the insurance commissioner of this state upon request.

(b) All advertisements shall be retained by the insurer, health care service plan or other entity for at least three years from the date the advertisement was first used.

(c) The commissioner may exempt from these requirements any advertising form or material when, in the commissioner's opinion, this requirement may not be reasonably applied.

R590-148-21. Initial Filing Requirements.

(1) This section shall apply to any long-term care policy issued in this state on or after January 1, 2003.

(2) An insurer shall file the information listed in this subsection to the commissioner prior to making a long-term care insurance form available for sale:

(a) a copy of the disclosure documents required in Section R590-148-19; and

(b) an actuarial certification consisting of at least the following:

(i) a statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

(ii) a statement that the policy design and coverage provided have been reviewed and taken into consideration;

(iii) a statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;

(iv) a complete description of the basis for contract reserves that are anticipated to be held under the form, to include:

(A) sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;

(B) a statement that the assumptions used for reserves contain reasonable margins for adverse experience;

(C) a statement that the net valuation premium for renewal years does not increase, except for attained-age rating where permitted; and

(D) a statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur;

(I) an aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship; and

(II) if the gross premiums for certain age groups appear to be inconsistent with this requirement, the commissioner may request a demonstration under Subsection R590-148-21(3) based on a standard age distribution;

(v)(A) A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or

(B) A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

(3) The commissioner may request an actuarial demonstration that benefits are reasonable in relation to premiums. The actuarial demonstration shall include either premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and credible data from other studies, or both.

(4) The premiums charged to an insured for long-term care insurance may not increase due to either:

(a) the increasing age of the insured at ages beyond 65; or

(b) the duration the insured has been covered under the policy.

R590-148-22. Loss Ratio.

(1) This section shall apply to all individual long-term care insurance policies except those covered in Sections R590-148-21 and R590-148-24.

(2) Benefits under individual long-term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least 60%, calculated in a manner which provides for adequate reserving of the long-term care insurance risk.

(3) In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

(a) statistical credibility of incurred claims experience and earned premiums;

(b) the period for which rates are computed to provide coverage;

(c) experienced and projected trends;

(d) concentration of experience within early policy duration;

(e) expected claim fluctuation;

(f) experience refunds, adjustments or dividends;

(g) renewability features;

(h) all appropriate expense factors;

(i) interest;

(j) experimental nature of the coverage;

(k) policy reserves;

(l) mix of business by risk classification; and

(m) product features such as long elimination periods, high deductibles and high maximum limits.

(4) The premiums charged to an insured for long-term care insurance may not increase due to either:

(a) the increasing age of the insured at ages beyond 65; or

(b) the duration the insured has been covered under the policy.

(5) Rate filings documents must contain all information required in R590-85-4.

R590-148-23. Reserve Standards.

(1) When long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to these policies, policy reserves for these benefits shall be determined in accordance with Subsection 31A-17-504(7). Claim reserves must also be established when the policy or rider is in claim status.

Reserves for policies and riders subject to this subsection should be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. However, in no event may the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term care benefit.

In the development and calculation of reserves for policies and riders subject to this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which have an impact on projected claim costs, including, but not limited to, the following:

(a) definition of insured events;
(b) covered long-term care facilities;
(c) existence of home convalescence care coverage;
(d) definition of facilities;
(e) existence or absence of barriers to eligibility;
(f) premium waiver provision;
(g) renewability;
(h) ability to raise premiums;
(i) marketing method;
(j) underwriting procedures;
(k) claims adjustment procedures;
(l) waiting period;
(m) maximum benefit
(n) availability of eligible facilities;
(o) margins in claim costs;
(p) optional nature of benefit;
(q) delay in eligibility for benefit;
(r) inflation protection provisions; and
(s) guaranteed insurability option.

Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

(2) When long-term care benefits are provided other than as in Subsection R590-148-23(1), reserves shall be determined in accordance with Minimum Reserve Standards for Individual and Group Health Insurance Contracts, Appendix A-010, Accounting Practices and Procedures Manual, edition March 2001, published by the National Association of Insurance Commissioners.

R590-148-24. Premium Rate Schedule Increases.

(1) This section shall apply as follows:

(a) except as provided in Subsection R590-148-24(1)(b), this section applies to any long-term care policy or certificate issued in this state on or after January 1, 2003.

(b) for certificates issued on or after July 1, 2002, under a group long-term care insurance policy, which policy was in force at the time this rule became effective, the provisions of this section shall apply on the policy anniversary following January 1, 2003.

(2) An insurer shall file notice of a pending premium rate schedule increase, including an exceptional increase, to the commissioner prior to the notice to the policyholders and shall include:

(a) information required by Section R590-148-19;

(b) certification by a qualified actuary that:

(i) if the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;

(ii) the premium rate filing is in compliance with the provisions of this section;

(c) an actuarial memorandum justifying the rate schedule change request that includes:

(i) lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale:

(A) annual values for the five years preceding and the three years following the valuation date shall be provided separately;

(B) the projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;

(C) the projections shall demonstrate compliance with Subsection R590-148-24(3); and

(D) for exceptional increases:

(I) the projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

(II) in the event the commissioner determines as provided in Section R590-148-5(2)(j)(iv) that offsets may exist, the insurer shall use appropriate net projected experience;

(ii) disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;

(iii) disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;

(iv) a statement that policy design, underwriting and claims adjudication practices have been taken into consideration; and

(v) in the event that it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer will need to file composite rates reflecting projections of new certificates;

(d) a statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commissioner; and

(e) sufficient information for review of the premium rate schedule increase by the commissioner.

(3) All premium rate schedule increases shall be determined in accordance with the following requirements:

(a) exceptional increases shall provide that at least 70% of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

(b) premium rate schedule increases shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

(i) the accumulated value of the initial earned premium times 58%;

(ii) 85% percent of the accumulated value of prior premium rate schedule increases on an earned basis;

(iii) the present value of future projected initial earned premiums times 58%; and

(iv) 85% percent of the present value of future projected

premiums not in Subsection R590-148-24(3)(b)(iii) on an earned basis;

(c) in the event that a policy form has both exceptional and other increases, the values in Subsections R590-148-24(3)(b)(ii) and (iv) will also include 70% for exceptional rate increase amounts; and

(d) all present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves which is the maximum rate permitted by law in the valuation of whole life insurance issued on the same date as the health insurance contract. The actuary shall disclose as part of the actuarial memorandum, the use of any appropriate averages.

(4)(a) The insurer may request a premium rate schedule increase that is lower than the rate increase necessary to provide the certification required in R590-148-24(2)(b)(i) and the commissioner may accept such premium rate schedule increase, without submission of the certification required in R590-148-24(2)(b)(i), if:

(i) in the opinion of the commissioner accepting such lower premium rate schedule increase is in the best interest of Utah policyholders;

(ii) the actuarial memorandum discloses the rate increase necessary to provide the certification required in R590-148-24(2)(b)(i); and

(iii) the rate increase filing satisfies all other requirements of this section.

(b) The commissioner may condition the acceptance of the premium rate schedule increase under Subsection R590-148-24(4)(a) upon:

(i) the disclosure, to the affected policyholders, of the premium rate schedule increase necessary to provide the certification required in R590-148-24(2)(b)(i); and

(ii) the extension of a contingent nonforfeiture benefit upon lapse to policyholders who would have been eligible for contingent nonforfeiture benefit upon lapse based on the premium rate schedule increase necessary to provide certification required in R590-148-24(2)(b)(i).

(5) For each rate increase that is implemented, the insurer shall file for review by the commissioner updated projections, as defined in Subsection R590-148-24(2)(c)(i), annually for the next three years and include a comparison of actual results to projected values. The commissioner may extend the period to greater than three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in Subsection R590-148-24(12), the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

(6) If any premium rate in the revised premium rate schedule is greater than 200% of the comparable rate in the initial premium schedule, lifetime projections, as defined in Subsection R590-148-24(2)(c)(i), shall be filed for review by the commissioner every five years following the end of the required period in Subsection R590-148-24(5). For group insurance policies that meet the conditions in Subsection R590-148-24(12), the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

(7)(a) If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in Subsection R590-148-24(3), the commissioner may require the insurer to implement any of the following:

(i) premium rate schedule adjustments; or

(ii) other measures to reduce the difference between the projected and actual experience.

(b) In determining whether the actual experience adequately matches the projected experience, consideration should be given to Subsection R590-148-24(2)(c)(v), if applicable.

(8) If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

(a) a plan, subject to commissioner approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the commissioner may impose the condition in Subsection R590-148-24(9); and

(b) the original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to Subsection R590-148-24(3) had the greater of the original anticipated lifetime loss ratio or 58% been used in the calculations described in Subsection R590-148-24(3)(a)(i) and (iii).

(9)(a) For a rate increase filing that meets the following criteria, the commissioner shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if significant adverse lapsation has occurred or is anticipated:

(i) the rate increase is not the first rate increase requested for the specific policy form or forms;

(ii) the rate increase is not an exceptional increase; and

(iii) the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

(b) In the event significant adverse lapsation has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the commissioner may determine that a rate spiral exists. Following the determination that a rate spiral exists, the commissioner may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates.

(i) The offer shall:

(A) be subject to the approval of the commissioner;

(B) be based on actuarially sound principles, but not be based on attained age; and

(C) provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.

(ii) The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

(A) the maximum rate increase determined based on the combined experience; and

(B) the maximum rate increase determined based only on the experience of the insureds originally issued the form plus 10%.

(10) If the commissioner determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the commissioner may, in addition to the provisions of Subsection R590-148-24(9), prohibit the insurer from either of the following:

(a) filing and marketing comparable coverage for a period of up to five years; or

(b) offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

(11) Subsections R590-148-24(1) through (10) shall not apply to policies for which the long-term care benefits provided by the policy are incidental, as defined in Subsection R590-148-5(2)(m), if the policy complies with all of the following provisions:

(a) the interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

(b) the portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in any of the following:

(i) Section 31A-22-408; and

(ii) Section 31A-22-409;

(c) the policy meets the disclosure requirements of Subsections 31A-22-1409(7) and (8) and 31A-22-1410;

(d) the portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as applicable in the following:

(i) policy illustrations as required by R590-177; and

(ii) disclosure requirements in R590-133;

(e) an actuarial memorandum is filed with the insurance department that includes:

(i) a description of the basis on which the long-term care rates were determined;

(ii) a description of the basis for the reserves;

(iii) a summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

(iv) a description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;

(v) a description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

(vi) the estimated average annual premium per policy and the average issue age;

(vii) a statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

(viii) a description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

(12) Subsections R590-148-24(7) and (9) shall not apply to group insurance policies where:

(a) the policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or

(b) the policyholder, and not the certificateholders, pays a material portion of the premium, which shall not be less than 20% of the total premium for the group in the calendar year prior to the year a rate increase is filed.

R590-148-25. Reporting Requirements.

(1) Every insurer shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

(a) Every insurer shall report the 10% of its agents with the greatest percentages of lapses and replacements as measured by Subsection R590-148-25(1).

(b) Every insurer shall report the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.

(c) Every insurer shall report the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year.

(d) The reports required by Subsection R590-148-25(1)(a),(b), and (c) must be reported on the "Replacement and Lapse Reporting Form," Appendix G.

(e) Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

(2) Every insurer shall report, for qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied. The report used by the insurer shall contain, at a minimum, the information in the format contained in Appendix E, Claims Denial Reporting Form Long-Term Care Insurance, in not less than 12 point type.

(3) Every insurer shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated and shall annually report this information in the format currently prescribed by the National Association of Insurance Commissioners.

(4) Every insurer shall report the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter. The report must be submitted on the Suitability Reporting Form, Appendix H.

(5) For purposes of this section:

(a) "policy" shall mean only long-term care insurance;

(b) "claim" means a request for payment of benefits under an in force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met;

(c) "denied" means that the insurer refuses to pay a claim for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition; and

(d) "report" means on a statewide basis.

(6) Reports required under this section shall be filed with the commissioner annually on or before June 30. All reports must be submitted in compliance with Rule R590-220-13, Submission of Accident and Health Insurance Filings: Additional Procedures for Long Term Products.

R590-148-26. Licensing.

A producer is not authorized to sell, solicit or negotiate with respect to long-term care insurance except as authorized by Chapter 23 of Title 31A.

R590-148-27. Discretionary Powers of Commissioner.

The commissioner may upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provisions of this rule with respect to a specific long-term care insurance policy or certificate upon a written finding that:

(1) the modification or suspension would be in the best interest of the insured; and

(2) the purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and

(3) one of the following occur:

(a) the modification or suspension is necessary to the

development of an innovative and reasonable approach for insuring long-term care;

(b) the policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of the community; or

(c) the modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

R590-148-28. Penalties.

In addition to any other penalties provided by the laws of this state any insurer and any agent found to have violated any requirement of this state relating to the rule of long-term care insurance or the marketing of this insurance shall be subject to a fine of up to three times the amount of any commissions paid for each policy involved in the violation or up to $10,000, whichever is greater.

R590-148-29. Enforcement Date.

Effective July 1, 2002, the department will enforce all sections of the rule that do not have a different compliance date.

R590-148-30. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this and the provisions of this rule are declared to be severable.

KEY: insurance
February 8, 2011 31A-2-201
Notice of Continuation July 12, 2017 31A-22-1404

R590. Insurance, Administration.
R590-151. Records Access Rule.
R590-151-1. Authority.

This rule is adopted pursuant to the provisions of Chapter 2, Title 63G, the Government Records Access and Management Act (GRAMA), specifically Subsections 63G-2-204(2), and 63A-12-104(2).

R590-151-2. Purposes.

The purposes of this rule are to define how record requests are to be made to the Insurance Department, to designate the person who shall fulfill various functions pursuant to the requirements of GRAMA, and to define how an individual may contest the accuracy and completeness of records concerning that individual which are maintained by the department.

R590-151-3. Rule.

(1) Making a Request for Access to Records.

(a) All record requests made under the provisions of GRAMA shall;

(i) be made in writing, email, or facsimile;

(ii) comply with the requirements of Subsection 63G-2-204(1); and

(iii) indicate in the subject line "GRAMA REQUEST"; and

(iv) be directed;

(A) in writing to the Records Officer, Utah Department of Insurance, State Office Building, Room 3110, Salt Lake City, Utah, 84114;

(B) via email to mdycrabb@utah.gov; or

(C) or via facsimile to the attention of Records Officer at (801)538-3829.

(b) The department's response may be delayed if a submitted request does not comply with the requirements of Subsection (1).

(3) The department may, at its discretion, waive the requirement for a written request if the records requested are public and readily accessible, or for other good cause shown.

(2) Appeals From Initial Decisions.

All appeals from an initial decision by the department, which denies access to a record, shall be addressed to the insurance commissioner and shall conform to the requirements of Section 63G-2-401. The authority to order disclosure or nondisclosure is delegated to the head of the division which maintains the record or to any other person the commissioner may designate from time to time.

(3) Contesting Accuracy or Completeness of a Record.

(a) Any request pursuant to Subsection 63G-2-603(2) shall be directed to the records officer.

(b) Consideration of the request shall be conducted as an informal adjudicative proceeding unless converted to a formal adjudicative proceeding by the presiding officer.

(c) A request to amend findings of fact in any administrative proceeding where the time for appeal has expired shall be denied. These types of records shall be maintained in their original form to protect the public interest and the integrity of the Administrative Records. Section 63G-2-603, may not apply.

R590-151-4. Enforcement Date.

The commissioner shall begin enforcing the revised provisions of this rule on the effective date.

R590-151-5. Severability.

If any provision or clause of this rule or the application of it 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 provision of this rule are declared to be severable.

KEY: insurance records access
October 3, 2012 63G-2-204
Notice of Continuation July 12, 2017 63A-12-104

R590. Insurance, Administration.
R590-206. Privacy of Consumer Financial and Health Information Rule.
R590-206-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-202(1), 31A-2-201(2) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce Title 31A, to perform duties imposed by Title 31A and to make administrative rules to implement the provisions of Title 31A. Furthermore, Title V, Section 505 (15 United States Code (U.S.C.) 6805) empowers the Utah Insurance Commissioner to enforce Subtitle A of Title V of the Gramm-Leach-Bliley Act of 1999 (15 U.S.C. 6801 through 6820). Title V, Section 505 (15 U.S.C. 6805(b)(2)) authorizes the commissioner to issue rules to implement the requirements of Title V, Section 501(b)of the federal act. The commissioner is also authorized under Subsection 31A-23a-417(3) to adopt rules implementing the requirements of Title V, Section 501(b) of the federal act.

R590-206-2. Purpose and Scope.

(1) Purpose. This rule governs the treatment of nonpublic personal health information and nonpublic personal financial information about individuals by all licensees of the Utah Insurance Department. This rule:

(a) Requires a licensee to provide notice to individuals about its privacy policies and practices;

(b) Describes the conditions under which a licensee may disclose nonpublic personal health information and nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties; and

(c) Provides methods for individuals to prevent a licensee from disclosing that information.

(2) Scope. This rule applies to:

(a) Nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. This rule does not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes; and

(b) All nonpublic personal health information.

(3) Compliance. A licensee domiciled in this state that is in compliance with this rule in a state that has not enacted laws or rules that meet the requirements of Title V of the Gramm-Leach-Bliley Act (PL 102-106) may nonetheless be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in such other state.

(4) This rule does not apply to a financial institution, securities broker or dealer, or a credit union that engages in activities or functions that do not require a license from the Utah insurance commissioner.

R590-206-3. Rule of Construction.

(1)(a) The examples in this rule, the sample clauses in Appendix A, and the Federal Model Privacy Form in Appendix B are not exclusive.

(b) Appendix A - Sample Clauses, of the Model Rule entitled, "Privacy of Consumer Financial and Health Information Regulation," and Appendix B -- Federal Model Privacy Form, of the Model Rule entitled, "Privacy of Consumer Financial and Health Information Regulation," adopted April 11, 2017, by the National Association of Insurance Commissioners, are incorporated by reference and available for inspection at the Insurance Department and the Office of Administrative Rules.

(c) Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this rule.

(2)(a) Licensees may rely on use of the Federal Privacy Form in Appendix B, consistent with the form's instructions, as a safe harbor of compliance with the privacy notice content requirements of this rule.

(b) Use of the Federal Model Privacy Form in Appendix B is not required. Licensees may continue to use other types of privacy notices, including notices that contain the examples in this regulation and/or the sample clauses in Appendix A, provided that such notices accurately describe the licensee's privacy practices and otherwise meet the notice content requirements of this rule.

(3)(a) Subjection to Subsection (b), licensees may continue to use privacy notices that contain the examples in this rule and the sample clauses in Appendix A.

(b) Licensees may not rely on the use of privacy notices with the sample clauses in Appendix A as a safe harbor of compliance with the notice content requirements of this regulation after July 1, 2019.

R590-206-4. Definitions.

As used in this rule, unless the context requires otherwise:

(1) "Affiliate" means any company that controls, is controlled by or is under common control with another company.

(2)(a) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(b) Examples.

(i) Reasonably understandable. A licensee makes its notice reasonably understandable if it:

(A) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;

(B) Uses short explanatory sentences or bullet lists whenever possible;

(C) Uses definite, concrete, everyday words and active voice whenever possible;

(D) Avoids multiple negatives;

(E) Avoids legal and highly technical business terminology whenever possible; and

(F) Avoids explanations that are imprecise and readily subject to different interpretations.

(ii) Designed to call attention. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:

(A) Uses a plain-language heading to call attention to the notice;

(B) Uses a typeface and type size that are easy to read;

(C) Provides wide margins and ample line spacing;

(D) Uses boldface or italics for key words; and

(E) In a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(iii) Notices on web sites. If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensures that other elements on the web site (such as text, graphics, hyperlinks or sound) do not distract attention from the notice, and the licensee either:

(A) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(B) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

(3) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the

underlying information.

(4) "Commissioner" means the Utah insurance commissioner.

(5) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

(6)(a) "Consumer" means an individual who seeks to obtain, obtains or has obtained an insurance product or service, from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative.

(b) Examples.

(i) An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.

(ii) An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.

(iii) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

(iv) An individual is a licensee's consumer if:

(A)(I) the individual is a beneficiary of a life insurance policy underwritten by the licensee;

(II) the individual is a claimant under an insurance policy issued by the licensee;

(III) the individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or

(IV) the individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and

(B) the licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under Sections 15, 16 and 17 of this rule.

(v) Provided that the licensee provides the initial, annual and revised notices under Section 10 of this rule to the plan sponsor, group or blanket insurance policyholder or group annuity contractholder, or workers' compensation policyholder, and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual described in (A), (B), or (C), other than as permitted under Sections 15, 16 and 17 of this rule, such an individual is not the consumer of the licensee solely because he or she is:

(A) A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary;

(B) Covered under a group or blanket insurance policy or group annuity contract issued by the licensee; or

(C) A claimant covered by a workers' compensation plan.

(vi)(A) The individuals described in Subsection R590-206-4(6)(b)(v)(A) through (C) of this Paragraph are consumers of a licensee if the licensee does not meet all the conditions of Subsection R590-206-4(6)(b)(v).

(B) In no event shall the individuals, solely by virtue of the status described in Subsection R590-206-4(6)(b)(v)(A) through (C) above, be deemed to be customers for purposes of this rule.

(vii) An individual is not a licensee's consumer solely because he or she is a beneficiary of a trust for which the licensee is a trustee.

(viii) An individual is not a licensee's consumer solely because he or she has designated the licensee as trustee for a trust.

(7) "Consumer reporting agency" has the same meaning as in Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(8) "Control" means:

(a) Ownership, control or power to vote 25% or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(b) Control in any manner over the election of a majority of the directors, trustees or general partners, or individuals exercising similar functions, of the company; or

(c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

(9) "Customer" means a consumer who has a customer relationship with a licensee.

(10)(a) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes.

(b) Examples.

(i) A consumer has a continuing relationship with a licensee if:

(A) The consumer is a current policyholder of an insurance product issued by or through the licensee; or

(B) The consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.

(ii) A consumer does not have a continuing relationship with a licensee if:

(A) The consumer applies for insurance but does not purchase the insurance;

(B) The licensee sells the consumer airline travel insurance in an isolated transaction;

(C) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(D) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under a policy choosing a settlement option involving an ongoing relationship with the licensee;

(E) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;

(F) The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than annual privacy notices, material required by law or rule, communication at the direction of a state or federal authority, or promotional materials;

(G) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

(H) For the purposes of this rule, the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(11)(a) "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(b) Financial institution does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity

Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(ii) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(12)(a) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section (4)(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(b) Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(13) "Health care" means:

(a) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that:

(i) Relates to the physical, mental or behavioral condition of an individual; or

(ii) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs or any other tissue; or

(b) Prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

(14) "Health care provider" means a physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with state law, or a health care facility.

(15) "Health information" means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

(a) The past, present or future physical, mental or behavioral health or condition of an individual;

(b) The provision of health care to an individual; or

(c) Payment for the provision of health care to an individual.

(16)(a) "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state.

(b) Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for a insurance product or service.

(17)(a) "Licensee" means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the insurance laws of this state.

(b) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in Sections 1 through 17 of this rule if the licensee is an employee, agent or other representative of another licensee, "the principal," and:

(i) The principal otherwise complies with, and provides the notices required by, the provisions of this rule; and

(ii) The licensee does not disclose any non-public personal information to any person other than the principal or its affiliates in a manner permitted by this rule.

(c)(i) Subject to Subsection R590-206-4(17)(c)(ii), "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed surplus lines broker in this state, but only in regard to the surplus lines placements placed pursuant to Section 31A-15-103 of this state's laws.

(ii) A surplus lines broker or surplus lines insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in Sections 1 through 17 of this rule provided:

(A) The broker or insurer does not disclose nonpublic personal financial information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Section 15 of this rule, except as permitted by Section 16 or 17 of this rule; and

(B) The broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type:

PRIVACY NOTICE

"NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW."

(18)(a) "Nonaffiliated third party" means any person except:

(i) A licensee's affiliate; or

(ii) A person employed jointly by a licensee and any company that is not the licensee's affiliate (but nonaffiliated third party includes the other company that jointly employs the person).

(b) Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in Section 4(k)(4)(H) or insurance company investment activities of the type described in Section 4(k)(4)(I) of the federal Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

(19) "Nonpublic personal information" means nonpublic personal financial information and nonpublic personal health information.

(20)(a) "Nonpublic personal financial information" means:

(i) Personally identifiable financial information; and

(ii) Any list, description or other grouping of consumers, and publicly available information pertaining to them, that is derived using any personally identifiable financial information that is not publicly available.

(b) Nonpublic personal financial information does not include:

(i) Health information;

(ii) Publicly available information, except as included on a list described in Subsection R590-206-4(20)(a)(ii); or

(iii) Any list, description or other grouping of consumers, and publicly available information pertaining to them, that is derived without using any personally identifiable financial information that is not publicly available.

(c) Examples of lists.

(i) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(ii) Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(21) "Nonpublic personal health information" means health information:

(a) That identifies an individual who is the subject of the information; or

(b) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

(22)(a) "Personally identifiable financial information" means any information:

(i) A consumer provides to a licensee to obtain an insurance product or service from the licensee;

(ii) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or

(iii) The licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

(b) Examples.

(i) Information included. Personally identifiable financial information includes:

(A) Information a consumer provides to a licensee on an application to obtain an insurance product or service;

(B) Account balance information and payment history;

(C) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;

(D) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;

(E) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(F) Any information the licensee collects through an Internet cookie, an information-collecting device from a web server; and

(G) Information from a consumer report.

(ii) Information not included. Personally identifiable financial information does not include:

(A) Health information;

(B) A list of names and addresses of customers of an entity that is not a financial institution; and

(C) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names or addresses.

(23)(a) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

(i) Federal, state or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by federal, state or local law.

(b) Reasonable basis. A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

(c) Examples.

(i) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(iii) Reasonable basis.

(A) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

R590-206-5. Initial Privacy Notice to Consumers Required.

(1) Initial notice requirement. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

(a) Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in Subsection R590-206-5(5); and

(b) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by Sections 16 and 17.

(2) When initial notice to a consumer is not required. A licensee is not required to provide an initial notice to a consumer under Subsection R590-206-5(1)(b) if:

(a) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by Sections 16 and 17, and the licensee does not have a customer relationship with the consumer; or

(b) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

(3) When the licensee establishes a customer relationship.

(a) General rule. A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.

(b) Examples of establishing customer relationship. A licensee establishes a customer relationship when the consumer:

(i) Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee; or

(ii) Agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.

(4) Existing customers. When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of Subsection R590-206-5(1) as follows:

(a) The licensee may provide a revised policy notice, under Section 9, that covers the customer's new insurance product or service; or

(b) If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under Subsection R590-206-5(1).

(5) Exceptions to allow subsequent delivery of notice.

(a) A licensee may provide the initial notice required by Subsection R590-206-5(1)(a) within a reasonable time after the licensee establishes a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election; or

(ii) Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(b) Examples of exceptions.

(i) Not at customer's election. Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

(ii) Substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

(iii) No substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a web site.

(6) Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section 11. If the licensee uses a short-form initial notice for non-customers according to Subsection R590-206-7(4) the licensee may deliver its privacy notice according to Subsection R590-206-7(4)(c).

R590-206-6. Annual Privacy Notice to Customers Required.

(1)(a) General rule. A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of 12 consecutive months during which that relationship exists. A licensee may define the 12 consecutive month period, but the licensee shall apply it to the customer on a consistent basis.

(b) Example. A licensee provides a notice annually if it defines the 12 consecutive month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year two.

(2) Exception to General Rule. A licensee that provides nonpublic personal information to nonaffiliated third parties only in accordance with Sections 15, 16, or 17 and has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section or Section 5 shall not be required to provide an annual disclosure under this section until such time as the licensee fails to comply with any criteria described in this paragraph.

(3)(a) Termination of customer relationship. A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

(b) Examples.

(i) A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(ii) A licensee no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve 12 consecutive months, other than to provide annual privacy notices, material required by law or rule, or promotional materials.

(iii) For the purposes of this rule, a licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(iv) A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

(4) Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section 11.

R590-206-7. Information to be Included in Privacy Notices.

(1) General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 5, 6 and 9 shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

(a) The categories of nonpublic personal financial information that the licensee collects;

(b) The categories of nonpublic personal financial information that the licensee discloses;

(c) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under Sections 16 and 17;

(d) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under Sections 16 and 17;

(e) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Section 14, and no other exception in Sections 16 and 17 applies to that disclosure, a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

(f) An explanation of the consumer's right under Subsection R590-206-12(1) to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(g) Any disclosures that the licensee makes under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(h) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(i) Any disclosure that the licensee makes under Subsection R590-206-7(2).

(2) Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under Sections 16 and 17, the licensee is not required to list those exceptions in the initial or annual privacy

notices required by Sections 5 and 6. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(3) Examples.

(a) Categories of nonpublic personal financial information that the licensee collects. A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

(i) Information from the consumer;

(ii) Information about the consumer's transactions with the licensee or its affiliates;

(iii) Information about the consumer's transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

(b) Categories of nonpublic personal financial information a licensee discloses.

(i) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in Subsection R590-206-7(3)(a), as applicable, and provides a few examples to illustrate the types of information in each category. These might include:

(A) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number;

(B) Transaction information, such as information about balances, payment history and parties to the transaction; and

(C) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(ii) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

(iii) If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal financial information that the licensee discloses.

(c) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

(i) A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

(ii) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

(iii) A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

(d) Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in Section 14 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of Subsection R590-206-7(1)(e) of this section if it:

(i) Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of Subsection R590-206-7(1)(b) of this section, as applicable; and

(ii) States whether the third party is:

(A) A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or

(B) A financial institution with whom the licensee has a joint marketing agreement.

(e) Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under Sections 16 and 17, the licensee may simply state that fact, in addition to the information it shall provide under Subsections R590-206-7(1)(a), 7(1)(h), 7(1)(i), and 7(2).

(f) Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

(i) Describes in general terms who is authorized to have access to the information; and

(ii) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

(4) Short-form initial notice with opt out notice for non-customers.

(a) A licensee may satisfy the initial notice requirements in Subsections R590-206-5(1)(b) and Subsection R590-206-8(3) for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt out notice as required in Section 8.

(b) A short-form initial notice shall:

(i) Be clear and conspicuous;

(ii) State that the licensee's privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(c) The licensee shall deliver its short-form initial notice according to Section 11. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to Section 10.

(d) Examples of obtaining privacy notice. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:

(i) Provides a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

(5) Future disclosures. The licensee's notice may include:

(a) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and

(b) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

(6) Sample clauses and the Federal Model Privacy Form. Sample clauses illustrating some of the notice content required by this section and the Federal Model Privacy Form are included in Appendix A and Appendix B, respectively, of this rule.

R590-206-8. Form of Opt Out Notice to Consumers and Opt Out Methods.

(1)(a) Form of opt out notice. If a licensee is required to provide an opt out notice under Subsection R590-206-12(1), it

shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

(i) That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(b) Examples.

(i) Adequate opt out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

(A) Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in Subsections R590-206-7(1)(b) and R590-206-7(1)(c), and states that the consumer can opt out of the disclosure of that information; and

(B) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction would apply.

(ii) Reasonable opt out means. A licensee provides a reasonable means to exercise an opt out right if it:

(A) Designates check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Includes a reply form together with the opt out notice;

(C) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information; or

(D) Provides a toll-free telephone number that consumers may call to opt out.

(iii) Unreasonable opt out means. A licensee does not provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

(iv) Specific opt out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(2) Same form as initial notice permitted. A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Section 5.

(3) Initial notice required when opt out notice delivered subsequent to initial notice. If a licensee provides the opt out notice later than required for the initial notice in accordance with Section 5, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(4) Joint relationships.

(a) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer, as explained in Subsection R590-206-8(4)(e).

(b) Any of the joint consumers may exercise the right to opt out. The licensee may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(c) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(d) A licensee may not require all joint consumers to opt out before it implements any opt out direction.

(e) Example. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:

(i) Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If the licensee does so:

(A) It shall permit John and Mary to opt out for each other;

(B) If both opt out, the licensee shall permit both of them to notify it in a single response, such as on a form or through a telephone call; and

(C) If John opts out and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary, but not about John and not about John and Mary jointly.

(5) Time to comply with opt out. A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.

(6) Continuing right to opt out. A consumer may exercise the right to opt out at any time.

(7) Duration of consumer's opt out direction.

(a) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(b) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

(8) Delivery. When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to Section 10.

R590-206-9. Revised Privacy Notices.

(1) General rule. Except as otherwise authorized in this rule, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under Section 5, unless:

(a) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(b) The licensee has provided to the consumer a new opt out notice;

(c) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(d) The consumer does not opt out.

(2) Examples.

(a) Except as otherwise permitted by Sections 15, 16 and 17, a licensee shall provide a revised notice before it:

(i) Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;

(ii) Discloses nonpublic personal financial information to

a new category of nonaffiliated third party; or

(iii) Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(b) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

(3) Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to Section 11.

R590-206-10. Privacy Notices to Group Policyholders.

Unless a licensee is providing privacy notices directly to covered individuals described in Subsection R590-206-4(6)(b)(v)(A), (B) or (C), a licensee shall provide initial, annual and revised notices to the plan sponsor, group, or blanket insurance policyholder or group annuity contractholder, or workers' compensation policyholder, in the manner described in Sections 5 through 9 of this rule, describing the licensee's privacy practices with respect to nonpublic personal information about individuals covered under the policies, contracts, or plans.

R590-206-11. Delivery.

(1) How to provide notices. A licensee shall provide any notices that this rule requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(2)(a) Examples of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

(i) Hand-delivers a printed copy of the notice to the consumer;

(ii) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;

(iii) For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service;

(iv) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(b) Examples of unreasonable expectation of actual notice. A licensee may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

(i) Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

(ii) Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(3) Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(a) The customer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or

(b) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(4) Oral description of notice insufficient. A licensee may not provide any notice required by this rule solely by orally explaining the notice, either in person or over the telephone.

(5) Retention or accessibility of notices for customers.

(a) For customers only, a licensee shall provide the initial notice required by Subsection R590-206-5(1)(a), the annual notice required by Subsection R590-206-6(1), and the revised notice required by Section 9 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(b) Examples of retention or accessibility. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

(i) Hand-delivers a printed copy of the notice to the customer;

(ii) Mails a printed copy of the notice to the last known address of the customer; or

(iii) Makes its current privacy notice available on a web site (or a link to another web site) for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the web site.

(6) Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

(7) Joint relationships. If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of Subsections R590-206-5(1), 6(1) and 9(1), respectively, by providing one notice to those consumers jointly.

R590-206-12. Limitations on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties.

(1)(a) Conditions for disclosure. Except as otherwise authorized in this rule, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

(i) The licensee has provided to the consumer an initial notice as required under Section 5;

(ii) The licensee has provided to the consumer an opt out notice as required in Section 8;

(iii) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(b) Opt out definition. Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 15, 16 and 17.

(c) Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if:

(i) By mail. The licensee mails the notices required in Subsection R590-206-12(1)(a) to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within 30 days from the date the licensee mailed the notices.

(ii) By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in Subsection R590-206-12(1)(a) electronically, and the licensee allows the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance

quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in Subsection R590-206-12(1)(a) at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(2) Application of opt out to all consumers and all nonpublic personal financial information.

(a) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.

(b) Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

(3) Partial opt out. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

R590-206-13. Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information.

(1)(a) Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Sections 16 and 17 of this rule, the licensee's disclosure and use of that information is limited as follows:

(i) The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

(ii) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

(iii) The licensee may disclose and use the information pursuant to an exception in Sections 16 and 17 of this rule, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(b) Example. If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

(2)(a) Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Sections 16 and 17 of this rule, the licensee may disclose the information only:

(i) To the affiliates of the financial institution from which the licensee received the information;

(ii) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

(iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

(b) Example. If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in Sections 16 and 17:

(i) The licensee may use that list for its own purposes; and

(ii) The licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in Sections 16 and 17, such as to the licensee's attorneys or accountants.

(3) Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Sections 16 and 17 of this rule, the third party may disclose and use that information only as follows:

(a) The third party may disclose the information to the licensee's affiliates;

(b) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(c) The third party may disclose and use the information pursuant to an exception in Sections 16 and 17 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(4) Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in Sections 16 and 17 of this rule, the third party may disclose the information only:

(a) To the licensee's affiliates;

(b) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(c) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

R590-206-14. Limits on Sharing Account Number Information for Marketing Purposes.

(1) General prohibition on disclosure of account numbers. A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

(2) Exceptions. R590-206-14(1) does not apply if a licensee discloses a policy number or similar form of access number or access code:

(a) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

(b) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

(c) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(3) Examples.

(a) Policy number. A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(b) Policy or transaction account. For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

R590-206-15. Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for

Service Providers and Joint Marketing.

(1) General rule.

(a) The opt out requirements in Sections 8 and 12 do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

(i) Provides the initial notice in accordance with Section 5; and

(ii) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Sections 16 and 17 in the ordinary course of business to carry out those purposes.

(b) Example. If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of Subsection R590-206-15(1)(a)(ii) if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in Sections 16 and 17 in the ordinary course of business to carry out that joint marketing.

(2) Service may include joint marketing. The services a nonaffiliated third party performs for a licensee under Subsection R590-206-15(1) may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.

(3) Definition of "joint agreement." For purposes of this section, "joint agreement" means a written contract pursuant to which a licensee and one or more financial institutions jointly offer, endorse or sponsor a financial product or service.

R590-206-16. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions.

(1) Exceptions for processing transactions at consumer's request. The requirements for initial notice in Subsection R590-206-5(1)(b), the opt out in Sections 8 and 12, and service providers and joint marketing provisions in Section 15 do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:

(a) Servicing or processing an insurance product or service that a consumer requests or authorizes;

(b) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;

(c) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or

(d) Reinsurance or stop loss or excess loss insurance.

(2) "Necessary to effect, administer or enforce a transaction" means that the disclosure is:

(a) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(b) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's producer;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;

(v) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits, including utilization review activities, participating in research projects or as otherwise required or specifically permitted by federal or state law; or

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

(B) The transfer of receivables, accounts or interests therein; or

(C) The audit of debit, credit or other payment information.

R590-206-17. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information.

(1) Exceptions to opt out requirements. The requirements for initial notice to consumers in Subsection R590-206-5(1)(b), the opt out in Sections 8 and 12, and service providers and joint marketing in Section 15 do not apply when a licensee discloses nonpublic personal financial information:

(a) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(b)(i) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;

(ii) To protect against or prevent actual or potential fraud or unauthorized transactions;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(c) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;

(d) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21, Financial Record keeping, a state insurance authority, and the Federal Trade Commission), self-regulatory organizations or for an investigation on a matter related to public safety;

(e)(i) To a consumer reporting agency in accordance with

the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or

(ii) From a consumer report reported by a consumer reporting agency;

(f) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

(g)(i) To comply with federal, state or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or

(h) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation policy.

(2) A licensed or admitted insurer that is the subject of a formal delinquency proceeding under Sections 31A-27a-207, 31A-27a-301 and 31A-27a-401, is not subject to the requirements of R590-206-5(1)(b), the opt out in Sections (8) and (12), and other notice requirements of this rule.

(3) Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under Subsection R590-206-8(6).

R590-206-18. When Authorization Required for Disclosure of Nonpublic Personal Health Information.

(1) General Rule. A licensee shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is sought to be disclosed.

(2) Exceptions. Nothing in this section shall prohibit, restrict or require an authorization for the disclosure of nonpublic personal health information by a licensee for the performance of the following insurance functions by or on behalf of the licensee: claims administration; claims adjustment and management; detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity; underwriting; policy placement or issuance; loss control; ratemaking and guaranty fund functions; reinsurance and excess loss insurance; risk management; case management; disease management; quality assurance; quality improvement; performance evaluation; provider credentialing verification; utilization review; peer review activities; actuarial, scientific, medical or public policy research; grievance procedures; internal administration of compliance, managerial, and information systems; policyholder service functions; auditing; reporting; database security; administration of consumer disputes and inquiries; external accreditation standards; the replacement of a group benefit plan or workers compensation policy or program; activities in connection with a sale, merger, transfer or exchange of all or part of a business or operating unit; any activity that permits disclosure without authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rules promulgated by the U.S. Department of Health and Human Services; disclosure that is required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes; and any activity otherwise permitted by law, required pursuant to governmental reporting authority, or to comply with legal process. Additional insurance functions may be added with the approval of the commissioner to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers.

R590-206-19. Authorizations.

(1) A valid authorization to disclose nonpublic personal health information pursuant to Sections 18 through 22 shall be in written or electronic form and shall contain all of the following:

(a) The identity of the consumer or customer who is the subject of the nonpublic personal health information;

(b) A general description of the types of nonpublic personal health information to be disclosed;

(c) General descriptions of the parties to whom the licensee discloses nonpublic personal health information, the purpose of the disclosure and how the information will be used;

(d) The signature of the consumer or customer who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed; and

(e) Notice of the length of time for which the authorization is valid and that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.

(2) An authorization for the purposes of Sections 18 through 22 shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than 24 months.

(3) A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to Sections 18 through 22 at any time, subject to the rights of an individual who acted in reliance on the authorization prior to notice of the revocation.

(4) A licensee shall retain the authorization or a copy thereof in the record of the individual who is the subject of nonpublic personal health information.

R590-206-20. Authorization Request Delivery.

A request for authorization and an authorization form may be delivered to a consumer or a customer as part of an opt-out notice pursuant to Section 11, provided that the request and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or customer or included in any other notices unless the licensee intends to disclose protected health information pursuant to Subsection R590-206-18(1).

R590-206-21. Relationship to Federal Rules.

Irrespective of whether a licensee is subject to the federal Health Insurance Portability and Accountability Act privacy rule as promulgated by the U.S. Department of Health and Human Services, as published in the Federal Register November 3, 1999 (64 Fed. Reg. 59918-60065), the "federal rule", if a licensee complies with all requirements of the federal rule except for its effective date provision, the licensee shall not be subject to Sections 18 through 22.

R590-206-22. Relationship to State Laws.

Nothing in Sections 18 through 22 shall preempt or supersede existing state law related to medical records, health or insurance information privacy.

R590-206-23. Protection of Fair Credit Reporting Act.

Nothing in this rule shall be construed to modify, limit or supersede the operation of the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), and no inference shall be drawn on the basis of the provisions of this rule regarding whether information is transaction or experience information under Section 603 of that Act.

R590-206-24. Nondiscrimination.

(1) A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this rule.

(2) A licensee shall not unfairly discriminate against a consumer or customer because that consumer or customer has not granted authorization for the disclosure of his or her nonpublic personal health information pursuant to the provisions of this rule.

R590-206-25. Violation.

Pursuant to Section 31A-23a-402, the commissioner finds that the failure to observe the requirements of this rule is misleading to the public and individuals transacting business with licensees of the department or any person or individual who should be licensed by the department. The failure to observe the requirements of this rule is also an unreasonable restraint on competition.

Violation of any provisions of the rule will result in appropriate enforcement action by the department which may include forfeiture, penalties, and revocation of license.

R590-206-26. Severability.

If any provision of this rule or its application to any person or shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance law
July 11, 2017 **31A-2-201**
Notice of Continuation June 15, 2016 **31A-2-202**
31A-25-317
15 U.S.C. 6805

R590. Insurance, Administration.
R590-241. Rule to Recognize the Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities.
R590-241-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3) and 31A-17-402(1).

R590-241-2. Purpose and Scope.

(1) The purpose of this rule is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between Preferred and Standard lives in determining minimum reserve liabilities in accordance with Sections 31A-17-504 and R590-198-5.

(2) This rule shall apply to all life insurance companies and fraternal benefit societies doing business in this State and to all life insurance companies and fraternal benefit societies which are authorized to reinsure life insurance business in this State.

R590-241-3. Definitions.

(1) "2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC, 2nd Quarter 2002 and is supplemented by the 2001 CSO Preferred Class Structure Mortality Table defined below in Subsection (2). Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. Mortality tables in the 2001 CSO Mortality Table include the following:

(a) "2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

(b) "2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

(c) "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

(d) "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

(2) "2001 CSO Preferred Class Structure Mortality Table" means mortality tables with separate rates of mortality for Super Preferred Nonsmokers, Preferred Nonsmokers, Residual Standard Nonsmokers, Preferred Smokers, and Residual Standard Smoker splits of the 2001 CSO Nonsmoker and Smoker tables as adopted by the NAIC at the September 2006 national meeting and published in the Proceedings of the NAIC, 3rd Quarter 2006. Unless the context indicates otherwise, the "2001 CSO Preferred Class Structure Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table. It includes both the smoker and nonsmoker mortality tables. It includes both the male and female mortality tables and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table.

(3) The tables identified in Subsections R590-241-3(1) and R590-241-3(2) are hereby incorporated by reference within this rule and are available for public inspection at the Insurance Department during normal business hours.

(4) "Statistical agent" means an entity with proven systems for protecting the confidentiality of individual insured and insurer information; demonstrated resources for and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers; and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner.

R590-241-4. 2001 CSO Preferred Class Structure Table.

At the election of the company, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this rule, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007. No such election shall be made until the company demonstrates that at least 20% of the business to be valued on this table is in one or more of the preferred classes. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation.

R590-241-5. Conditions.

(1) For each plan of insurance with separate rates for Preferred and Standard Nonsmoker lives, an insurer may use the Super Preferred Nonsmoker, Preferred Nonsmoker, and Residual Standard Nonsmoker tables to substitute for the Nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the Residual Standard Nonsmoker Table, the appointed actuary shall certify that:

(a) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(b) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(2) For each plan of insurance with separate rates for Preferred and Standard Smoker lives, an insurer may use the Preferred Smoker and Residual Standard Smoker tables to substitute for the Smoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the Preferred Smoker Table, the appointed actuary shall certify that:

(a) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basic table.

(b) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basic table.

(3) Unless exempted by the commissioner, every authorized insurer using the 2001 CSO Preferred Class Structure Table shall annually file with the commissioner or, at the direction of the commissioner, with the NAIC or with a statistical agent designated by the NAIC and acceptable to the commissioner, statistical reports showing mortality and such other information as the commissioner may deem necessary or

expedient for the administration of the provisions of this rule. The form of the reports shall be established by the commissioner or the commissioner may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the commissioner.

R590-241-6. Severability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected.

KEY: life insurance mortality tables
August 8, 2007 31A-2-201
Notice of Continuation July 12, 2017 31A-17-402

R590. Insurance, Administration.
R590-264. Property and Casualty Actuarial Opinion Rule.
R590-264-1. Authority.

This rule is promulgated pursuant to the general rulemaking authority vested in the commissioner by Section 31A-2-201, and pursuant to the specific authority of Section 31A-4-113.

R590-264-2. Scope.

This rule applies to all property and casualty insurance companies doing business in this state.

R590-264-3. Purpose.

The purpose of this rule is:

1. Require all property and casualty companies doing business in Utah to prepare annually an Actuarial Opinion Summary providing details of the analysis performed by the Appointed Actuary.

2. Require all property and casualty companies domiciled in Utah to file the Actuarial Opinion Summary with the Utah Insurance commissioner.

3. Allow property and casualty companies doing business in Utah the ability to request confidentiality for the Actuarial Opinion Summary.

R590-264-4. Definitions.

In addition to the definitions in 31A-1-301 the following definitions shall apply for the purposes of this rule.

(1) "Appointed Actuary" means a qualified actuary appointed by the insurance company's board of directors or its equivalent, or by a committee of the board, to provide actuarial opinion to be filed with the company's annual statement.

(2) "Qualified Actuary" means:

(a) a member of the Casualty Actuarial Society; or

(b) a member of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserves opinions by the Casualty Practice Council of the American Academy of Actuaries.

(3) "Statement of the Actuarial Opinion" means a statement prepared by the Appointed Actuary

(a) setting forth the actuary's opinion relating to the company's reserves; and

(b) prepared in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions.

R590-264-5. Actuarial Opinion Summary.

(1) Every property and casualty insurance company domiciled in this states that is required to submit a Statement of Actuarial Opinion shall annually file with the commissioner an Actuarial Opinion Summary, prepared and signed by the company's Appointed Actuary.

(2) This Actuarial Opinion Summary shall be prepared in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions and shall be considered as a document supporting the Actuarial Opinion.

(3) A property and casualty insurance company licensed but not domiciled in this state shall provide the Actuarial Opinion Summary upon request.

R590-264-6. Actuarial Report.

(1) Each Statement of Actuarial Opinion submitted annually by a property and casualty insurance company shall be supported by an Actuarial Report prepared and signed by the company's Appointed Actuary.

(2) The Actuarial Report required by R590-264-5(1) shall be:

(a) prepared in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions; and

(b) be available to the commissioner upon request.

(3) The commissioner may engage a qualified actuary at the expense of the company to review the Actuarial Opinion and the basis for the opinion, and prepare, if requested, the supporting Actuarial Report or work papers if:

(a) the insurance company fails to provide an Actuarial Report upon request of the commissioner; or

(b) the commissioner determines that the Actuarial Report provided by the company is otherwise unacceptable to the commissioner.

R590-264-7. Confidentiality.

(1) A property and casualty insurance company filing an Actuarial Opinion Summary with the commissioner shall, at the time of the filing, request that all or a part of the Actuarial Opinion Summary it deems confidential be classified as a protected record under Section 63G-2-305(1) or 63G-2-305(2).

(2) A company making a confidentiality claim under R590-264-6(1) shall provide the commissioner with the filing information specified in Section 63G-2-309.

R590-264-8. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-264-9. Enforcement Date.

The commissioner will begin enforcing this rule on the effective date of this rule.

R590-264-10. 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: property casualty insurance
July 13, 2012 31A-2-201
Notice of Continuation July 12, 2017 31A-4-113

R597. Judicial Performance Evaluation Commission, Administration.
R597-2. Administration of the Commission.
R597-2-1. Internal Operating Procedures.

(1) The commission may adopt procedures governing internal operations relating to judicial performance evaluation and meeting protocol, consistent with state statute and these rules.

(2) Proposed amendments to internal operating procedures shall be submitted in writing to all members of the commission in advance of the next regular meeting, at which time a majority of the commission is required for the adoption of the amendment. Amendments become effective immediately upon ratification.

R597-2-2. Disclosure, Recusal, and Disqualification.

(1) Disclosure.

(a) Commissioners shall make disclosures at the monthly commission meeting prior to the first scheduled meeting at which the retention evaluation reports for a given class of judges will be discussed or, in any event, no later than the beginning of the meeting at which a particular judge's evaluation is considered.

(b) Each commissioner shall disclose to the commission any professional or personal relationship or conflict of interest with a judge that may affect an unbiased evaluation of the judge.

(c) Relationships that may affect an unbiased evaluation of the judge include any contact or association that might influence a commissioner's ability to fairly and reasonably evaluate the performance of any judge or to assess that judge without bias or prejudice, including but not limited to:

(i) family relationships to a state, municipal, or county judge within the third degree (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);

(ii) any business relationship between the commissioner and the judge.

(iii) any personal litigation directly or indirectly involving the judge and the commissioner, the commissioner's family or the commissioner's business;

(d) A commissioner exhibits bias or prejudice when the commissioner is predisposed to decide a cause or an issue in a way that does not leave the commissioner's mind open to exercising the commissioner's duties impartially in a particular case.

(e) Disclosures made with respect to a judge subject to evaluation constitute a protected record pursuant to Subsection 78A-12-203(5)(e).

(2) Recusal.

(a) As used in this rule, recusal is a voluntary act of self-disqualification by a commissioner.

(b) Recusal encompasses exclusion both from participating in the commission's evaluation of judge and from voting on whether to recommend the judge for retention.

(c) After making a disclosure, a commissioner may voluntarily recuse if the commissioner believes the relationship with the judge will affect an unbiased evaluation of the judge.

(3) Disqualification.

(a) A commissioner may move to vote on the disqualification of another commissioner if:

(i) the other commissioner makes a disclosure and does not voluntarily recuse, and that commissioner's impartiality might reasonably be questioned; or

(ii) the other commissioner does not make a disclosure, but known circumstances suggest that the commissioner's impartiality might reasonably be questioned.

(b) A commissioner may not be disqualified from voting on whether to recommend that the voters retain a judge solely because the member appears before the judge as an attorney, a fact witness, or an expert, pursuant to Subsection 78A-12-203(5)(e)(i).

(c) A motion to disqualify must be seconded in order to proceed.

(d) During the discussion concerning possible disqualification, any commissioner may raise any facts concerning another commissioner's ability to fairly and reasonably evaluate the performance of any judge without bias or prejudice.

(e) A two-thirds vote of those present is required to disqualify any commissioner.

(f) Disqualification encompasses exclusion both from participating in the commission's evaluation of a judge and from voting on whether to recommend the judge for retention.

R597-2-3. Reporting Improper Attempts to Influence.

A commissioner shall report to the executive committee any form of communication that attempts to influence the evaluation process by improper means, including but not limited to undue pressure, duress, or coercion.

R597-2-4. Confidentiality.

(1) The commission enacts this rule to avoid the risk of inconsistent statements by commissioners and to maintain the credibility of the commission and the integrity of its work product.

(2) Only the commission's designated spokesperson may publicly discuss the evaluation of any particular judge or justice.

(3) No commissioner may publicly advocate for or against the retention of any particular judge or justice.

(4) Notwithstanding other provisions of this subsection, commissioners may publicly discuss the evaluation process, including but not limited to discussion of respondent groups, survey instruments, and the operation of the commission.

KEY: internal operating procedures, reporting improper attempts to influence, conflicts of interest, confidentiality
July 10, 2017 78A-12-201 through 78A-12-206
Notice of Continuation April 13, 2015

R597. Judicial Performance Evaluation Commission, Administration.
R597-3. Judicial Performance Evaluations.
R597-3-1. Evaluation Cycles.

(1) For judges not serving on the supreme court:

(a) The mid-term evaluation cycle. Except as provided in subsection (3) the mid-term evaluation cycle begins upon the appointment of the judge or on the first Monday in January following the retention election of the judge and ends on September 30th of the third year preceding the year of the judge's next retention election.

(b) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends on September 30th of the year preceding the year of the judge's next retention election.

(2) For justices serving on the supreme court:

(a) The initial evaluation cycle. The initial evaluation cycle begins upon the appointment of the justice or on the first Monday in January following the retention election of the justice and ends on September 30th of the seventh year preceding the year of the justice's next retention election.

(b) The mid-term evaluation cycle. The mid-term evaluation cycle begins the day after the initial evaluation cycle is finished and ends on September 30th of the third year preceding the year of the justice's next retention election.

(c) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends on September 30th of the year preceding the year of the justice's next retention election.

(3) Timing of evaluations within cycles. In order to allow judges time to incorporate feedback from midterm evaluations into their practices, no evaluations shall be conducted during the first six months of the retention cycle.

R597-3-2. Survey.

(1) General provisions.

(a) All surveys shall be conducted according to the evaluation cycles described in R597-3-1, supra.

(b) The commission may provide a partial midterm evaluation to any judge whose appointment date precludes the collection of complete midterm evaluation data.

(c) The commission shall post on its website the survey questionnaires upon which the judge shall be evaluated at the beginning of the survey cycle.

(d) The commission may select retention survey questions from among the midterm survey questions.

(e) Periodically, reviews may be conducted to ensure compliance with administrative rules governing the survey process.

(f) The commission may consider narrative survey comments that cannot be reduced to a numerical score.

(g) Surveys shall be distributed by the third-party contractor engaged by the commission to conduct the survey. The contractor shall determine the maximum number of survey requests sent to a respondent, but in no event shall any respondent receive more than nine survey requests.

(2) Respondent Classifications

(a) Attorneys

(i) Identification of survey respondents. Within 10 business days of the end of the evaluation cycle, the clerk for the judge or the Administrative Office of the Courts shall identify as potential respondents all attorneys who have appeared before the judge who is being evaluated at a minimum of one hearing or trial during the evaluation cycle. Attorneys who have been confirmed as judges during the evaluation cycle shall be excluded from the attorney pool.

(ii) Number of survey respondents.

(A) For each judge who is the subject of a survey, the surveyor shall identify the number of attorneys most likely to produce a response level yielding reliability at a 95% confidence level with a margin of error of +/- 5%.

(B) In the event that the attorney appearance list from the Administrative Office of the Courts contains an insufficient number of attorneys with one trial appearance or at least three total appearances before the evaluated judge to achieve the required confidence level, then the surveyor shall supplement the survey pool with other attorneys who have appeared before the judge during the evaluation cycle.

(iii) Sampling. The surveyor shall design the survey to comply with generally-accepted principles of surveying. All attorneys with one trial appearance or at least three total appearances before the evaluated judge shall be surveyed.

(b) Jurors

(i) Identification and number of survey respondents. All jurors who participate in deliberation shall be eligible to receive an online juror survey.

(ii) Distribution of surveys. Prior to the jury being dismissed, the bailiff or clerk in charge of the jury shall collect email addresses from all jurors. If email addresses are not available, street addresses shall be collected. The bailiff or clerk shall transmit all such addresses to the surveyor within 24 hours of collection. The surveyor shall administer the survey online and deliver survey results electronically to each judge. Paper surveys may be sent to those jurors who do not have access to email.

(c) Court Staff

(i) Definition of court staff who have worked with the judge. Court staff who have worked with the judge refers to employees of the judiciary who have regular contact with the judge as the judge performs judicial duties and also includes those who are not employed by the judiciary but who have ongoing administrative duties in the courtroom.

(ii) Identification of survey respondents. Court staff who have worked with the judge include, but are not limited to:

(A) judicial assistants;
(B) case managers;
(C) clerks of court;
(D) trial court executives;
(E) interpreters;
(F) bailiffs;
(G) law clerks;
(H) central staff attorneys;
(I) juvenile probation and intake officers;
(J) other courthouse staff, as appropriate;
(K) Administrative Office of the Courts staff.

(d) Juvenile Court Professionals

(i) Definition of juvenile court professional. A juvenile court professional is someone whose professional duties place that individual in court on a regular and continuing basis to provide substantive input to the court.

(ii) Identification of survey respondents. Juvenile court professionals shall include, where applicable:

(A) Division of Child and Family Services ("DCFS") child protection services workers;

(B) Division of Child and Family Services ("DCFS") case workers;

(C) Juvenile Justice Services ("JJS") Observation and Assessment Staff;

(D) Juvenile Justice Services ("JJS") case managers;

(E) Juvenile Justice Services ("JJS") secure care staff;

(F) Others who provide substantive professional services on a regular basis to the juvenile court.

(iii) Beginning with juvenile court judges standing for retention in 2014, juvenile court professionals shall be included as an additional survey respondent group for both the midterm and retention evaluation cycles.

(3) Anonymity and Confidentiality

(a) Definitions

(i) Anonymous.

(A) "Anonymous" means that the identity of the individual who authors any survey response, including comments, will be protected from disclosure.

(B) The independent contractor conducting the surveys shall provide to the commission all written comments from the surveys, redacted to remove any information that identifies the person commenting. The contractor shall also redact any information that discloses the identity of any crime victims referenced in a written comment.

(C) The submission of a survey form containing an anonymous narrative comment does not preclude any survey respondent from submitting a public comment in writing pursuant to the Judicial Performance Evaluation Commission Act.

(ii) Confidentiality: Confidentiality means information obtained from a survey respondent that the respondent may reasonably expect will not be disclosed other than as indicated in the survey instrument.

(iii) The raw form of survey results consists of quantitative survey data that contributes to the minimum score on the judicial performance survey.

(iv) The summary form of survey results consists of quantitative survey data in aggregated form.

R597-3-3. Courtroom Observation.

(1) General Provisions.

(a) Courtroom observations shall be conducted according to the evaluation cycles described in R597-3-1(1) and (2), supra.

(b) The commission shall provide notice to each judge at the beginning of the survey cycle of the courtroom observation process and of the instrument to be used by the observers.

(c) Only the content analysis of the individual courtroom observation reports shall be included in the retention report for each judge.

(2) Courtroom Observers.

(a) Selection of Observers

(i) Courtroom observers shall be volunteers, recruited by the commission through public outreach and advertising.

(ii) Courtroom observers shall be selected by the commission staff, based on written applications and an interview process.

(iii) Courtroom observers, though volunteers, may be eligible to receive compensation in exchange for successful completion of a specified amount of additional courtroom observation work.

(b) Selection Criteria. Observers with a broad and varied range of life experiences shall be sought. The following persons shall be excluded from eligibility as courtroom observers:

(i) persons with a professional involvement with the state court system, the justice courts, or the judge;

(ii) persons with a fiduciary relationship with the judge;

(iii) persons within the third degree of relationship with a state or justice court judge (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);

(iv) persons lacking computer access or basic computer literacy skills;

(v) persons currently involved in litigation in state or justice courts;

(vi) convicted felons;

(vii) persons whose background or experience suggests they may have a bias that would prevent them from objectively serving in the program.

(c) Terms and Conditions of Service

(i) Courtroom observers shall serve at the will of the commission staff.

(ii) Courtroom observers shall not disclose the content of their courtroom evaluations in any form or to any person except as designated by the commission.

(d) Training of Observers

(i) Courtroom observers must satisfactorily complete a training program developed by the commission before engaging in courtroom observation.

(ii) Elements of the training program shall include:

(A) Orientation and overview of the commission process and the courtroom observation program;

(B) Classroom training addressing each level of court;

(C) In-court group observations, with subsequent classroom discussions, for each level of court;

(D) Training on proper use of observation instrument;

(E) Training on confidentiality and non-disclosure issues;

(F) Such other periodic trainings as are necessary for effective observations.

(3) Courtroom Observation Program.

(a) Courtroom Requirements

(i) During each midterm and retention evaluation cycle, a minimum of four different observers shall observe each judge subject to that evaluation cycle.

(ii) Each observer shall observe each judge in person while the judge is in the courtroom and for a minimum of two hours while court is in session. The observations may be completed in one sitting or over several courtroom visits.

(iii) If a judge sits in more than one geographic location at the judge's appointed level or a justice court judge serves in more than one jurisdiction, the judge may be observed in any location or combination of locations in which the judge holds court.

(iv) When the observer completes the observation of a judge, the observer shall complete the observation instrument, which will be electronically transferred to the commission or the third party contractor for processing.

(b) Travel and Reimbursement

(i) All travel must be preapproved by the executive director.

(ii) All per diem and lodging will be reimbursed, when appropriate, in accordance with Utah state travel rules and regulations.

(iii) Travel reimbursement forms shall be submitted on a monthly basis or whenever the observer has accumulated a minimum of 200 miles of travel.

(iv) Travel may be reimbursed only after the observer has satisfactorily completed and successfully submitted the courtroom observation report for which the reimbursement is sought.

(v) Overnight lodging

(A) Overnight lodging is reimbursable when the courtroom is located over 100 miles from home base and court is scheduled to begin before 9:30 a.m., with any exceptions preapproved by commission staff.

(B) Multiple overnight lodging is reimbursable where the commission staff determines it is cost-effective to observe several courtrooms in a single trip.

(vi) Each courtroom observer must provide a social security number or tax identification number to the commission in order to process state reimbursement.

(4) Principles and Standards used to evaluate the behavior observed.

(a) Procedural fairness, which focuses on the treatment judges accord people in their courts, shall be used to evaluate the judicial behavior observed in the courtroom observation program.

(b) To assess a judge's conduct in court with respect to procedural fairness, observers shall respond in narrative form to the following principles and behavioral standards:

(i) Neutrality, including but not limited to:

(A) displaying fairness and impartiality toward all court participants;

(B) acting as a fair and principled decision maker who applies rules consistently across court participants and cases;

(C) explaining transparently and openly how rules are applied and how decisions are reached.

(D) listening carefully and impartially;

(ii) Respect, including but not limited to:

(A) demonstrating courtesy toward attorneys, court staff, and others in the court;

(B) treating all people with dignity;

(C) helping interested parties understand decisions and what the parties must do as a result;

(D) maintaining decorum in the courtroom.

(E) demonstrating adequate preparation to hear scheduled cases;

(F) acting in the interests of the parties, not out of demonstrated personal prejudices;

(G) managing the caseflow efficiently and demonstrating awareness of the effect of delay on court participants;

(H) demonstrating interest in the needs, problems, and concerns of court participants.

(iii) Voice, including but not limited to:

(A) giving parties the opportunity, where appropriate, to give voice to their perspectives or situations and demonstrating that they have been heard;

(B) behaving in a manner that demonstrates full consideration of the case as presented through witnesses, arguments, pleadings, and other documents.

(C) attending, where appropriate, to the participants' comprehension of the proceedings.

(c) Courtroom observers may also be asked questions to help the commission assess the overall performance of the judge with respect to procedural fairness.

R597-3-4. Minimum Performance Standards.

(1) In addition to the minimum performance standards specified by statute or administrative rule, the judge shall:

(a) Demonstrate by a preponderance of the evidence, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for court participants.

(b) Meet all performance standards established by the Judicial Council, including but not limited to:

(i) annual judicial education hourly requirement;

(ii) case-under-advisement standard; and

(iii) physical and mental competence to hold office.

(2) No later than October 1st of the year preceding each general election year, the Judicial Council shall certify to the commission whether each judge standing for retention election in the next general election has satisfied its performance standards.

R597-3-5. Public Comments.

(1) Persons desiring to comment about a particular judge with whom they have had experience may do so at any time, either by submitting such comments on the commission website or by mailing them to the executive director.

(2) In order for the commission to consider comments in making its retention recommendation on a particular judge, comments about that judge must be received no later than March 1st of the year in which the judge's name appears on the ballot.

(3) Comments received after March 1st of the year in which the judge's name appears on the ballot will be included as part of the judge's mid-term evaluation report in the subsequent evaluation cycle.

(4) Comments received about a judge after the mid-term evaluation cycle ends will be included in the judge's next retention evaluation report.

(5) Persons submitting comments pursuant to this section must include their full name, address, and telephone number with the submission.

R597-3-6. Judicial Retirements and Resignations.

(1) For purposes of judicial performance evaluation, the commission shall evaluate each judge until the judge:

(a) provides written notice of resignation or retirement to the Governor;

(b) is removed from office;

(c) otherwise vacates the judicial office; or

(d) fails to properly file for retention.

(2) For judges who provide written notice of resignation or retirement after a retention evaluation has been conducted but before it is distributed, the retention evaluation shall be sent to the Judicial Council.

R597-3-7. Publication of Retention Reports.

No later than three months after the filing deadline for a retention election, the commission shall post on its website the retention reports of all judges who have filed for that election.

R597-3-8. Judicial Written Statements.

If, pursuant to Utah Code Ann. Subsection 78A-12-206(3), a judge is eligible to provide a written statement to be included in the judge's evaluation report, the statement shall be due to commission staff, in writing, no later than one week after the deadline for the judge to file a declaration of the judge's candidacy in the retention election.

R597-3-9. Judicial Discipline.

(1) For the purposes of judicial performance evaluation and pursuant to Utah Code Ann. Section 78A-12-205, the commission shall consider any public sanction of a judge issued by the Supreme Court during the judge's current term, including:

(a) During the judge's midterm and retention evaluation cycles and

(b) After the end of the judge's retention evaluation cycle until the commission votes whether to recommend the judge for retention.

KEY: judicial performance evaluations, judges, evaluation cycles, surveys
July 10, 2017 78A-12
Notice of Continuation February 17, 2014

R651. Natural Resources, Parks and Recreation.
R651-603. Animals.
R651-603-1. Pets.

(1) All pets are prohibited in park areas unless caged, or physically controlled on a six foot maximum leash, or confined to the inside of a vehicle.

(2) Pet owners are responsible for picking up and properly disposing of all fecal matter deposited by their pets/animals within the park area.

R651-603-2. Animal Exclusions.

All animals are prohibited from public buildings, bathing beaches and adjacent waters, eating places and any other trails or locations posted closed to pets within the park system, except for guide or service dogs as authorized by Section 62A-5b-104.

R651-603-3. Unattended Animal.

Leaving any animal unattended is prohibited except by permit.

R651-603-4. Dangerous Animals.

Vicious, dangerous, or noisy animals of any kind are prohibited within the park system.

R651-603-5. Wildlife.

Feeding, touching, teasing, molesting, or intentionally disturbing any wildlife is prohibited except as approved for authorized hunting and trapping activities (see R651-614).

R651-603-6. Hitching or Tying Animals.

Hitching or tying an animal to any tree, shrub or structure in a manner that may cause damage or block or restrict foot or vehicular traffic is prohibited.

R651-603-7. Horse Use on Trails.

Horses and other saddle or pack animals are prohibited on developed trails and routes not posted open for their use.

R651-603-8. Horse Use Within a Park.

Horse and other saddle or pack animals are prohibited from all campgrounds, picnic areas and other areas of public gatherings except where trails and facilities are specifically designed and posted for such use.

KEY: parks
July 25, 2017 **79-4-304**
Notice of Continuation June 25, 2013 **79-4-501**

R651. Natural Resources, Parks and Recreation.
R651-606. Camping.
R651-606-1. Permit Required for Camping in Undeveloped Areas.

No person shall camp in undeveloped locations of a park area without proper permit.

R651-606-2. Reserved Campsites May Not Be Taken.

No person shall occupy or otherwise use a campsite when it is occupied or reserved for another person.

R651-606-3. Maximum Occupancy of Campsites.

Unless authorized by a park representative, individual campsites shall not be occupied by more than two vehicles and eight persons.

R651-606-4. Payment Required Before Occupancy of Campsite.

No person shall occupy camping facilities prior to payment of required fees.

R651-606-5. Time-Limit in Campsite May Not Be Exceeded.

Camping is limited to 14 consecutive days at all campgrounds except for designated long-term campsites where a long-term camping agreement has been signed by the occupant and the park manager.

R651-606-6. Use of Showers.

Showers may only be used by campers with camping or shower authorization permits and only in accordance with posted restrictions.

R651-606-7. Camping Only in Designated Areas.

All persons shall park or camp only in areas designated for those purposes.

R651-606-8. Time by Which Campsites Shall Be Vacated.

All persons shall vacate the campsite by 2:00 p.m. of the last day of the camp permit.

R651-606-9. Clean-up of Campsite Required.

All persons shall remove all personal property, debris and litter prior to departing the site.

R651-606-10. Quiet Hours.

No person shall operate or allow the operation of a generator, audio device; make or allow the making of unreasonable noises from 10:00 p.m. to 7:00 a.m., except in the following area(s): Coral Pink Sand Dunes State Park, which shall be from 10:00 p.m. to 9:00 a.m.

KEY: parks
July 25, 2017 **79-4-501**
Notice of Continuation June 27, 2013

R651. Natural Resources, Parks and Recreation.
R651-633. Special Closures or Restrictions.
R651-633-1. Emergency Closures or Restrictions.

No person shall be in a closed area or participate in a restricted activity which has been posted by the park manager to protect public safety or park resources.

R651-633-2. General Closures or Restrictions.

Persons are prohibited from being in a closed area or participating in a restricted activity as listed for the following park areas:

(1) Coral Pink Sand Dunes State Park - Motorized vehicle use is prohibited in the non-motorized area of the sand dunes, except for limited and restricted access through the travel corridor;

(2) Dead Horse State Park - Hang gliding, para gliding and B.A.S.E. jumping is prohibited;

(3) Deer Creek State Park - Dogs are prohibited below high water line and in or on the reservoir except for guide or service dogs as authorized by Section 62A-5b-104;

(4) Jordanelle State Park - Dogs are prohibited in the Rock Cliff area except for the Perimeter Trail and designated parking areas except for guide or service dogs as authorized by Section 62A-5b-104;

(5) Snow Canyon State Park -

(a) All hiking and walking in the park is limited to roadways, designated trails and slick rock areas and the Sand Dunes area,

(b) The last half-mile of the Johnson Canyon Trail is closed annually from March 15 through September 14 except by permit or guided walk; this portion of trail is open from September 15 through March 14.

(c) Black Rocks Canyon is closed annually from March 15 to June 30,

(d) West Canyon climbing routes are closed annually from February 1 to June 1.

(e) Dogs are prohibited on all trails and natural areas of the park unless posted open, except for guide or service dogs as authorized by Section 62A-5b-104.

(f) Hang gliding, para gliding and B.A.S.E. jumping is prohibited.

KEY: parks
July 25, 2017 **79-4-203**
Notice of Continuation July 5, 2013 **79-4-304**
79-4-501

R657. Natural Resources, Wildlife Resources.
R657-28. Use of Division Lands.
R657-28-1. Purpose and Authority.

(1) Pursuant to Utah Code Section 23-14-8 and Section 23-21-2.1, this rule defines:

(a) lawful uses and activities on division lands; and

(b) the application procedures and administration on division lands for rights-of-way; grazing permits; agricultural leases; leases; special use permits; seed harvesting; wood products removal; water uses; and sand, gravel, and cinder extraction.

(2) The division may approve a land use only if, in the opinion of the division, such use does not unreasonably conflict with the intended use of the land or is not detrimental to wildlife or wildlife habitat; and the impacts can be avoided, minimized, rectified, or compensated.

(3) The division may not authorize a land use under this rule without first obtaining the approval of the persons or entities, if any, holding contractual or proprietary interests in the subject property.

(4) Nothing in this rule shall prevent the division from closing division lands to public-use or activity if the division determines that the disturbance from the use or activity is detrimental to wildlife or wildlife habitat.

(5) The division's habitat section is primarily responsible for the management responsibilities of division lands and waters, including the processing of all contracts, permits, and other agreements.

R657-28-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Agricultural lease" means any lease given for purposes of cultivating crops of any kind.

(b) "Christmas tree" means any pinyon or juniper tree; or other species that the division may so designate on a subject property; or any part thereof cut and removed from the place where it was grown, without the foliage being removed.

(c) "Commercial gain" means compensation in money, services, or other valuable consideration as part of a scheme or effort to generate income or financial advantage.

(d) "Compensatory Mitigation" means the replacement or substitution of resources or environments cumulatively impacted by a proposed action or cumulative proposed actions.

(e) "Cord" means a unit of cut firewood equal to a stack 4x4x8 feet or 128 cubic feet.

(f) "Division lands" means all land and waters owned by the division, or managed by the division under written agreement. When lands or waters owned by other parties are managed by the division under written agreement, and the terms of the agreement conflict with this Rule, the agreement shall govern.

(g) "Firewood" means any portion of a dead and fallen tree not included in any other definition of this section.

(h) "Grassbank" means forage reserved on a particular division property to be used as in-kind trade for conservation actions on public or private lands, emergency forage for division grazing permittees, or any other purpose designated by the division.

(i) "In-Kind Compensation" means anything paid or given in goods, commodities, or services in lieu of money, that is done on, affixed to, invested in, or beneficial to division property for the purpose of wildlife habitat maintenance or improvement, or other wildlife-related projects.

(j) "Lease" means an agreement that authorizes use of division land for a specified term, purpose, and for a specified fee or in-kind compensation, or a combination thereof.

(k) "Livestock Operator" means any individual or entity that owns or manages domestic livestock.

(l) "Organized Event" means any event in which registration fees are collected, commercial gain may occur, prizes are awarded for competition, an enrollment or participation list is created, or a group is assembled as part of a club or organizational activity.

(m) "Ornamental" means any coniferous or deciduous tree that is less than 20 feet in height and has a trunk of no more than 6 inches in diameter at breast height, which is removed from a natural setting, generally with roots attached, for transplant to a different location.

(n) "Post" means a portion of a tree or tree stem, generally a Utah juniper, which is less than 10 feet in length and 6 inches in tip diameter.

(o) "Right-of-way Lease" means a lease for an easement or right-of-way for a specific use of division land including, but not limited to, utilities, telecommunications structures, transmission lines, canals, ditches, pipelines, tunnels, fences, roads, and trails.

(p) "Sand, Gravel, Cinders, and Ornamental Rock" means common varieties of sand, gravel, volcanic cinder, or ornamental rock separate and distinct from the mineral estate on division lands.

(q) "Seed Harvesting" means the gathering of any seed on division property for any purpose.

(r) "Special use permit" means a temporary authorization for a specific, non-depleting land use, including seismic or land surveys, research sites, organized activity, or physical access on division lands.

(s) "Wood product" means any tree, or portion of a tree, including Christmas trees, posts, ornamentals, and firewood.

R657-28-3. Management of Division Lands.

The division manages division lands and water rights to directly or indirectly protect and improve wildlife habitats and watersheds; increase fish and game populations to meet wildlife management plan objectives and expand fishing and hunting opportunities; conserve, protect, and recover sensitive wildlife species and their habitats; and provide wildlife-related recreational opportunities.

R657-28-4. Unlawful Uses and Activities on Division Lands.

(1) Except as authorized by statute, rule, contractual agreement, special use permit, certificates of registration, or public notice, a person, on division land, may not:

(a) remove, extract, use, consume or destroy any improvement or cultural or historic resource;

(b) remove, extract, use, consume, or destroy any sand, gravel, cinder, ornamental rock, or other common mineral resource, or vegetation resource;

(c) allow livestock to graze, except as allowed by permit;

(d) remove any plant or portion thereof for purposes of commercial gain;

(e) enter, use, or occupy division land when posted against such entry, use, or occupancy;

(f) enter, use, or occupy division land in group sizes greater than twenty-five (25) people;

(g) enter, use, or occupy division land while engaged in an organized event;

(h) use, occupy, destroy, move, or construct any structure including fences, water control devices, roads, surveys and section markers, or signs;

(i) prohibit, prevent, or obstruct public entry on division lands when such public entry is authorized by the division;

(j) attempt to manage or control division lands in a manner inconsistent with division management plans, rules, or policies.

(k) solicit, promote, negotiate, barter, sell or trade any product or service on, or obtained from, division lands for commercial gain;

(l) park a motor vehicle or trailer or camp for more than 14

consecutive days unless posted for a different duration;

(m) light a fire without adequate provision to prevent spreading or leave a fire unattended;

(n) use fireworks, explosives, poisons, herbicides, insecticides, or pesticides;

(o) use motorized vehicles of any kind except as authorized by declaration, management plan, or posting; or

(p) use division lands for any purpose that otherwise violates applicable land use restrictions imposed in statute, rule, or by the division.

(2) A person or entity which unlawfully uses division lands is liable for damages in the amount of:

(a) the value of the resource removed, destroyed, or extracted;

(b) the amount of damage committed;

(c) the value of any losses suffered as a result of interference with authorized activities; and

(d) the consideration which would have been charged by the division for use of the land during the period of trespass, whichever is greater.

(3) The division's law enforcement section shall be primarily responsible for the investigation of any unlawful use of, or activity on, division lands.

(4) The division's law enforcement section shall be primarily responsible for the investigation of facts pertinent to filing for judicial remedy related to any unlawful use of, or activity on, division lands.

(5) The provisions of this Section do not apply to division employees or division volunteers while in the performance of their duties.

(6) Except as otherwise provided by statute, the criminal penalty for a violation of any provision of this Section is prescribed in Section 23-13-11.

R657-28-5. Domestic Livestock Grazing on Division Lands.

(1) The division may use domestic livestock grazing to manage vegetation on division lands if the division determines domestic livestock prescribed grazing is necessary for the maintenance or improvement of wildlife habitat on particular division properties.

(2) Domestic livestock grazing on division lands shall occur only under the permission, provisions, and authority given in a grazing permit issued by the division.

(3) Grazing permits may be issued by the division through a proposal solicitation process in accordance with R657-28-20 to achieve the division's vegetation or wildlife management goals.

(4) In the event an unanticipated prescribed grazing treatment is necessary for a division property, the division reserves the right to enter into contract with any livestock operator the division determines can provide the prescribed grazing treatment in a timely manner without soliciting competitive proposals; however, grazing permits issued under this paragraph shall not contain an option to renew and shall be limited to the current grazing season in duration.

(5) Grazing permits issued by the division shall include:

(a) The name, and a map, of the subject property to be grazed;

(b) A description of the desired vegetation community structure sought through the use of domestic livestock grazing;

(c) Identification of the type of domestic livestock needed to achieve the desired vegetation community structure;

(d) Identification of the key forage species for which utilization is to be measured;

(e) A description of the timing and intensity of utilization sought on key forage species that will achieve the desired vegetation community structure;

(f) The division's best estimate of the stocking density, period of grazing, and authorized forage harvesting stated in animal unit months that will achieve its vegetation management goals;

(g) A statement that the division may unilaterally suspend the grazing period if utilization goals for key forage species are met or exceeded prior to the end of the grazing period stated in the permit; or if events such as drought or fire make suspension necessary in order to prevent harm to the vegetation or wildlife resources.

(h) Identification of a reserved grass bank, if any, that the division may at its option offer as emergency forage for a permittee if the period of grazing set forth in the permit is suspended by the division.

(i) Identification of the type of compensation required by the division. Description of the compensation required shall be sufficiently specific as to be clearly understood by the permittee and the division.

(j) Requirement that all applications to appropriate water on division land be filed only with the permission of the division, filed in the name of the division, and that express written consent from the division is needed prior to the conveyance of water off division land.

(k) A statement assuring public access to division property by the permittee.

(l) A statement that the permittee is solely responsible for fence maintenance and control of permittee's livestock during the period of the permit.

(6) The division may at its option suspend domestic livestock grazing authorized under any permit prior to expiration of the permit's grazing period if the division determines the desired degree of utilization on the key forage species has been achieved.

(a) The division shall attempt to verbally notify the livestock operator and send written notification that utilization goals have been achieved and that domestic livestock grazing is suspended.

(b) The livestock operator shall remove its domestic animals within seven (7) days of the postmark date on the written notification of suspension.

(c) Animals remaining on division lands after the seven (7) day period will be considered in trespass.

(7) Compensation received by the division for grazing permits may be in-kind or monetary, or a combination of both, as specified by the division.

(8) The permittee is obligated to satisfy its compensation obligations regardless of whether the permittee uses the grazing permit or whether the provisions of the permit have been changed by the division.

(9) Compensation due from the permittee shall be pro-rated in cases where the division suspends the period of grazing or animal unit months set forth in the permit.

(10) The division may require compensation to be paid prior to livestock being placed on division land each year.

R657-28-6. Grazing of Domestic Livestock on Division Lands -- Grazing Permits -- Termination of Grazing Permit.

(1) The division may unilaterally terminate a grazing permit at any time if the permittee has managed permittee's livestock in a manner that breaches the provisions of the grazing permit.

(a) If the livestock management of a permittee is sufficiently egregious as to defeat the vegetation management goals of a grazing permit, that livestock operator may be disqualified from applying in the future for grazing permits on division property.

(b) The division shall notify in writing any livestock operator disqualified from obtaining grazing permits.

(2) The division shall determine the degree to which a permittee has complied with the provisions of the grazing permit, and shall report to the permittee whether compliance

was satisfactory or unsatisfactory.

R657-28-7. Grazing of Domestic Livestock on Division Lands -- Grazing Permits -- Option to Renew.

(1) Permits shall be issued for a term no greater than one year.

(2) Permittees who receive a satisfactory review for the previous year may have the option to renew the permit for the coming year provided the division determines continued livestock grazing is necessary to maintain or improve wildlife habitat; except the division may at its discretion:

(a) Alter the provisions of the permit contract describing key forage species, timing, intensity, location, and duration of domestic livestock grazing if the division determines that such alteration will better achieve its vegetation management goals;

(b) Identify a different in-kind compensation on division property that is reasonably comparable in value to the in-kind compensation of the original grazing permit.

(i) the division may negotiate the terms of the new in-kind compensation, and total compensation due the division without opening the permit to competitive bidding.

(c) Withdraw the subject property from domestic livestock grazing for any reason whatsoever.

(3) Should the terms of the original grazing permit be changed by the division, the permittee shall have the option to renew the permit.

(4) A permittee may hold a grazing permit on a subject division property for a maximum period of ten years through the exercising of an option to renew; except the division may put the permit out to competitive proposal solicitation at the conclusion of the fifth year;

(5) The permittee having the grazing permit for the preceding ten years on a subject division property is entitled to submit a proposal for grazing the same division property if the permittee has not been disqualified from consideration as a permittee on division lands.

(6) The division reserves the right to issue grazing permits without options to renew, or with options to renew for a shorter aggregate term.

R657-28-8. Grazing of Domestic Livestock on Division Lands -- Grazing Permits -- Legal Effect.

(1) Grazing permits transfer no right, title, or interest in any lands or resources held by the division, nor any exclusive right of possession, and grant only the authorized utilization of forage.

(2) Permittees have no property rights in a grazing permit.

R657-28-9. Grazing of Domestic Livestock on Division Lands -- Grazing Permits -- Range Improvement Projects.

(1) No range improvement project, including, but not limited to, the building of fences or corrals; structures used to impound, divert, or convey water claimed solely under a division water right; prescribed burning; seeding; chaining; harrowing; irrigation; etc., shall be conducted on division lands without the express written consent of the division.

(2) Range improvements, including fences, corrals, water works , etc., constructed on division property by permittee and which are affixed to the property shall be property of the division.

(3) Permittee shall not be compensated for such improvements unless previously agreed upon in writing between the division and the permittee.

(4) All permittees are prohibited from filing an application to appropriate water on division lands unless the application is approved by the division in writing and is filed in the name of the State of Utah, Utah Division of Wildlife Resources.

R657-28-10. Grazing of Domestic Livestock on Division Lands -- Trespass.

(1) Unauthorized livestock management activities on division land shall be considered trespass. These activities include, but are not limited to:

(a) The use of forage at times and at places not authorized in a permit.

(b) The placement of numbers of livestock on division land which, if left on the division land for the length of time allowed in the permit, would result in forage utilization in excess of that authorized by the permit.

(c) Grazing, staging, or trailing livestock on or across division land without a valid permit or publicly-recorded right-of-entry.

(d) The dumping of garbage or any other material on the division land.

(2) The permittee shall cooperate with the division in seeking judicial remedy against owners of trespass livestock on division lands for lost forage or other values.

R657-28-11. Grazing of Domestic Livestock on Division Lands -- Trailing and Staging Livestock Across or On Division Lands.

(1) Unless a party has a recorded right-of-way to trail livestock across division lands, prior written approval must be obtained from the division for trailing livestock across division lands.

(2) The authorization to trail livestock across division land shall restrict and limit the route, the number and type of animals, and the time and duration, (not to exceed two consecutive days).

(3) Staging of livestock on division lands is prohibited without the prior written consent of the division

R657-28-12. Grazing of Domestic Livestock on Division Lands -- Grassbanks.

(1) The division may designate specific properties as grassbanks for purposes of:

(a) Trading forage for habitat conservation actions on private or public lands;

(b) Providing emergency forage for a division grazing permittee when goals of domestic livestock impacts to vegetation have been achieved prior to the expiration of a permit's grazing period; or

(c) Any other purpose the division may identify.

(2) Provisions required for a grazing permit under R657-28-5(5) shall be defined for grassbank properties prior to their forage reserves being used.

(3) Nothing herein shall be construed to obligate the division to provide a grassbank or forage reserve when a grazing permittee is required by the division to suspend grazing prior to the expiration of the grazing period described in the permit, nor shall the division be required to utilize forage reserves under any other circumstance unless previously agreed to in writing by the division.

R657-28-13. Wood Products -- General Restrictions.

(1) A person may not cut or remove any wood product from division lands without obtaining the proper permit, tag, or contract and having the permit, tag, or contract in possession.

(2) A wood products collection contract or permit may be issued for a designated area and a specified period of time for:

(a) Removing trees;

(b) Harvesting Christmas trees; or

(c) Collecting firewood, posts, or ornamentals.

(3) A person may not cut or remove wood products during any period of time, or on any area not specified on the permit.

(4) Permits are nontransferable and nonrefundable.

(5) Permittees must accompany wood products from the cutting site.

(6) Permits are available at the Salt Lake and regional offices.

(7) The division may set a maximum number of permits to harvest wood products on division lands.

R657-28-14. Wood Products -- Firewood Permits.

(1) A person may purchase one permit per year to collect firewood on division lands.

(2) A firewood permit allows a person to collect up to 2 cords of wood under the following conditions:

(a) Firewood collection is limited to felled trees on chained areas, except in designated live tree removal areas.

(b) A living or dead tree containing a nesting cavity may not be felled or collected.

(3) Firewood may be collected from May 1 through November 30 or as otherwise specified in the permit.

(4) The fee for a firewood permit is that which is set by the Utah Legislature yearly.

R657-28-15. Wood Products -- Christmas Tree Permits.

(1) A person may purchase one permit per year to cut a Christmas tree on division lands.

(2) A tag will be issued with each Christmas tree permit.

(3) Only pinyon pine, Rocky Mountain juniper, or Utah juniper, or other species designated by the division on a specific property may be cut and removed.

(4) The tag must be visibly attached to the tree before it is transported from the cutting site.

(5) The fee for a Christmas tree permit is that which is set by the Utah Legislature yearly.

(6) The Christmas tree permit fee may be waived for any person who possesses a current Utah hunting or fishing license.

(7) Division lands are closed from December 1 through April 30 or as otherwise specified in the permit.

R657-28-16. Wood Products -- Ornamentals and Posts.

(1) A person may purchase one permit per year to remove ornamentals or cut posts on division lands.

(2) A person may harvest ornamentals up to an aggregate value of $60 per permit.

(3) A person may harvest posts up to an aggregate value of $50 per permit.

(4) The value of ornamentals and posts are those values determined yearly by the Utah Legislature; compensation received by the division may be monetary, in-kind, or both.

R657-28-17. Wood Products -- Contract Agreements.

(1) Contracts may be issued by the division for removing quantities of wood products in excess of those specified in this rule.

(2) Contracts shall be awarded through the competitive proposal solicitation process described in R657-28-20.

(3) Compensation may be either in-kind, monetary, or both.

R657-28-18. Seed Harvesting.

(1) The division may issue seed harvesting permits that grant a permittee exclusive rights to harvest all seeds for a specified species for a single growing season on the division property specified in the permit.

(2) Seed harvesting permits may be issued under a competitive bid process or on a first-come, first-served basis.

(a) The division may solicit competitive bids for seed harvesting permits for locations the division determines may provide opportunities for seed harvesting if such determination is made at least three weeks in advance of the anticipated onset of harvest.

(i) The division shall notify all parties by mail or electronic mail who have provided contact information and who have previously indicated their desire to be contacted regarding seed harvesting opportunities on division lands.

(ii) The bid award and seed harvesting permit shall be issued at least two weeks in advance of the anticipated onset of harvest.

(b) The division may issue seed harvesting permits on a first-come, first-served basis for locations the division determines may provide opportunities for seed harvesting if such determination is made after three weeks prior to the anticipated onset of harvest.

(i) Negotiated compensation shall reflect a fair market value of the opportunity provided.

(ii) In order to determine a fair market value of the seed harvesting opportunity, the division may rely upon, but not be limited to, one or more of the following:

(A) results of competitive bids for seed harvesting permits on other division properties;

(B) market information obtained from other landowners, including other state agencies;

(C) market information provided by a seed harvester's competitors; or

(D) market information provided by seed wholesalers or retailers; etc.

(3) Compensation received by the division may be either a percentage of the seeds harvested or other in-kind compensation, monetary compensation, or a combination thereof.

(a) All seed delivered to the division as compensation shall meet standards set forth in the Federal Seed Act (Title 7, Ch. 37), the Utah Seed Act (Utah Code Title 4 Chapter 16), and Utah Seed Law (Utah Administrative Rule R68-8), and shall also meet minimum germination and purity standards determined by the division.

(4) Permittees shall compensate the division in whole regardless of whether seeds are harvested, unless harvest was precluded by circumstances beyond the permittee's control.

(5) If the permittee breaches the provisions of the permit, the permit may be terminated and the permittee disqualified from bidding on future seed harvesting permits. The division shall notify the permittee in writing of any breach of the terms of the permit.

(6) Methods of harvest that in the judgment of the division may kill or seriously injure source plants are expressly prohibited.

(7) The permittee may post the specified division property as prohibited against unauthorized seed harvesting provided the posting prohibits harvesting of only those seed species which the permittee is granted exclusive right to harvest. Permittee must remove signs after harvest of seed.

R657-28-19. Agricultural Leases.

(1) The division may lease lands or water rights for purposes of cultivated crop production only when the division determines that such a lease would provide a net benefit for wildlife or would facilitate wildlife management activities that would provide a net benefit for wildlife.

(2) Leases may be issued for a term no greater than one year, with an option to renew in accordance with Subsection (10).

(3) Compensation received by the division for agricultural leases may be either a fixed rate per acre or in-kind or a combination of both as specified by the division, providing that the value received is customary and reasonable.

(4) The lessee is obligated to satisfy its compensation obligations regardless of whether the lessee uses the lease.

(5) The division may require the lessee to acquire crop insurance if the division is to receive a share of the harvested crop.

(6) At the time of initial lease payment, the lessee may be

required to post with the division a bond in the form and amount as may be determined by the division to assure compliance with all terms and conditions of the lease.

(7) Agricultural leases may be issued by the division through a competitive proposal solicitation process set forth in R657-28-20.

(8) Agricultural Leases issued by the division shall include:

(a) The name, and a map, of the subject property to be leased;

(b) A description of the vegetation management goals to be achieved, including type of crop to be grown and a description of crop residue, if any, to be left after harvest to benefit wildlife; or any other vegetation parameter desired for the subject lease property;

(c) A description of the benefit expected for wildlife;

(d) A description of the rights of the lessee and the division;

(e) The type and amount of compensation to be delivered to the division, and the date compensation is due;

(f) A provision for adjusting the base rental fee, if any, over the life of the lease to reflect changes in the market value of the lease;

(g) A statement describing how reporting is to be made of the quantity of crop harvested if a crop share is identified as in-kind compensation;

(h) A statement that the division may unilaterally terminate the lease if lessee breaches the terms of the lease contract;

(i) Identification of the type of compensation required by the division. Description of the compensation required shall be sufficiently specific as to be clearly understood by the lessee and the division;

(j) Requirement that all applications to appropriate water on division land be filed only with the permission of the division, filed in the name of the division, and that express written consent from the division is needed prior to the conveyance of water off division land;

(k) A statement assuring non-motorized public access to division property by the lessee;

(l) A statement that the lessee is solely responsible for fence maintenance of the leased property;

(m) A statement that the division is held harmless and indemnified for acts of God or any and all losses due to domestic livestock or public or wildlife use of the subject property during the period of the lease;

(n) A statement indemnifying the state from all actions of the lessee;

(o) Lessee's consent to suit or arbitration arising under terms of the lease or as a result of operations carried on under the lease;

(9) The division shall determine the degree to which a lessee has complied with the provisions of the lease, and shall report to the lessee whether compliance was satisfactory or unsatisfactory.

(10) Lessees who receive a satisfactory review for the previous year may have the option to renew the lease for the coming year provided the division determines the lease continues to provide a net benefit for wildlife or facilitates wildlife management activities that provide a net benefit for wildlife; except the division may at its discretion;

(a) Withdraw the subject property from lease if the division determines the lease has failed to benefit wildlife or facilitate wildlife management goals;

(b) Alter the non-compensatory provisions of the lease if the division determines that such alteration will better achieve its wildlife management goals;

(c) Identify a different in-kind compensation on division property that is reasonably comparable in value to the market-adjusted in-kind compensation of the original lease;

(i) the division may negotiate the terms of the new in-kind compensation, and total compensation due the division without opening the lease to competitive proposal solicitation.

(d) Should the terms of the original lease agreement be changed by the division, the lessee shall have the option to renew the lease.

(i) A lessee may hold a lease on a subject division property for a maximum period of ten years through the exercising of an option to renew; except the division may put the lease out to competitive proposal solicitation at the conclusion of the fifth year;

(ii) The lessee having the lease for the preceding ten years on a subject division property is entitled to submit a competitive proposal on the same division property if the lessee has not been disqualified from consideration as a lessee on division lands.

(e) The division reserves the right to issue leases without options to renew, or with options to renew for a shorter aggregate term.

(11) No improvement, including the building of fences, corrals, and water structures used to impound, divert, or convey water claimed solely under a division water right; or management practice, including prescribed burning, seeding, chaining, harrowing, irrigation, etc.; shall be constructed or conducted on division lands without the express written consent of the division.

(12) All improvements, including fences, corrals, water structures, etc., constructed on division property by lessee and which are affixed to the property shall be property of the division.

(a) Lessee shall not be compensated for such improvements unless previously agreed upon in writing between the division and the lessee.

(13) All lessees are prohibited from filing an application to appropriate water on division lands unless the application is approved by the division in writing and is filed in the name of the State of Utah, Utah Division of Wildlife Resources.

R657-28-20. Competitive Proposal Solicitation Process.

(1) Grazing permits, leases, or wood harvesting contracts may be issued by the division through a competitive proposal solicitation process to achieve the division's vegetation or wildlife management goals. The division may use the process described herein for the removal of other natural resources from division lands for commercial gain by any party.

(2) Proposals for grazing permits, leases, or wood harvesting contracts will be solicited through publication at least once a week for two consecutive weeks in one or more newspapers of general circulation in the county in which the permit or lease is offered at least 30 days or more in advance of the deadline for proposal submittals. At least 30 days prior to the deadline for proposal submittals, notification will be sent to landowners adjoining the subject division property, and to livestock operators having federal permits to graze a federal allotment adjacent to division property.

(a) Notification and advertising shall include a general description of the parcel including township, range, and section, and any other information which may create interest in the subject permit, lease, or wood harvesting contract. The division shall also identify the desired form of compensation, whether monetary, in-kind, or both.

(b) The division shall make available at an applicant's request additional information, including information describing the division's management objectives for the subject property to be achieved through a grazing permit, lease, or wood harvesting contract, that would assist an applicant in making a reasonably informed proposal.

(3) At the conclusion of the advertising process, the division shall review and select the preferred applicant using either of the following processes. The division shall have full

discretion to select which process to use:

(a) The division shall allow all applicants at least 20 days from the date of mailing of notice to submit a sealed proposal. Applicants not submitting a proposal within the prescribed time period shall have their proposals rejected. Competing proposals are evaluated using the following criteria where applicable:

(i) Resources available to applicant that can be used to control livestock movement on the subject division property;

(ii) Applicant's ability to meet lease or prescribed management objectives;

(iii) Benefits to wildlife and wildlife habitat that could be expected from applicant's proposal;

(iv) Applicant's demonstrated sound range and agricultural management practices on applicant's property or other property used by applicant;

(v) Applicant's knowledge of principles of range science, range management, or agriculture;

(vi) Applicant's prior history of satisfactory or unsatisfactory use of division lands;

(vii) Applicant's right to the use of adjoining or nearby properties with which management of a division property may be coordinated;

(viii) Proximity of applicant's property to division property;

(ix) Functionality of subject division property's perimeter fences in controlling livestock movement on or off the subject property;

(x) The size of area upon which the applicant can achieve the division's wildlife or vegetation management goals, thereby reducing the division's grazing permit, lease, or wood harvesting contract administrative costs;

(xi) Amount or value of the compensation offered to the division, including the satisfaction of a minimum quantity or quality of compensation, whether monetary, in-kind, or both, if minimum standards are required by the division.

(b) The division may invite each qualified applicant to meet privately with the division and present its proposal for the subject property's grazing permit, lease, or wood harvesting contract. The division may request parties other than those responding to the initial solicitation to meet with the division. The division shall have full authority to:

(i) Offer counter-proposals;

(ii) Negotiate with any or all of the applicants to create a proposal which best satisfies the vegetation or wildlife management objectives of the division;

(iii) Terminate the negotiation process entirely; or

(iv) Require the respondents to proceed through the process described in Subsection (3)(a).

(v) The division may select the preferred applicant based on criteria delineated in Subsection (3)(a)(i) through (xi), or may withdraw the property from consideration for grazing, leasing, or wood harvesting.

(4) Any party in default on a previous obligation to the division may be disqualified from obtaining a grazing permit, special use permit, lease, or wood harvesting contract from the division.

R657-28-21. Applications to Appropriate Water on Division Lands.

No party possessing a right-of-way lease, grazing permit, agricultural lease, non-agricultural lease, special use permit, contract or other form of authorization issued by the division to use division lands shall apply to appropriate water from the surface or subsurface of division lands without first obtaining written permission from the division, and the application is filed in the name of the State of Utah, Division of Wildlife Resources. All water structures, including impoundment, diversion and conveyance structures or works, used to impound, divert or convey water claimed solely under a division water right shall be the property of the division.

R657-28-22. Extraction of Sand, Gravel, Cinders, and Ornamental Rock on Division Lands.

(1) The division shall not sell, lease, or otherwise permit the excavation or extraction of any sand, gravel, cinders, ornamental rock, or other common mineral resource on division lands by any private or public entity except when the division determines that such sale, lease, excavation or extraction is consistent with the purposes for which the land was acquired and provides a net-benefit to wildlife.

(2) The division shall receive fair market value for all sand, gravel, cinders, ornamental rock, or other common mineral resources removed from division property.

(3) Following the completion of excavations, the division shall require reclamation measures to stabilize and restore natural surface conditions. Reclamation measures will generally consist of, but not necessarily be limited to, sloping and stabilization of highwalls, contouring of slopes at a ratio not greater than three feet horizontal for each one foot vertical or as otherwise specified by the division, stabilization, closure, or removal of access roads as determined by the division, replacement of natural topsoils, revegetation using a seed mixture and rate of application as specified by the division, removal of all trash and debris, and the prompt removal of all equipment, buildings, and structures owned by the permittee or permittee's agents.

(4) Bonding in an amount equal to two-times the estimated cost of reclamation shall be required by the division prior to authorizing the sale, lease, excavation or extraction of any sand, gravel, cinders, ornamental rock, or other common mineral resource on division lands.

(5) Nothing herein shall be construed as superceding the division's legal obligations to obtain approval from the U.S. Fish and Wildlife Service or any other party possessing a legal interest in the property prior to authorizing the extraction or excavation of sand, gravel, cinders, ornamental rock, or other common mineral resource on division property.

R657-28-23. Rights-of-Way Leases, Non-Agricultural Leases of Division Lands, Special Use Permits -- Application Procedures --Required Information -- Conditional Approval.

(1) To apply for a right-of-way lease, special use permit, or non-agricultural lease of division lands, a person shall:

(a) complete and submit an application provided by the division to the regional supervisor in the appropriate division regional office;

(b) pay a nonrefundable application fee;

(c) submit the application and application fee at least 120 days prior to the proposed construction or occupancy date; and

(d) include the following information with the application:

(i) A 7.5-minute topographic map or aerial photo showing the proposed project area. Map scale may be larger but must identify township and range sections, UTM coordinates, and give appropriate scale.

(ii) Evidence of an ownership or leasehold interest in the mineral estate where development of that estate is the purpose for applicant's seeking a right-of-way lease, special use permit, or lease.

(iii) A project plan that includes:

(A) project alternatives, including alternatives which do not affect the division;

(B) a description of the activity to occur, or infrastructure to be constructed, including site location, construction footprint, above and below ground construction, infrastructure's functional relationship to existing or future infrastructure, etc. The description should be sufficiently detailed as to provide an accurate and complete representation of the proposed action;

(C) identification of adverse impacts to wildlife and

wildlife habitat associated with the proposed use and how they will be avoided, minimized, or mitigated; and

(D) project alternatives that do not affect division land which were considered but rejected, and the specific reasons those alternatives were rejected.

(2) Upon receiving the application, application fee, and the information required in Subsection (1)(d) the division director or the director's designee may either deny the application or grant a conditional approval within 60 days.

(3) If the application is denied, the director shall provide a written notice to the applicant.

(4) Before final approval is granted the division may require the applicant to provide the following additional information:

(a) A certified copy of a survey of the area affected by the proposed project prepared by a licensed surveyor. A centerline survey describing the proposed right-of-way lease and its width is adequate for a pipeline, road, power line, or similar use.

(b) An electronic file depicting the lease that is compatible with, and requires no editing for, accurate downloading into geographic systems information software used by the division.

(c) Evidence that the applicant has given the State Historic Preservation Officer a reasonable opportunity to review and comment on the proposed project as required by Utah Code Section 9-8-404.

(d) A biological assessment, including an analysis of the potential direct, indirect, and cumulative effects the proposed project may have on wildlife, wildlife habitat, and public recreational use opportunities.

(e) A survey of threatened, endangered and candidate plant and animal species, Utah wildlife sensitive species, and Utah species of special concern conducted on and adjacent to the proposed project.

(f) Proof that the applicant has secured all the permits and authorizations required for the project under State, Federal, and local laws.

(g) Proof that the applicant has complied with the provisions of the National Environmental Policy Act, where applicable, including preparation of all environmental assessments, environmental impact statements, or other reports required by the administering federal agency.

R657-28-24. Rights-of-Way Leases, Leases of Division Lands, Special Use Permits -- Final Determination -- Project Review -- Contract Provisions.

(1) Within 60 days of receiving the application fee and information required in Section R657-28-23, or 60 days of granting conditional approval, whichever is greater, the division director or the director's designee shall make a final determination to affirm or modify the conditional approval or deny the application.

(2) The director or the director's designee shall deny an application if:

(a) the application does not include the information requested by the division;

(b) the potential impact to wildlife, wildlife habitat, public recreation, or cultural or historic resources is unacceptable;

(c) the applicant has not, in the opinion of the division, adequately considered ways to avoid or minimize impacts or proposed adequate compensatory mitigation plans for unavoidable impacts, including cumulative impacts;

(d) there are, in the opinion of the division, alternative locations reasonably available on lands not owned by the division for the requested use, including organized events that may harm wildlife or wildlife habitat, utilities, telecommunications structures, transmission lines, canals, ditches, pipelines, tunnels, fences, roads, and trails; or

(e) if the applicant's project affects property in which a third party has contractual or legal oversight rights and the project is rejected by that party.

(f) the applicant is in default on any previous obligation to the division.

(3) If the application is denied, the division shall provide a written notice to the applicant.

(4) A right-of-way lease or other form of lease may include provisions requiring the applicant to:

(a) Restore all structures including fences, roads, and existing facilities, and regrade as nearly as practical to the pre-project grade and contour, and revegetate the impacted area to division specifications;

(b) Adhere to the terms of the applicant's approved project plan prescribed in Subsection R657-28-23(1)(d)(iii); and

(c) Pay for surveys, environmental assessments, environmental impact statements, appraisals, restoration, re-vegetation, compensatory mitigation, and all other expenses associated with the project.

(5) A special use permit shall include any applicable provision prescribed in Subsection (4).

(6) A right-of-way lease or division land lease may be granted for a maximum of 30 years from the date of signing; however, the division explicitly reserves the right to grant leases for shorter periods.

(7) The termination date for a lease will be determined by the division after assessing the activity applied for and the needs of the lessee.

(8) A special use permit may only be granted for a maximum period of one year from the date of signing.

R657-28-25. Right-of-Way Leases, Division Land Leases, Special Use Permits -- Compensation.

(1) The division shall receive compensation for all right-of-way leases, division land leases, and special use permits consistent with the following requirements:

(a) Compensation may be based on:

(i) the cost incurred to the division in evaluating and preparing the right-of-way lease, division land lease, or special use permit;

(ii) the cost incurred by the division in administering the right-of-way lease, division land lease, or special use permit ;

(iii) the appraised value of the affected property;

(iv) the fair market value of the use;

(v) fee schedule set forth by the Utah Legislature;

(vi) impacts to wildlife and wildlife habitat;

(vii) impacts to public access; and

(viii) impacts to public opportunities to engage in wildlife related activities.

(b) In lieu of monetary compensation, the division may accept in-kind compensation in the form of, but not limited to, land enhancements, habitat maintenance or improvements, land exchange, public access for wildlife related activities, or other forms of compensation that are beneficial to wildlife management and the division's statutory responsibilities.

(2) Every right-of-way lease, division land lease, and special use permit shall be documented in writing and contain the following information:

(a) the names of the parties and other persons involved in the transaction;

(b) the signature of the parties and other persons involved in the transaction. The individual signing on behalf of the applicant must provide evidence he/she is authorized to sign on the applicant's behalf;

(c) a detailed description of the compensation, including compensatory mitigation;

(d) a detailed description of the location, terms, and conditions of the right-of-way lease, division land lease, or special use permit;

(e) a statement that the parties and signatories to the transaction enter therein voluntarily and mutually agree to its

terms and conditions;

(f) the commencement and termination date of the right-of-way lease, division land lease, or special use permit.

R657-28-26. Termination of Right-of-Way Leases, Division Land and Water Leases, Grazing Permits, and Special Use Permits.

(1) Unless specified elsewhere in this Rule, the provisions of this section set forth the process for the termination of grazing permits, special use permits, and leases. If provisions of this section are in conflict with provisions in other sections of this Rule, those other sections shall govern.

(2) A person may request termination of their grazing permit or lease by submitting a written request to the division at least 60 days prior to the requested date of termination.

(3) A person may request termination of their special use permit by submitting a written request to the division at least 10 days prior to the beginning date of the special use permit.

(4) The division is under no obligation to grant a requested termination of a grazing permit, special use permit, or lease, and retains the right to pursue specific performance of any contract into which it has entered.

(5) The division may not grant a grazing permit, special use permit, or lease termination request until the required reclamation and any compensatory mitigation for impacts incurred by the project are completed.

(6) The division may unilaterally terminate any grazing permit, special use permit, or lease and require full reclamation of disturbed areas where the holder violates any of the conditions of the grazing permit, special use permit, or lease.

(7) Before terminating a grazing permit, special use permit, or lease the division shall:

(a) Give written notice of the intended division action to the holder of the permit or lease by certified mail;

(b) Document noncompliance; and

(c) Allow the holder of the lease or permit 30 days to remedy the violation and comply with the terms set therein.

(8) Any party breaching an agreement or contract with the division, or being in default on an obligation to the division, may be disqualified from securing a grazing permit, special use permit, or lease from the division or otherwise applying for the ability to remove any natural resource from division lands in the future. The division shall notify the party in writing of the party's disqualification.

R657-28-27. Renewal of Right-of-Way Leases and Non-Agricultural Division Land Leases.

(1) A person may apply to renew a right-of-way lease or division land lease by:

(a) submitting a written request to the division;

(b) updating the original application; and

(c) paying a renewal fee.

(2) A renewal may be requested no earlier than 120 days and no later than 60 days prior to the expiration date of the right-of-way lease or division land lease.

(3) A renewal shall be granted under the division's laws, rules, and policies in effect at the time of renewal.

(4) A request for a change in the size or use of an area or for an additional area or use shall be applied for as a new right-of-way lease or division land lease.

(5) The division may deny renewal of a right-of-way lease or division land lease for any of the following reasons:

(a) Unacceptable impacts to wildlife, wildlife habitat, public recreation, or cultural or historic resources;

(b) Continuation of the right-of-way lease or division land lease is, in the opinion of the division, incompatible with the intended uses of the land;

(c) The person has not complied with terms and conditions of the lease contract; or

(d) The management goals for the area have changed to the extent that the right-of-way lease or division land lease is no longer compatible.

(6) The division shall provide a written notice to the applicant stating the reason for denial.

(7) Nothing herein shall be construed as limiting the division in seeking agreement from the U.S. Fish and Wildlife Service, or any other party with a contractual or property interest in the division's property.

R657-28-28. Sublease, Conveyance, or Assignment of Grazing Permits; Special Use Permits; Seed Harvesting Permits; Wood Products Harvesting Permits; Right-of-Way, Agricultural, and Division Land Leases; and Contracts for the Removal of Natural Resource.

(1) Leases, grazing permits, special use permits, seed harvesting permits, any form of wood products harvesting permit, or contracted rights to remove natural resources of any kind may not be assigned, partially assigned, subpermitted, leased, subleased, mortgaged, pledged or otherwise transferred, disposed, or encumbered in any fashion without the prior written consent of the division.

(2) A sublease, conveyance, or assignment may be made only to a person, firm, association, or corporation qualified to do business in the state of Utah, and which is not in default under the laws of the state of Utah relative to qualification to do business within the state, and is not in default on any previous obligation to the division.

(3) A sublease, conveyance, or assignment may not be approved without reimbursement for the division's administrative costs associated with said sublease, conveyance, or assignment; and payment of:

(a) the difference between what was originally paid for the permit, lease, or contract and what the division would charge for the permit, lease, or contract at the time the application for sublease, conveyance, or assignment is submitted; or

(b) an alternate fee established by, and at the discretion of, the division.

(4) A sublease, conveyance, or assignment shall take effect the date of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

(5) A sublease, conveyance, or assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the permit or lease contract number, land involved, and the name and address of the assignee and shall include any agreement which transfers control of the lease to a third party. A copy of the documents subleasing, conveying, or assigning the interest shall be given to the division.

(6) A sublease, conveyance, or assignment shall be executed according to division procedures.

(7) A sublease, conveyance, or assignment is not effective until approval is given by the division. Any sublease, conveyance, or assignment made without such approval is void.

R657-28-29. Abandonment of Right-of-Way Leases.

(1) If within 365 days of the date of execution of right-of-way lease a lessee fails to construct and install the infrastructure which necessitated lessee's acquisition of a right-of-way lease, or the lessee otherwise fails to use all or any portion of a right-of-way, that portion of the right-of-way so unused shall be deemed to be abandoned and the lessee's leasehold interest in said portion of the right-of-way shall be terminated with no compensation due from the division. (2) If proof of lessee's use of all or a portion of a right-of-way lease cannot be provided for any contiguous three-year period, that portion of the right-of-

way for which proof of use cannot be provided shall be deemed to be abandoned and the lessee's leasehold interest in said portion of the right-of-way shall be terminated with no compensation due from the division.

(2) In order to facilitate the determination of an abandonment of right-of-way leases, the lessee shall pay an administrative charge every three years during the term of the lease unless otherwise stated in the lease contract.

R657-28-30. Bonding.

(1) Prior to approval and issuance of a right-of-way lease, division land lease, or special use permit, the division may require the applicant to post a surety bond in an amount determined by the division.

(2) Only bonds issued by insurers listed in U.S. Treasury Department Circular 570, or with a financial rating assigned by the A.M. Best Company Insurance Guide of A or higher with respect to property and casualty sureties, shall be accepted by the division.

(3) The division may use the surety bond to pay for reclamation, compensatory mitigation, payment of any money owed the division, or any other unpaid obligation of right-of-way lessee, division land lessee, or special use permit holder according to the terms and conditions set therein. Should the amount of bond fail to cover the cost of reclamation, mitigation, or other contractual obligations, the party shall remain liable for any additional costs over and above the bonded amount.

(4) The division may require a reasonable increase from time-to-time in the amount of the bond after providing right-of-way lessee, division land lessee, or special use permit holder 30 days written notice.

(5) The bond shall be in effect even if the lessee or permittee has conveyed all or part of the leasehold interest to a sublessee, assignee, or subsequent operator until the lessee fully satisfies the lease obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

(6) Following termination of a right-of-way lease, division land lease or special use permit; and satisfaction of the contractual obligations of the holder; the division shall release any unused bonds back to the lessee or permit holder within six months.

KEY: wildlife, right-of-way, leases, land use, wood
August 7, 2007 23-13-8
Notice of Continuation July 31, 2017

R657. Natural Resources, Wildlife Resources.
R657-29. Government Records Access Management Act.
R657-29-1. Purpose and Authority.

(1) This rule prescribes where and to whom requests for information shall be directed and provides procedures for access to division records as allowed under Subsection 63G-2-204(2).

(2) Specific procedures for requesting division records are provided in Chapter 2, Title 63, Government Records Access and Management Act.

R657-29-2. Definitions.

(1) Terms used in this rule are defined in Section 63G-2-103.

(2) In addition:

(a) "Department" means the Department of Natural Resources.

(b) "Division" means the Division of Wildlife Resources

(c) "Records officer" means the individual located in the Salt Lake division office designated by the director of the division to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

R657-29-3. Allocation of Responsibility Within the Division.

The division is considered a governmental entity and the director of the division is considered the head of the governmental entity.

R657-29-4. Requesting Information.

(1) A person making a request for any private, controlled or protected record shall furnish the division with a written request as provided in Subsection 63G-2-204(1) on a form provided by the division.

(2)(a) A request for any record shall be made only to the records officer in the Salt Lake division office located at 1594 West North Temple, Salt Lake City, Utah 84114.

(b) Response to a request submitted to any person other than the records officer in the Salt Lake division office may be delayed.

(3)(a) The records officer shall respond to each request according to Section 63G-2-204.

(b) Under authority of Subsection 63G-2-201(5)(b) the director may, in his discretion, disclose records that are private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in Section 63G-2-202 or 63G-2-206 if he determines there is no interest in restricting access to the record, or that the interests favoring access outweighs the interest favoring restriction of access.

R657-29-5. Requests for Access for Research Purposes.

(1) Access to private or controlled records for research purposes is allowed under Section 63G-2-202(8).

(2) Requests for access to private or controlled records for research purposes may be made to the records officer in the Salt Lake division office.

R657-29-6. Intellectual Property Records.

(1) The division may duplicate and distribute an intellectual property right that is owned by the division in accordance with Section 63G-2-201(10).

(2) Decisions with regard to these rights shall be made by the records officer in the Salt Lake division office.

(3) Any request regarding the duplication and distribution of such materials shall be made in writing to the records officer in the Salt Lake division office.

R657-29-7. Fees.

(1) The division, pursuant to Section 63G-2-203, may charge a reasonable fee to cover the actual cost of duplicating a record or compiling a record in a form other than that maintained by the division.

(2) The division shall establish fees in accordance with Subsection 63J-1-303.

(3) Fees must be paid at the time of the request or before the records are provided to the requester.

(4) The records officer may fulfill a record request without charge according to the guidelines established in Subsection 63G-2-203(3).

(5) Requests for a fee waiver may be made to the records officer in the Salt Lake division office.

R657-29-8. Denials.

(1) If the records officer denies a request in whole or in part, he shall send a notice of denial to the requester either in person or by sending the notice to the requester's address.

(2) The notice of denial shall contain the information required in Subsection 63G-2-205(2).

R657-29-9. Appeal of Access Determination.

(1) Any person aggrieved by an access determination made by the records officer, including a person not a party to the division proceeding may, within 30 days after the determination, appeal the determination by submitting a notice of appeal in writing to the department executive director.

(2) The notice of appeal shall contain the information provided in Subsection 63G-2-401(2).

(3) Upon receiving the notice of appeal, the department executive director shall make a determination according to the guidelines and within the time periods specified in Section 63G-2-401.

R657-29-10. Appeal of Request to Amend a Record.

(1) Any individual contesting the accuracy or completeness of any public, private, or protected record concerning him may request the division amend the record according to the guidelines specified in Subsection 63G-2-603(2).

(2) The request to amend shall be considered a request for agency action as prescribed in Subsection 63G-4-201 and the adjudicative proceeding shall be conducted informally according to the procedures prescribed in Section 63G-4-203 and R657-2, Adjudicative Proceedings.

(3) Any request to amend a record must be made to the records officer in the Salt Lake division office on a form provided by the division.

KEY: government documents, freedom of information, public records
July 10, 2017 63G-2-204

R657. Natural Resources, Wildlife Resources.
R657-64. Predator Control Incentives.
R657-64-1. Purpose and Authority.

(1) This rule is promulgated under authority of Section 23-30-104 to establish procedures for:

(a) targeted predator control and general predator control programs administered by the division for the benefit of mule deer; and

(b) creation and distribution of educational and training materials related to mule deer protection.

R657-64-2. Definitions.

(1) Terms used in this rule are defined in Section 23-30-102 and 23-13-2.

(2) In addition:

(a) "Division" means the Utah Division of Wildlife Resources.

(b) "General predator control" means a predatory animal removal effort by the division, which uses the public to remove predators for the benefit of mule deer.

(c) "GPS" means Global Positioning System location in either the form of Latitude-Longitude coordinate or Universal Transverse Mercator (UTM) coordinate.

(d) "Marked" means the permanent clipping or punching of ears on the predatory animal carcass or pelt.

(e) "Predatory animal" means a coyote.

(f) "Targeted area" means an area within the State of Utah specifically identified for predatory animal removal during a specified season.

(g) "Targeted predator control" means a predatory animal removal effort by the division or its contractors:

(i) to remove predatory animals in an area where high predation on mule deer occurs; and

(ii) that focuses on specific locations and certain times.

(h) "State" means State of Utah.

R657-64-3. Predatory Animal Control Programs.

(1) Two predatory animal control programs are created within the division to provide financial incentive to participants for the removal of coyotes detrimental to mule deer production.

(a) The General Predator Control Program provides a financial incentive to any registered participant to remove coyotes within the State.

(i) The financial incentive to participate in the program and remove coyotes under the conditions prescribed in this rule and by the division is $50 compensation per animal, unless otherwise adjusted by the division, to be paid in accordance with R657-64-4.

(b) The Targeted Predator Control Program provides compensation by contract to preapproved vendors to remove coyotes within prescribed areas of the State and during specified times of the year where predation on deer is most prevalent.

(2) Participants in either program are not granted special authority to take coyotes beyond that available to non-participants, and each shall comply with all applicable federal, state, and local laws.

(3)(a) Except as provided in Subsection (3)(b) participants in both programs are required to follow all relevant rules and regulations related to trapping and firearm use, as detailed in state code and rule R657-11, "Taking Furbearers."

(b) The division may exempt a participant in the Targeted Predator Control Program from specified provisions of R657-11 which the division determines necessary to effectively control coyotes in a targeted area that are detrimental to mule deer production.

R657-64-4. General Predator Control Program.

(1) A person may participate in the General Predator Control Program, provided the applicant:

(a) completes an online application, including the applicant's:

(i) full name;

(ii) mailing address;

(iii) phone number;

(iv) e-mail address;

(v) date of birth; and

(vi) social security number;

(b) completes an online orientation and training course for participation in the program;

(c) agrees to the requirements of this rule and any additional terms and conditions specified by the division for program participation on its webpage;

(d) acknowledges and agrees to the division submitting an Internal Revenue Service Form 1099 each calendar year where compensation totals require reporting under federal law;

(e) acknowledges and agrees to verify that all coyotes submitted for compensation are taken by the applicant within the State.

(f) acknowledges and agrees to collect and submit accurate GPS data documenting the precise location where each coyote is taken; and

(g) acknowledges and agrees to not interfere with USDA Wildlife Services employees conducting similar coyote removal efforts in the area.

(2) The division may deny an application to participate in the program for any of the following reasons:

(a) the application is incomplete or filled out incorrectly;

(b) the application contains false or misleading information;

(c) the applicant has failed to complete the online orientation and training course required in Subsection (1)(b);

(d) the applicant has previously violated any of the terms of this rule or participation requirements imposed by the division;

(e) the applicant's hunting privileges are suspended in the State at the time of application;

(f) the applicant has been convicted of or entered a plea in abeyance to any crime of dishonesty in the previous five years; or

(g) the applicant has committed any other crime, or violation of law or contract that bears a reasonable relationship to their reliability in accurately reporting the locations and times that predatory animals are taken.

(3) Upon approval of the application, the division shall issue a registration number authorizing the applicant's participation in the program which will remain valid until June 30th each year, unless earlier suspended pursuant to R657-64-11.

(4) Registered program participants will be eligible to receive from the division $50 for each qualifying coyote presented, unless otherwise adjusted by the division, subject to the following conditions:

(a) requests for payment shall be made only on the designated check-in dates and at the locations identified by the division;

(b) any coyote presented to the division for the incentive payment must:

(i) be taken by the participant within the State on or after July 1, 2012;

(A) Program participants are not authorized to trespass or take coyotes on tribal trust lands without written tribal authorization.

(ii) include the full pelt or the scalp with both ears attached, with neither previously marked or damaged to the extent that marking is unascertainable;

(iii) include the lower jaw removed from the carcass with canine teeth intact ;

(iv) be permanently marked by the division; and

(c) requests for payment must be on a signed, division-approved compensation form that:

(i) provides the name, mailing address, and registration number of the participant;

(ii) records the date and GPS location where each coyote is taken; and

(iii) verifies that the participant personally took the coyotes, the information provided is accurate, and all program terms and conditions have been complied with.

(5) Program participants may designate a third party to check-in their coyotes with the division at the designated times and locations, provided:

(a) the compensation form referred to in subsection (4)(c) is completed and signed by the program participant that took the coyotes;

(b) the lower jaw and either the full pelt or the scalp (with both ears attached) of each coyote is presented to the division, as required in Subsection (4)(b)(ii) and (iii), with the compensation form; and

(c) the compensation form identifies and authorizes the person that will present it to the division for compensation.

(6) Compensation for qualified coyotes will be documented by written receipt at the time of submission to the division and payment by check will be mailed at a later date.

(7) Participants shall be responsible for disposing of coyote pelts and ears presented to the division for compensation, but the division may retain the lower jaw.

R657-64-5. Targeted Predator Control Program.

(1) The division may award contracts and compensate eligible vendors for targeted coyote removal services in areas of the State and at times specified in the contract.

(a) Selected vendors will be compensated as prescribed in the contract and are ineligible to receive the $50 incentive under the General Predator Control Program in R657-64-4 for coyotes taken under contract in the Targeted Predator Control Program.

(b) Vendors participating in the Targeted Predator Control Program must submit to the division the lower jaw removed from the carcass with canine teeth intact and either the full pelt or the scalp with both ears attached for each coyote for which compensation credit is sought.

(i) The division will document each animal and mark its ears, and may retain its lower jaw.

(c) Contract vendors shall:

(i) be responsible for disposal of all coyote pelts and ears presented to the division for compensation credit, but the division may retain the lower jaw;

(ii) not interfere with USDA Wildlife Services employees conducting similar coyote removal efforts within a targeted area;

(iii) verify that all coyotes presented for compensation credit were taken:

(A) by them personally or by another person operating under their direct supervision; and

(B) within the areas and time periods prescribed in the contract; and

(iv) provide and verify the accuracy of GPS data documenting the precise location where each coyote is taken.

(2)(a) The division may establish a list or pool of preapproved vendors for participation in the Targeted Predator Control Program.

(b) Preapproved vendors are eligible to receive a coyote removal contract.

(c) The division may select one or more of the approved vendors for use in each targeted area for the season.

(d) The division has full discretion to select any vendor to contract with among the pool of preapproved vendors and is under no obligation to use all the vendors or to provide equal opportunity to them.

(e) The division is not bound to select vendors in any year, and does not guarantee that any vendor will be selected.

(3)(a) A person or business entity may become a preapproved vendor in the Targeted Predator Control Program by complying with the following:

(i) complete and submit to the division an application on the form provided by the division; and

(ii) participate in the General Predator Control Program under R657-64-4 for one or more years with compensation credit awarded by the division for 25 or more coyotes each year.

(A) In the case of a business entity, one or more of the entity's principals or owners must satisfy the requirements in Subsection (3)(a)(ii).

(b) The division may deny an application for preapproved vendor status in the Targeted Predator Control Program for any of the following reasons:

(i) the application is incomplete or filled out incorrectly;

(ii) the application contains false or misleading information;

(iii) the applicant has previously violated any of the terms of this rule or participation requirements imposed by the division;

(iv) the applicant's hunting privileges are suspended in the State at the time of application;

(v) the applicant has been convicted of or entered a plea in abeyance to any crime of dishonesty in the previous five years; or

(vi) the applicant has committed any other crime, or violation of law or contract that bears a reasonable relationship to their reliability in accurately reporting the locations and times that predatory animals are taken.

R657-64-6. Trap Locations.

(1) Program participants and contract vendors are required to provide GPS data documenting the precise location where each coyote is taken.

(2) To the extent GPS data discloses the location of trap lines and public disclosure of that data exposes the traps to the possibility of theft and damage, the data may be classified as "protected" under Section 63G-2-305(2) and restricted from public disclosure pursuant to Title 63G, Chapter 2, Government Records Access and Management Act, provided the requirements of Subsection (3) are satisfied.

(3) Any person desiring to protect GPS data from public disclosure that locates trap lines must submit to the division a written claim of confidentiality explaining:

(a) the financial and commercial harm reasonably expected to occur if the data is subject to public disclosure; and

(b) why the person submitting the data has a greater interest in prohibiting access than the public in obtaining access.

R657-64-7. Coordination.

(1) The division will coordinate with the Department of Agriculture and Food and the Agricultural and Wildlife Damage Prevention Board created in Section 4-23-4 to:

(a) minimize unnecessary duplication of predatory animal control efforts;

(b) prevent interference between predatory animal control programs administered under Title 4, Chapter 23, Agricultural and Wildlife Damage Prevention Act and this rule; and

(c) enhance the effectiveness of predatory animal control efforts and maximize the benefit to both mule deer and livestock.

R657-64-8. Education and Training.

The division may conduct and administer training, education, and outreach activities related to mule deer protection and predator control.

R657-64-9. Appropriation of Funds.

(1) Funding for the predatory animal control programs in this rule is appropriated annually by the Legislature.

(2) Should appropriated funding be reduced or eliminated, funds available for compensation in the two predatory animal control programs may be ended without prior public notice.

(3) Once the annual funding allocation for coyote removal is expended for the general or targeted control programs in a given year, no further payments will be made for that year, regardless of pelts or ears that may be held by program participants.

R657-64-10. Liability.

(1)(a) Any person who participates in either predatory animal control program under this rule assumes full and complete liability and responsibility for their acts and omissions while engaged in removing coyotes or redeeming them for compensation.

(b) To the extent provided under the Utah Governmental Immunity Act and the liability limitations in this rule, the division shall not be liable in any civil action for any act or omission of a program participant while removing coyotes or redeeming them for compensation.

(2) It is the responsibility of program participants to read, understand and comply with this rule and all other applicable federal, state, county, and municipal laws, regulations, and ordinances.

R657-64-11. Violations.

(1) The division may suspend, terminate, or deny any authorization under this rule to participate in either or both predatory animal control programs for any of the violations listed in R657-64-4(2) or R657-64-5(3)(b).

(2) Providing false information to the division or otherwise violating the provisions of this rule may be criminally prosecuted under applicable offenses defined in the Utah Code.

KEY: wildlife, predators, game laws, wildlife laws

July 8, 2013	**23-30-102**
Notice of Continuation July 31, 2017	**23-30-104**
	23-13-17

R698. Public Safety, Administration.
R698-10. Electronic Meetings.
R698-10-1. Authority.

This rule is authorized by Section 52-4-207.

R698-10-2. Purpose.

The purpose of this rule is to establish procedures for conducting electronic meetings by department public bodies.

R698-10-3. Definitions.

(1) Terms used in this rule are defined in Section 52-4-103.

(2) In addition:

(a) "department" means the Utah Department of Public Safety.

R698-10-4. Notice and Procedure of Electronic Meetings.

(1) The following provisions govern any meeting in which one or more members of a public body appear electronically or telephonically:

(a) if one or more public body members may participate electronically or telephonically in a meeting, the public notice of the meeting shall so indicate;

(b) the meeting minutes shall identify all public body members who participate electronically or telephonically in the meeting; and

(c) a member of the public body who participates in the meeting through electronic or telephonic means is considered to be present at the meeting for quorum, participation, and voting requirements.

(2) The department may decline to hold a meeting as an electronic or telephonic meeting due to budget, technical, or logistical issues.

R698-10-5. Anchor Location.

(1) The anchor location for an electronic meeting shall be designated in the meeting notice.

(2) A quorum of a public body is not required to be present at the anchor location for an electronic meeting.

(3) The anchor location shall have space where interested persons and the public may attend and monitor the open portions of the meeting.

KEY: electronic meetings, public meetings, open meetings
July 18, 2017 52-4-103
52-4-207

R714. Public Safety, Highway Patrol.
R714-162. Equipment Standards for Heavy Motor Vehicle, Trailer and Bus Safety Inspections.
R714-162-1. Authority.

This rule is authorized by Subsections 53-8-204(5) and 41-6a-1601(2).

R714-162-2. Purpose.

The purpose of this rule is to set minimum equipment standards governing heavy motor vehicle, trailer, and bus safety inspections in accordance with Sections 53-8-204 and 41-6a-1601.

R714-162-3. Definitions.

(1) Terms used in this rule are found in Sections 41-1a-102, 41-6a-102, and 49 C.F.R. 571, et seq.

(2) In addition:

(a) "acute area" means the area extending upward from the height of the top of the steering wheel, excluding a 2 inch border at the top of the windshield, and a 1 inch border at each side of the windshield or windshield panel;

(b) "CNG" means compressed natural gas;

(c) "heavy motor vehicle" means any vehicle with a gross vehicle weight rating of 26,001 pounds or more, machine, tractor, trailer, or semi-trailer, propelled or drawn by mechanized power that transports passengers or property, or any combination thereof;

(d) "division" means the Vehicle Safety Inspection section of the Utah Highway Patrol;

(e) "fuel system" means the fuel tank, the fuel pump, and the necessary piping to carry the tank to the carburetor or injection system;

(f) "inspector" means a person employed by a station licensed to conduct safety inspections;

(g) "online inspection certificate" means an inspection certificate created electronically through the Vehicle Safety Inspection System;

(h) "online inspection program" means the web-based inspection program used to record safety inspections;

(i) "OEM" means original equipment manufacturer; and

(j) "paper inspection certificate" means an inspection certificate created by paper form.

R714-162-4. Incorporation of Federal Motor Vehicle Safety Standards.

This rule incorporates by reference the standards found in 49 CFR Parts 393, 396, and 396 Appendix G as the minimum standards a motor vehicle must meet to pass a safety inspection under this rule.

R714-162-5. Applicability of Rule.

This rule applies to all heavy motor vehicles, trailers, and buses.

R714-162-6. Inspection Procedures.

(1) The inspector shall complete the following tasks prior to inspecting the vehicle:

(a) collect appropriate registration paperwork;

(i) a vehicle may be inspected without registration paperwork;

(b) verify the Vehicle Identification Number;

(c) record the owner's full name and vehicle information;

(d) record the vehicle mileage;

(e) remove the old inspection sticker; and

(f) enter the inspection date and inspector number if using a paper inspection certificate.

(2) The inspector shall examine the vehicle's interior by completing the following tasks:

(a) inspect the windshield;

(b) inspect the required mirrors for adequate visibility;

(c) inspect the seatbelts for proper operation;

(d) inspect the steering system;

(e) inspect for play in the brake pedal;

(f) inspect the emergency brake for proper operation;

(g) inspect the horn;

(h) inspect the windshield wiper and washer; and

(i) inspect heater and defroster.

(3) The inspector shall examine the vehicle's exterior by completing the following tasks:

(a) inspect high and low beam headlights;

(b) inspect headlights for proper aim;

(c) inspect parking lights, tail lights, signal lights, brake lights, marker lights, and reflectors;

(d) inspect the light for proper color;

(e) inspect the tires for proper inflation, wear, and damage;

(f) inspect the body, fenders, door, hood latches, and bumpers;

(g) inspect for broken glass; and

(h) inspect the window tinting by measuring the light transmittance on the front side windows and windshield.

(4) The inspector shall examine items under the vehicle's hood by completing the following tasks:

(a) inspect belts;

(b) inspect hoses;

(c) inspect power steering pump;

(d) inspect wiring;

(e) inspect the exhaust manifold;

(f) inspect the master cylinder;

(g) inspect for fuel leaks; and

(h) inspect the air compressor.

(5) The inspector shall examine the vehicle's suspension and undercarriage by completing the following tasks:

(a) inspect wheel bearings;

(b) inspect ball joints;

(c) inspect tie rod ends;

(d) inspect idler arms;

(e) inspect shock absorbers;

(f) inspect springs;

(g) inspect the exhaust system;

(h) inspect floor pans; and

(i) inspect fuel system lines.

(6) The inspector shall examine the braking system by completing the following tasks:

(a) inspect for loose or missing lug nuts;

(b) inspect for cracked wheels;

(c) inspect pads or shoes;

(d) inspect rotors or drums;

(e) record the brake measurements on the safety inspection sticker report;

(f) inspect for fluid leaks; and

(g) inspect brake hoses.

(7) If the vehicle passes inspection, the inspector shall:

(a) sign the sticker report; and

(b) apply the new sticker to the inspected vehicle.

R714-162-7. Registration.

(1) When reviewing the vehicle registration papers, the inspector shall:

(a) check the vehicle registration certificate, vehicle identification number, license plates, and vehicle description for agreement;

(b) enter the manufacturer's vehicle identification number and license plate number into the online program or record on the safety inspection certificate if not using the online program;

(c) advise the owner when paperwork disagreements are accidental or clerical in nature; and

(d) issue a rejection inspection certificate when:

(i) the registration certificate, vehicle identification

number, license plate, and vehicle description are not in agreement; or

(ii) the vehicle identification number is missing or obscured.

(e) Verify the vehicle identification number on the registration or other documents with the number on the vehicle.

(2) The inspector shall examine the vehicle's license plates and comply with the following requirements:

(a) if the vehicle is registered, verify the license plates are securely mounted and clearly visible;

(b) check to ensure the Utah Apportioned plate is properly mounted; and

(c) advise the owner when a license plate is not securely fastened, is obscured, or cannot be clearly identified.

R714-162-8. Tires and Wheels.

(1) When examining the tire and wheels of a vehicle, the inspector shall:

(a) check the vehicle for proper mudguard protection, which must be at least as wide as the tire it is protecting, be directly in line with the tire, and maintain a ground clearance of not more than 50% of the diameter of a rear axle wheel under any conditions; and

(i) issue a rejection inspection certificate when:

(A) tire tread is not fully covered by the body, trailer, or fender;

(B) rear tires do not have the top 50% of the tire covered by mudflaps; or

(C) rear mud flaps are not as wide as the tire;

(ii) Wheel covers, mudguards, flaps, or splash aprons are not required if the motor vehicle, trailer, or semi-trailer is designed and constructed to meet the requirements in Subsection R714-162-8(1)(a).

(b) check for proper tire width, size, and load rating; and

(i) issue a rejection inspection certificate when:

(A) a tire's width is beyond the outside of the vehicle body; or

(B) a tire is not of proper size and load rating per axle as determined by OEM specifications;

(c) check valve stems for damage or cracks; and

(i) issue a rejection inspection certificate when:

(A) a valve stem is cracked, damaged, or shows evidence of wear because of misalignment;

(d) check the rims; and

(i) issue a rejection inspection certificate when:

(A) rims and rings are mismatched;

(B) a ring shows evidence of slippage, rust, or damage;

(C) a rim or ring is bent, sprung, cracked, improperly sealed, or otherwise damaged;

(D) there is slippage on Louisville or Dayton type wheels;

(E) wheel nuts, studs, or clamps are loose, broken, damaged, missing, mismatched, cracked, stripped, have improper thread engagement, or otherwise ineffective;

(F) wheel rings, disc, spoke, or rim type wheels show any evidence of having been repaired or re-welded;

(G) stud holes are out of round or elongated;

(H) there are cracks between the hand holes or the stud holes in the disc; or

(I) wheel casting is cracked or there is evidence of wear in the clamping area; and

(e) check the wheel welds; and

(i) issue a rejection inspection certificate when:

(A) there are any cracks in welds attaching wheel disc to rim;

(B) there are any cracks in welds attaching tubeless demountable rim to the adapter;

(C) there are any welded repairs on any aluminum wheels; or

(D) there are any welded repairs other than disc to rim attachment on steel disc wheels mounted on the steering axle.

(2) When examining the front steering axle tires of a vehicle, the inspector shall:

(a) check tire tread depth, which may not be measured on the tread wear bar; and

(i) issue a rejection inspection certificate when tread depth is less than 4/32 inch on steering axle tires when measured in any two adjacent major tread grooves at three equally spaced intervals around the circumference of the tire; and

(b) check tire condition and inflation; and

(i) issue a rejection inspection certificate when:

(A) a tire is cut or otherwise damaged, exposing body ply or belt material through the tread or sidewall;

(B) a tire has any tread or sidewall separation;

(C) a tire is labeled for other than highway use or displaying other markings that would exclude use on a steering axle;

(D) a tire is a tube-type radial tire without radial tube stem markings, which include a red band around the tube stem, the word "radial" embossed in metal stems, or the word "radial" molded in rubber stems;

(E) there is mixing of bias and radial tires on the same axle;

(F) a tire flap protrudes through the valve slot in rim and touches the stem;

(G) There are re-grooved tires on the steering axle;

(H) a tire has a boot, blowout patch, or other ply repairs;

(I) the weight carried exceeds the tire load limit, including an overloaded tire resulting from low air pressure;

(J) a tire is flat, has noticeable leak, or is inflated to less than 50% of the vehicle manufacturer's recommended tire pressure;

(K) a tire is mounted or inflated so that it comes in contact with any part of the vehicle;

(L) a tire is over inflated;

(M) a tire is worn to the extent secondary rubber is exposed in the tread or sidewall area; or

(N) if the vehicle is a bus and is equipped with a re-capped or re-treaded tire.

(3) When examining tires other than the front steering axle tires of a vehicle, the inspector shall:

(a) check the tire tread depth, which may not be measured on the tread wear bar; and

(i) issue a rejection inspection certificate when tread depth is less than 2/32 inch in any two adjacent major tread grooves at three equally spaced intervals around the circumference of the tire; and

(b) check the tire condition and inflation; and

(i) issue a rejection inspection certificate when:

(A) the weight carried exceeds the tire load limit, including an overloaded tire resulting from low air pressure;

(B) a tire is flat, has noticeable leak, or is inflated to less than 50% of the vehicle manufacturer's recommended tire pressure;

(C) a tire is cut or otherwise damaged, exposing body ply or belt material through the tread or sidewall;

(D) a tire has any tread or sidewall separation;

(E) a tire is mounted or inflated so that it comes in contact with any part of the vehicle, including a tire that contacts its mate;

(F) a tire is labeled for other than highway use or displays other markings that would exclude its use; or

(G) a tire is worn to the extent secondary rubber is exposed in the tread or sidewall area.

(4) When examining the dual tires of a vehicle, if equipped, the inspector shall:

(a) check for mismatching of tire construction, such as radial and bias, sizes, and wear on any set of duals; and

(i) issue a rejection inspection certificate when:

(A) the tire diameter of one of the duals is not within 1/4 inch of the other on 8.25-20 and smaller, or 1/2 inch on 9.00-20 and larger;

(B) the dual tires are in contact with any part of vehicle body or adjacent tire; or

(C) a tire has a boot, blowout patch, or other ply repairs that are sub-standard and not identified by a triangular label in the immediate vicinity.

R714-162-9. Steering Alignment and Suspension.

(1) When examining the steering system of a vehicle, the inspector shall:

(a) check the steering wheel for excessive play, which must be checked with the engine running on vehicles with power steering; and

(i) issue a rejection inspection certificate when:

(A) steering wheel lash on a 16 inch diameter steering wheel exceeds 2 inches for manual steering or 4-1/2 inches for power steering;

(B) the steering wheel lash on an 18 inch diameter steering wheel exceeds 2-1/4 inches for manual steering or 4-3/4 inches for power steering;

(C) the steering wheel lash on a 19 inch diameter steering wheel exceeds 2-3/8 inches for manual steering or 5 inches for power steering;

(D) the steering wheel lash on a 20 inch diameter steering wheel exceeds 2-1/2 inches for manual steering or 5-1/4 inches for power steering;

(E) the Steering wheel lash on a 21 inch diameter steering wheel exceeds 2-5/8 inches for manual steering or 5-1/2 inches for power steering; or

(F) the steering wheel lash on a 22 inch diameter steering wheel exceeds 2-3/4 inches for manual steering or 5-3/4 inches for power steering;

(b)(i) check:

(A) the steering column for proper functioning;

(B) flexible coupling in the steering column, if equipped, for misalignment and tightness of the adjusting screw or nut;

(C) for absence or looseness of U-bolts or positioning parts;

(D) for worn, faulty, or welded repairs of universal joints; and

(E) for a loose or improperly secured steering wheel; and

(ii) Issue a rejection inspection certificate when:

(A) flexible coupling is obviously misaligned;

(B) a clamp bolt or nut is loose or missing;

(C) there is separation of the shear capsule from bracket and general looseness of wheel and column, or if the wheel and column can be moved as a unit;

(D) an adjustable steering wheel or tilt steering cannot be secured in a safe operating position, or if there is 3/4 inch or more movement at the center of the steering wheel when locked in the operating position;

(E) there is any absence or looseness of a U-bolt or positioning part;

(F) there are worn, faulty, or welded repairs to universal joints; or

(G) the steering wheel is not properly secured, is cracked, or has spokes missing;

(c) check the size of steering wheel; and

(i) issue a rejection inspection certificate when the steering wheel is less than 13 inches in outside diameter or is not a full circular construction;

(d) check the front axle beam for defects, cracks, and welded repairs; and

(i) issue a rejection inspection certificate when:

(A) a kingpin is worn and shows excessive movement;

(B) there are cracks, welds, or any bends; or

(C) a positioning part is loose such as a U-bolt or spring hanger;

(e) check the steering gear box for proper functioning; and

(i) issue a rejection inspection certificate when:

(A) a bolt is loose or missing at the frame or mounting brackets;

(B) there are cracks in the gear box or mounting brackets; or

(C) fasteners are missing;

(f) check the pitman arm; and

(i) issue a rejection inspection certificate when:

(A) there is any looseness of the pitman arm on the steering gear output shaft; or

(B) there are any welded repairs;

(g)(i) check:

(A) the auxiliary power assist cylinder for looseness, if the vehicle is equipped with power steering;

(B) the power steering belts for proper condition and tension, if the vehicle is equipped with power steering;

(C) the power steering system, including gear, hoses, hose connections, cylinders, valves, pump, and pump mounting for condition, rubbing, and leaks, if the vehicle is equipped with power steering; and

(D) the power steering reservoir for fluid level below OEM specifications, if the vehicle is equipped with power steering; and

(ii) issue a rejection inspection certificate when:

(A) the auxiliary power assist cylinder is loose;

(B) a power steering belt is frayed or cracked and tension is not maintained;

(C) a Hose or hose connection has been rubbed by moving parts or is leaking;

(D) any cylinder, valve, or pump shows evidence of leakage;

(E) a pump mounting part is loose or broken;

(F) the power steering system is inoperative, if the vehicle is equipped with power steering; or

(G) the power steering fluid level is below OEM specifications;

(h)(i) check ball and socket joints for any:

(A) movement under the steering load of a stud nut; or

(B) motion, other than rotational, between any linkage member and its attachment point of more than 1/8 inch; and

(ii) issue a rejection inspection certificate when there is any:

(A) movement under steering load of a stud nut; or

(B) motion, other than rotational, between any linkage member and its attachment point of more than 1/8 inch measured with hand pressure only;

(i)(i) check:

(A) tie rods and drag links for a loose clamp or clamp bolt; and

(B) for loose or missing nuts on tie rods, pitman arm, drag link, steering arm, or tie rod arm; and

(ii) advise the owner when:

(A) tie rod grease seals are cut, torn, or otherwise damaged to the extent that lubricant will not be retained; and

(iii) issue a rejection inspection certificate when:

(A) there is a loose or missing clamp or bolt;

(B) there are worn tie rod ends;

(C) there are loose or missing nuts on tie rods, pitman arm, drag link, steering arm or tie rod arm; or

(D) looseness is detected in a threaded joint;

(j) check for any modifications or other condition that may interfere with free movement of any steering component; and

(i) issue a rejection inspection certificate when:

(A) any modification or other condition interferes with free movement of any steering component; and

(k) check the steering linkage, kingpin, and springs and ensure that any looseness detected is not wheel bearing free play

by applying service brakes during the inspection; and
(i) issue a rejection inspection certificate when:
(A) wheel bearing free play exceeds OEM specifications; or
(B) kingpin looseness exceeds OEM specifications.
(2) When examining a vehicle's leaf spring suspensions, the inspector shall:
(a) check:
(i) for cracked, broken, loose, missing, or sagging suspension springs;
(ii) spring shackles, spring center bolts, U-bolts, clips, and other attaching parts; and
(iii) for any U-bolts, spring hangers, or other axle positioning parts that are cracked, broken, loose, or missing; and
(b) issue a rejection inspection certificate when:
(i) springs are cracked, broken, loose, missing, separated, or sagging;
(ii) spring attaching parts are cracked, broken, loosely connected, missing, worn, or sagging;
(iii) one or more leaves are displaced in a manner that could result in contact with a tire, rim, brake drum, or frame;
(iv) an improper spring size and rating is utilized and does not meet or exceed OEM specifications; or
(v) U-bolts, spring hangers, or other axle positioning parts are cracked, broken, loose, or missing resulting.
(3) When examining all other suspension mechanisms of the vehicle, the inspector shall:
(a) check:
(i) shock absorbers;
(ii) coil springs;
(iii) torsion bar spring in a torsion bar suspension; and
(iv) air suspension; and
(d) issue a rejection inspection certificate when:
(i) rubber bushings are destroyed or missing;
(ii) a mounting is loose, broken, or missing;
(iii) shock absorbers are missing or disconnected;
(iv) shock absorbers are leaking;
(v) coil springs are broken or missing;
(vi) torsion bar spring is broken;
(vii) air suspension is deflated, indicating a system failure;
(vii) any component is the improper size or rating; or
(ix) any component is leaking, cracked, misaligned or broken.
(4) When examining the following items related to the vehicle's torque, radius, and tracking components, the inspector shall:
(a) check all torque, radius, and tracking components for proper operation; and
(b) issue a rejection inspection certificate when any part of a torque, radius, or tracking component assembly, or any part used for attaching the same to the vehicle frame or axle is cracked, loose, broken, or missing, except when it is a loose bushing in the torque or track rods.
(5) When examining a vehicle's wheel tracking, the inspector shall:
(a) check wheel tracking with the front wheels in a straight-ahead position, measure the distance between the center of the front wheels to the center of the rear wheels, and compare the dimensions on the right side against the dimensions on the left side; and
(b) issue a rejection inspection certificate when the dimensions between wheel centers on one side differ from the dimensions on the other side by more than one inch.

R714-162-10. Coupling Devices.
(1) When examining a fifth wheel coupling device, the inspector shall:
(a) check the mounting to frame; and
(i) issue a rejection inspection certificate when:
(A) a fastener is missing or ineffective;
(B) any movement between mounting components is detected; or
(C) a mounting angle iron is cracked or broken;
(b) check mounting plates and pivot brackets; and
(i) issue a rejection inspection certificate when:
(A) a fastener is missing or ineffective;
(B) any cracks in welds or parent metal are detected;
(C) more than 3/8 inch horizontal movement between the pivot bracket pin and bracket exists; or
(D) a pivot bracket pin is missing or not secured;
(c) check sliders; and
(i) issue a rejection inspection certificate when:
(A) a latching fastener is missing or ineffective;
(B) a fore or aft stop is missing or is not securely attached;
(C) there is any movement more than 3/8 inch between the slider bracket and slider base; or
(D) a slider component is cracked in the parent metal or weld;
(d) check the lower coupler; and
(i) issue a rejection inspection certificate when:
(A) horizontal movement between the upper and lower fifth wheel halves exceeds 1/2 inch;
(B) the operating handle is not in a closed or locked position;
(C) the kingpin is not properly engaged;
(D) separation between upper and lower coupler allows light to show through from side to side;
(E) a crack is detected in the fifth wheel plate, unless it is a crack in the fifth wheel approach ramps or a casting shrinkage crack in the ribs of the body of a cast fifth wheel; or
(F) a locking mechanism part is missing, broken, or deformed to the extent the kingpin is not securely held.
(2) When examining a pintle hooks coupling device, the inspector shall:
(a) check the pintle hooks for proper mounting to the frame; and
(i) issue a rejection inspection certificate when:
(A) there is a missing or ineffective fastener, except a fastener is not considered missing if there is an empty hole in the device but no corresponding hole in the frame or vice versa;
(B) a mounting surface crack extends from point of attachment;
(C) a pintle hook is loosely mounted;
(D) the frame cross member providing the pintle hook attachment is cracked;
(E) a crack is discovered anywhere in the pintle hook assembly;
(F) any welded repairs have been made to the pintle hook;
(G) any part of the horn section has been reduced by more than 20%; or
(H) the pintle hook latch is not secure.
(3) When examining a drawbar or tow-bar eye coupling device, the inspector shall:
(a) check the drawbar or tow-bar eye for proper mounting; and
(i) issue a rejection inspection certificate when:
(A) a crack in an attachment weld is present;
(B) a missing or ineffective fastener is present;
(C) a crack is present; or
(D) any part of the eye is reduced by more than 20%.
(4) When examining a drawbar or tow-bar tongue coupling device, the inspector shall:
(a) check the drawbar or tow-bar tongue on a power or manual slider for proper operation; and
(i) issue a rejection inspection certificate when:
(A) the latching mechanism is ineffective or disconnected;
(B) a stop is missing or ineffective;
(C) there is movement of more than 1/4 inch between the

slider and housing; or

(D) there is a leak, other than normal oil weeping around the hydraulic seals, including air, hydraulic cylinders, hoses, or chambers; and

(b) check for cracks and movement of 1/4 inch between the slider and housing; and

(i) issue a rejection inspection certificate when:

(A) a crack is discovered; or

(B) there is movement of 1/4 inch or more between sub-frame and drawbar at point of attachment.

(5) When examining all coupling safety devices, the inspector shall:

(a) check for:

(i) missing safety devices such as chains, metal wire, and rope;

(ii) safety devices that are unattached or incapable of secure attachment;

(iii) worn chains and hooks; and

(iv) kinked or broken cable strands and improper clamps or clamping;

(b) issue a rejection inspection certificate when:

(i) a safety device is missing;

(ii) a safety device is unattached;

(iii) a safety device is incapable of secure attachment;

(iv) a chain and hook are worn to the extent of a measurable reduction in link cross section;

(v) improper repairs are evident such as welding, wire, small bolts, rope, or tape;

(vi) a cable is kinked or has broken cable strands; or

(vii) a cable has improper clamps or clamping; and

(c) check the saddle-mounts for the method of attachment; and

(i) issue a rejection inspection certificate when:

(A) a fastener is missing or ineffective;

(B) a mounting is loose;

(C) a stress or load bearing member is cracked or broken; or

(D) horizontal movement between upper and lower saddle-mounts exceeds 1/4 inch.

R714-162-11. Brakes.

(1) When examining the brake system of a vehicle, the inspector shall:

(a) check to ensure that the vehicle is installed with the required brakes;

(b) check the service brakes for proper operation;

(c) check for broken, missing, or loose components, brake lining air leaks in the brake chambers, brake readjustment limits, mismatch across the steering axle of air chamber sizes, and slack adjuster length;

(d) check wedge brakes for movement on the scribe that exceeds 1/16 inch; and

(e) issue a rejection inspection certificate when:

(i) there is absence of any braking action on any axle required to have brakes upon application of the service brakes such as missing brakes or brake shoes, failing to move upon application of a wedge, S-cam, cam, or disc brake;

(ii) there are missing or broken mechanical components such as shoes, linings, pads, springs, anchor pins, spiders, cam rollers, push rods, or air chamber mounting bolts;

(iii) a brake lining is contaminated with oil, grease, or brake fluid;

(iv) a brake lining is broken, has a crack that exceeds 1-1/2 inch in length, has a crack or void that exceeds 1/16 inch observable from the edge of the lining, or a pad or lining is not firmly attached to the shoe;

(v) there are loose brake components such as air chambers, spiders, and cam shaft support brackets;

(vi) there is an audible air leak at the brake chamber, including a ruptured diaphragm or loose chamber clamp;

(vii) a brake is beyond adjustment limits listed in tables or instructions in the Federal Motor Carrier Safety Regulations;

(viii) a brake lining has a thickness less than 1/4 inch at the shoe center for air drum brakes, 1/16 inch or less at the shoe center for hydraulic and electric drum brakes, and less than 1/8 inch for air disc brakes on either the steering or non-steering axles; or

(ix) there is a mismatch across any power unit steering axle of air chamber sizes or slack adjuster length;

(e) check the parking brake system; and

(i) issue a rejection inspection certificate when the brakes on the vehicle or combination are not applied upon actuation of the parking brake control, including the driveline hand controlled parking brakes;

(f) check brake drums and brake rotors for damage, wear, and contamination; and

(i) issue a rejection inspection certificate when:

(A) any portion of the brake drum or rotor has any external crack or has any crack that opens upon brake application, except for short hairline heat check cracks;

(B) any portion of the brake drum or rotor is missing or is in danger of falling away;

(C) there are fluids contaminating the friction surface of either the brake drum or rotor;

(D) the inside diameter of the drum measures more than the discard diameter stamped on the drum or more than OEM specifications if drum is unmarked; or

(E) the thickness of a disc is less than the minimum thickness stamped on the disc.

(f) check the brake hoses for any damage, bulges or swelling, audible leaks, and proper fittings; and

(i) issue a rejection inspection certificate when:

(A) a brake hose has any damage extending through the outer reinforcement ply;

(B) there is color difference between cover and inner tube;

(C) bulges or swelling are evident when air pressure is applied;

(D) there are any audible air leaks;

(E) two brake hoses are improperly joined, such as a splice made by sliding the hose ends over a piece of tubing and clamping the hose to the tube; or

(F) an air hose is cracked, broken or crimped;

(g) check brake tubing for any damage, leaks, and general condition; and

(i) issue a rejection inspection certificate when:

(A) there are any audible air leaks; or

(B) any brake tubing is cracked, damaged by heat, broken, or crimped;

(h) check the low pressure warning device; and

(i) issue a rejection inspection certificate when:

(A) the low pressure warning device is missing, inoperative, does not operate at 55 PSI and below or 1/2 the governor cutout pressure, whichever is less, on a vehicle manufactured after March 1, 1975; or

(B) the vehicle does not have a visual warning device, if manufactured after March 1, 1975;

(i) check the tractor protection valve or device on the power unit; and

(i) issue a rejection inspection certificate when the tractor protection valve or device is inoperative or missing.;

(j) check air brakes and compressor for proper operation and condition; and

(i) issue a rejection inspection certificate when:

(A) compressor drive belts are in a condition of impending or probable failure;

(B) compressor mounting bolts are loose;

(C) pulley is cracked, broken, or loose; or

(D) a mounting bracket, brace, or adapter is loose,

cracked, broken, or missing;

(k) check electric brakes and breakaway braking device; and

(i) issue a rejection inspection certificate when:

(A) there is absence of braking action on any wheel required to have brakes; or

(B) breakaway braking device is missing or inoperable;

(l) check hydraulic brakes, including power assist over hydraulic, engine drive hydraulic booster and dual hydraulic circuits for proper operation; and

(i) issue a rejection inspection certificate when:

(A) The master cylinder is below the add line or less than 3/4 full;

(B) there is no pedal reserve when the engine is running except by pumping the pedal;

(C) the power assist unit fails to operate;

(D) a brake hose is seeping or swelling under application of pressure;

(E) the check valve is missing or inoperative;

(F) hydraulic fluid is observed leaking from the brake system;

(G) a hydraulic hose is abraded (chafed) through the outer cover to the fabric layer;

(H) fluid lines or connections are leaking, restricted, crimped, cracked, or broken; or

(I) brake failure or low fluid warning light is on or inoperative;

(m) check the Vacuum Braking System for proper operation.

(i) issue a rejection inspection certificate when:

(A) there is insufficient vacuum reserve to permit one full brake application after the engine is shut off;

(B) a vacuum hose or line is leaking, restricted, abraded (chafed) through the outer cover to the cord ply, crimped, cracked, broken, or collapsed when vacuum is applied; or

(C) the low-vacuum warning device is missing or inoperative; and

(n) check for leaking wheel seals; and

(i) issue a rejection inspection certificate when a wheel seal is leaking.

R714-162-12. Electrical System.

(1) When examining the electrical system of a vehicle, the inspector shall:

(a) check the horn to ensure it is securely fastened and works properly; and

(i) issue a rejection inspection certificate when:

(A) the horn is not securely fastened; or

(B) the horn does not function properly and is not audible under normal conditions at a distance of at least 200 feet;

(b) check to ensure all switches function properly; and

(i) advise the owner when any original equipment switch fails to function as designed;

(c) check all wiring to make sure it is not chafed, bare, or contacting sharp objects; and

(i) issue a rejection inspection certificate when wiring insulation is chafed, rubbed bare, or shows any evidence of burning or short-circuiting;

(d) check to ensure all electrical connectors are tight and secure; and

(i) advise the owner when connections are not tight and secure or connections are corroded;

(e) check:

(i) the neutral starting switch on an automatic transmission to determine whether the starter operates only with the gear selector in "P" or "N"; or

(ii) a manual transmission, if originally equipped with a neutral safety switch, to determine if the vehicle only starts with the clutch depressed; and

(iii) issue a rejection inspection certificate when the automatic or manual transmission safety starting switch is inoperative; and

(f) check for battery securement; and

(i) issue a rejection inspection certificate when the battery is not properly secured, or a temporary repair is present.

R714-162-13. Lighting System.

(1) When examining the lighting system of a vehicle, the inspector shall:

(a) check all lights for secure mounting, proper location, and correct color; and

(i) issue a rejection inspection certificate when:

(A) a light is missing, not secured, or emitting light of improper color;

(B) a light is in wrong position or not operating;

(C) a headlight is not the color white, not properly aimed, lacks upper and lower beams, or does not measure between 22 inches and 54 inches in height when measured from the ground to the center of the low-beam headlamp;

(D) fog driving lights are not white or yellow in color or are not properly aimed or do not operate on a separate switch;

(E) a tail light or stop light is not the color red, is not present on each side at the rear of the vehicle, or is not mounted between 15 inches to 72 inches in height when measured from the ground to the center of the bulb;

(F) a turn signal light is not on each side of the vehicle front and rear, is not the color yellow or amber on the front of the vehicle, is not the color red, yellow, or amber on the rear of the vehicle, or the signal switch is not capable of operation by the driver or does not remain on without assistance when activated;

(G) the instrument panel does not illuminate whenever headlights or taillights are activated, the high beam indicator does not indicate when high beam lights are on, or a turn signal indicator does not indicate when turn signals are in operation;

(H) the back-up lights on trailers, when present, are not white or are on when the vehicle is moving forward; or

(I) any required light, reflector, or retro reflective sheeting is not present, does not light properly, is not the proper height, is not the proper color, or is not in the proper location as listed in Part 393 of the Federal Motor Carrier Safety Regulations.

R714-162-14. Exhaust System.

(1) When examining the exhaust system of a vehicle, the inspector shall:

(a) check the exhaust system to determine if there is any leaking at a point forward of or directly below the driver or sleeper compartment; and

(i) issue a rejection inspection certificate when there is any leaking at a point forward of or directly below the driver or sleeper compartment;

(b) check the bus exhaust system to determine if there is any improper leaking or discharging; and

(i) issue a rejection inspection certificate when:

(A) there is a leak or discharge at any location in excess of six inches forward of the rearmost part of the bus, if the bus is gasoline powered;

(B) there is a leak or discharge at any location in excess of 15 inches forward of the rearmost part of the bus, if the bus is powered by anything other than gasoline; or

(C) there is any leak or discharge forward of a door or window designed to be opened, except for emergency exits, if the vehicle is powered by anything other than gasoline;

(c) check the exhaust system for the correct location; and

(i) issue a rejection inspection certificate when:

(A) the system will burn, char, or damage any electrical wiring, the fuel supply, or any combustible part of the motor vehicle;

(B) the vehicle has no muffler;
(C) there are loose or leaking joints;
(D) there are leaks, excluding drain holes installed by the manufacturer, of any kind on any part of the system;
(E) the tailpipe is pinched;
(F) any element of exhaust system is not securely fastened or is secured in a manner that is likely to fail, such as securing the tail pipe with rope;
(G) the vehicle is installed with a muffler cutout or similar device;
(H) exhaust stacks are located in a position in which an individual may be burned upon entering or leaving the vehicle, or in a location likely to cause damage to any electrical wiring, fuel supply, or any combustible part of the motor vehicle;
(I) any part of the exhaust system passes through the occupant compartment;
(J) a tail pipe does not extend to or beyond the rear of the cab or passenger area or is severely bent or broken; or
(K) a tail pipe does not extend to outer periphery of a motor home or van.

R714-162-15. Fuel System.
(1) If the fuel system uses diesel or gasoline, the inspector shall:
(a) check the fuel tank, fuel tank support straps, filler tube, tube clamps, fuel tank vent hoses or tubes, filler housing drain, overflow tube, and fuel filler; and
(i) issue a rejection inspection certificate when:
(A) there is fuel leakage at any point or there are escaping gases detected in the system;
(B) the fuel tank filler cap is missing;
(C) any part of the system is not securely fastened or supported;
(D) there is physical damage to any fuel system component; or
(E) the crossover line is not protected and drops more than two inches below fuel tanks.
(2) If the fuel system uses liquid propane gas, the inspector shall:
(a) check the fuel tank, fuel tank support straps, filler tube, tube clamps, fuel tank vent hoses or tubes, filler housing drain, overflow tube, fuel filler cap, and conversion kit installations;
(b) check for leaks by using the soap test with antifreeze;
(c) check that the fuel container is installed in a way to prevent it from jarring loose, slipping, or rotating;
(d) check that containers are located to minimize the possibility of damage to the container and its fittings;
(e) check that containers located less than 18 inches from the exhaust system, the transmission, or a heat-producing component of the internal combustion engine are shielded by a vehicle frame member or by a noncombustible baffle with an air space on both sides of the frame member or baffle;
(f) check that the piping system is installed, supported, and secured in such a manner as to minimize damage due to expansion, contraction, vibration, strains, and wear. Protection to the piping system may be achieved by parts of the vehicle furnishing the necessary protection, a fitting guard furnished by the manufacturer of the container, or by other means to provide equivalent protection;
(g) check that container valves, appurtenances, and connections are protected to prevent damage from accidental contact with stationary objects or from stones, mud, ice, and from damage from the vehicle's overturn or similar accident;
(h) for a tank installed inside a passenger compartment, check that it is installed in an enclosure that is securely mounted to the vehicle, such as a trunk which is gas-tight with respect to the passenger compartment and is vented to the outside of the vehicle; and
(i) check that manual shutoff valves provide positive closure under service conditions, are equipped with an internal excess-flow check valve designed to close automatically at the rated flows of vapor, stop all flow to and from the container when put in the closed position, and are readily accessible without the use of tools or other equipment. A check valve will not meet this requirement; and
(j) issue a rejection inspection certificate when:
(i) there is fuel leakage at any point or there are escaping gases detected in the system;
(ii) the fuel tank filler cap is missing, which is the cap over the fueling receptacle, not the door to the receptacle;
(iii) any part of the system is not securely fastened, supported, or the tank valve is not shielded;
(iv) there is physical damage, such as excessive denting, corrosion, bulging, or gouging to any fuel system component;
(v) the fuel lines have any corrosion;
(vi) welding is present, with the exception of being on saddle plates, lugs, pads or brackets that are attached to the container by the container manufacturer;
(vii) excessive surface rust on the tank or tank paint coating is in poor condition;
(viii) there is any installation hazard present that may cause a potential hazard during a collision;
(ix) a container is mounted directly on roofs or ahead of the front axle or beyond the rear bumper of a vehicle;
(x) a container or its appurtenance protrudes beyond the sides or top of the vehicle;
(xi) the vehicle does not have a weather-resistant, diamond shaped label located on the right rear of the vehicle identifying the vehicle as a "PROPANE" fueled vehicle;
(xii) a data plate, or saddle plate, is not present or is not legible on a propane tank;
(xiii) any aftermarket data plates are welded on the tank; or
(xiv) a check valve is used for a manual shutoff valve.
(3) American Society of Mechanical Engineers, or ASME containers are installed permanently to vehicles and are not subject to the DOT inspection requirements.
(4) All liquefied propane gas containers fabricated to earlier editions of regulations, rules, or codes listed in NFPA 5.2.1.1 and of the Interstate Commerce Commission Rules for Construction of Unified Pressure Vessels, prior to April 1, 1967, shall be permitted to continue to be used in accordance with Section 1.4 of NFPA.
(5) Containers that have been involved in a fire and show no distortion shall be re-qualified by a manufacturer of that type of cylinder or by a repair facility approved by DOT, before being used or reinstalled.
(6) When inspecting a fuel system that uses either CNG or liquefied natural gas, the inspector shall:
(a) check the fuel tank, fuel tank support straps, filler tube, tube clamps, fuel tank vent hoses or tubes, filler housing drain, overflow tube, fuel filler cap, and conversion kit installations;
(b) check the tank to verify it is protected from physical damage using the vehicle structure, valve protectors or a suitable plastic or metal shield;
(c) check that fuel tank shields do not have direct contact with fuel tanks and prevent trapping of materials that could damage the tanks or its coatings;
(d) for fuel tanks installed above, below, or within the passenger compartment, check to verify connections are external or sealed and vented from the compartment.
(e) for fuel tanks installed within the passenger compartment, check to verify tanks are vented to the outside of the vehicle with a boot or heavy plastic bag and shall not exit into a wheel well;
(f) check tanks and fuel lines to verify mounting and bracing is away from the exhaust system and supported to minimize vibration and to protect against damage, corrosion, or

breakage.

(g) check for identification with a weather-resistant, diamond-shaped label located on an exterior vertical surface or near-vertical surface on the lower right rear of the vehicle, excluding the bumper, inboard from any other markings;

(i) the label shall be a minimum of 4.72 inches long by 3.27 inches high;

(h) check that when a manual valve is used, the valve location is accessible, indicated with the words "MANUAL SHUTOFF VALVE";

(i) check that the vehicle bears in the engine compartment a label readily visible identification as a CNG-fueled vehicle, system service pressure, installer's name or company, container retest dates or expiration date, and the total container water volume in gallons;

(j) check for a label located at the fueling connection receptacle with identification as a CNG-fueled vehicle, system working pressure, and container retest dates or expiration date;

(k) check that CNG fuel containers are permanently labeled;

(i) disassembly of the tanks protective shield is not required to verify the label on the tank;

(ii) it is the vehicle owner's responsibility to provide documentation for a current CNG tank Inspection from a CNG certified inspector; and

(iii) the documentation must identify the vehicle and list the CNG tank certification number; and

(l) visually inspect CNG fuel containers for damage and deterioration; and

(m) issue a rejection inspection certificate when:

(i) there is fuel leakage at any point or escaping gases are detected in the system, odor will be present;

(ii) the fuel tank filler cap or cover is missing;

(iii) any part of the system is not securely fastened, supported, or shielded to prevent damage from road hazards, slippage, loosening, or rotations;

(iv) fuel tank is exposed or unprotected;

(v) tanks that are installed under a vehicle are mounted ahead of the front axle or behind the point of attachment of the rear bumper;

(vi) there is any physical damage to a fuel system component;

(vii) there is any installation hazard present that may cause a potential hazard during a collision;

(viii) any part of the fuel tank or its appurtenances protrudes beyond the sides or top of any vehicle where the tanks can be struck or punctured;

(ix) the vehicle is not labeled as described in Subsection C of this section or in accordance with National Fire Protection Association Pamphlet 52; or

(x) a CNG fuel container is not current with its certification in accordance with Federal Motor Vehicle Safety Standards.

R714-162-16. Vehicle Interior.

(1) When examining the interior of a vehicle, the inspector shall:

(a) check seats for proper operation of the adjusting mechanism and ensure the seats are securely anchored to the floor; and

(i) issue a rejection inspection certificate when:

(A) seats are not securely anchored to the floor;

(B) a seat adjusting mechanism slips out of set position;

(C) a seat back is broken or disconnected from the seat base so that it will not support a person's full weight;

(D) a seat belt, per OEM specifications, is missing or ineffective; or

(E) a seat belt is cut, torn, frayed, or otherwise damaged.

(b) check the floor pan in both occupant compartments and sleeper berths for rusted-out areas or holes that could permit entry of exhaust gases or would not support occupants adequately; and

(i) issue a rejection inspection certificate when the front or rear of the floor pan is rusted through sufficiently to cause a hazard to an occupant or that exhaust gases could enter the occupant area of the vehicle;

(c) check the frame and ensure that any repairs meet OEM Specifications and FMCSA Regulation 396.17; and

(i) issue a rejection inspection certificate when:

(A) there are any broken, rusted through, cracked, loose, or sagging frame components; or

(B) the frame has been cut or portions of the frame have been removed, affecting the strength or integrity of the frame;

(C) there is any condition, including loading, that causes the body or frame to be in contact with a tire or any part of the wheel assemblies; or

(D) adjustable axle assemblies, or sliding sub-frames, with locking pins are missing or not engaged;

(d) check the frame for any loose, broken, or missing fasteners, including fasteners that attach functional components such as the engine, transmission, steering gear, suspension, body parts and fifth wheel; and

(i) issue a rejection inspection certificate when the frame has evidence of loose, broken, or missing fasteners, including fasteners that attach functional components such as the engine, transmission, steering gear, suspension, body parts and fifth wheel.;

(e) check windshield wipers for proper operation and for damaged, torn, or hardened rubber elements and metal parts of wiper blades or arms; and

(i) issue a rejection inspection certificate when:

(A) a wiper fails to function properly;

(B) a wiper blade smears or streaks the windshield;

(C) a wiper blade show signs of physical breakdown of the rubber wiping element; or

(D) a part of the wiper blade or arm is missing or damaged;

(f) check the windshield washer system for proper operation of hand or foot control and that an effective amount of fluid is delivered to the outside of the windshield; and

(i) issue a rejection inspection certificate when the windshield washer system fails to function properly, such as cracked hoses, broken hoses, or if the fluid reservoir is unable to hold fluid;

(g) check the defroster for proper operation; and

(i) issue a rejection inspection certificate when the defroster fan fails to function as designed; and

(h) check the vehicle to ensure that it is equipped with a properly functioning speedometer and odometer; and

(i) advise the owner when the speedometer or odometer is not functional or is disconnected.

R714-162-17. Vehicle Exterior.

(1) When examining the exterior of a vehicle, the inspector shall:

(a) check the exterior for torn metal parts, moldings, or any body parts that may protrude from the vehicle; and

(i) issue a rejection inspection certificate when metal, molding, or other loose or dislocated parts protrude from the surface of the vehicle causing a safety hazard;

(b) check parts and accessories for proper securement; and

(i) issue a rejection inspection certificate when parts or accessories are not properly secured;

(c) check the condition of front and rear bumpers; and

(i) issue a rejection inspection certificate when:

(A) the front bumper is missing, misplaced, loosely attached, broken, or torn so that a portion is protruding creating a hazard; or

(B) rear impact guards are missing;
(d) check front fenders; and
(i) issue a rejection inspection certificate when any fender has been removed or altered to such extent that it does not cover the entire width of the tire and wheel;
(e) check door latches, locks, hinges, and handles for proper operation, improper adjustment, and broken or missing components; and
(i) issue a rejection inspection certificate when:
(A) a door is broken or hinges are sagging so that the door cannot be tightly closed;
(B) a door does not open properly or close tightly; or
(C) any door part is missing, broken, or sagging to the extent that the door cannot be opened and closed properly;
(f) check the hood and hood latch for proper operation; and
(i) issue a rejection inspection certificate when:
(A) the hood is missing, the hood latch does not securely hold the hood in its proper fully closed position, or the secondary safety catch does not function properly; or
(B) the latch release mechanism or its parts are broken, missing, or badly adjusted so that the hood cannot be opened and closed properly;
(g) check the exterior rearview mirrors; and
(i) issue a rejection inspection certificate when:
(A) the right or left exterior mirror is loose or missing;
(B) a mirror is difficult to adjust or cannot maintain a set adjustment;
(C) a mirror extends beyond the vehicle width limit of 102 inches;
(i) allowance should be made for truck tractors inspected without a trailer attached when the extra width the mirrors extend are to provide rearward visibility around the trailer; and
(D) a mirror is cracked, has sharp edges, or is pitted or clouded to the extent that rear vision is obscured; and
(h) check all motor and transmission mount components; and
(i) advise the owner when any heat cracks are present; and
(ii) issue a rejection inspection certificate when:
(A) a mount bolt or nut is broken, loose, or missing;
(B) the rubber cushion is separated from the metal plate of the mount;
(C) there is a split through the rubber cushion;
(D) the engine or transmission is sagging to the point where the mount bottoms out or engine misalignment to the point of drive train component compromise; or
(E) fluid filled mounts are leaking, which are verified from the mount.

R714-162-18. Windows and Glazing.
(1) When examining the windshield of a vehicle, the inspector shall:
(a) check the windshield for unauthorized tinting, signs, posters, or other non-transparent materials;
(b) check the windshield for appropriate AS certification; and
(i) issue a rejection inspection certificate when:
(A) there is outright breakage, which includes shattered glass either on the inside or outside surface, or any glass is broken, leaving sharp or jagged edges;
(B) there are sandpits or discoloration that interferes with the driver's vision;
(C) the windshield is missing;
(D) any crack intersects with another crack within the acute area;
(E) there is any damage within the acute area that cannot be covered by a disc 3/4 inch in diameter;
(F) there is any damage in the acute area that is within three inches of any other damage in the acute area; or
(G) the windshield does not have a marking of AS-1, AS-10, or AS-14.
(2) When examining the windows of a vehicle, the inspector shall:
(a) check all glass for unauthorized materials or conditions that obscure the driver's vision;
(b) check all vehicle glass for proper AS approval marking;
(c) issue a rejection inspection certificate when:
(i) any tint or other non-transparent material has been added to the windshield below the horizontal line four inches from the top of the windshield and allows less than 70% light transmittance below the AS-1 mark on the upper corner of windshield;
(ii) any tint is present and allows less than 70% light transmittance, or other non-transparent material has been added to the windows to the immediate left or right of the driver's seat; or
(iii) any windows are covered by or treated with a material that presents a metallic or mirrored appearance when viewed from the outside of the vehicle;
(d) check the operation of the driver-side window; and
(e) issue a rejection inspection certificate when:
(i) the driver-side window cannot be readily opened to permit arm signals; or
(ii) the driver-side window is broken, shattered, or jagged.

R714-162-19. Safe Loading.
(1) When examining the loading equipment of a vehicle, the inspector shall:
(a) check the load securement; and
(i) issue a rejection inspection certificate when:
(A) any part of a vehicle or condition of loading is not properly secured such that the spare tire or any part of the load or dunnage can fall onto the roadway;
(B) container securement devices on intermodal equipment is cracked, broken, loose, or missing; or
(C) the vehicle does not have a front-end structure or equivalent device as required, to protect against shifting cargo.

R714-162-20. School Bus.
(1) When examining a school bus, the inspector shall:
(a) check the front and rear loading lights for proper operation and condition; and
(i) advise the owner when any lens is cracked or broken; and
(ii) issue a rejection inspection certificate when any amber or red loading light on the front or rear fail to operate;
(b) check each stop arm for proper operation; and
(i) advise the owner when there is an air leak from the bellows; and
(ii) issue a rejection inspection certificate when:
(A) the stop arm fails to extend or retract; or
(B) more than 50% of the stop arm lights are inoperative;
(c) visually check the convex cross view mirror for a clear view of the front bumper and area in front of the bus from the driver's position, and inspect for stable mounting, cracks, and sharp edges; and
(i) issue a rejection inspection certificate when:
(A) the exterior cross view mirror is missing;
(B) the mirror will not maintain a set position; or
(C) the mirror is cracked, broken, has sharp edges, is pitted or clouded to the extent vision is obscured;
(d) check emergency exit windows for proper operation; and
(i) advise the owner when the emergency exit window warning device does not operate, if equipped; and
(ii) issue a rejection inspection certificate when:
(A) an emergency exit window does not open freely or

completely; or

(B) an emergency exit window is obstructed;

(e) check emergency exit doors for proper operation; and

(i) issue a rejection inspection certificate when:

(A) the emergency exit door warning device does not operate, if equipped;

(B) the emergency exit door does not open freely or completely;

(C) the emergency exit door is obstructed, including when the retractable seat bottom does not automatically retract and stay in the retracted position; or

(D) any emergency exit door is equipped with a padlock or non-OEM locking device, not including an interlock system;

(f) check tire load rating; and

(i) issue a rejection inspection certificate when the tire load rating is less than the required tire load rating on bus data plate;

(g) check the fire extinguisher, aisle clearance, handrails and seat or barriers; and

(i) issue a rejection inspection certificate when:

(A) the fire extinguisher has been discharged or is missing;

(B) the aisle is not clear of obstructions or the center aisle strip is missing or not secured;

(C) the left side handrail is missing, has a portion of the handrail that is completely unattached from its securement position, or if it does not meet OEM specifications;

(D) any seat cushion or seat assembly is completely unattached from the structure that secures it;

(E) any seat or barrier material is defective so that it compromises the integrity of occupant protection and compartmentalization;

(F) the driver's seat fails to adjust or hold proper adjustment; or

(G) any part of the driver's safety restraint assembly is missing, not properly installed, or is so defective as to prevent proper securement;

(h) check the step well, floors, and panels; and

(i) issue a rejection inspection certificate when:

(A) any part of the step well or support structure is damaged;

(B) there is a step well condition that would present a tripping hazard;

(C) the floor pan or inner panels have excessive perforated areas or openings sufficient to cause a hazard to an occupant; or

(D) any panel, such as ceiling, side, or wheel well, protrudes, has sharp edges, or is not secured, to the point that may cause injuries; and

(i) check body exterior; and

(i) issue a rejection inspection certificate when:

(A) any school bus body part is loose, torn, dislocated, or protruding from the surface of the bus and creates a hazard; or

(B) a school bus is any color other than school-bus yellow.

KEY: motor vehicle safety, safety inspection manual
July 18, 2017 **53-8-204**
Notice of Continuation: June 2, 2016 **53-8-205**
41-6a-1601

R746. Public Service Commission, Administration.
R746-101. Statement of Rule for the Filing and Disposition of Petitions for Declaratory Rulings.
R746-101-1. Definitions.

A. Terms used in this rule are defined in Section 63G-4-103, except that "agency" shall mean the Utah Public Service Commission.

B. In addition:

1. "Order" shall mean a Commission action of particular applicability which determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons and not a class of persons;

2. "Declaratory Ruling" shall mean an administrative interpretation or explanation of rights, status, interests or other legal relationships under a statute, rule or order; and

3. "Applicability" shall mean a determination of the relationship of a statute, rule or order to a given set of facts.

R746-101-2. Petition Procedure.

A. A person or agency may petition the Commission for a declaratory ruling.

B. The petition shall be addressed to the Commission and directed to the chairman of the Commission.

C. The Commission will stamp upon the petition the date of its receipt.

D. The petitioner shall serve a copy of the petition upon the public utility which could or would be adversely affected by a Commission ruling favorable to the petitioner and shall file with the Commission the certificate of service within five days of the filing of the petition; or petitioner shall include in the petition a statement to the effect that no public utility under the Commission's jurisdiction will be adversely affected by a ruling favorable to the petitioner.

R746-101-3. Petition Form.

A. The petition shall:

1. be clearly designated a request for a declaratory ruling;

2. identify the statute, rule or order to be reviewed;

3. describe adequately the facts and circumstances in which applicability is to be reviewed;

4. describe the reason or need for the review;

5. include an address and telephone number where petitioner can be reached; and

6. be signed by the petitioner or petitioner's duly authorized representative and be notarized.

R746-101-4. Petition Review and Disposition.

A. The Commission shall:

1. review and consider the petition;

2. prepare a declaratory ruling in compliance with the requirements of 63G-4-503(6) and stating:

a. the applicability or non-applicability of the statute, rule or order in question;

b. the reasons for the applicability or non-applicability of the statute, rule or order in question;

c. requirements imposed upon the Commission, petitioner, or a person as a result of the ruling.

B. The Commission may:

1. interview the petitioner;

2. hold a public hearing on the petition;

3. consult with counsel or the Attorney General; or

4. take action which the Commission, in its discretion and judgment, deems necessary to provide the petitioner with adequate review and due consideration of the petition.

C. The Commission shall prepare the declaratory ruling without unnecessary delay and shall send the petitioner and each party a copy of the ruling.

D. The Commission shall retain the petition and a copy of the declaratory ruling in its records.

KEY: public utilities, rules and procedures, government hearings
1992 63G-4-102(5)
Notice of Continuation July 31, 2017 63G-4-503(6)

R746. Public Service Commission, Administration.
R746-310. Uniform Rules Governing Electricity Service by Electric Utilities.
R746-310-1. General Provisions.

A. 1. Scope and Applicability -- The following rules apply to the methods and conditions for service employed by utilities furnishing electricity in Utah.

2. A utility may petition the Commission for an exemption from specified portions of these rules in accordance with R746-1-109, Deviation from Rules.

B. Definitions --

1. "Capacity" means load which equipment or electrical system can carry.

2. "CFR" means the Code of Federal Regulations, 1998 edition.

3. "Commission" means the Public Service Commission of Utah.

4. "Contract Demand" means the maximum amount of kilowatt demand that the customer expects to use and for which the customer has contracted with the utility.

5. "Customer" means a person, firm, partnership, company, corporation, organization, or governmental agency supplied with electrical power by an electric utility subject to Commission jurisdiction, at one location and at one point of delivery.

6. "Customer's Installation" means the electrical wiring and apparatus owned by the customer and installed by or for the customer to facilitate electric service and which is located on the customer's side of the point of delivery of electric service.

7. "Customer meter" or "meter" means the device used to measure the electricity transmitted from an electric utility to a customer.

8. "Demand" means the rate in kilowatts at which electric energy is delivered by the utility to the customer at a given instant or averaged over a designated period of time.

9. "Electric service" means the availability of electric power and energy at the customer's point of delivery at the approximate voltage and for the purposes specified in the application for electric service, electric service agreement or contract, irrespective of whether electric power and energy is actually used.

10. "Energy" means electric energy measured in kilowatt-hours--kWh. For billing purposes energy is the customer's total use of electricity measured in kilowatt-hours during any month.

11. "FERC" means the Federal Energy Regulatory Commission.

12. "Month" means the period of approximately 30 days intervening between regular successive meter reading dates.

13. "National Electrical Safety Code" means the 2017 edition of the National Electrical Safety Code, C2-2017, as promulgated by the Institute of Electrical and Electronics Engineers, which is incorporated by reference.

14. "Point of delivery" means the point, unless otherwise specified in the application for electric service, electric service agreement or contract, at which the utility's service wires are connected with the customer's wires or apparatus. If the utility's service wires are connected with the customer's wire or apparatus at more than one point, each connecting point shall be considered a separate point of delivery unless the additional connecting points are made by the utility for its sole convenience in supplying service. Additional service supplied by the utility at a different voltage or phase classification shall also be considered a separate point of delivery. Each point of delivery shall be separately metered and billed.

15. "Power" means electric power measured in kilowatts--kw. For billing purposes, power is the customer's maximum use of electricity shown or computed from the readings of the utility's kilowatt meter for a 15-minute period, unless otherwise specified in the applicable rate schedule; at the option of the utility it may be determined either by periodic tests or by permanent meters.

16. "Power factor" means the percentage determined by dividing customer's average power use in kilowatts, real power, by the average kilovolt-ampere power load, apparent power, imposed upon the utility by the customer.

17. "Premises" means a tract of land with the buildings thereon or a building or part of a building with its appurtenances.

18. "Rated capacity" means load for which equipment or electrical system is rated.

19. "Service line" means electrical conductor which ties customer point of delivery to distribution network.

20. "Transmission line" means high voltage line delivering electrical energy to substations.

21. "Utility" means an electrical corporation as defined in Section 54-2-1.

22. "Year" means the period between the date of commencement of service under the application for electric service, electric service agreement or contract and the same day of the following calendar year.

R746-310-2. Customer Relations.

A. Information to Customers -- Each electric utility shall transmit to each of its consumers a clear and concise explanation of the existing rate schedule, and each new rate schedule applied for, applicable to the consumer. This statement shall be transmitted to each consumer:

1. Not later than 60 days after the date of the commencement of service to the consumer and not less frequently than once a year thereafter, and

2. Not later than 30 days, 60 days if a utility uses a bi-monthly billing system, after the utility's application for a change in a rate schedule applicable to the consumer.

3. An electric utility shall annually mail to its customers a clear and concise explanation of rate schedules that may be applicable to that customer.

4. The required explanation of existing and proposed rate schedules may be transmitted together with the consumer's regular billing for utility service or in a manner deemed appropriate by the Commission.

5. An electric utility shall print on its monthly bill, in addition to the information regarding consumption and charges for the current bill, similar information showing average daily energy use and cost for the same billing period for the previous year. That information shall include the utility telephone number for use by customers with questions or concerns on their electric service.

B. Meter Reading Method -- Upon request, utilities shall furnish reasonable assistance and information as to the method of reading customer meters and conditions under which electric service may be obtained from their systems.

C. Utility's Responsibility -- Nothing in these rules shall be construed as placing upon the utility a responsibility for the condition or maintenance of the customer's wiring, appliances, current consuming devices or other equipment, and the utility shall not be held liable for loss or damage resulting from defects in the customer's installation and shall not be held liable for damage to persons or property arising from the use of the service on the premises of the customer.

D. Conditions of Service -- The utility shall have the right of refusing to, or of ceasing to, deliver electric energy to a customer if any part of the customer's service, appliances, or apparatus shall be unsafe, or if the utilization of electric energy by means thereof shall be prohibited or forbidden under the authority of a law or municipal ordinance or regulation, until the law, ordinance or regulation shall be declared invalid by a court of competent jurisdiction, and may refuse to serve until the customer shall put the part in good and safe condition and comply with applicable laws, ordinances and regulations.

The utility does not assume the duty of inspecting the customer's services, appliances or apparatus, and assumes no liability therefore. If the customer finds the electric service to be defective, the customer is requested to immediately notify the utility to this effect.

E. Access to premises and meters -- As a condition of service the customer shall, either explicitly or implicitly, grant the utility necessary permission to enable the utility to install and maintain service on the premises. The customer shall grant the utility permission to enter upon the customer's premises at reasonable times without prior arrangements, for the purpose of reading, inspecting, repairing, or removing utility property.

If the customer is not the owner of the occupied premises, the customer shall obtain permission from the owners.

F. Customer Complaints --

1. Utilities shall fully and promptly investigate customer complaints pertaining to service. Utilities shall maintain record of each complaint that concerns outages or interruptions of service including the date, nature, and disposition of the complaint.

2. Customer complaints shall be filed with the Commission in accordance with Subsection R746-1-201, Complaints.

G. Service Interruptions --

1. Utilities shall maintain records of interruptions of service of their entire system, a community, or a major distribution circuit. These records shall indicate the date, time of day, duration, approximate number of customers affected, cause and the extent of the interruption.

2. Utilities will provide reasonable notice of contemplated work which is expected to result in service interruptions. Failure of a customer to receive this notice shall not create a liability upon the utility. When it is anticipated that service must be interrupted, the utility will endeavor to do the work at a time which causes the least inconvenience to customers.

3. For the purposes of this section, a service interruption is defined as a consecutive period of three minutes or longer, during which the voltage is reduced to less than 50 percent of the standard voltage.

H. Restrictions of Change of Utility Service -- If a customer has once obtained service from an electric utility, that customer may not be served by another electric utility at the same premises without prior approval of the Commission.

I. Rate Schedules, Rules and Regulations -- Utilities may adopt reasonable rules and regulations, not inconsistent with Commission rules governing service and customer relations. Upon Commission approval, rules and regulations of the utilities shall constitute part of utility tariffs.

R746-310-3. Meters and Meter Testing.

A. Reference and Working Standards

1. Reference standards -- Utilities having 500 or more meters in service shall have a high grade reference standard meter which shall be calibrated at least annually by the U.S. Bureau of Standards or a testing agency that regularly calibrates with them. Other utilities with meters in service shall at least have access to another utility's or testing agency's high grade reference standards that are periodically calibrated.

2. Working standards -- Utilities furnishing metered service shall provide for, or have access to, high grade testing instruments, working standards, to test the accuracy of meters or other instruments used to measure electricity consumed by its customers. The error of accuracy of the working standards at both light load and full load shall be less than one percent of 100 percent of rated capacity. This accuracy shall be maintained by periodic calibration against reference standards.

B. Meter Tests -- Unless otherwise directed by the Commission, the requirements contained in the 2014 edition of the American National Standards for Electric Meters Code for Electricity Metering, ANSI C12.1-2014, incorporated by reference, shall be the minimum requirements relative to meter testing.

1. Accuracy limits -- After being tested, meters shall be adjusted to as near zero error as practicable. Meters shall not remain in service with an error over two percent of tested capacity, or if found to register at no load.

2. Before installation -- New meters shall be tested before installation. Removed meters shall be tested before or within 60 days of installation.

3. Periodic -- In-service meters shall be periodically or sample tested.

4. Request -- Upon written request, utilities shall promptly test the accuracy of a customer's meter. If the meter has been tested within 12 months preceding the date of the request, the utility may require the customer to make a deposit. The deposit shall not exceed the estimated cost of performing the test. If the meter is found to have an error of more than two percent of tested capacity, the deposit shall be refunded; otherwise, the deposit may be retained by the utility as a service charge. Customers shall be entitled to observe tests, and utilities shall provide test reports to customers.

5. Referee -- In the event of a dispute, the customer may request a referee test in writing. The Commission may require the deposit of a testing fee. Upon filing of the request and receipt of the deposit, if required, the Commission shall notify the utility to arrange for the test. The utility shall not remove the meter prior to the test without Commission approval. The meter shall be tested in the presence of a Commission representative, and if the meter is found to be inaccurate by more than two percent of rated capacity, the customer's deposit shall be refunded; otherwise, it may be retained.

C. Bill Adjustments for Meter Error --

1. Fast meter -- If a meter tested pursuant to this section is more than two percent fast, the utility shall refund to the customer the overcharge based on the corrected meter readings for the period the meter was in use, not exceeding six months, unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the overcharge shall be computed back to, but not beyond that time.

2. Slow meter -- If a meter tested pursuant to this section is more than two percent slow, the utility may bill the customer for the estimated energy consumed but not covered by the bill for a period not exceeding six months unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the bill shall be computed back to, but not beyond that time.

3. Non-registering meter -- If a meter does not register, the utility may bill the customer for the estimated energy used but not registered for a period not exceeding three months.

D. Meter Records -- Utilities shall maintain records for each meter until retirement. This record shall contain the identification number; manufacturer's name, type and rating; each test, adjustment and repair; date of purchase; and location, date of installation, and removal from service. Utilities shall keep records of the last meter test for every meter. At a minimum, the records shall identify the meter, the date, the location of and reason for the test, the name of the person or organization making the test, and the test results.

R746-310-4. Station Instruments, Voltage and Frequency Restrictions and Station Equipment.

A. Station Instruments -- Utilities shall install the instruments necessary to obtain a record of the load on their systems, showing at least the monthly peak and a monthly record of the output of their plants. Utilities purchasing electrical energy shall install the instruments necessary to furnish information regarding monthly purchases of electrical energy, unless those supplying the energy have already installed

instruments from which that information can be obtained.

Utilities shall maintain records indicating the data obtained by station instruments.

B. Voltage and Frequency Restrictions --

1. Unless otherwise directed by the Commission, the requirements contained in the 2011 edition of the American National Standard for Electrical Power Systems and Equipment-Voltage Ratings (60 Hz), ANSI C84.1-2011, incorporated by this reference, shall be the minimum requirements relative to utility voltages.

2. Utilities shall own or have access to portable indicating voltmeters or other devices necessary to accurately measure, upon complaint or request, the quality of electric service delivered to its customer to verify compliance with the standard established in Subsection R746-310-4(B)(1). Utilities shall make periodic voltage surveys sufficient to indicate the character of the service furnished from each distribution center and to ensure compliance with the voltage requirements of these rules. Utilities having indicating voltmeters shall keep at least one instrument in continuous service.

3. Utilities supplying alternating current shall maintain their frequencies to within one percent above and below 60 cycles per second during normal operations. Variations in frequency in excess of these limits due to emergencies are not violations of these rules.

C. Station Equipment --

1. Utilities shall inspect their poles, towers and other similar structures with reasonable frequency in order to determine the need for replacement, reinforcement or repair.

D. General Requirements -- Unless otherwise ordered by the Commission, the requirements contained in the National Electrical Safety Code, as defined at R746-310-1(B)(13), constitute the minimum requirements relative to the following:

1. the installation and maintenance of electrical supply stations;

2. the installation and maintenance of overhead and underground electrical supply and communication lines;

3. the installation and maintenance of electric utilization equipment;

4. rules to be observed in the operation of electrical equipment and lines;

5. the grounding of electrical circuits.

R746-310-5. Design, Construction and Operation of Plant.

Facilities owned or operated by utilities and used in furnishing electricity shall be designed, constructed, maintained and operated so as to render adequate and continuous service. Utilities shall, at all times, use every reasonable effort to protect the public from danger and shall exercise due care to reduce the hazards to which employees, customers and others may be subjected from the utility's equipment and facilities.

R746-310-6. Line Extensions.

A. Utilities shall provide line extensions in accordance with the terms of their tariff on file with, and approved by the Commission.

R746-310-7. Accounting.

A. Uniform System of Accounts -- The Commission adopts the FERC rules found at 18 CFR Part 101, which is incorporated by reference, as the uniform system of accounts for electric utilities subject to Commission jurisdiction. Utilities shall employ and adhere to that system.

B. Uniform List of Retirement Units of Property --

1. The Commission adopts the FERC rules found at 18 CFR Part 116, incorporated by reference, as the schedule to be used in conjunction with the uniform system of accounts in accounting for additions to and retirements of electric plant. Utilities subject to Commission jurisdiction shall employ and adhere to this schedule.

2. Utilities shall obtain Commission approval prior to making a change in depreciation rates, methods or lives for either new or existing property.

R746-310-8. Billing Adjustments.

A. Definitions --

1. A "backbill" is that portion of a bill, other than a levelized bill, which represents charges not previously billed for service that was actually delivered to the customer during a period before the current billing cycle.

2. A "catch-up bill" is a bill based upon an actual reading rendered after one or more bills based on estimated or customer readings. A catch-up bill which exceeds by 50 percent or more the bill that would have been rendered under a utility's standard estimation program is presumed to be a backbill.

B. Notice -- The account holder may be notified by mail, by phone, or by a personal visit, of the reason for the backbill. This notification shall be followed by, or include, a written explanation of the reason for the backbill that shall be received by the customer before the due date and be sufficiently detailed to apprise the customer of the circumstances, error or condition that caused the underbilling, and, if the backbill covers more than a 24-month period, a statement setting forth the reasons the utility did not limit the backbill under Subsection R746-310-8(D), Limitations of the Period for Backbilling.

C. Limitations on Rendering a Backbill -- A utility shall not render a backbill more than three months after the utility actually became aware of the circumstance, error, or condition that caused the underbilling. This limitation does not apply to fraud and theft of service situations.

D. Limitations of the Period for Backbilling --

1. A utility shall not bill a customer for service rendered more than 24 months before the utility actually became aware of the circumstance, error, or condition that caused the underbilling or that the original billing was incorrect.

2. In case of customer fraud, the utility shall estimate a bill for the period over which the fraud was perpetrated. The time limitation of Subsection R746-310-8(D)(1) does not apply to customer fraud situations.

3. In the case of a backbill for Utah sales taxes not previously billed, the period covered by the backbill shall not exceed the period for which the utility is assessed a sales tax deficiency.

E. Payment Period -- A utility shall permit the customer to make arrangements to pay a backbill without interest over a time period at least equal in length to the time period over which the backbill was assessed. If the utility has demonstrated that the customer knew or reasonably should have known that the original billing was incorrect or in the case of fraud or theft, in which case, interest will be assessed at the rate applied to past due accounts on amounts not timely paid in accordance with the established arrangements.

R746-310-9. Overbilling.

A. Standards and Criteria for Overbilling-- Billing under the following conditions constitutes overbilling:

1. a meter registering more than two percent fast, or a defective meter;

2. use of an incorrect watt-hour constant;

3. incorrect service classification, if the information supplied by the customer was not erroneous or deficient;

4. billing based on a switched meter condition where the customer is billed on the incorrect meter;

5. meter turnover, or billing for a complete revolution of a meter which did not occur;

6. a delay in refunding payment to a customer pursuant to rules providing for refunds for line extensions;

7. incorrect meter reading or recording by the utility; and

8. incorrect estimated demand billings by the utility.

B. Interest Rate--

1. A utility shall provide interest on customer payments for overbilling. The interest rate shall be the greater of the interest rate paid by a utility on customer deposits, or the interest rate charged by a utility for late payments.

2. Interest shall be paid from the date when the customer overpayment is made, until the date when the overpayment is refunded. Interest shall be compounded during the overpayment period.

C. Limitations--

1. A utility shall not be required to pay interest on overpayments if offsetting billing adjustments are made during the next full billing cycle subsequent to the receipt of the overpayment.

2. The utility shall be required to offer refunds, in lieu of credit, only when the amount of the overpayment exceeds $50 or the sum of two average month's bills. However, the utility shall not be required to offer a refund to a customer having a balance owing to the utility, unless the refund would result in a credit balance in favor of the customer.

3. If a customer is given a credit for an overpayment, interest will accrue only up to the time at which the first credit is made, in cases where credits are applied over two or more bills.

4. A utility shall not be required to make a refund of, or give a credit for, overpayments which occurred more than 24 months before the customer submitted a complaint to the utility or the Commission, or the utility actually became aware of an incorrect billing which resulted in an overpayment.

5. When a utility can demonstrate before the Commission that a customer knew or reasonably should have known an overpayment to be incorrect, a utility shall not be required to pay interest on the overpayment.

6. Utilities shall not be required to pay interest on overpayment credits or refunds which were made before the effective date of the rule.

7. Disputes regarding the level or terms of the refund or credit are subject to the informal and formal review procedures of the Utah Public Service Commission.

R746-310-10. Preservation of Records.

The Commission adopts the standards to govern the preservation of records of electric utilities subject to the jurisdiction of the Commission at 18 CFR 125, which is incorporated by reference.

KEY: public utilities, utility regulation, electric safety codes, electric utility industries

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54-4-23

R746. Public Service Commission, Administration.
R746-343. Rule for Deaf, Severely Hearing or Speech Impaired Person.
R746-343-1. Purpose and Authority.

This rule is to establish a program as required in Section 54-8b-10 which will provide telecommunication devices to certified deaf, or severely hearing or speech impaired persons, who qualify under certain conditions, and to provide a dual relay system using third party intervention to connect deaf or severely hearing or speech impaired persons with normal hearing persons by way of telecommunication devices.

R746-343-2. Definitions.

A. Definitions

1. "Applicant" is a person applying for a Telecommunication Device for the Deaf, signal device, or other communication device.

2. "Audiologist" is a person who has a Master's or Doctoral degree in Audiology, is licensed in Audiology in Utah, and holds the Certificate of Clinic Competence in Audiology from the American Speech/Language/Hearing Association, or its equivalent.

3. "Deaf" is a hearing loss that requires the use of a TDD to communicate effectively on the telephone.

4. "Provider" is a service provider who agrees to be, if determined by the Public Service Commission, the administrator of the program or a portion of the program.

5. "Distribution center" is a facility authorized by the provider to distribute TDDs and signal devices, personal communicators, or other devices required by a recipient to communicate effectively on the telephone.

6. "Dual relay system" is the provision of voice and teletype communication between users of TDDs and other parties.

7. "Otolaryngologist" is a licensed physician specializing in ear, nose and throat medicine.

8. "Recipient" is a person who receives a TDD, signal device, personal communicator, or other device to communicate effectively on the telephone.

9. "Speech language pathologist" is a person who has a Master's or Doctoral degree in Speech Language Pathology in Utah, and holds the Certificate of Clinical Competence in Speech/Language Pathology from the American Speech Language Hearing Association, or its equivalent.

10. "Severely hearing impaired" is a hearing loss that requires use of TDD to communicate effectively on the telephone.

11. "Severely Speech Impaired" is a speech handicap, or disorder, that renders speech on an ordinary telephone unintelligible.

12. "Signal device" is a mechanical device that alerts a deaf, deaf-blind, or severely hearing impaired person of an incoming telephone call.

13. "Telecommunications Device for the Deaf, or TDD, is an electrical device for use with a telephone that utilizes a key board. It may also have an acoustic coupler, display screen or braille display to transmit and receive messages.

14. "Telephone relay center" is a facility administered by the provider to provide dual relay service.

15. "Commission" is the Utah Public Service Commission.

R746-343-3. Eligibility Requirements.

A. An applicant is eligible if he is deaf, severely hearing impaired, or severely speech impaired and is eligible for assistance under a low income public assistance program. The impairment must be established by the certification on an application form by a person who is permitted to practice medicine in Utah, an audiologist, otolaryngologist, speech/language pathologist, or qualified personnel within a state agency. The applicant must provide evidence that they are currently eligible, though it is not necessary that they be participating in a low income public assistance program.

C. The provider may require additional documentation to determine applicant's eligibility.

D. During the training session required in Section R746-343-8, Training, the applicant must demonstrate an ability to send and receive messages with a TDD or other appropriate devices.

R746-343-4. Approval of an Application.

A. Approved Application--

1. When an original application has been approved, the provider shall inform the applicant in writing of:

a. when the original application has been approved;

b. the location of the distribution center or designated place where the applicant may receive a TDD;

c. the date and time of the training session as required in Section R746-343-8.

2. When the request for a replacement TDD, signal device, or other device has been approved, the provider or the distribution center shall inform the recipient of the procedure for obtaining a replacement device.

B. Denied Applications--If an original application or replacement request is denied, the provider shall inform the applicant in writing of the reasons for the denial and of applicable procedures for appeal. Denial notices shall be sent by mail. The notice shall be accompanied by instructions on the review process.

R746-343-5. Review by the Provider.

A. An applicant or recipient whose request for an original or replacement device has been denied may request that the provider review the decision.

B. The request for review shall be in writing and shall specify the basis for review and must be received by the provider within 30 days of the receipt of the notice of denial.

C. Within ten days of receiving the request for review, the provider shall inform the applicant or recipient in writing of the disposition of the request.

R746-343-6. Review by the Commission.

A. Within 20 days of the notice of denial from the provider for review, the applicant or recipient may request in writing a hearing by the Commission. The request shall specify the reasons for challenging the decision.

R746-343-7. Distribution Process.

A. Distribution Centers shall:

1. Upon notice from the provider, distribute TDDs, signal devices, or other specified devices, to persons determined eligible under Section R746-343-3, Eligibility Requirements, and who reside in Utah;

2. Require each recipient or legal guardian to sign an agreement, Condition of Acceptance, form supplied by the provider;

3. Forward completed application forms and agreement forms to the provider;

4. Inform the provider of those applicants who fail to report for training and receipt of devices.

B. The provider shall implement a program to facilitate distribution of devices and provide training as required.

C. Neither the distribution center nor the provider shall be responsible for providing replacement paper for devices, the payment of the recipient's monthly telephone bill, purchase or lease cost of recipient's telephone, or the cost of replacement light bulbs for signal devices.

R746-343-8. Training.

A. The provider shall be responsible for seeing that training is provided to each recipient and legal guardian, or significant other, in accordance with guidelines established by the provider.

R746-343-9. Replacement Devices.

A. The distribution center shall provide devices to persons determined by the provider to be eligible under Sections R746-343-3, Eligibility Requirements, and R746-343-8, Training, accept devices that need repair, and deliver devices returned by recipients to a repair center designated by the provider.

R746-343-10. Ownership and Liability.

A. TDDs, signal devices, and other devices provided by this program are the property of the state.

B. A recipient or guardian shall return a TDD, signal device, or other device, to the provider or distribution center when the recipient no longer intends to reside in Utah, is no longer qualified for the program, does not need the device, or has been notified by the provider to return the device.

C. Other than normal usage, recipients are liable for damage to or loss of a device issued under conditions of acceptance.

R746-343-11. Out of State Use.

No person shall remove a TDD, signal device, or other device from the state for a period longer than 90 days without written permission of the provider.

R746-343-12. Dual Relay Service--Telephone Relay Center.

A. A telephone relay center shall provide dual relay service seven days a week, 24 hours a day, including holidays.

B. A telephone relay center shall hire operators with specialized communication skills who shall be salaried employees.

C. A telephone relay center shall require the operators to relay each message accurately, except as otherwise specifically provided in Section R746-343-14, Criminal Activity.

R746-343-13. Confidentiality and Privacy Requirements.

A. Except as otherwise specifically provided in Section R746-343-14, Criminal Activity, a telephone relay center shall protect the privacy of persons to whom relay services are provided and shall require each operator to maintain the confidentiality of each telephone message.

B. The confidentiality and privacy of persons to whom relay services are provided will be protected by means of the following:

1. The relay center shall not maintain any form of permanent copies of messages relayed by their operators or allow the content of telephone messages relayed by their operators to be communicated to non-staff members.

2. Persons using the relay system shall not be required to provide identifying information until the party they are calling is on line, and shall only be required to identify themselves to the extent necessary to fulfill the purpose of their call.

3. Relay operators shall not leave messages with third parties unless instructed to do so by the person making the call.

4. Persons using the relay system may file complaints about the relay service to the telephone relay center or the provider, who shall review each complaint.

R746-343-14. Criminal Activity.

A. Relay operators shall not knowingly transmit telephone messages that are made in furtherance of a criminal activity as defined by Utah or federal law.

B. The confidentiality and privacy requirements of Section R746-343-13, Confidentiality and Privacy Requirements, do not apply to telephone conversations made in furtherance of a criminal activity as defined by Utah or federal law.

R746-343-16. New Technology Equipment Distribution Program (NTEDP).

(1) Authority and Purpose.

(a) This rule section is promulgated pursuant to Utah Code Subsection 54-8b-10(3)(b).

(b) The purposes of the NTEDP are:

(i) to explore the feasibility of using tablet devices and/or unlocked cellular telephones to address the telecommunication needs of the deaf, severely hearing-impaired, and severely speech-impaired communities;

(ii) to determine how best to manage a program in which tablet devices and/or unlocked cellular telephones are provided; and

(iii) to determine the level of support services that would be required if tablet devices and/or unlocked cellular telephone devices are provided.

(2) Duration. The NTEDP shall terminate no later than December 31, 2018.

(3) Participation.

(a) An individual who wishes to participate in the NTEDP shall:

(i) submit a completed application form to the Relay Utah office;

(ii) provide medical documentation of:

(A) deafness;

(B) severe hearing impairment; or

(C) severe speech impairment;

(iii) demonstrate that the individual is receiving assistance from a low-income public assistance program administered by a state agency;

(iv)(A) if applying for a tablet, certify that the individual has consistent access to a WiFi network; or

(B) if applying for an unlocked cellular telephone, certify that the individual has a service plan in place with a wireless telecommunications provider; and

(v) certify that the individual is able and willing to comply with Subsection (4).

(b) Priority may be given to applicants who have previously participated in the Commission's Relay Utah program.

(c) An applicant who is not selected to participate may request to be placed on a waiting list.

(d) Participation shall be limited as follows:

(i) From the inception of the program through June 30, 2017, no more than 25 participants, as follows:

(A) no more than 8 deaf individuals who are at least 13 years old;

(B) no more than 8 severely hearing-impaired individuals who are at least 13 years old;

(C) no more than 8 severely speech-impaired individuals who are at least 13 years old; and

(D) at least one deaf, severely hearing-impaired, or severely speech-impaired individual who is under 13 years of age.

(ii) From July 1, 2017 through the conclusion of the program, up to 10 additional participants in each six-month period.

(4) Participant obligations.

(a) An individual who is chosen to participate in the NTEDP shall:

(i) participate in an entrance interview with the Relay Utah office;

(ii) complete online surveys as instructed by the Relay Utah office;

(iii) promptly comply with all instructions from the Relay Utah office to download apps;

(iv) promptly respond to requests from the Relay Utah

office for information and feedback;

(v) maintain the device in the storage case provided;

(vi) retain all original device packaging, instructions, and information;

(vii) contact the manufacturer's customer service department for assistance with technical support;

(viii) promptly report to the Relay Utah office:

(A) software and hardware failures; and

(B) damage to the device;

(ix) take financial responsibility for loss of, or damage to, the device if caused by the individual's misuse or negligence; and

(x) immediately return the device to the Relay Utah office if the individual:

(A) moves from the State of Utah;

(B) is disqualified by the Relay Utah office from further participation in the NTEDP; or

(C) chooses to terminate the individual's participation in the NTEDP.

(b) An individual who is chosen to participate in the NTEDP may not:

(i) reformat or attempt to reformat the device;

(ii) allow any other person to use the device, except as necessary to assist the participant with telecommunications; or

(iii) install software, apps, or other programs not authorized by the Relay Utah office.

(c) A participant who fails to comply with this Subsection (4) may be disqualified from further participation in the NTEDP.

(5) All devices distributed as part of the NTEDP shall remain the property of the State of Utah Public Service Commission.

KEY: assistive devices and technology, speech/hearing assistance, telecommunications
July 10, 2017 54-8b
Notice of Continuation December 10, 2012

R746. Public Service Commission, Administration.
R746-360. Universal Public Telecommunications Service Support Fund.
R746-360-1. General Provisions.

A. Authorization -- Section 54-8b-15 authorizes the Commission to establish an expendable trust fund, known as the Universal Public Telecommunications Service Support Fund, the "universal service fund," "USF" or the "fund," to promote equitable cost recovery and universal service by ensuring that customers have access to basic telecommunications service at just, reasonable and affordable rates, consistent with the Telecommunications Act of 1996.

B. Purpose -- The purposes of these rules are:

1. to govern the methods, practices and procedures by which:

a. the USF is created, maintained, and funded by end-user surcharges applied to retail rates;

b. funds are collected for and disbursed from the USF to qualifying telecommunications corporations so that they are able to recover the reasonable and prudent costs of providing basic telecommunications service while charging just, reasonable and affordable rates; and,

2. to ensure funds collected and disbursed from the USF are used efficiently and in the public interest.

C. Application of the Rules -- The rules apply to all retail providers that provide intrastate public telecommunications services.

R746-360-2. Definitions.

A. Affordable Base Rate (ABR) -- means the monthly per line retail rates, charges or fees for basic telecommunications service which the Commission determines to be just, reasonable, and affordable for a designated support area. The Affordable Base Rate shall be established by the Commission. The Affordable Base Rate does not include the applicable USF retail surcharge, municipal franchise fees, taxes, and other incidental surcharges.

B. Average Revenue Per Line -- means the average revenue for each access line computed by dividing the sum of all revenue derived from a telecommunications corporation's provision of public telecommunications services, including, but not limited to, revenues received from the provision of services in both the interstate and intrastate jurisdictions, whether designated "retail," "wholesale," or some other categorization, all revenues derived from providing network elements, services, functionalities, etc. required under the Federal Telecommunications Act of 1996, Pub. L. 104-104,110 Stat.56 or the Utah Telecommunications Reform Act, Laws of Utah 1995, Chapter 269, all support funds received from the Federal Universal Service Support Fund, and each and every other revenue source or support or funding mechanism used to assist in recovering the costs of providing public telecommunications services in a designated support area by that telecommunications corporation's number of access lines in the designated support area.

C. Basic Telecommunications Service -- means a local exchange service consisting of access to the public switched network; touch-tone, or its functional equivalent; local flat-rated, unlimited usage, exclusive of extended area service; single-party service with telephone number listed free in directories that are received free; access to operator services; access to directory assistance, lifeline and telephone relay assistance; access to 911 and E911 emergency services; access to long-distance carriers; access to toll limitation services; and other services as may be determined by the Commission.

D. Designated Support Area -- means the geographic area used to determine USF support distributions. A designated support area, or "support area," need not be the same as a USF proxy model's geographic unit. The Commission will determine the appropriate designated support areas for determining USF support requirements. Unless otherwise specified by the Commission, the designated support area for a rate-of-return regulated Incumbent telephone corporation shall be its entire certificated service territory located in the State of Utah.

E. Facilities-Based Provider -- means a telecommunications corporation that uses its own facilities, a combination of its own facilities and essential facilities or unbundled network elements obtained from another telecommunications corporation, or a telecommunications corporation which solely uses essential facilities or unbundled network elements obtained from another telecommunications corporation to provide public telecommunications services.

F. Geographic Unit -- means the geographic area used by a USF proxy cost model for calculating costs of public telecommunications services. The Commission will determine the appropriate geographic area to be used in determining public telecommunications service costs.

G. Net Fund Distributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues collected by that company, when the former amount is greater than the latter amount.

H. Net Fund Contributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues generated by that company, when the latter amount is greater than the former amount.

I. USF Proxy Model Costs -- means the total, jurisdictionally unseparated, cost estimate for public telecommunications services, in a geographic unit, based on the forward-looking, economic cost proxy model(s) chosen by the Commission. The level of geographic cost disaggregation to be used for purposes of assessing the need for and the level of USF support within a geographic unit will be determined by the Commission. These models shall be provided by the Commission by January 2, 2001.

J. Universal Service Fund (USF or fund) -- means the Universal Public Telecommunications Service Support Fund established by 54-8b-15 and set forth by this rule.

R746-360-3. Duties of Administrator.

A. Selection of Administrator -- The Division of Public Utilities will be the fund administrator. If the Division is unable to fulfill that responsibility, the administrator, who must be a neutral third party, unaffiliated with any fund participant, shall be selected by the Commission.

B. Cost of Administration -- The cost of administration shall be borne by the fund; unless administered by a state agency.

C. Access to Books -- Upon reasonable notice, the administrator shall have access to the books of account of all telecommunications corporations and retail providers, which shall be used to verify the intrastate retail revenue assessed in an end-user surcharge, to confirm the level of eligibility for USF support and to ensure compliance with this rule.

D. Maintenance of Records -- The administrator shall maintain the records necessary for the operation of the USF and this rule.

E. Report Forms -- The administrator shall develop report forms to be used by telecommunications corporations and retail providers to effectuate the provisions of this rule and the USF. An officer of the telecommunications corporation or retail provider shall attest to and sign the reports to the administrator.

F. Administrator Reports -- The administrator shall file reports with the Commission containing information on the average revenue per line calculations, projections of future USF needs, analyses of the end-user surcharges and Affordable Base Rates, and recommendations for calculating them for the

following 12-month period. The report shall include recommendations for changes in determining basic telecommunications service, designated support areas, geographic units, USF proxy cost models and ways to improve fund collections and distributions.

G. Periodic Review -- The administrator, under the direction of the Commission, shall perform a periodic review of fund recipients to verify eligibility for future support and to verify compliance with all applicable state and federal laws and regulations.

H. Proprietary Information -- Information received by the administrator which has been determined by the Commission to be proprietary shall be treated in conformance with Commission practices.

I. Information Requested -- Information requested by the administrator which is required to assure a complete review shall be provided within 45 days of the request. Failure to provide information within the allotted time period may be a basis for withdrawal of future support from the USF or other lawful penalties to be applied.

R746-360-4. Application of Fund Surcharges to Customer Billings.

A. Commencement of Surcharge Assessments -- Commencing June 1, 1998, end-user surcharges shall be the source of revenues to support the fund. Surcharges will be applied to intrastate retail rates, and shall not apply to wholesale services.

B. Surcharge Based on a Uniform Percentage of Retail Rates -- The retail surcharge shall be a uniform percentage rate, determined and reviewed annually by the Commission and billed and collected by all retail providers.

C. Surcharge -- The surcharge to be assessed is as follows:

1. through September 30, 2016, 1 percent of billed intrastate retail rates; and

2. beginning October 1, 2016, 1.65 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 Floor.

1. Unless a petition brought pursuant to Subsection (B)(2) is granted after adjudication, to be eligible for USF subsidization, a telecommunications corporation shall charge, at a minimum, $18 per line for basic telecommunications service.

2.a. A telecommunications corporation may petition the Commission to deviate from the Affordable Base Rate set forth in this Subsection (B)(1).

b. A telecommunications corporation that files a petition under this Subsection (B)(2)(a) shall:

i. demonstrate that the Affordable Base Rate is not reasonable in the particular geographic area served; or

ii. impute income up to the Affordable Base Rate in calculating the telecommunications corporation's state USF subsidization.

C. Lifeline Requirement -- A telecommunications corporation may qualify to receive distributions from the fund only if it offers Lifeline service on terms and conditions prescribed by the Commission.

D. Exclusion of Resale Providers -- Only facilities-based providers, will be eligible to receive support from the fund. Where service is provided through one telecommunications corporation's resale of another telecommunications corporation's service, support may be received by the latter only.

R746-360-7. Calculation of Fund Distributions in Non-rate-of-Return Regulated Incumbent Telephone Corporation Territories.

A. Use of Proxy Cost Models -- The USF proxy cost model(s) selected by the Commission and average revenue per line will be used to determine fund distributions within designated support areas.

B. Use of USF Funds --Telecommunications corporations shall use USF funds to support each primary residential line in active service which it furnishes in each designated area.

C. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between USF proxy model cost estimates of costs to provide residential Basic Telecommunications Service in the designated support area and

the product of the Incumbent telephone corporation's Average Revenue per line, for the designated support area, times the number of Incumbent telephone corporation's active residential access lines in the designated support area.

2. Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the Incumbent telephone corporation's average residential access line support amount for the respective designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active residential access lines in the designated support area, times the eligible telecommunications corporation's number of active residential access lines.

D. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

E. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-8. Calculation of Fund Distributions in Rate-of-Return Incumbent Telephone Corporation Territories.

(A) Determination of Support Amounts --

(1) Incumbent telephone corporation - Monies from the fund will equal the numerical difference between the Incumbent telephone corporation's total embedded costs of providing public telecommunications services, for a designated support area, less the product of the Incumbent telephone corporation's Average Revenue Per Line, for the designated support area, times the Incumbent telephone corporation's active access lines in the designated support area. To the extent the Commission finds that inclusion of any cost will result in an inefficient use of USF funds or in a use of USF funds that is inconsistent with the public interest, such cost will be excluded from total embedded costs. Total embedded costs shall include a weighted average rate of return on capital of the intrastate and interstate jurisdictions. For example, in the case of an Incumbent telephone corporation whose costs are allocated fifty percent to each jurisdiction and whose interstate return is 11.25 percent and whose intrastate return authorized by the Commission is 9 percent, the weighted average return on capital would be 10.125 percent.

(a) In order to determine the interstate return on capital to calculate the weighted average rate of return on capital for Incumbent telephone corporations, the Commission shall:

(i) use the prior year return reported by the National Exchange Carriers Association (NECA) to the Federal Communications Commission (FCC) on FCC Form 492 for Incumbent telephone corporations that do separations between intrastate and interstate jurisdictions under 47 CFR Part 36. In the event that the Incumbent local telephone corporation uses a future test period as provided in Utah Code Ann. Subsection 54-4-4(3)(b)(i), the interstate return for these Incumbent telephone corporations shall be the average of the actual return for the prior three years as reported on FCC Form 492.

(ii) use NECA's most recent interstate allocation computation filed at the FCC under 47 CFR Part 69.606 and the actual interstate return on capital reported by NECA as described in R746-360-8 A.1.a.i. for average schedule Incumbent telephone corporations.

(iii) use the actual interstate return of an Incumbent telephone corporation's relevant tariff group reported to the FCC in its most recent FCC Form 492A for Incumbent telephone corporations that are regulated on a price-cap basis in the interstate jurisdiction.

(2) Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the respective Incumbent telephone corporation's average access line support amount for the designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active access lines in the designated support area, times the eligible telecommunications corporation's number of active access lines in the designated support area.

(B) Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission-approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

(C) Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-9. One-Time Distributions From the Fund.

A. Applications for One-Time Distributions -- Telecommunications corporations, whether they are or are not receiving USF funds under R746-360-7 or R746-360-8, potential customers not presently receiving service because facilities are not available, or customers receiving inadequate service may apply to the Commission for one-time distributions from the fund for extension of service to a customer, or customers, not presently served or for amelioration of inadequate service.

1. These distributions are to be made only in extraordinary circumstances, when traditional methods of funding and service provision are infeasible.

2. One-time distributions will not be made for:

a. New subdivision developments;

b. Property improvements, such as cable placement, when associated with curb and gutter installations; or

c. Seasonal developments that are exclusively vacation homes.

i. Vacation home is defined as: A secondary residence which is primarily used for recreation and is unoccupied for a period of four consecutive weeks per year.

3. An application for a one-time distribution may be filed with the Commission by an individual or group of consumers desiring telephone service or improved service, a telecommunications corporation on behalf of those consumers, the Division of Public Utilities, or any entity permitted by law to request agency action. An application shall identify the service(s) sought, the area to be served and the individuals or entities that will be served if the one-time distribution is approved.

4. Following the application's filing, affected telecommunications corporations shall provide engineering, facilities, costs, and any other pertinent information that will assist in the Commission's consideration of the application.

5. In considering the one-time distribution application, the Commission will examine relevant facts including the type and grade of service to be provided, the cost of providing the service, the demonstrated need for the service, whether the customer is within the service territory of a telecommunications corporation, whether the proposed service is for a primary residence, the provisions for service or line extension currently available, and other relevant factors to determine whether the one-time distribution is in the public interest.

B. Presumed Reasonable Amounts and Terms -- Unless otherwise ordered by the Commission, the maximum one-time

distribution will be no more than $10,000 per customer for customers of rate-of-return regulated companies. For customers of non-rate of return companies, the maximum one-time distribution shall be calculated so that the required customer payments would equal the payments required from a customer of a rate-of-return regulated company. The Commission will presume a company's service or line extension terms and conditions reasonable, for a subscriber in connection with one-time universal service fund distribution requests, if the costs of service extension, for each extension, are recovered as follows:

1. For rate-of-return regulated Local Exchange Carriers who request USF One-Time Distribution support for facility placement: The first $2,500 of cost coverage per account is provided by the company; and for cost amounts exceeding $2,500 per account up to two times the statewide average loop investment per account for rate-of-return regulated telecommunication companies, as determined annually by the Division of Public Utilities, the company will pay 50 percent of the costs of the project.

2. For non-rate-of-return Local Exchange Carriers who request USF One-Time Distribution support for facility placement the first $2,500 of cost coverage per account is provided by the company; and all other costs are shared between the customer and the fund as provided herein.

3. For projects that exceed $2,500 per account, but are equal to or less than $10,000 per account, the customer shall pay 25 percent of the costs that exceed $2,500. For projects that exceed $10,000 per account, but are equal to or less than $20,000 per account, the customer shall pay 50 percent of the costs that are greater than $10,000 plus the previously calculated amount. For projects exceeding $20,000 per account the customer shall pay 75 percent of the cost above $20,000 until the State Universal Service Support Fund has paid the maximum amount as provided herein, any project costs above that level will be paid for 100 percent by the customer.

4. The State Universal Service Support Fund shall pay the difference between the sum of the defined company contributions plus customer contribution amounts and the total project cost up to the maximum amount provided herein. To the extent the Commission finds that inclusion of any cost will result in an inefficient use of USF funds or in a use of USF funds that is inconsistent with the public interest, such cost will be excluded from the total project cost.

5. Other terms and conditions for service extension shall be reviewed by the Commission in its consideration of an application and may be altered by the Commission in order to approve the use of universal service funds through the requested one-time distribution.

C. Combination of One-Time Distribution Funds with Additional Customer Funds and Future Customer Payment Recovery --

1. At least 51 percent of the potential customers must be full-time residents in the geographic area being petitioned for and must be willing to pay the initial up-front contribution to the project as calculated by the Commission or its agent.

2. Qualified customers in the area shall be notified by the telecommunications corporation of the nature and extent of the proposed service extension including the necessary customer contribution amounts to participate in the project. Customer contribution payments shall be made prior to the start of construction. In addition to qualified customers, the Local Exchange Company needs to make a good faith effort to contact all known property owners within the geographic boundaries of the proposed project and invite them to participate on the same terms as the qualified customers. Local Exchange Companies may ask potential customers to help in the process of contacting other potential customers.

3. New developments and empty lots will not be considered in the cost analysis for USF construction projects unless the property owner is willing to pay the per account costs for each lot as specified in this rule.

4. Potential customers who are notified and initially decline participation in the line extension project, but subsequently decide to participate, prior to completion of the project, may participate in the project if they make a customer contribution payment, prior to completion of the project, of 105 percent of the original customer contribution amount.

5. For a period of five years following completion of a project, new customers who seek telecommunications service in the project area, shall pay a customer contribution payment equal to 110 percent of the amount paid by the original customers in the project.

6. The telecommunications corporation shall ensure that all customer contribution payments required by R746-360-9(C)(3), (4), and (5) are collected. Funds received through these payments shall be sent to the universal service fund administrator. The company is responsible for tracking and notification to the Commission when the USF has been fully compensated. All monies will be collected and reported by the end of each calendar year, December 31st.

7. For each customer added during the five-year period following project completion, the telecommunications corporation and new customers shall bear the costs to extend service pursuant to the company's service or line extension terms and conditions, up to the telecommunications corporation's original contribution per customer for the project and the customer contributions required by this rule. The company may petition the Commission for a determination of the recovery from the universal service fund and the new customer for costs which exceed this amount.

D. Impact of Distribution on Rate of Return Companies -- A one-time distribution from the fund shall be recorded on the books of a rate base, rate of return regulated LEC as an aid to construction and treated as an offset to rate base.

E. Notice and Hearing -- Following notice that a one-time distribution application has been filed, any interested person may request a hearing or seek to intervene to protect his interests.

F. Bidding for Unserved Areas -- If only one telecommunications corporation is involved in the one-time distribution request, the distribution will be provided based on the reasonable and prudent actual or estimated costs of that company. If additional telecommunications corporations are involved, the distribution will be determined on the basis of a competitive bid. The estimated amount of the one-time distribution will be considered in evaluating each bid. Fund distributions in that area will be based on the winning bid.

R746-360-10. Altering the USF Charges and the End-User Surcharge Rates.

The uniform surcharge shall be adjusted periodically to minimize the difference between amounts received by the fund and amounts disbursed.

R746-360-11. Support for Schools, Libraries, and Health Care Facilities. Calculation of Fund Distributions.

The Universal Service Fund rules for schools, libraries and health care providers, as prescribed by the Federal Communications Commission in Docket 96-45, 97-157 Sections X and XI, paragraphs 424 - 749, of Order issued May 8, 1996, and CFR Sections 54.500 through 54.623 inclusive, incorporated by this reference, is the prescribed USF method that shall be employed in Utah. Funding shall be limited to funds made available through the federal universal service fund program.

KEY: affordable base rate, public utilities, telecommunications, universal service fund

July 31, 2017
Notice of Continuation November 13, 2013

54-3-1
54-4-1
54-8b-15

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
R861-1A-3. Division Conferences Pursuant to Utah Code Ann. Sections 59-1-210 and 63G-4-102.

Any party directly affected by a commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in that action.

(1) A request may be oral or written.

(2) A conference will be conducted in an informal manner in an effort to clarify and narrow the issues and problems involved.

(3) The party requesting a conference will be notified of the result:

(a) orally or in writing;

(b) in person or through counsel; and

(c) at the conclusion of the conference or within a reasonable time thereafter.

(4) A conference may be held at any time prior to a hearing, whether or not a petition for hearing, appeal, or other commencement of an adjudicative proceeding has been filed.

R861-1A-9. State Board of Equalization Procedures Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.

(1) The commission sits as the state board of equalization in discharge of the equalization responsibilities given it by law. The commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

(2) Appeals to the commission shall include:

(a) a copy of the recommendation of a hearing officer if a hearing officer heard the appeal;

(b) a copy of the notice required under Section 59-2-919.1;

(c) a copy of the minutes of the board of equalization;

(d) a copy of the property record maintained by the assessor;

(e) if the county board of equalization does not include the record in its minutes, a copy of the record of the appeal required under R884-24P-66;

(f) a copy of the evidence submitted by the parties to the board of equalization;

(g) a copy of the petition for redetermination; and

(h) a copy of the decision of the board of equalization.

(3) A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.

(4) Appeals to the commission shall be scheduled for hearing pursuant to commission rules.

(5) Appeals to the commission shall be on the merits except for the following:

(a) dismissal for lack of jurisdiction;

(b) dismissal for lack of timeliness;

(c) dismissal for lack of evidence to support a claim for relief.

(6)(a) The commission shall consider, but is not limited to, the facts and evidence submitted to the county board.

(b) A party may raise a new issue before the commission.

(7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be reviewed by the commission is the dismissal itself, not the merits of the appeal.

(8) An appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the commission determines that:

(a) dismissal under Subsection (5)(a) or (c) was improper;

(b) the taxpayer failed to exhaust all administrative remedies at the county level;

(c) in the interest of administrative efficiency, the matter can best be resolved by the county board;

(d) the commission determines that dismissal under Subsection (5)(a)(c) is improper under R884-24P-66; or

(e) a new issue is raised before the commission by a party.

(9) The provisions of this rule apply only to appeals to the commission as the state board of equalization. For information regarding appeals to the county board of equalization, please see Section 59-2-1004 and R884-24P-66.

R861-1A-10. Miscellaneous Provisions Pursuant to Utah Code Ann. Section 59-1-210.

A. Rights of Parties. Nothing herein shall be construed to remove or diminish any right of any party under the Constitution of the United States, the Constitution of the state of Utah, or any existing law.

B. Effect of Partial Invalidation. If any part of these rules be declared unconstitutional or in conflict with existing statutory law by a court of competent jurisdiction, the remainder shall not be affected thereby and shall continue in full force and effect.

C. Enactment of Inconsistent Legislation. Any statute passed by the Utah Legislature inconsistent with these rules or any part thereof will effect a repeal of that part of these rules with which it is inconsistent, but of no other part.

D. Presumption of Familiarity. It will be presumed that parties dealing with the Commission are familiar with:

1. these rules and the provisions thereof,

2. the revenue laws of the state of Utah, and

3. all rules enacted by the Commission in its administration thereof.

R861-1A-11. Appeal of Corrective Action Order Pursuant to Utah Code Ann. Section 59-2-704.

A. Appeal of Corrective Action Order. Any county appealing a corrective action order issued pursuant to Section 59-2-704, shall, within 10 days of the mailing of the order, request in writing a hearing before the Commission. The Commission shall immediately set the time and place of the hearing, which shall be held no later than June 30 of the tax year to which the corrective action order applies.

B. Hearings. Hearings on corrective action order appeals shall be conducted as formal hearings and shall be governed by the procedures contained in these rules. If the parties are able to stipulate to a modification of the corrective action order, and it is evident that there is a reasonable basis for modifying the corrective action order, an amended corrective action order may be executed by the Commission. One or more commissioners may preside at a hearing under this rule with the same force and effect as if a quorum of the Commission were present. However, a decision must be made and an order signed by a quorum of the Commission.

C. Decisions and Orders. The Commission shall render its decision and order no later than July 10 of the tax year to which the corrective action order applies. Upon reaching a decision, the Commission shall immediately notify the clerk of the county board of equalization and the county assessor of that decision.

D. Sales Information. Access to Commission property sales information shall be available by written agreement with the Commission to any clerk of the county board of equalization and county assessor appealing under this rule. All other reasonable and necessary information shall be available upon request, according to Commission guidelines.

E. Conflict with Other Rules. This rule supersedes all other rules that may otherwise govern these proceedings before the Commission.

R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. Sections 41-3-209, 59-1-210, 59-1-403, and 59-1-405.

(1) Hearings.

(a) Except as provided under Subsection (1)(b), and pursuant to Section 59-1-405, hearings related to appeals filed with the commission are confidential tax matters and not subject to Title 52, Chapter 4, Open and Public Meetings Act.

(b) Hearings related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation, are open to the public.

(2) Orders.

(a) Except as provided in Subsections (2)(b) through (e), written orders signed by the commission will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality; or

(ii) the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify a particular person.

(b) Property tax orders signed by the commission that do not contain commercial information will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality;

(ii) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(iii) the disclosure is required or allowed under state law.

(c)(i) Property tax orders signed by the commission that contain commercial information will be mailed to the appropriate persons in accordance with Section 59-1-404 and rule R861-1A-37, Provisions Relating to Disclosure of Commercial Information.

(ii) Copies of property tax orders described in Subsection (2)(c)(i), or information about them, will be made available to persons other than the persons described in Section 59-1-404 and rule R861-1A-37 under the following circumstances:

(A) the parties have affirmatively waived any claims to confidentiality;

(B) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, commercial information, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(C) the disclosure is required or allowed under state law.

(d) Orders resulting from a hearing related to the enforcement of Title 41, Chapter 1a, Motor Vehicle Act, will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality;

(ii) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(iii) the disclosure is required under state law.

(e) Orders resulting from a hearing related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation, are public information and may be publicized.

(3) Commission Notes and Workpapers.

(a) All workpapers, notes, and other material prepared by the commissioners, as well as staff and employees of the commission, are protected, and access to the specific material is restricted to employees of the commission and its legal counsel only.

(b) Examples of this restricted material include audit workpapers and notes, ad valorem appraisal worksheets, and notes taken during hearings and deliberations. In the case of information prepared as part of an audit, the auditing division will, upon request, provide summary information of the findings to the taxpayer. These items will not be available to any person or party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.

(4) Reciprocal Agreements.

(a) The commission may enter into individual reciprocal agreements to share specific tax information with authorized representatives of the United States Internal Revenue Service or the revenue service of any other state.

(b) For all taxes other than individual income tax and corporate franchise tax, the commission may share information gathered from returns and other written statements with the federal government, other states, and political subdivisions within and without the state if the political subdivision, state, or federal government grant substantially similar privileges to this state.

(5) Statistical Information. The commission authorizes the preparation and publication of statistical information regarding the payment and collection of state taxes. The information will be made available after review and approval of the commission.

(6) Publication of Delinquent Taxpayer Information.

(a) For purposes of this Subsection (6), "delinquent taxpayer" does not include a person subject to a tax under:

(i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

(ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information;

(iii) Title 59, Chapter 10, Part 2, Trusts and Estates; or

(iv) Title 59, Chapter 10, Part 14, Pass-Through Entities and Pass-Through Entity Taxpayers Act.

(b) The commission may publicize the following information relating to a delinquent taxpayer:

(i) name;

(ii) address;

(iii) the amount of money owed by tax type; and

(iv) any legal action taken by the commission, including charges filed and property seized.

R861-1A-13. Requests for Accommodation and Grievance Procedures Pursuant to Utah Code Ann. Section 63G-3-201, 28 CFR 35.107 1992 edition, and 42 USC 12201.

(1) Individuals with a disability may request reasonable accommodations to services, programs, or activities, or a job or work environment in the following manner.

(a) Requests shall be directed to:

Accommodations Coordinator
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134

Telephone: 801-297-3811 TDD: 801-297-3819 or relay at 711

(b) Requests shall be made at least three working days prior to any deadline by which the accommodation is needed.

(c) Requests shall include the following information:

(i) the individual's name and address;
(ii) a notation that the request is made in accordance with the Americans with Disabilities Act;
(iii) a description of the nature and extent of the individual's disability;
(iv) a description of the service, program, activity, or job or work environment for which an accommodation is requested; and
(v) a description of the requested accommodation if an accommodation has been identified.
(2) The accommodations coordinator shall review all requests for accommodation with the applicable division director and shall issue a reply within two working days.
(a) The reply shall advise the individual that:
(i) the requested accommodation is being supplied; or
(ii) the requested accommodation is not being supplied because it would cause an undue hardship, and shall suggest alternative accommodations. Alternative accommodations must be described; or
(iii) the request for accommodation is denied. A reason for the denial must be included; or
(iv) additional time is necessary to review the request. A projected response date must be included.
(b) All denials of requests under Subsections (2)(a)(ii) and (2)(a)(iii) shall be approved by the executive director or designee.
(c) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.
(3) Individuals with a disability who are dissatisfied with the reply to their request for accommodation may file a request for review with the executive director in the following manner.
(a) Requests for review shall be directed to:
Executive Director
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3841 TDD: 801-297-3819 or relay at 711
(b) A request for review must be filed within 180 days of the accommodations coordinator's reply.
(c) The request for review shall include:
(i) the individual's name and address;
(ii) the nature and extent of the individual's disability;
(iii) a copy of the accommodation coordinator's reply;
(iv) a statement explaining why the reply to the individual's request for accommodation was unsatisfactory;
(v) a description of the accommodation desired; and
(vi) the signature of the individual or the individual's legal representative.
(4) The executive director shall review all requests for review and shall issue a reply within 15 working days after receipt of the request for review.
(a) If unable to reach a decision within the 15 working day period, the executive director shall notify the individual with a disability that the decision is being delayed and the amount of additional time necessary to reach a decision.
(b) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.
(5) The record of each request for review, and all written records produced or received as part of each request for review, shall be classified as protected under Section 63G-2-305 until the executive director issues a decision.
(6) Once the executive director issues a decision, any portions of the record that pertain to the individual's medical condition shall remain classified as private under Section 63G-2-302 or controlled under Section 63G-2-304, whichever is appropriate. All other information gathered as part of the appeal shall be classified as private information. Only the written decision of the executive director shall be classified as public information.
(7) Individuals with a disability who are dissatisfied with the executive director's decision may appeal that decision to the commission in the manner provided in Sections 63G-4-102 through 63G-4-105.

R861-1A-15. Requirement of Social Security and Federal Identification Numbers Pursuant to Utah Code Ann. Section 59-1-210.

A. Taxpayers shall provide the Tax Commission with their social security number or federal identification number, as required by the Tax Commission.
B. Sole proprietor and partnership applicants shall provide the Tax Commission with the following information for every owner or partner of the applying entity:
1. name;
2. home address;
3. social security number and federal identification number, as required by the Tax Commission.
C. Corporation and limited liability applicants shall provide the Tax Commission with the following information for every officer or managing member of the applying entity:
1. name;
2. home address; and
3. social security number and federal identification number, as required by the Tax Commission.
D. Business trust applicants shall provide the Tax Commission with the following information for the responsible trustees:
1. name;
2. home address; and
3. social security number and federal identification number, as required by the Tax Commission.

R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.

(1) The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.
(2) The structure of the agency is as follows:
(a) The Office of the Commission, including the commissioners and the following units that report to the commission:
(i) Internal Audit;
(ii) Appeals;
(iii) Economic and Statistical; and
(iv) Public Information.
(b) The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:
(i) Administration;
(ii) Taxpayer Services;
(iii) Motor Vehicle;
(iv) Auditing;
(v) Property Tax;
(vi) Processing; and
(vii) Motor Vehicle Enforcement.
(3) The Executive Director shall oversee service agreements from other departments, including the Department of Human Resources and the Department of Technology Services.
(4) The commission hereby delegates full authority for the following functions to the executive director:

(a) general supervision and management of the day to day management of the operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in Subsection (2)(b);

(b) management of the day to day relationships with the customers of the agency;

(c) all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in Subsections (4)(d) and (5);

(d) in conformance with standards established by the commission, waivers of penalty and interest pursuant to Section 59-1-401 in amounts under $10,000, or offers in compromise agreements in amounts under $10,000;

(e) except as provided in Subsection (5)(g), voluntary disclosure agreements with companies, including multilevel marketers;

(f) determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the commission;

(g) human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and

(h) administration of Title 63G, Chapter 2, Government Records Access and Management Act.

(5) The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

(a) the agency budget;

(b) the strategic plan of the agency;

(c) administrative rules and bulletins;

(d) waivers of penalty and interest in amounts of $10,000 or more pursuant to Section 59-1-401 as per the waiver of penalty and interest policy;

(e) offer in compromise agreements that abate tax, penalty and interest over $10,000 as per the offer in compromise policy;

(f) stipulated or negotiated agreements that dispose of matters on appeal; and

(g) voluntary disclosure agreements that meet the following criteria:

(i) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and

(ii) the agreement forgives a known past tax liability of $10,000 or more.

(6) The commission shall retain authority for the following functions:

(a) rulemaking;

(b) adjudicative proceedings;

(c) private letter rulings issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;

(d) internal audit processes;

(e) liaison with the governor's office:

(i) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

(ii) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission;

(f) liaison with the Legislature:

(i) The commission will set legislative priorities and communicate those priorities to the executive director.

(ii) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency; and

(g) litigation:

(i) The executive director shall advise the commission on matters under litigation.

(ii) If a settlement offer is received, the executive director shall inform the commission of the:

(A) terms of the offer; and

(B) the division's recommendations with regards to that offer.

(7) Correspondence that has been directed to the commission or individual commissioners that relates to matters delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

(8) The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

(a) Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

(b) The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

(9) The commission shall meet with the executive director periodically for the purpose of exchanging information and coordinating operations.

(a) The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

(b) The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

(c) When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

R861-1A-18. Allocations of Remittances Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-705.

A. Remittances received by the commission shall be applied first to penalty, then interest, and then to tax for the filing period and account designated by the taxpayer.

B. If no designation for period is made, the commission shall allocate the remittance so as to satisfy all penalty, interest, and tax for the oldest period before applying any excess to other periods.

C. Fees associated with Tax Commission collection activities shall be allocated from remittances in the manner designated by statute. If a statute does not provide for the manner of allocating those fees from remittances, the commission shall apply the remittance first to the collection activity fees, then to penalty, then interest, and then to tax for the filing period.

R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 63G-4-201 and 68-3-8.5.

(1) Except as provided in Subsection (2), a petition for adjudicative action must be received in the commission offices no later than 30 days from the date of the action that creates the right to appeal. The petition is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or

(ii) the date of the postmark on the envelope or cover indicates that the petition was mailed on or before the last day of the 30-day period; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day period.

(c) A petition for adjudicative action that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsections 68-3-8.5(2)(b) and (c).

(2) If a statute provides the period within which an appeal may be filed, a petition for adjudicative action is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the time frame provided by statute.

(c) A petition for adjudicative action that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsections 68-3-8.5(2)(b) and (c).

(3) Any party adversely affected by an order of the commission may seek judicial review within the time frame provided by statute. Copies of the appeal shall be served upon the commission and upon the Office of the Attorney General.

R861-1A-22. Petitions for Commencement of Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, and 63G-4-201.

(1) Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.

(2) Contents. A petition for adjudicative action need not be in any particular form, but shall be in writing and, in addition to the requirements of 63G-4-201, shall contain the following:

(a) name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;

(b) a telephone number where the petitioning party or that party's representative can be reached during regular business hours;

(c) petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;

(d) particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;

(e) if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and

(f) in the case of property tax cases, the assessed value sought.

(3) Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

R861-1A-23. Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63G-4-202.

(1) All matters shall be designated as formal proceedings and set for an initial hearing, a status conference, or a scheduling conference pursuant to R861-1A-26.

(2) A matter may be diverted to a mediation process pursuant to R861-1A-32 upon agreement of the parties and the presiding officer.

R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63G-4-206, and 63G-4-208.

(1) The following may preside at a formal proceeding:

(a) a commissioner;

(b) an administrative law judge appointed by the commission; or

(c) in the case of a formal proceeding that relates to a matter that is not a tax, fee, or charge as defined under Section 59-1-1402:

(i) a commissioner;

(ii) an administrative law judge appointed by the commission; or

(iii) a hearing officer appointed by the commission.

(2) Assignment of a presiding officer to a case will be made pursuant to agency procedures and not at the request of any party to the appeal.

(a) A party may request that one or more commissioners be present at any hearing. However, the decision of whether the request is granted rests with the commission.

(b) If more than one commissioner, administrative law judge, or hearing officer is present at any hearing, the hearing will be conducted by the presiding officer assigned to the appeal, unless otherwise determined by the commission.

(3) A formal proceeding includes an initial hearing pursuant to Section 59-1-502.5, unless it is waived upon agreement of all parties, and a formal hearing on the record, if the initial hearing is waived or if a party appeals the initial hearing decision.

(a) Initial Hearing.

(i) An initial hearing pursuant to Section 59-1-502.5 shall be in the form of a conference.

(ii) In accordance with Section 59-1-502.5, the commission shall make no record of an initial hearing.

(iii) Any issue may be settled in the initial hearing, but any party has a right to a formal hearing on matters that remain in dispute after the initial hearing decision is issued.

(iv) Any party dissatisfied with the result of the initial hearing must file a timely request for a formal hearing before pursuing judicial review of unsettled matters.

(b) Formal Hearing.

(i) The commission shall make a record of all formal hearings, which may include a written record or an audio recording of the proceeding.

(ii) Evidence presented at the initial hearing will not be included in the record of the formal hearing, unless specifically requested by a party and admitted by the presiding officer.

R861-1A-26. Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63G-4-204 through 63G-4-209.

(1) A scheduling or status conference may be held.

(a) At the conference, the parties and the presiding officer may:

(i) establish deadlines and procedures for discovery;

(ii) discuss scheduling;

(iii) clarify other issues;

(iv) determine whether to refer the action to a mediation

process; and

(v) determine whether the initial hearing will be waived.

(b) The scheduling or status conference may be converted to an initial hearing upon agreement of the parties.

(2) Notice of Hearing. At least ten days prior to a hearing date, the commission shall notify the petitioning party or the petitioning party's representative by mail, e-mail, or facsimile of the date, time and place of any hearing or proceeding.

(3) Proceedings Conducted by Telephone. Any proceeding may be held with one or more of the parties on the telephone if the presiding officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Each party to the proceeding is responsible for notifying the presiding officer of the telephone number where contact can be made for purposes of conducting the hearing.

(4) Representation.

(a) A party may pursue an appeal before the commission without assistance of legal counsel or other representation. However, a party may be represented by legal counsel or other representation at every stage of adjudication. Failure to obtain legal representation shall not be grounds for complaint at a later stage in the adjudicative proceeding or for relief on appeal from an order of the commission.

(i) An attorney licensed in a jurisdiction outside Utah may represent a taxpayer before the commission without being admitted pro hac vice in Utah.

(ii) For appeals concerning Utah corporate franchise and income taxes or Utah individual income taxes, legal counsel must file a power of attorney or the taxpayer must submit a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized legal counsel to represent him or her in the appeal. For all other appeals, legal counsel may, as an alternative, submit an entry of appearance.

(iii) Any representative other than legal counsel must submit a signed power of attorney authorizing the representative to act on the party's behalf and binding the party by the representative's action, unless the taxpayer submits a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized the representative to represent him or her in the appeal.

(iv) If a party is represented by legal counsel or other representation, all documents will be directed to the party's representative. Documents will be mailed to the representative's street or other address as shown in documents submitted by the representative. Documents may also be transmitted by facsimile number, e-mail address or other electronic means.

(b) Any division of the commission named as party to the proceeding may be represented by the Attorney General's Office upon an attorney of that office submitting an entry of appearance.

(5) Subpoena Power.

(a) Issuance. Subpoenas may be issued to secure the attendance of witnesses or the production of evidence.

(i) If all parties are represented by counsel, an attorney admitted to practice law in Utah may issue and sign the subpoena.

(ii) In all other cases, the party requesting the subpoena must prepare it and submit it to the presiding officer for review and, if appropriate, signature. The presiding officer may inform a party of its rights under the Utah Rules of Civil Procedure.

(b) Service. Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure.

(6) Motions.

(a) Consolidation. The presiding officer has discretion to consolidate cases when the same tax assessment, series of assessments, or issues are involved in each, or where the fact situations and the legal questions presented are virtually identical.

(b) Continuance. A continuance may be granted at the discretion of the presiding officer.

(i) In the absence of a scheduling order:

(A) Each party to an appeal may receive one continuance, upon request, prior to the initial hearing.

(B) If the initial hearing is waived or a formal hearing is timely requested after an initial hearing decision is issued, each party may receive one continuance, upon request, prior to the formal hearing.

(C) A request must be submitted no later than ten days prior to the proceeding for which the continuance is requested and may be denied if a party is prejudiced by the continuance.

(ii) If a scheduling order has been issued or the requesting party has already been granted a continuance, a continuance request must be submitted in writing to the presiding officer. The request must set forth specific reasons for the continuance. After reviewing the request with one or more commissioners, the presiding officer shall grant the request only if the presiding officer determines that adequate cause has been shown and that no other party or parties will be unduly prejudiced.

(c) Default. The presiding officer may enter an order of default against a party in accordance with Section 63G-4-209.

(i) The default order shall include a statement of the grounds for default and shall be delivered to all parties.

(ii) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

(d) Ruling on Motions. Motions may be made during the hearing or by written motion.

(i) Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be served upon all other parties to the proceeding.

(ii) Upon the filing of any motion, the presiding officer may:

(A) grant or deny the motion; or

(B) set the matter for briefing, hearing, or further proceedings.

(iii) If a hearing on a motion is held that may dispose of all or a portion of the appeal or any claim or defense in the appeal, the commission shall make a record of the proceeding, which may include a written record or an audio recording of the proceeding.

(e) Requests to Withdraw Locally-Assessed Property Tax Appeals.

(i) A party who appeals a county board of equalization decision to the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw the appeal 20 or more days prior to:

(I) the initial hearing; or

(II) the formal hearing, if the parties waived the initial hearing or participated in a mediation conference in lieu of the initial hearing; and

(B) no other party has filed a timely appeal of the county board of equalization decision.

(ii) A party who appeals an initial hearing decision issued by the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw 20 or more days prior to the formal hearing, regardless of whether the party who appealed the initial hearing order is also the party who appealed the county board of equalization decision; and

(B) no other party has filed a timely appeal of the initial hearing decision.

R861-1A-27. Discovery Pursuant to Utah Code Ann. Section 63G-4-205.

(1) Discovery procedures in formal proceedings shall be established during the scheduling, and status conference in

accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.

(2) The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 63G-4-206, 76-8-502, and 76-8-503.

(1) Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence, and the degree of proof in a hearing before the commission shall be the same as in a judicial proceeding in the state courts of Utah.

(2) Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(a) The presiding officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

(b) The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

(c) If a party attempts to introduce evidence into a hearing, and that evidence is excluded, the party may proffer the excluded testimony or evidence to allow the reviewing judicial authority to pass on the correctness of the ruling of exclusion on appeal.

(3) At the discretion of the presiding officer or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to prefile the testimony.

(a) Prefiled testimony may be placed on the record without being read into the record if the opposing parties have had reasonable access to the testimony before it is presented. Except upon finding of good cause, reasonable access shall be not less than ten working days.

(b) Prefiled testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness.

(c) The presiding officer may require the witness to present a summary of the prefiled testimony. In that case, the witness shall reduce the summary to writing and either file it with the prefiled testimony or serve it on all parties within 10 days after filing the testimony.

(d) If an opposing party intends to cross-examine the witness on prefiled testimony or the summary of prefiled testimony, that party must file a notice of intent to cross-examine at least 10 days prior to the date of the hearing so that witness can be scheduled to appear or within a time frame agreed upon by the parties.

(4) The presiding officer shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the proceeding.

(5) Oral testimony at a formal hearing will be sworn. The oath will be administered by the presiding officer or a person designated by him. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

(6) Any party appearing in an adjudicative proceeding may submit a memorandum of authorities. The presiding officer may request a memorandum from any party if deemed necessary for a full and informed consideration of the issues.

R861-1A-29. Decisions, Orders, and Reconsideration Pursuant to Utah Code Ann. Sections 59-1-205 and 63G-4-302.

(1) "Taxpayer" for purposes of the requirement under Section 59-1-205 that in a tie vote of the commission the position of the taxpayer is considered to have prevailed, includes:

(a) a person that has received a license issued by the commission; or

(b) an applicant for a license issued by the commission.

(2) Decisions and Orders.

(a) Initial hearing decisions, formal hearing decisions, and other dispositive orders.

(i) A quorum of the commission shall deliberate all hearing decisions and other orders that could dispose of all or a portion of an appeal or any claim or defense in the appeal.

(ii) A quorum of the commission shall sign all hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iii) An administrative law judge, if he or she was the presiding officer for an appeal, may elect not to sign the commission's hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iv) An initial hearing decision shall become final upon the expiration of 30 days after the date of its issuance, except in any case where a party has earlier requested a formal hearing in writing.

(A) The date a party requests a formal hearing is the earlier of the date the envelope containing the request is postmarked or the date the request is received at the commission.

(B) If a party withdraws an appeal, the initial decision becomes final as of the date that is 30 days after the date of the issuance of the initial hearing decision.

(b) Orders that are not dispositive.

(i) A quorum of the commission is not required to participate in an order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(ii) The presiding officer is authorized to sign all orders that do not dispose of a portion of an appeal or any claim or defense in the appeal.

(iii) The commission may, at its option, sign any order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(3) Reconsideration. Within 20 days after the date that an order that is dispositive of a portion or all of an appeal or any claim or defense in the appeal is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.

(a) The commission shall respond to the petition within 20 days after the date that it was received in the appeals unit to notify the petitioner whether the reconsideration is granted or denied, or is under review.

(i) If no notice is issued within the 20-day period, the commission's lack of action on the request shall be deemed to be a denial and a final order.

(ii) For purposes of calculating the 30-day limitation period for pursuing judicial review, the date of the commission's order on the reconsideration or the order of denial is the date of the final agency action.

(b) If no petition for reconsideration is made, the 30-day limitation period for pursuing judicial review begins to run from the date of the final agency action.

R861-1A-30. Ex Parte Communications Pursuant to Utah Code Ann. Sections 63G-4-203 and 63G-4-206.

(1) No commissioner or administrative law judge shall make or knowingly cause to be made to any party to an appeal any communication relevant to the merits of a matter under appeal unless notice and an opportunity to be heard are afforded to all parties.

(2) No party shall make or knowingly cause to be made to any commissioner or administrative law judge an ex parte communication relevant to the merits of a matter under appeal for the purpose of influencing the outcome of the appeal.

Discussion of procedural matters are not considered ex parte communication relevant to the merits of the appeal.

(3) A presiding officer may receive aid from staff assistants if:

(a) the assistants do not receive ex parte communications of a type that the presiding officer is prohibited from receiving, and,

(b) in an instance where assistants present information which augments the evidence in the record, all parties shall have reasonable notice and opportunity to respond to that information.

(4) Any commissioner or administrative law judge who receives an ex parte communication relevant to the merits of a matter under appeal shall place the communication into the case file and afford all parties an opportunity to comment on the information.

R861-1A-31. Declaratory Orders Pursuant to Utah Code Ann. Section 63G-4-503.

(1) A party has standing to bring a declaratory action if that party is directly and adversely affected or aggrieved by an agency action within the meaning of the relevant statute.

(2) A party with standing may petition for a declaratory order to challenge:

(a) the commission's interpretation of statutory language as stated in an administrative rule; or

(b) the commission's grant of authority under a statute.

(3) The commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.

(4) The commission may refuse to render a declaratory order if the order will not completely resolve the controversy giving rise to the proceeding or if the petitioner has other remedies through the administrative appeals processes. The commission's decision to accept or reject a petition for declaratory order rests in part on the petitioner's standing to raise the issue and on a determination that the petitioner has not already incurred tax liability under the statutes or rules challenged.

(5) A declaratory order that invalidates all or part of an administrative rule shall trigger the rulemaking process to amend the rule.

R861-1A-32. Mediation Process Pursuant to Utah Code Section 63G-4-102.

(1) Except as otherwise precluded by law, a resolution to any matter of dispute may be pursued through mediation.

(a) The parties may agree to pursue mediation any time before the formal hearing on the record.

(b) The choice of mediator and the apportionment of costs shall be determined by agreement of the parties.

(2) If mediation produces a settlement agreement, the agreement shall be submitted to the presiding officer pursuant to R861-1A-33.

(a) The settlement agreement shall be prepared by the parties or by the mediator, and promptly filed with the presiding officer.

(b) The settlement agreement shall be adopted by the commission if it is not contrary to law.

(c) If the mediation does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

(d) If any issues remain unresolved, the appeal will be scheduled for a formal hearing pursuant to R861-1A-23.

R861-1A-33. Settlement Agreements Pursuant to Utah Code Sections 59-1-210 and 59-1- 502.5.

A. "Settlement agreement" means a stipulation, consent decree, settlement agreement or any other legally binding document or representation that resolves a dispute or issue between the parties.

B. Procedure:

1. Parties with an interest in a matter pending before a division of the Tax Commission may submit a settlement agreement for review and approval, whether or not a petition for hearing has been filed.

2. Parties to an appeal pending before the commission may submit a settlement agreement to the presiding officer for review and approval.

3. Each settlement agreement shall be in writing and executed by each party or each party's legal representative, if any, and shall contain:

a) the nature of the claim being settled and any claims remaining in dispute;

b) a proposed order for commission approval; and

c) a statement that each party has been notified of, and allowed to participate in settlement negotiations.

4. A settlement agreement terminates the administrative action on the issues settled before all administrative remedies are exhausted, and, therefore, precludes judicial review of the issues. Each settlement agreement shall contain a statement that the agreement is binding and constitutes full resolution of all issues agreed upon in the settlement agreement.

5. The signed agreement shall stay further proceedings on the issues agreed upon in the settlement until the agreement is accepted or rejected by the commission or the commission's designee.

a) If approved, the settlement agreement shall take effect by its own terms.

b) If rejected, action on the claim shall proceed as if no settlement agreement had been reached. Offers made during the negotiation process will not be used as an admission against that party in further adjudicative proceedings.

R861-1A-34. Private Letter Rulings Pursuant to Utah Code Ann. Section 59-1-210.

A. Private letter rulings are written, informational statements of the commission's interpretation of statutes or administrative rules, or informational statements concerning the application of statutes and rules to specific facts and circumstances.

1. Private letter rulings address questions that have not otherwise been addressed in statutes, rules, or decisions issued by the commission.

2. The commission shall not knowingly issue a private letter ruling on a matter pending before the commission in an audit assessment, refund request, or other agency action, or regarding matters that are pending before the court on judicial review of a commission decision. Any private letter ruling inadvertently issued on a matter pending agency or judicial action shall be set aside until the conclusion of that action.

3. Requests for private letter rulings must be addressed to the commission in writing. If the requesting party is dissatisfied with the ruling, that party may resubmit the request along with new facts or information for commission review.

B. The weight afforded a private letter ruling in a subsequent audit or administrative appeal depends upon the degree to which the underlying facts addressed in the ruling were adequate to allow thorough consideration of the issues and interests involved.

C. A private letter ruling is not a final agency action. Petitioner must use the designated appeal process to address judiciable controversies arising from the issuance of a private letter ruling.

1. If the private letter ruling leads to a denial of a claim, an audit assessment, or some other agency action at a divisional

level, the taxpayer must use the appeals procedures to challenge that action within 30 days of the final division decision.

2. If the only matter at issue in the private letter ruling is a challenge to the commission's interpretation of statutory language or a challenge to the commission's authority under a statute, the matter may come before the commission as a petition for declaratory order submitted within 30 days of the date of the ruling challenged.

R861-1A-35. Manner of Retaining Records Pursuant to Utah Code Ann. Sections 59-1-210, 59-5-104, 59-5-204, 59-6-104, 59-7-506, 59-8-105, 59-8a-105, 59-10-501, 59-12-111, 59-13-211, 59-13-312, 59-13-403, 59-14-303, and 59-15-105.

A. Definitions.

1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

2. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

3. "Hard copy" means any documents, records, reports, or other data printed on paper.

4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

6. "Taxpayer" means the person required, under Title 59 or other statutes administered by the Tax Commission, to collect, remit, or pay the tax or fee to the Tax Commission.

B. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the commission in machine-sensible format upon request by the commission.

C. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this rule. However, this does not relieve the taxpayer of the obligation to comply with B.

D. Recordkeeping requirements for machine-sensible records.

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the commission upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this rule are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

4. Electronic Data Interchange Requirements.

a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record.

b) For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the commission to interpret the coded information.

c) The taxpayer may capture the information necessary to satisfy D.4.b) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name, i.e., they contain only codes for that information, the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

5. Electronic data processing systems requirements.

a) The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

6. Business process information.

a) Upon the request of the commission, the taxpayer shall provide a description of the business process that created the retained records. The description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.

b) The taxpayer shall be capable of demonstrating:

(1) the functions being performed as they relate to the flow of data through the system;

(2) the internal controls used to ensure accurate and reliable processing; and

(3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

c) The following specific documentation is required for machine-sensible records retained pursuant to this rule:

(1) record formats or layouts;

(2) field definitions, including the meaning of all codes used to represent information;

(3) file descriptions, e.g., data set name; and

(4) detailed charts of accounts and account descriptions.

E. Records maintenance requirements.

1. The commission recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 C.F.R., Section 1234,(1995).

2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

F. Access to machine-sensible records.

1. The manner in which the commission is provided access to machine-sensible records as required in B. may be satisfied through a variety of means that shall take into account a

taxpayer's facts and circumstances through consultation with the taxpayer.

2. Access will be provided in one or more of the following manners:

a) The taxpayer may arrange to provide the commission with the hardware, software, and personnel resources necessary to access the machine-sensible records.

b) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

c) The taxpayer may convert the machine-sensible records to a standard record format specified by the commission, including copies of files, on a magnetic medium that is agreed to by the commission.

d) The taxpayer and the commission may agree on other means of providing access to the machine-sensible records.

G. Taxpayer responsibility and discretionary authority.

1. In conjunction with meeting the requirements of D., a taxpayer may create files solely for the use of the commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of D. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

2. A taxpayer may contract with a third party to provide custodial or management services of the records. The contract shall not relieve the taxpayer of its responsibilities under this rule.

H. Alternative storage media.

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

2. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

a) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and made available on request. This documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

b) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

c) Upon request by the commission, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

d) When displayed on equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

e) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

I. Effect on hard-copy recordkeeping requirements.

1. Except as otherwise provided in this section, the provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in H.

2. Hard-copy records not produced or received in the ordinary course of transacting business, e.g., when the taxpayer uses electronic data interchange technology, need not be created.

3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. These details include those listed in D.4.a) and D.4.b).

4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

5. Nothing in this section shall prevent the commission from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

R861-1A-36. Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-7-505, 59-10-512, 59-12-107, 59-13-206, and 59-13-307.

(1) Individuals who submit an application to renew their vehicle registration on the Internet web site authorized by the Tax Commission shall use the Tax Commission assigned personal identification number included with their registration renewal information as their signature for the renewal application submitted over the Internet.

(2) Taxpayers who use the Tax Commission authorized Internet web site to file tax return information for tax types that may be filed on that web site shall use the personal identification number provided by the Tax Commission as their signature for the tax return information filed on that web site.

(3) Taxpayers who file a tax return under Title 59, Chapter 10, Individual Income Tax Act, electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-10-512.

(4) Taxpayers who file a corporate franchise and income tax return electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-7-505.

R861-1A-37. Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.

(1) The provisions of this rule apply to the disclosure of commercial information under Section 59-1-404. For disclosure of information other than commercial information, see rule R861-1A-12.

(2) For purposes of Section 59-1-404, "assessed value of the property" includes any value proposed for a property.

(3) For purposes of Subsection 59-1-404(2), "disclosure" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in Subsection (3)(a) or (3)(b).

(4) For purposes of Subsection 59-1-404(6), "published decision" does not include the issuance by the commission of a

decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in Subsection (4)(a) or (4)(b).

(5) Information that may be disclosed under Subsection 59-1-404(3) includes:

(a) the following information related to the property's tax exempt status:

(i) information provided on the application for property tax exempt status;

(ii) information used in the determination of whether a property tax exemption should be granted or revoked; and

(iii) any other information related to a property's property tax exemption;

(b) the following information related to penalty or interest relating to property taxes that the commission or county legislative body determines should be abated:

(i) the amount of penalty or interest that is abated;

(ii) information provided on an application or request for abatement of penalty or interest;

(iii) information used in the determination of the abatement of penalty or interest; and

(iv) any other information related to the amount of penalty or interest that is abated; and

(c) the following information related to the amount of property tax due on property:

(i) the amount of taxes refunded or deducted as an erroneous or illegal assessment under Section 59-2-1321;

(ii) information provided on an application or request that property has been erroneously or illegally assessed under Section 59-2-1321; and

(iii) any other information related to the amount of taxes refunded or deducted under Subsection (5)(c)(i).

(6)(a) Except as provided in statute and Subsection (6)(b), commercial information disclosed during an action or proceeding may not be disclosed outside an action or proceeding by any person conducting or participating in any action or proceeding.

(b) Notwithstanding Subsection (6)(a), commercial information contained in a decision issued by the commission may be disclosed outside the action or proceeding if all of the parties named in the decision agree in writing to the disclosure.

(7) The commission may disclose commercial information in a published decision as follows.

(a) If the property taxpayer that provided the commercial information does not respond in writing to the commission within 30 days of the decision's issuance, requesting that the commercial information not be published and identifying the specific commercial information the taxpayer wants protected, the commission may publish the entire decision.

(b) If the property taxpayer that provided the commercial information indicates to the commission in writing the specific commercial information that the taxpayer wants protected, the commission may publish a version of the decision that contains commercial information not identified by the taxpayer under Subsection (7)(a).

(8) The commission may share commercial information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, if these political subdivisions, or the federal government grant substantially similar privileges to this state.

R861-1A-38. Class Actions Pursuant to Utah Code Ann. Section 59-1-304.

A. Unless the limitations of Section 59-1-304(2) apply, the commission may expedite the exhaustion of administrative remedies required by individuals desiring to be included as a member of the class.

B. In expediting exhaustion of administrative remedies, the commission may take any of the following actions:

1. publish sample claim forms that provide the information necessary to process a claim in a form that will reduce the burden on members of the putative class and expedite processing by the commission;

2. provide for waiver of initial hearings where requested by any party;

3. provide for expedited rulings on motions for summary judgment where the facts are not contested and the legal issues have been previously determined by the commission in ruling on the case brought by class representatives. The parties may waive oral hearing and have final orders issued based upon information submitted in the claims and division responses;

4. consolidate the cases for hearing at the commission, where a group of claims presents identical legal issues and it is agreed by the parties that the resolution of the legal issues would be dispositive of the claims;

5. designate a claim as a test or sample claim with any rulings on that test or sample claim to be applicable to all other similar claims, upon agreement of the claiming parties; or

6. any other action not listed in this rule if that action is not contrary to procedures required by statute.

R861-1A-39. Penalty for Failure to File a Return Pursuant to Utah Code Ann. Sections 10-1-405, 59-1-401, 59-12-118, and 69-2-5.

(1)(a) Subject to Subsection (1)(b), "failure to file a tax return," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes a tax return that does not contain information necessary for the commission to make a correct distribution of tax revenues to counties, cities, and towns.

(b) Subsection (1)(a) applies to a tax return filed under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

(2)(a) "Unpaid tax," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes tax remitted to the commission under Subsection (2)(b) that is:

(i) not accompanied by a tax return; or

(ii) accompanied by a tax return that is subject to the penalty for failure to file a tax return.

(b) Subsection (2)(a) applies to a tax remitted under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

R861-1A-40. Waiver of Requirement to Post Security Prior to Judicial Review Pursuant to Utah Code Ann. Section 59-1-611.

(1) "Post security" is as defined in Section 59-1-611.

(2)(a) A taxpayer that seeks judicial review of a final commission determination of a deficiency may apply for a waiver of the requirement to post security with the commission by:

(i) submitting a letter requesting the waiver;

(ii) providing financial information requested by the commission; and

(iii) providing a copy of the financial information to the attorney general that is representing the commission in the judicial review.

(b) The financial information described in Subsection

(2)(a) shall be signed by the taxpayer under penalties of perjury.

(3) Upon review of the financial information described in Subsection (2), the commission shall:

(a) determine whether the taxpayer qualifies for a waiver of the requirement to post security with the commission; or

(b) if unable to make the determination under Subsection (3)(a) from the financial information, request additional information from the taxpayer as necessary to make that determination.

R861-1A-42. Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code Ann. Section 59-1-401.

(1) Procedure.

(a) A taxpayer may request a waiver of penalties or interest for reasonable cause under Section 59-1-401 if the following conditions are met:

(i) the taxpayer provides a signed statement, with appropriate supporting documentation, requesting a waiver;

(ii) the total tax owed for the period has been paid;

(iii) the tax liability is based on a return the taxpayer filed with the commission, and not on an estimate provided by the taxpayer or the commission;

(iv) the taxpayer has not previously received a waiver review for the same period; and

(v) the taxpayer demonstrates that there is reasonable cause for waiver of the penalty or interest.

(b) Upon receipt of a waiver request, the commission shall:

(i) review the request;

(ii) notify the taxpayer if additional documentation is needed to consider the waiver request; and

(iii) review the account history for prior waiver requests, taxpayer deficiencies, and historical support for the reason given.

(c) Each request for waiver is judged on its individual merits.

(d) If the request for waiver of penalty or interest is denied, the taxpayer has a right to appeal. Procedures for filing appeals are found in Title 63G, Chapter 4, Administrative Procedures Act, and commission rules.

(e) If a taxpayer first requests a waiver of penalties or interest in an appeal to the commission, the taxpayer is not required to meet Subsections (1)(a)(i) through (iv).

(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

(3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:

(a) Timely Mailing:

(i) The taxpayer mailed the return with payment to the commission by the due date and it was not timely delivered by the post office through no fault of the taxpayer.

(ii) In cases where the taxpayer cannot document a post office error, the penalties may be waived if the taxpayer:

(A) has an excellent history of compliance;

(B) proves that sufficient funds were in the bank as of the date of payment, and the check was written in numerical order; and

(C) presents documentation showing that the return or payment was mailed timely.

(b) Wrong Filing Place: The return or payment was filed on time, but was delivered to the wrong office or agency.

(c) Death or Serious Illness:

(i) The death or serious illness of a taxpayer or a member of the taxpayer's immediate family caused the delay.

(ii) With respect to a business, trust or estate, the death or illness must have been of the individual, or the immediate family of the individual, who had sole authority to file the return.

(iii) The death or illness must have occurred on or immediately prior to the due date of the return.

(d) Unavoidable Absence: The person having sole responsibility to file the return was absent from the state due to circumstances beyond his or her control.

(e) Disaster Relief:

(i) A delay in reporting, filing, or paying was due either to a federal or state declared disaster or to a natural disaster, such as fire or accident, that results in the destruction of records or disruption of business.

(ii) If delinquency or delay is due to a federally declared disaster, federal relief guidelines shall be followed.

(iii) In the absence of federal guidelines, and for other listed disasters, the taxpayer must demonstrate the matter was corrected within a reasonable time, given the circumstances.

(f) Reliance on Erroneous Tax Commission Information:

(i) Underpayments and late filings or payments were attributable to incorrect advice obtained from the commission, unless the taxpayer gave the commission inaccurate or insufficient information.

(ii) Proof of erroneous information may be based on written communication provided by the commission or, if the taxpayer clearly documents, verbal communication. Clear documentation of verbal communication should include the dates, times, and names of commission employees who provided the erroneous information.

(iii) A failure to comply will also be excused if it is demonstrated that the taxpayer requested the necessary tax forms and instructions timely, and the commission failed to timely provide the forms and instructions requested.

(g) Tax Commission Office Visit: The taxpayer proves that before expiration of the time for filing the return or making the payment, the taxpayer visited a commission office for information or help in preparing the return and a commission employee was not available for consultation.

(h) Unobtainable Records: For reasons beyond the taxpayer's control, the taxpayer was unable to obtain records to determine the amount of tax due.

(i) Reliance on Competent Tax Advisor:

(i) The taxpayer fails to file a return after furnishing all necessary and relevant information to a competent tax advisor, who incorrectly advised the taxpayer that a return was not required.

(ii) The taxpayer is required, and has an obligation, to file the return. Reliance on a tax advisor to prepare a return does not automatically constitute reasonable cause for failure to file or pay. The taxpayer must demonstrate that ordinary business care, prudence, and diligence were exercised in determining whether to seek further advice.

(j) First Time Filer:

(i) It is the first return required to be filed and the taxes were filed and paid within a reasonable time after the due date.

(ii) The commission may also consider waiving penalties on the first return after a filing period change if the return is filed and tax is paid within a reasonable time after the due date.

(k) Bank Error:

(i) The taxpayer's bank has made an error in returning a check, making a deposit or transferring money.

(ii) A letter from the bank verifying its error is required.

(l) Compliance History:

(i) The commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining whether a penalty may be waived.

(ii) The commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.

(m) Employee Embezzlement: The taxpayer shows that failure to pay was due to employee embezzlement of the tax

funds and the taxpayer was unable to obtain replacement funds from any other source.

(n) Recent Tax Law Change: The taxpayer's failure to file and pay was due to a recent change in tax law that the taxpayer could not reasonably be expected to be aware of.

(4) Other Considerations for Determining Reasonable Cause.

(a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:

(i) whether the commission had to take legal means to collect the taxes;

(ii) if the error is caught and corrected by the taxpayer;

(iii) the length of time between the event cited and the filing date;

(iv) typographical or other written errors; and

(v) other factors the commission deems appropriate.

(b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.

(c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.

(d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

R861-1A-43. Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207.

(1) A commissioner may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) two commissioners are present at a single anchor location; or

(b) one commissioner is present at the anchor location.

(2) If Subsection (1)(b) applies, the commissioner at the anchor location shall conduct the meeting.

(3)(a) The commission shall indicate in a public notice if the public may participate electronically in a meeting open to the public under Section 52-4-207.

(b) A notice provided under Subsection (3)(a) shall direct the public on how to participate electronically in the meeting.

R861-1A-44. Definition of Delivery Service Pursuant to Utah Code Ann. Section 59-1-1404.

For purposes of determining the date on which a document has been mailed under Section 59-1-1404, "delivery service" means the following delivery services the Internal Revenue Service has determined to be a designated delivery service under Section 7502, Internal Revenue Code:

(1) DHL Express (DHL):

(a) DHL Same Day Service;

(b) DHL Next Day 10:30 a.m.;

(c) DHL Next Day 12:00 p.m.;

(d) DHL DHL Next Day 3:00 p.m.; and

(e) DHL 2nd Day Service;

(2) Federal Express (FedEx):

(a) FedEx Priority Overnight;

(b) FedEx Standard Overnight;

(c) FedEx 2 Day;

(d) FedEx International Priority; and

(e) FedEx International First; and

(3) United Parcel Service (UPS):

(a) UPS Next Day Air;

(b) UPS Next Day Air Saver;

(c) UPS 2nd Day Air;

(c) UPS 2nd Day Air A.M.;

(d) UPS Worldwide Express Plus; and

(e) UPS Worldwide Express.

R861-1A-45. Procedures for Commission Meetings Not Open to the Public Pursuant to Utah Code Ann. Section 59-1-405.

(1) When the commission holds a meeting that is not open to the public pursuant to Section 59-1-405, the commission shall:

(a) follow the procedures set forth in commission rules:

(i) R861-1A-9, Tax Commission as Board of Equalization;

(ii) R861-1A-11, Appeal of Corrective Action;

(iii) R861-1A-20, Time of Appeal;

(iv) R861-1A-22, Petitions for Commencement of Adjudicative Proceedings;

(v) R861-1A-23, Designation of Adjudicative Proceedings;

(vi) R861-1A-24, Formal Adjudicative Proceedings;

(vii) R861-1A-26, Procedures for Formal Adjudicative Proceedings;

(viii) R861-1A-27, Discovery;

(ix) R861-1A-28, Evidence in Adjudicative Proceedings;

(x) R861-1A-29, Decision, Orders, and Reconsideration;

(xi) R861-1A-30, Ex Parte Communications;

(xii) R861-1A-31, Declaratory Orders;

(xiii) R861-1A-32, Mediation Process;

(xiv) R861-1A-33, Settlement Agreements;

(xv) R861-1A-34, Private Letter Rulings;

(xvi) R861-1A-38, Class Actions;

(xvii) R861-1A-40, Waiver of Requirement to Post Security Prior to Judicial Review; and

(xviii) R861-1A-42, Waiver of Penalty and Interest for Reasonable Cause; and

(b) for all meetings other than initial hearings, or the deliberating and issuing of an order relating to adjudicative proceedings, keep confidential written minutes and a confidential recording of the meeting.

(2) Written minutes of a meeting under Subsection (1)(b) shall include:

(a) the date, time, and place of the meeting;

(b) the names of each person present at the meeting;

(c) the substance of all matters proposed, discussed, or decided by the commission, which may include a summary of comments made by the commissioners;

(d) a record, by commissioner, of each vote taken by the commission;

(e) a summary of comments made by a person, other than a commissioner, present at the meeting; and

(f) any other information that is a record of the proceedings of the meeting that any commissioner requests be entered in the minutes or recording.

(3) Recorded minutes of a meeting under Subsection (1)(b) shall be:

(a) properly labeled or identified with the date, time, and place of the meeting; and

(b) a complete and unedited record of the meeting.

R861-1A-46. Procedures for Purchaser Refund Requests Pursuant to Utah Code Ann. Sections 59-1-1410 and 59-12-110.

(1) Definitions.

(a) "Division" means the Auditing Division of the commission.

(b) "Purchaser refund request" means:

(i) a refund request for sales tax overpaid; and

(ii) submitted by a person other than the seller that originally collected and remitted the sales tax to the commission.

(c) "Required information and documents" means, for each transaction included in a purchaser refund request:

(i) a description of the item for which a refund is requested;

(ii) the invoiced transaction date;
(iii) the taxable purchase amount;
(iv) the tax rate applied to the purchase amount;
(v) the invoice number;
(vi) invoices or receipts or other books and records that show the items purchased and sales tax charged;
(vii) the sales tax paid;
(viii) the reason and basis in Utah law for exempting or excluding the item from sales tax;
(ix) documentation that verifies that the item qualifies for a sales tax exemption or exclusion;
(x) the amount of sales tax overpaid;
(xi) proof of payment of sales tax, such as a canceled check, bank statement, credit card statement or receipt, letter from the seller, or other books and records that demonstrate payment was made;
(xii) if an agent applies for the refund on behalf of a purchaser, a power of attorney;
(xiii) the name and address of the seller; and
(xiv) a signed statement that the seller that calculated and remitted the sales tax:
(A) has not provided a sales tax refund or credit; and
(B) will not be asked to provide a sales tax refund or credit.

(2)(a) Except as provided in Subsection (3), a person submitting a purchaser refund request shall include the required information and documents with the application to the division.

(b) The items described in Subsection (2)(a) shall be provided to the division in the format and manner prescribed by the division.

(c) If the application is not accompanied by all of the required information and documents, the division shall send a notice to the person that submitted the purchaser refund request.

(d) The notice described in Subsection (2)(c) shall:
(i) indicate the required information and documents that are missing; and
(ii) allow the person submitting the purchaser refund request 30 days to provide the missing required information and documents to the division.

(e)(i) A person submitting a purchaser refund request who is unable to provide the information and documents described in Subsection (2)(d)(i) within the time period described in Subsection (2)(d)(ii) may contact the division to request an extension of time to provide the required information and documents that are missing.

(ii) The division shall grant reasonable requests for extension that will not unnecessarily prolong the processing of the refund request. If an extension is granted, the division shall provide written notice to the person submitting the purchaser refund request of the length of an extension of time granted under Subsection (2)(e)(i).

(f) If the division has not received all of the required information and documents within the time period described in Subsection (2)(d), or if applicable, within an extension of time granted under Subsection (2)(e), the division shall:
(i) evaluate the purchaser refund request based solely on the required information and documents received; and
(ii) dismiss for lack of evidence requests for refunds on items for which the division has not received the required information and documents.

(g)(i) Dismissals under Subsection (2)(f) may be appealed to the commission.

(ii) On an appeal under Subsection (2)(g)(i), the only matter that will be reviewed by the commission is whether information and documents adequate to determine the validity of the purchaser refund request were received by the division within the time period prescribed under Subsection (2)(d), or if applicable, within an extension of time granted under Subsection (2)(e).

(3)(a) A person who submits a purchaser refund request may, at the time the application for the refund is filed, request the division use a sampling method in its review of the purchaser refund request.

(b) A person requesting a sampling method of review under Subsection (3)(a) shall include the following information for each transaction included in the purchaser refund request with the application to the division:
(i) the invoice number;
(ii) the invoiced transaction date;
(iii) the taxable purchase amount;
(iv) the tax rate applied to the purchase amount;
(v) the sales tax paid;
(vi) the amount of sales tax overpaid;
(vii) the name and address of the seller
(viii) a description of the item for which a refund is requested; and
(ix) the reason and basis in Utah law the item is exempt or excluded from sales tax.

(c) The items described in Subsection (3)(b) shall be provided to the division in the format and manner prescribed by the division.

(4)(a) If the division and a person submitting a purchaser refund request agree to the division's use of a sampling method in its review of the purchaser refund request, the division shall:
(i) determine the items that will be included in the sample;
(ii) notify the person submitting the purchaser refund request of the items that will be included in the sample and the information and documents that must be submitted to the division; and
(iii) allow the person submitting the purchaser refund request 30 days to provide the information and documents to the division in the format and manner prescribed by the division.

(b)(i) A person submitting a purchaser refund request who is unable to provide the information and documents described in Subsection (4)(a)(ii) within the time period described in Subsection (4)(a)(iii) may contact the division to request an extension of time to provide the information and documents that are missing.

(ii) The division shall grant reasonable requests for extension that will not unnecessarily prolong the processing of the refund request. If an extension is granted, the division shall provide written notice to the person submitting the purchaser refund request of the length of an extension of time granted under Subsection (4)(b)(i).

(c) Information and documents described in Subsection (4)(a)(ii) that are not received by the end of the period described in Subsection(4)(a), or if applicable, within an extension of time granted under Subsection (4)(b), shall be:
(i) considered errors; and
(ii) included in the overall error factor by which the purchaser refund request is decreased.

(d)(i) Errors under Subsection (4)(c) may be appealed to the commission.

(ii) On an appeal under Subsection (4)(d)(i), the only matter that will be reviewed by the commission is whether information and documents adequate to determine the validity of the purchaser refund request were received by the division within the time period prescribed under Subsection (4)(a), or if applicable, within an extension of time granted under Subsection (4)(b).

KEY: developmental disabilities, grievance procedures, taxation, disclosure requirements

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42 USC 12201
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R865. Tax Commission, Auditing.
R865-9I. Income Tax.
R865-9I-2. Determination of Utah Resident Individual Status Pursuant to Utah Code Ann. Sections 59-10-103 and 59-10-136.

(1) For purposes of determining whether an individual spends in the aggregate 183 or more days of the taxable year in this state, a "day" means a day in which the individual spends more time in this state than in any other state.

(2) Determination of resident individual status for military servicepersons.

(a) The status of a military serviceperson as a resident individual or a nonresident individual is determined as follows.

(i) A resident individual in active military service does not lose his status as a resident individual if the resident individual's absence from the state is a result of military orders.

(ii) A nonresident individual in active military service who is stationed in Utah does not become a resident individual for income tax purposes if the nonresident individual's presence in Utah is due solely to military orders.

(b) Subject to federal law, an individual in active military service may change from a resident individual to a nonresident individual or from a nonresident individual to a resident individual if he establishes that he satisfies the conditions of Section 59-10-136.

(c) A nonresident individual serviceperson is exempt from Utah income tax only on his active service pay. All other Utah source income received by the nonresident individual serviceperson is subject to Utah income tax as provided by Section 59-10-116.

R865-9I-3. Credit for Income Tax Paid by an Individual to Another State Pursuant to Utah Code Ann. Section 59-10-1003.

(1) A Utah resident taxpayer is required to report his entire state taxable income pursuant to Section 59-10-1003 even though part of the income may be from sources outside this state.

(2) Except to the extent allowed in Subsection (4), a resident taxpayer may claim the credit provided in Section 59-10-1003 by:

(a) filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state;

(b) completing form TC-40A, Credit For Income Tax Paid To Another State, for each state for which a credit is claimed; and

(c) attaching any schedule completed under Subsection (2)(b) to the individual income tax return.

(3) A part-year resident taxpayer may claim credit on that portion of income subject to both Utah tax and tax in another state. The credit is claimed in the same manner as claimed by a full-year resident, but only for that portion of the year that the nonresident taxpayer was living in Utah. Form TC-40A, Credit For Income Tax Paid To Another State, must be completed and attached to the individual income tax return for each state for which a credit is claimed.

(4) For only those states in which a resident professional athlete has participated in his team's composite return or simplified withholding, a resident professional athlete may claim the credit provided in Section 59-10-1003 by:

(a) filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state; and

(b) attaching a summary, prepared by the team or the team's authorized representative, indicating both the amount of the athlete's income allocated to all other states in which the athlete has participated in his team's composite return or simplified withholding, and the amount of income tax paid by the athlete to those states.

(5) The credit allowable on the Utah return for taxes paid to any other state shall be the smaller of the following:

(a) the amount of tax paid to the other state; or

(b) a percentage of the total Utah tax. This percentage is determined by dividing the total federal adjusted gross income into the amount of the federal adjusted gross income taxed in the other state.

(6) A taxpayer claiming a credit under Section 59-10-1003 shall retain records to support the credit claimed.

R865-9I-6. Returns by Husband and Wife When One is a Resident and the Other is a Nonresident Pursuant to Utah Code Ann. Section 59-10-119.

(1) Except as provided in Subsection (2), a husband and wife, one being a nonresident and the other a resident, who file a joint federal income tax return, but separate state income tax returns shall determine their separate:

(a) state taxable income as follows:

(i) Determine the amount of the total federal adjusted gross income ("FAGI") pertaining to each spouse. Any adjustments that apply to both spouses shall be divided between the spouses in proportion to the respective incomes of the spouses.

(ii) Allocate a portion of each deduction and add back item described in Section 59-10-114 to each spouse by:

(A) dividing each spouse's FAGI by the combined FAGI of both spouses, and rounding the resulting percentage to four decimal places; and

(B) multiplying the resulting percentage by any deductions and add back items described in Section 59-10-114; and

(b)(i) shares of the taxpayer tax credit authorized in Section 59-10-1018 by multiplying the percentage calculated under Subsection (1)(a)(ii)(A) by the:

(A) itemized or standard deduction; and

(B) state exemption for dependents.

(ii) For purposes of Subsection (1)(b)(i), each spouse shall claim his or her full state personal exemption.

(2) A husband and wife, one being a nonresident and the other a resident, may use an alternate method of calculating their separate state taxable incomes than the method provided in Subsection (1) if they can demonstrate to the satisfaction of the commission that the alternate method more accurately reflects their separate state taxable incomes.

R865-9I-7. Change of Status As Resident or Nonresident Pursuant to Utah Code Ann. Section 59-10-120.

(1) Definitions.

(a) "AGI" means adjusted gross income, as defined by Section 59-10-103.

(b) "Part-year resident" means an individual that changes status during the taxable year from resident to nonresident or from nonresident to resident.

(2) The state taxable income of a part-year resident shall be a percentage of the amount that would have been state taxable income if the taxpayer had been a full-year resident as defined under Section 59-10-103. This percentage is the Utah portion of AGI divided by the total AGI, not to exceed 100 percent.

(3) The Utah portion of a part-year resident's AGI shall be determined as follows:

(a) Income from wages, salaries, tips and other compensation earned or received while in a resident status and included in the total AGI shall be included in the Utah portion of the AGI.

(b) Dividends actually or constructively received while in resident status shall be included in the Utah portion of AGI. Any dividend exclusion shall be deducted from the Utah portion of AGI using the percentage of excludable dividends received

while in resident status, compared to the total excludable dividends.

(c) All interest actually or constructively received while in resident status shall be included in the Utah portion of the AGI.

(d) All AGI derived from Utah sources while in a nonresident status, as determined under Section 59-10-117, shall be included in the Utah portion of AGI.

(4)(a) Income or loss from businesses, rents, royalties, partnerships, estates or trusts, small business corporations as defined by Internal Revenue Code Section 1371(b), and farming shall be included in the Utah portion of AGI:

(i) if the activities involved were concluded, or the taxpayer's connection with them terminated before or at the time of change from resident to nonresident status; or

(ii) if the activities were commenced or the taxpayer joined them at the time or after the change from nonresident to resident status.

(b) Income or loss that does not meet Subsection (4)(a) shall be included in the Utah portion of AGI only to the extent the income or loss is derived from Utah sources as determined under Section 59-10-117.

(5) Moving expenses deducted on the federal return may be deducted from the Utah portion of AGI only to the extent that they are for moving into Utah and within Utah.

(6) Employee business expenses may be deducted from the Utah portion of AGI only to the extent that they pertain to the production of income included in the Utah portion of AGI.

(7) Payments by a self-employed person to a retirement plan that reduce the total AGI may be deducted from the Utah portion of AGI in the same proportion that the related self-employment income is included in the Utah portion of FAGI.

(8) Other income, losses or adjustments applicable in determining total AGI may be allowed or included in the Utah portion of AGI only when the allowance or inclusion is fair, equitable, and would be consistent with other requirements of Title 59, Chapter 10, Individual Income Tax Act, or these rules as determined by the commission.

R865-9I-8. Proration When Two Returns Are Required Pursuant to Utah Code Ann. Section 59-10-121.

A. Two returns are not required when an individual changes status as resident or nonresident. Ordinarily, the total of the taxable income that would be reported on two returns will be included in one return.

B. Only in unusual circumstances as determined by the Tax Commission will the preparation of two returns be allowed or required. In this event, the returns shall be prepared in a fair and equitable manner as approved or prescribed by the Tax Commission consistent with Utah Code Ann. Section 59-10-121 and other pertinent provisions.

R865-9I-9. Taxable Year Pursuant to Utah Code Ann. Section 59-10-122.

A. If a taxpayer's taxable year is changed to a taxable period of less than 12 months as required by Utah Code Ann. Section 59-10-122 and if he is required to convert his income for the period to an annual basis for federal income tax purposes, the taxpayer shall convert his income for the period of less than a year to an annual basis for computing his state income tax.

B. Unless the Tax Commission determines a different method consistent with requirements of the act is necessary or appropriate, the income tax of the taxpayer for the period of less than 12 months shall be computed as follows:

1. determine the state taxable income applicable to the fractional part of the year and multiply this amount by 12;

2. divide the product by the number of months in the period to arrive at the state taxable income on an annualized basis;

3. compute the tax applicable to the state taxable income as annualized;

4. divide the tax as computed on the annualized state taxable income by 12; and

5. multiply the result by the number of months in the period involved.

R865-9I-10. Adjustments Between Taxable Years After Change in Accounting Methods Pursuant to Utah Code Ann. Section 59-10-124.

A. If a taxpayer's state taxable income for any taxable year is computed under a method of accounting different from the method under which such income was computed for the previous year, the taxpayer shall attach a statement to his return setting forth all differences. This statement shall specify the amounts duplicated or omitted in full or in part as a result of such change. The Tax Commission shall make or allow any necessary adjustments to prevent double inclusion or exclusion of an item of gross income, or double allowance or disallowance of an item of deduction or credit.

R865-9I-13. Pass-Through Entity Withholding Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405.

(1) A pass-through entity must withhold and pay over to the state a tax on:

(a) the business income of the pass-through entity to the extent the business income is derived from Utah sources in accordance with Section 59-10-116; and

(b) the nonbusiness income of the pass-through entity derived from or connected with Utah sources.

(i) "Nonbusiness income of the pass-through entity derived from or connected with Utah sources" does not include portfolio income if the income would not be reportable to Utah on the pass-through entity taxpayer's Utah state tax return or the Utah state tax return of any downstream pass-through entity taxpayer.

(ii) "Downstream pass-through entity taxpayer" means a pass-through entity taxpayer that is a pass-through entity taxpayer of any entity that is itself a pass-through entity taxpayer.

(2) A schedule shall be included with the return listing all of the following information for each nonresident pass-through entity taxpayer:

(a) name;

(b) address;

(c) social security number;

(d) percentage of ownership in pass-through entity;

(e) Utah income attributable to that pass-through entity taxpayer; and

(f) amount of Utah tax withheld on behalf of that pass-through entity taxpayer.

(3) The income of a pass-through entity that is an S corporation shall be calculated by:

(a) adding back to the line on the federal Schedule K labeled "Income/loss reconciliation" the amount included on that schedule for:

(i) charitable contributions;

(ii) total foreign taxes paid or accrued; and

(iii) recapture of a benefit derived from a deduction under Section 179, Internal Revenue Code; or

(b) if the pass-through entity that is an S corporation was not required to complete the line labeled "Income/loss reconciliation" on the federal Schedule K, a pro forma calculation of the amounts for charitable contributions and foreign taxes paid or accrued, and of the amount that would have been entered on the Income/loss reconciliation" line shall be used for purposes of this rule.

(4) A pass-through entity shall calculate the tax it is

required to withhold on behalf of pass-through entity taxpayers by:

(a) multiplying the income of the pass-through entity computed in Subsection (1) by the tax rate in effect under Section 59-10-104; and

(b) subtracting from the amount calculated in Subsection (4)(a) any amounts withheld from the pass-through entity under Section 59-6-102 that are attributable to pass-through entity taxpayers for whom the pass-through entity is required to withhold.

(5)(a) A pass-through entity is not required to withhold a tax on behalf of a pass-through entity taxpayer of that pass-through entity if the pass-through entity taxpayer is:

(i) exempt from taxation under Section 59-7-102 and the income from the pass-through entity is not unrelated business income to the pass-through entity taxpayer;

(ii) a real estate investment trust if all of the earnings of the real estate investment trust are distributed to the owners of the real estate investment trust; or

(iii) a person exempt from state income tax under Section 59-10-104.1.

(6) For purposes of Subsections 59-10-1403.2(5) and (6), a pass-through entity shall apply to the commission for a waiver of penalty or interest, on an amount the pass-through entity fails to pay or withhold and for which the pass-through entity taxpayer files and pays in a timely manner, by checking the box on the tax return requesting the waiver for required withholding.

(7) An entity that is disregarded for federal tax purposes is disregarded for purposes of pass-through entity withholding.

(8) The pass-through entity's federal identification number shall be used on the form TC-65 in place of a social security number.

(9) Examples.

(a) Partnership A has two partners, both of whom are nonresident individuals exempt from state income tax under Section 59-10-104.1. Partnership A is not required to withhold Utah tax for these partners.

(b) For tax year 2010, Partnership C has two partners, Partnerships D and E. Partnership D has two partners, both Utah resident individuals. Partnership E has three nonresident partners, all of whom are subject to Utah state tax. Partnership C's responsibility for withholding is based on Partnerships D and E, not the partners of Partnerships D and E. Accordingly, Partnership C must withhold tax on behalf of Partnerships D and E. If, however, both Partnership D and the partners of Partnership D file returns and pay any tax due by the filing due date for Partnership C, including extensions, Partnership C may elect to not withhold those amounts and may apply to the Tax Commission, by checking the box on the tax return requesting the waiver for required withholding, for a waiver of tax, penalty, and interest on amounts Partnership C should have collected and remitted for Partnership D, but did not.

R865-9I-14. Requirement of Withholding Pursuant to Utah Code Ann. Sections 59-10-401, 59-10-402, and 59-10-403.

A. Except as otherwise provided in statute or this rule, every employer shall withhold Utah income taxes from all wages paid:

1. to a nonresident employee for services performed within Utah,

2. to a resident employee for all services performed, even though such services may be performed partially or wholly without the state.

B. If the services performed by a resident employee are performed in another state of the United States, the District of Columbia, or a possession of the United States that requires withholding on wages earned, the withholding tax for Utah shall be the Utah tax required to be withheld less the tax required to be withheld under the laws, rules, and regulations of that other state, District of Columbia, or possession of the United States.

C. If the duties of a nonresident employee involve work both within and without the state, tax is withheld from that portion of the total wages that is properly allocable to Utah. The method of allocation is subject to review by the Tax Commission and may be subject to change if it is determined to be improper.

D. Income tax treatment of rail carrier and motor carrier employees is governed by 49 U.S.C. Section 14503.

E. Withholding required under Section 59-10-402 is required for all wages that are:

1. subject to withholding for federal income tax purposes;

2. paid to individuals who are deemed employees as determined by the Tax Commission, using Internal Revenue Service guidelines.

F. The number of exemptions claimed for federal withholding shall be the number of exemptions claimed for state withholding purposes.

G. Employers should use Utah income tax withholding schedules or tables published by the Tax Commission in computing the amount of state income tax withheld from their employees.

R865-9I-15. Employees Incurring No Income Tax Liability Pursuant to Utah Code Ann. Section 59-10-403.

A. With reference to Utah Code Ann. Section 59-10-403, an employer shall not be required to deduct and withhold Utah income taxes from wages paid to an employee who has filed a Federal Withholding Certificate, Form W-4E.

R865-9I-16. Collection and Payment of Withholding Pursuant to Utah Code Ann. Section 59-10-406.

A. Legible copies of the federal Form W-2 must contain the following information:

1. the name and address of the employee and employer;

2. the employer's Utah withholding tax account number;

3. the amount of compensation;

4. the amounts of federal and Utah state income tax withheld;

5. the social security number of the employee;

6. the word "Utah" either printed or stamped thereon in such a way as to clearly indicate the tax withheld was for Utah in accordance with Utah law, as distinguished from any other state or jurisdiction; and

7. other information required by the commission.

B. Sufficient copies of the W-2 form must be furnished to each employee to enable attachment of a legible copy to the state income tax return.

C. If a tax required under Section 59-10-402 is not withheld by an employer, but is later paid by the employee:

1. the tax required to be withheld under Section 59-10-402 shall not be collected from the employer; and

2. the employer shall remain subject to penalties and interest on the total amount of taxes that the employer should have withheld under Section 59-10-402.

R865-9I-17. Time for Filing Withholding Tax Returns and Payment of Withholding Taxes Pursuant to Utah Code Ann. Sections 59-10-406 and 59-10-407.

(1) This rule provides exceptions to the statutory requirement that an employer shall file withholding tax returns and pay withholding taxes quarterly.

(2) An employer may file withholding tax returns and pay withholding taxes on an annual basis for a calendar year in which the employer files:

(a) a federal Schedule H; or

(b) a Form 944, Employer's ANNUAL Federal Tax Return, with the Internal Revenue Service.

(3) The annual withholding return and payment under

Subsection (2) are due by January 31 of the year succeeding the year for which the payment and return apply.

(4) An employer withholding an average of $1,000 or more per month shall prepay withholding taxes on a monthly basis in the manner prescribed in Section 59-10-407.

R865-9I-18. Taxpayer Records, Statements, and Special Returns Pursuant to Utah Code Ann. Section 59-1-1406.

(1) Every taxpayer shall keep adequate records for income tax purposes of a type which clearly reflect income and expense, gain or loss, and all transactions necessary in the conduct of business activities.

(2) Records of all transactions affecting income or expense, or gain or loss, and of all transactions for which deductions may be claimed, should be preserved by the taxpayer to enable preparation of returns correctly and to substantiate claims. All records shall be made available to an authorized agent of the commission when requested, for review or audit.

R865-9I-19. Returns By Husband and Wife Pursuant to Utah Code Ann. Section 59-10-503.

A. In the year a married person dies, the surviving spouse may file a joint Utah return if a joint federal return was filed except in cases where one spouse was a resident and the other a nonresident. In these cases, separate returns may be required (see Section 59-10-503(1)(b) and Rule R865-9I-6).

R865-9I-20. Returns Made By Fiduciaries and Receivers Pursuant to Utah Code Ann. Section 59-10-504.

A. Returns by fiduciaries and receivers shall be made in accordance with forms and instructions provided by the Tax Commission. The fiduciary of any resident estate or trust or of any nonresident estate or trust having income derived from Utah sources and who is required to make a return for federal income tax purposes shall make and file a corresponding return for state income tax purposes.

1. Each return shall include a listing of the beneficiaries and their distributable shares of the state taxable income.

2. In the case of a nonresident estate or trust, the return shall include detailed information showing how the amount of income derived from or connected with Utah sources was determined.

B. The fiduciary is required to pay the taxes on the income taxable to the estate or trust. Liability for payment of the tax attaches to the executor or administrator up to his discharge. If the executor or administrator failed to file a return as required by law or failed to exercise due diligence in determining and satisfying the tax liability, the liability is not extinguished until the return is filed and paid.

C. Liability for the tax also follows the estate itself. If by reason of the distribution of the estate and the discharge of the executor or administrator, it appears that collection of tax cannot be made from the executor or administrator, each legatee or distributee must account for his proportionate share of the tax due and unpaid to the extent of the distributive share received by him.

R865-9I-21. Return By Partnership Pursuant to Utah Code Ann. Sections 59-10-507 and 59-10-514.

(1) Every partnership having a nonresident partner and income derived from sources in this state shall file a return in accordance with forms and instructions provided by the Tax Commission.

(2) If the partnership has income derived from or connected with sources both inside and outside Utah and if any partner was not a resident of Utah, the portion derived from or connected with sources in this state must be determined and shown on the Utah forms TC-65 Schedule K and Schedule K-1.

(3) A partnership may satisfy the requirement to file a return with the commission by maintaining records that show each partner's share of income, losses, credits, and other distributive items, and making those records available for audit if:

(a) all of the partnership's partners are resident individuals; and

(b) the partnership is not a pass-through entity taxpayer.

R865-9I-22. Signing of Returns and Other Documents Pursuant to Utah Code Ann. Section 59-10-512.

A. Any return, statement, or other document shall be signed as required by specific provisions of the act or as prescribed by forms or instructions furnished by the Tax Commission.

B. All returns filed with the Tax Commission must be signed by the taxpayer or his duly authorized agent as provided by law. Unsigned returns are not valid returns for income tax purposes and if unsigned, the benefits of proper filing may be denied the taxpayer.

C. Returns may be filed on forms prescribed and furnished by the Tax Commission, or in lieu thereof, on reproduced or facsimile copies, provided that the same information required on the printed form for the same year is provided and the paper used for such substitute return is equal in durability and weight to 20 lb. bond. Paper more brittle or lighter in weight than that specified is not acceptable as a replacement for the regular reporting forms. The use of paper of lesser quality for supporting schedules is permitted, providing the schedules are clear and legible.

R865-9I-23. Extension of Time to File Returns Pursuant to Utah Code Ann. Section 59-10-516.

A. A completed form TC-546, Prepayment of Income Tax, must accompany the prepayment amount required by Section 59-10-516, if the prepayment is not in the form of withholding, payments applied from previous year refunds, or credit carryforwards.

B. Interest shall be charged on any additional tax due shown on the return in accordance with Section 59-1-402. Interest is calculated from the original due date of the return to the date the tax is paid and applies even when an extension of time to file the return exists.

C. Utah residents in military service, stationed outside the United States, shall be granted an extension of time to file to the 15th day of the fourth month after their return to the United States, or their discharge date, whichever is earlier.

R865-9I-24. Timely Mailing Treated As Timely Filing Pursuant to Utah Code Ann. Section 59-10-517.

A. With reference to Section 59-10-517(3)(b), the provisions of that statute that apply to registered mail shall also apply in ordinary circumstances to certified mail.

R865-9I-30. Limitations on Assessment and Collection Pursuant to Utah Code Ann. Section 59-10-536.

A. If a taxpayer elects to defer a determination as to applicability of the presumption that the activity is being engaged in for profit as set forth in I.R.C. Section 183(d), he shall notify the Tax Commission in writing of such election. He must also consent to assessment of tax pertaining to such activity at any time within the five- or seven-year period plus a reasonable additional period.

1. In addition, the taxpayer shall immediately furnish to the Tax Commission a copy of every waiver of the running of the statute of limitations that he may give to the Internal Revenue Service, and he shall at the same time give his consent in writing that the waiver shall also apply to the time allowed for assessment of tax by the Tax Commission.

2. The taxpayer must notify the Tax Commission of any

audit actions or determinations made by the Internal Revenue Service with respect to such activity.

R865-9I-33. Reporting Miscellaneous Income Pursuant to Utah Code Ann. Section 59-10-501.

A. Legible copies of the federal Form 1099 or other special forms for reporting rents, royalties, interest, remuneration, etc., from Utah sources not subject to federal withholding must be open to inspection and gathering of information by authorized representatives of the Tax Commission or submitted to the Tax Commission upon request. These forms must show the name, address, social security number, and other pertinent information pertaining to each taxpayer, resident or nonresident of Utah, the amount and purpose of the distribution clearly shown.

R865-9I-34. Property Tax Relief For Individuals Pursuant to Utah Code Ann. Sections 59-2-1201 through 59-2-1220.

A. "Household" is determined as follows:

1. For purposes of the homeowner's credit under Section 59-2-1208, household shall be determined as of January 1 of the year in which the claim under that section is filed.

2. For purposes of the renter's credit under Section 59-2-1209, household shall be determined as of January 1 of the year for which the claim is filed under that section.

B. "Nontaxable income" includes:

1. the amount of a federal child tax credit received under Section 24 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability; and

2. the amount of a federal earned income credit received under Section 32 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability.

C. "Nontaxable income" does not include:

1. federal tax refunds;

2. the amount of a federal child tax credit received under Internal Revenue Code Section 24 that did not exceed the taxpayer's federal tax liability;

3. the amount of a federal earned income credit received under Internal Revenue Code Section 32 that did not exceed the taxpayer's federal tax liability;

4. payments received under a reverse mortgage;

5. payments or reimbursements to senior program volunteers under United States Code Title 42, Section 5058; and

6. gifts and bequests.

D. "Property taxes accrued" does not mean that taxes can be accumulated for two or more years and then claimed in one year.

E. A claimant who pays property taxes on a mobile home and pays rent on the land on which the mobile home is situated shall be eligible for a homeowner's credit for the property tax paid on the mobile home and a renter's credit for the rent paid on the land.

F. State welfare assistance is not considered as public funds for the payment of rent, and will not preclude a rebate. However, assistance payments must be included in income.

G. Where housing assistance payments are involved under the Housing and Community Development Act, Title II, Section 8:

1. only that portion of the rent paid by the tenant may be claimed under the terms of the Circuit Breaker Act; and

2. that portion of the rent paid by the federal government to the landlord will not be considered as part of the household income since it is not subject to a claim for rebate.

H. Persons claiming a property tax exemption under Title 59, Chapter 2, Part 11 are not precluded from claiming a homeowner's or renter's credit.

R865-9I-41. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-10-1006.

(1) Definitions

(a) "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

(b) "Qualified rehabilitation expenditures" does not include movable furnishings.

(c) "Residential" as used in Section 59-10-1006 applies only to the use of the building after the project is completed.

(2) Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

(3) Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

(4) In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

(a) The project approved under Subsection (2) must be completed.

(b) Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

(c) Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

(d) Projects must be completed, and the $10,000 expenditure threshold required by Section 59-10-1006 must be met, within 36 months of the approval received pursuant to Subsection (2).

(e) During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's standards for Rehabilitation.

(5) Upon issuing a certification number under Subsection (4), the State Historic Preservation Office shall provide the taxpayer an authorization form containing that certification number.

(6) Credit amounts shall be applied against Utah individual income tax due in the tax year in which the project receives final certification under Subsection (4).

(7) Credit amounts greater than the amount of Utah individual income tax due in a tax year shall be carried forward to the extent provided by Section 59-10-1006.

(8) Carryforward historic preservation tax credits shall be applied against Utah individual income tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

(9) Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-9I-42. Order of Credits Applied Against Utah Individual Income Tax Due Pursuant to Utah Code Ann. Sections 59-6-102, 59-13-202, and 59-13-301, and Title 59, Chapter 10, and Title 63M, Chapter 1.

Taxpayers shall deduct credits authorized by Section 59-6-102, Section 59-13-202, Section 59-13-301, Title 59, Chapter 10, and Title 63M, Chapter 1 against Utah individual income tax due in the following order:

(1) nonrefundable credits;

(2) nonrefundable credits with a carryforward;

(3) refundable credits.

R865-9I-44. Mandatory Withholding of Income for

Nonresident Professional Athletes Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, and 59-10-118.

(1) Definitions.

(a) "Duty days" means all days during the taxable year from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes or is scheduled to compete.

(i) Duty days includes:

(A) days on which a member of a professional athletic team renders a service for a team on a date that does not fall within the period described in Subsection (1)(a), for example, participation in instructional leagues, the Pro Bowl, or promotional caravans. Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team; and

(B) game days, practice days, days spent at team meetings, promotional caravans, and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

(ii) Duty days for any person who joins a team during the season shall begin on the day that person joins the team, and for a person who leaves a team shall end on the day that person leaves the team. If a person switches teams during a taxable year, a separate duty day calculation shall be made for the period that person was with each team.

(iii) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.

(iv) Days for which a member of a professional athletic team is on the disabled list shall be presumed not to be duty days spent in the state. They shall, however, be included in total duty days spent within and without the state.

(v) Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in the state, but shall be considered duty days spent within and without the state.

(b) "Member of a professional athletic team" shall include those employees who are active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes coaches, managers, and trainers.

(c) "Professional athletic team" includes any professional baseball, basketball, football, soccer, or hockey team that is not incorporated or organized under the laws of this state.

(d) "Total compensation" includes salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year.

(i) Total compensation does not include strike benefits, severance pay, termination pay, contract or option-year buyout payments, expansion or relocation payments, or any other payments not related to services rendered to the team.

(ii) For purposes of this rule, "bonuses" subject to the allocation procedures described in Subsection (5) are:

(A) bonuses earned as a result of play during the season, including performance bonuses, bonuses paid for championship, playoff or bowl games played by a team, or for selection to all-star league or other honorary positions; and

(B) bonuses paid for signing a contract, unless all of the following conditions are met:

(I) the payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

(II) the signing bonus is payable separately from the salary and any other compensation; and

(III) the signing bonus is nonrefundable.

(e) "Total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered:

(i) from the beginning of the official preseason training period through the last game in which the team competes or is scheduled to compete during that taxable year; and

(ii) during the taxable year on a date that does not fall within the period in Subsection (1)(e)(i), for example, participation in instructional leagues, the Pro Bowl, or promotional caravans.

(2) The purpose of this rule is to apportion to the state, in a fair and equitable manner, a nonresident member of a professional athletic team's total compensation for services rendered as a member of a professional athletic team. It is presumed that application of the provisions of this rule will result in a fair and equitable apportionment of that compensation. Where it is demonstrated that the method provided under this rule does not fairly and equitably apportion that compensation, the commission may require the member of a professional athletic team to apportion that compensation under a method the commission prescribes, as long as the prescribed method results in a fair and equitable apportionment.

(3) If a nonresident member of a professional athletic team demonstrates that the method provided under this rule does not fairly and equitably apportion compensation, that member may submit a proposal for an alternative method to apportion compensation. If approved, the proposed method must be fully explained in the nonresident member of a professional athletic team's nonresident personal income tax return for the state.

(4) A professional athletic team:

(a) is an employer for purposes of Title 59, Chapter 10, Part 4, Withholding of Tax; and

(b) may not be relieved from the requirements imposed on an employer under Title 59, Chapter 10, Part 4, Withholding of Tax.

(5) Nonresident professional athletes shall keep adequate records to substantiate their determination or to permit a determination by the commission of the part of their adjusted gross income that was derived from or connected with sources in this state.

(6) The Utah source income of a nonresident individual who is a member of a professional athletic team includes that portion of the individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which, the number of duty days spent within the state rendering services for the team in any manner during the taxable year, bears to the total number of duty days spent both within and without the state during the taxable year.

(7)(a) Professional athletic teams shall withhold and remit tax on behalf of nonresident professional athletes on a form prescribed by the commission.

(b) A schedule shall be included with the return, listing all of the following information for each nonresident member of a professional athletic team:

(i) name;

(ii) address;

(iii) social security number;

(iv) income attributable to Utah for the nonresident member of a professional athletic team;

(v) total compensation paid to the nonresident member of a professional athletic team by the professional athletic team;

(vi) the nonresident member of a professional athletic team's duty days both within and without the state;

(vii) the nonresident member of a professional athletic team's duty days within the state;

(viii) Utah tax deducted and withheld; and

(ix) federal income tax deducted and withheld.

(8) A nonresident member of a professional athletic team

is not required to file an individual income tax return if:

(a) the professional athletic team deducts and withholds a tax on behalf of the nonresident member of a professional athletic team;

(b) the nonresident member of a professional athletic team does not seek to claim a tax credit under Title 59, Chapter 10, Individual Income Tax Act; and

(c) the nonresident member of a professional athletic team does not have adjusted gross income derived from or connected with Utah sources other than the income the member of a professional athletic team receives from the professional athletic team.

R865-9I-46. Medical Savings Account Administration Pursuant to Utah Code Ann. Sections 31A-32a-106, 59-10-114, and 59-10-1021.

(1) Account administrators required to withhold penalties from withdrawals pursuant to Section 31A-32a-105 shall hold those penalties in trust for the state and shall submit those withheld penalties to the commission along with form TC-97M, Utah Medical Savings Account Reconciliation.

(2) In addition to the requirements of Subsection (1), account administrators shall file a form TC- 675M, Statement of Withholding for Medical Savings Account, with the commission, for each account holder. The TC-675M shall contain the following information for the calendar year:

(a) the beginning balance in the account;

(b) the amount contributed to the account;

(c) the account's earnings;

(d) distributions for qualified medical expenses;

(e) distributions for non-medical expenses not subject to penalty;

(f) distributions for non-medical expenses subject to penalty;

(g) the amount of penalty required to be withheld and remitted to the state;

(h) the account administrator's administrative fee charged to the account; and

(i) the ending balance in the account.

(3) The account administrator shall file forms TC-97M and TC-675M with the commission on or before January 31 of the year following the calendar year on which the forms are based.

(4) The account administrator shall provide each account holder with a copy of the form TC-675M on or before January 31 of the year following the calendar year on which the TC-675M is based.

(5) The account administrator shall maintain original records supporting the amounts listed on the TC-675M for the current year filing and the three previous year filings.

R865-9I-47. Withholding and Payment of Income Tax for Members of the Armed Services Receiving Combat Pay Pursuant to Utah Code Ann. Sections 59-10-408 and 59-10-522.

A. Income excluded from federal adjusted gross income as combat pay shall be exempt from the withholding requirements of Sections 59-10-401 through 59-10-407.

B. Utah residents receiving combat pay qualify for an extension of time to pay income taxes for a period not to exceed the extension for filing returns provided in Tax Commission rule R865-9I-23(C).

R865-9I-49. Higher Education Savings Incentive Program Administration Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-10-114, and 59-10-1017.

(1) "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

(2) The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust account owner. The TC-675H shall contain the following information for the calendar year:

(a) the amount contributed to the trust by the account owner; and

(b) the amount disbursed to the account owner pursuant to Section 53B-8a-109.

(3) The trustee of the trust shall file form TC-675H with the commission on or before March 31 of the year following the calendar year on which the forms are based.

(4) The trustee of the trust shall provide each trust account owner with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

(5) The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

R865-9I-50. Addition to Adjusted Gross Income for Interest Earned on Bonds, Notes, and Other Evidences of Indebtedness Pursuant to Utah Code Ann. Section 59-10-114.

The addition to adjusted gross income required under Section 59-10-114 for interest earned on bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003 applies to:

(1) interest on individual bonds, notes, or other evidences of indebtedness purchased by a resident or nonresident individual on or after January 1, 2003; and

(2) for bonds, notes, and other evidences of indebtedness held in a bond fund owned by a resident or nonresident individual, the portion of interest attributable to individual bonds, notes, and other evidences of indebtedness purchased by the bond fund on or after January 1, 2003.

R865-9I-51. Withholding Tax License Pursuant to Utah Code Ann. Section 59-10-405.5.

(1) The holder of a license issued under Section 59-10-405.5 shall notify the commission:

(a) of any change of address of the business;

(b) of a change of character of the business, or

(c) if the license holder ceases to do business.

(2) The commission may determine that a person has ceased to do business or has changed that person's business address if:

(a) mail is returned as undeliverable as addressed and unable to forward;

(b) the person fails to file four consecutive monthly or quarterly withholding tax returns, or two consecutive annual withholding tax returns;

(c) the person fails to renew its annual business license with the Department of Commerce; or

(d) the person fails to renew its local business license.

(3) If the requirements of Subsection (2) are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.

(4) A person may request the commission to reopen a withholding tax license that has been determined invalid under Subsection (3).

(5) The holder of a license issued under Section 59-10-405.5 shall be responsible for any withholding tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

R865-9I-52. Credit For Health Benefit Plan Insurance Pursuant to Utah Code Ann. Section 59-10-1023.

A credit for health benefit plan insurance under Section 59-10-1023 shall be determined in the manner that provides the

greatest possible credit.

R865-9I-53. Disclosure of Reportable Transactions and Material Advisor List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309.

(1) A taxpayer shall disclose a reportable transaction to the commission by:

(a) marking the box on the taxpayer's individual income tax return indicating that the taxpayer has filed federal form 8886, or successor form, with the Internal Revenue Service; and

(b) providing the commission a copy of the form described in Subsection (1)(a) upon the request of the commission.

(2)(a) A material advisor shall disclose a reportable transaction to the commission by attaching a copy of the federal form 8264, or successor form, and any additional information that the material advisor submitted to the Internal Revenue Service, to the form prescribed by the commission.

(b) A material advisor shall provide the commission the information described in Subsection (2)(a) within 60 days after the form 8264, or successor form, was required to be filed with the Internal Revenue Service.

(3)(a) The list of persons a material advisor is required to maintain under 26 C.F.R. Sec. 301.6112-1 shall satisfy the requirement for the list of persons a material advisor is required to maintain under Section 59-1-1307.

(b) If more than one material advisor is required to maintain a list of persons in accordance with Section 59-1-1307, the material advisor that maintained the list required by 26 C.F.R. Sec. 301.6112-1 shall maintain the list required by Section 59-1-1307.

R865-9I-55. Qualified Subchapter S Subsidiaries Pursuant to Utah Code Ann. Section 59-10-1403.

(1) "Qualified subchapter S subsidiary" is as defined in Section 1361(b), Internal Revenue Code.

(2) For purposes of Title 59, Chapter 10, Part 14, a pass-through entity that is a qualified subchapter S subsidiary shall be treated in the same manner as it is treated for federal tax purposes under Section 1361(b), Internal Revenue Code.

(3) A pass-through entity that is an S corporation that owns one or more qualified subchapter S subsidiaries must take into account the activities of each qualified subchapter S subsidiary in determining whether the S corporation parent is doing business in Utah. For purposes of this determination, all of a subsidiary's activities will be attributed to the S corporation parent.

(4) For purposes of Title 59, Chapter 10, Part 14:

(a) the Utah property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the Utah property, payroll, and sales of the S corporation parent to determine the numerators of the property, payroll, and sales factors; and

(b) the total property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the total property, payroll, and sales of the S corporation parent to determine the denominators of the property, payroll, and sales factors.

(5) Except as provided in Subsection (4), the apportionment fraction for a pass-through entity that is an S corporation shall be calculated based on Sections 59-7-311 through 59-7-321 and as provided in Tax Commission rule R865-6F-8.

KEY: historic preservation, income tax, tax returns, enterprise zones

July 27, 2017 31A-32A-106
Notice of Continuation November 10, 2016 53B-8a-112
59-1-1301 through 59-1-1309
59-2-1201
through
59-2-1220
59-6-102
59-7-3
59-10
59-10-103
59-10-108
through
59-10-122
59-10-108.5
59-10-114
59-10-124
59-10-127
59-10-128
59-10-129
59-10-130
59-10-207
59-10-210
59-10-303
59-10-401
through
59-10-403
59-10-405.5
59-10-406
through
59-10-408
59-10-501
59-10-503
59-10-504
59-10-507
59-10-512
58-10-514
59-10-516
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59-10-522
59-10-533
59-10-536
59-10-602
59-10-603
59-10-1003
59-10-1006
59-10-1014
59-10-1017
59-10-1021
59-10-1023
59-10-1106
59-10-1403
59-10-1403.2
59-10-1405
59-13-202
59-13-301
59-13-302
63M-1
63N-2-201 through 63N-2-215

R873. Tax Commission, Motor Vehicle.
R873-22M. Motor Vehicle.
R873-22M-2. Documentation Required and Procedures to Follow to Register or Title Certain Vehicles Pursuant to Utah Code Ann. Sections 41-1a-104 and 41-1a-108.

(1) To title or register a vehicle previously registered in a nontitle state, an applicant must submit both of the following:

(a) the last registration certificate; and

(b) a lien search from the recording jurisdiction or form TC- 569A, Ownership Statement, in lieu of the lien search.

(2) To title or register a repossessed vehicle, an applicant must submit both of the following:

(a) the outstanding certificate of title, with the lien recorded in favor of the repossessor; and

(b) form TC-569B, Repossession Statement, signed by the lien holder recorded on the certificate of title or a similar statement or form.

(3) To title or register a vehicle previously owned by the U.S. government, an applicant must submit U.S. government Standard Form No. 97.

(4) To title or register a vehicle foreclosed by advertisement, an applicant must submit each of the following:

(a) a certificate of sale bearing the signature of the person who conducted the sale. The certificate must contain the following information:

(i) date of sale;

(ii) name of person to whom the vehicle was sold;

(iii) complete description of the vehicle;

(iv) amount due on the contract;

(v) date that the amount due became delinquent; and

(vi) amount received from the sale of the vehicle;

(b) a copy of the notice sent to the owner and lien holder of record; and

(c) proof that notice was published in accordance with Sections 38-2-4 or 38-8-3, as applicable.

(5) To title or register a vehicle transferred by divorce decree an applicant must submit each of the following:

(a) a certified copy of the divorce decree;

(b) the outstanding certificate of title; and

(c) the last registration certificate for a nontitle state.

(6) To title or register a vehicle when the current owner is declared incompetent, an applicant must submit each of the following:

(a) the outstanding certificate of title, endorsed for transfer by the guardian;

(b) the last registration certificate for a nontitle state; and

(c) a certified copy of the court order appointing the guardian.

(7) To title or register a vehicle purchased at impound auction, an applicant must submit a certificate of sale that contains the following information:

(a) a complete description of the vehicle;

(b) name of the purchaser; and

(c) the signature of the state, city, or county official who conducted the sale.

(8) To title or register a vehicle transferred pursuant to a power of attorney, an applicant must submit the power of attorney to the Tax Commission.

(9) To title or register a vehicle transferred from a deceased owner when form TC-569C, Survivorship Affidavit, does not apply, the applicant must submit the outstanding certificate of title or the last registration certificate for a nontitle state. In addition, the applicant must submit one of the following:

(a) a certified copy of the final decree of distribution;

(b) an order from the court confirming sale; or

(c)(i) an endorsement on the title by the administrator, executor, or personal representative with a certified copy of letters of administration, letters testamentary, or letters appointing a personal representative attached.

(ii) When the title is issued in joint ownership where the owners names are connected with "and" or "/", the survivor may transfer ownership by endorsement only and by furnishing proof of death of the other joint owner.

(10)(a) When satisfactory documentary evidence of ownership is lacking and the applicant has exhausted all normal means of obtaining evidence of ownership, the Tax Commission may issue a title or a dismantle permit upon receipt of:

(i) a court order; or

(ii) subject to Subsections (10)(b)(ii) and (iii), form TC-569A, Ownership Statement.

(b)(i) The form required under Subsection (10)(a)(ii) must contain each of the following:

(A) a complete recital of facts explaining the absence of a negotiable title or current registration for nontitle states;

(B) an explanation of how the vehicle was obtained and from whom;

(C) a statement indicating any outstanding liens or encumbrances on the vehicle;

(D) a statement indicating where the vehicle was last titled or registered;

(E) a description of the vehicle;

(F) any other items pertinent to the acquisition or possession of the vehicle; and

(G) an indemnification agreement holding the Tax Commission and its employees harmless from any and all liability resulting from the issuance of the title or dismantle permit.

(ii) If the vehicle has a value of $1,000 or less at the time of application, and the vehicle is less than six model years old, or the vehicle is a motorcycle, the vehicle may be subject to a physical examination by an employee appointed by the Tax Commission prior to issuance of a title or dismantle permit.

(iii) If the vehicle has a value in excess of $1,000, the Tax Commission may require a surety bond in addition to the form described in Subsection (10)(a)(ii). The amount of the surety bond may not exceed twice the fair market value of the vehicle as determined by the Tax Commission.

(11) To title or register a specially constructed or rebuilt vehicle, an applicant shall furnish form TC-569D, Statement of Facts, explaining the acquisition of essential parts and the date construction was completed. The form must be supported by bills of sale or invoices for the parts.

(a) An application for an identification number must be completed. The assigned number shall be affixed to the vehicle and inspected by a peace officer or an authorized agent of the Tax Commission.

(b) The vehicle make shall be designated as "SPCN" (specially constructed), and the year model shall be determined according to the date the construction was completed.

(c) If satisfactory evidence of ownership is lacking, the procedure outlined in Subsection (10) must be followed.

(d) In the case of a dune buggy or similar type vehicle where the complete running gear and chassis of another vehicle is used, the identification number of the vehicle used as the primary base of the rebuilt vehicle shall be used for identification and must correspond to the identification number on the surrendered certificate of title.

(e) The rebuilt vehicle shall retain the manufacturer's name as it appeared on the surrendered title. However, the word "rebuilt" shall be placed on the application and on the face of the title issued by the Tax Commission. The type of body and vehicle model may be changed to more accurately describe the vehicle. If a new body is used, the year model shall be determined by the date the rebuilding is complete. If only the body style has been altered or changed, the vehicle shall retain the year model stated on the surrendered title.

R873-22M-7. Transfer of License Plates and Registration for an Increase of Gross Laden Weight Pursuant to Utah Code Ann. Section 41-1a-701.

A. License plates and registration may not be transferred under any of the following conditions:

1. The license plates are lifetime trailer plates issued pursuant to Section 41-1a-228.

2. The newly acquired vehicle requires a different registration period from that of the vehicle previously owned.

B. License plates may be transferred only if the application for transfer is made in the name of the original registered owner, unless the owner's name has been changed by marriage, divorce, or court order.

C. Transferred license plates may not be displayed upon the newly acquired vehicle until the registration has been completed and a new registration card has been issued.

D. The expiration date on the new registration card shall be the same as that appearing on the original registration.

E. If registration is based on gross laden weight and the gross laden weight of a vehicle is increased during the registration year, additional registration fees shall be collected based on the following computations:

1. Subtract the registration fee for the current year from the registration fee for the increased weight.

2. Multiply that difference by the percentage of the year for which the vehicle will be registered at the increased weight.

F. The holder of a three-month registration who seeks to increase the gross laden weight of a vehicle shall pay the full three-month registration fee for the increased weight.

R873-22M-8. Expiration of Registration Pursuant to Utah Code Ann. Sections 41-1a-211 and 41-1a-215.

A. Registration issued for a period of three calendar months, six calendar months, or nine calendar months, shall expire at midnight on the last day of the third, sixth, or ninth calendar month from the date issued.

B. If an unexpired registration issued for three calendar months, six calendar months, or nine calendar months is being renewed, the expiration date shall be three calendar months, six calendar months or nine calendar months from the month the previous registration would have expired.

C. When a temporary permit is issued as authorized under Section 41-1a-211, the registration period shall begin on the first day of the calendar month in which the first temporary permit was issued.

R873-22M-11. Copies of Registration Cards Pursuant to Utah Code Ann. Section 41-1a- 214.

A. In lieu of an original registration card, a copy of a registration card may be carried in an intrastate commercial vehicle or a vehicle owned or leased by this state or any of its political subdivisions. Both the front and back of the registration card must be copied.

R873-22M-14. License Plates and Decals Pursuant to Utah Code Ann. Sections 41-1a-215, 41-1a-401, and 41-1a-402.

A. Except as provided under Section 41-1a-215(1), license plates shall be renewed on a yearly basis until new license plates are issued.

B. For all license plates, except vintage vehicle license plates, a month decal and year decal shall be issued upon the first registration of the vehicle. Upon each subsequent registration, the vehicle owner shall receive only a year decal to validate renewal. The registration decals shall be applied as follows:

1. Decals displayed on license plates with black lettering on a white background shall be applied to the lower left hand corner of the rear license plate.

2. Decals displayed on centennial license plates and regular issue license plates with blue lettering on a white background shall be applied to the upper left hand corner of the rear license plate.

3. Decals displayed on special group license plates shall be applied to the upper right hand corner of the rear license plate unless there is a plate indentation on the upper left hand corner of the license plate.

4. All registration decals issued for truck tractors shall be applied to the front license plate in the position described in either Subsection B.1. or B.2.

5. All registration decals issued for motorcycles shall be applied to the upper corner of the license plate opposite the word "Utah".

C. The month decal shall be displayed on the license plate in the left position, and the year decal in the right position.

D. The current year decal shall be placed over the previous year decal.

E. Whenever any license plate, month decal, or year decal is lost or destroyed, a replacement shall be issued upon application and payment of the established fees.

R873-22M-15. Assigned and Replacement Vehicle Identification Number System Pursuant to Utah Code Ann. Section 41-1a-801.

A. The Tax Commission provides a standard Vehicle Identification Number (VIN) plate for vehicles, snowmobiles, trailers, and outboard boat motors that have never had a distinguishing number or if the original VIN has been altered, removed, or defaced.

B. The owner of the unit will make application to the Tax Commission on form TC-162 for an assigned or replacement VIN. In the event the applicant has no title to the unit, the Motor Vehicle Division follows the procedure in Rule R873-22M-2, to determine ownership.

C. The vehicle may be subject to inspection and investigation. Upon determination of the validity of the application, a vehicle identification plate is issued.

1. In cases involving vehicles where the original plate has been removed or obliterated but the original factory number can be verified, a VIN plate is issued with the original VIN entered by means of an approved procedure.

2. In all other instances a prestamped VIN plate is issued bearing an official Utah assigned VIN.

3. The VIN plate must, under the supervision of the Tax Commission, be attached to the unit as follows:

a) passenger and commercial vehicles:

(1) primary location is on a portion of the left front door lock post;

(2) secondary location is on a portion of the firewall, either left or right side, whichever is most advantageous; (This location is to be selected only when the VIN plate cannot be attached to the lock posts.)

b) motorcycles, snowmobiles, and outboard motors:

(1) as near as possible to the original number location; (If an original number, the VIN plate shall be affixed to the headstock.)

c) trailers:

(1) primary location is on a portion of the right side of the tongue or drawbar near the body;

(2) secondary location is on a portion of the metal frame near the front right corner;

d) on units where it is not practical to install rivets, the VIN plate may be attached by adhesive only.

D. The Motor Vehicle Division is responsible for the control, security, and distribution of the VIN plates and will keep the necessary records and require regular reports from designated branch offices.

E. Following are the specifications of the official Utah assigned identification plate and attachment accessories.

1. Size will be 1 inch x 3 inches x .003 inch deep etched to .002 inch with 1/8 inch radius corners.

2. Material will be color anodized aluminum foil.

3. Color will be blue background with silver lettering.

4. Backing will be laminated with permanent pressure sensitive adhesive.

5. Control numbers will be serialized with 1/8 inch permanent embossed or anodized numbers.

6. The state seal will be in the left center, with appropriate rivet areas designated.

7. The assigned number will be prestamped using the prefix of "UT." The number series to include one letter and five digits with the letter to identify the unit type as follows:

TABLE

a)	Passenger and Commercial	P00001
b)	Motorcycles	M00001
c)	Trailers	T00001
d)	Reconstructed vehicle	R00001
e)	Outboard Motors	E00001
f)	Snowmobiles	S00001

R873-22M-16. Authorization to Issue a Certificate of Title Pursuant to Utah Code Ann. Section 41-1a-104.

(1) If the purpose of the certificate of title is to record a new lien, or to rerecord a lien, and there is no change in the registered owner, all of the following are required:

(a) the outstanding Utah certificate of title showing a release of the prior lien;

(b) an application or title, properly signed; and

(c) the title fee.

(2) In order to issue a new certificate of title showing the assignee as the lienholder, an applicant shall submit all of the following:

(a) the outstanding Utah certificate of title showing a release of the prior lien;

(b) an application or title showing the registered owner and the new lienholder, and signed by the assigning lienholder; and

(c) the title fee.

R873-22M-17. Standards for State Impound Lots Pursuant to Utah Code Ann. Section 41-1a-1101.

A. An impound yard may be used by the Motor Vehicle Division and peace officers only if all of the following requirements are satisfied:

1. The yard must be identified by a conspicuously placed, well-maintained sign that:

a) is at least 24 square feet in size;

b) includes the business name, address, phone number, and hours of business; and

c) displays the impound yard identification number issued by the Motor Vehicle Division in characters at least four inches high.

2. The yard shall maintain a hard-surfaced storage area of concrete, black top, gravel, road base, or other similar material.

3. The yard must have adequate lighting.

4. A six-foot chain link or other similar fence that is topped with three strands of barbed wire or razor security wire must surround the yard.

5. Spacing between vehicles must be adequate to allow opening of vehicle doors without interfering with other vehicles or objects.

6. An office shall be located on the premises of the yard.

a) The yard office shall be staffed and open for public business during normal business hours, Monday through Friday, except for designated state and federal holidays.

b) If the yard maintains multiple storage areas, authorization may be requested from the Motor Vehicle Division to maintain a central office facility in a location not to exceed a 10 mile radius from any of its storage areas.

c) If a central office is approved under Subsection 6.b) above, the signs of all storage areas must provide the location of the office.

7. The yard shall provide compressed air and battery boosting capabilities at no additional cost.

B. Persons who can demonstrate an ownership interest in a car held at a state impound yard are allowed to enter the vehicle during normal business hours and remove personal property not attached to the vehicle upon signing a receipt for the property with the yard.

1. An individual has ownership interest in the vehicle if he:

a) is listed as a registered owner or lessee of the vehicle; or

b) has possession of the vehicle title.

2. An individual must show picture identification as evidence of his ownership interest.

3. The storage yard shall maintain a log of individuals who have been given access to vehicles for the purpose of removing personal property.

C. Impound yards holding five or less vehicles in a month may be required to tow those vehicles to another yard for the purpose of centralizing sales of vehicles or, at the discretion of the Motor Vehicle Division, be required to hold the vehicles until additional impounded vehicles may be included.

D. Operators of impound yards shall remove license plates from impounded vehicles prior to the time of sale and turn them over to the Tax Commission at the time the vehicles are sold.

E. The Motor Vehicle Division has the authority to review the qualifications of state impound yards to assure compliance with the requirements set forth in this rule. Any yard not in compliance shall be notified in writing and given 30 days from that notice to rectify any noncompliance. If no action or insufficient action is taken by the impound yard, the Motor Vehicle Division may order it to be suspended as a state impound yard. Any yard contesting suspension, or any yard directly and adversely affected by the Motor Vehicle Division's refusal to designate it a state impound yard, has the right to appeal that suspension to the Tax Commission.

R873-22M-20. Aircraft Registration Pursuant to Utah Code Ann. Sections 72-10-102, 72-10-109 through 72-10-112.

(1) The registration period for aircraft is from January 1 through December 31.

(2) The average wholesale value of an aircraft is obtained from the "average wholesale" column listed in the fall edition of the Aircraft Bluebook Price Digest in the year preceding the year of registration for all aircraft listed in that publication.

(3) The database maintained by the Division of Aeronautics shall include the following information for each aircraft:

(a) the name and address of the owner of the aircraft;

(b) the airport where the aircraft is hangered;

(c) the FAA number of the aircraft;

(d) the aircraft manufacturer or builder;

(e) the year of manufacture or the year the aircraft was completed and certified for air worthiness by the FAA;

(f) the aircraft model as identified by the manufacturer or builder; and

(g) the aircraft serial number.

(4) Aircraft not legally registered are subject to seizure and impound under the provisions of Section 72-10-112.

(5) The registration certificate shall be surrendered upon the sale of an aircraft or at the time of registration renewal. A duplicate certificate may be obtained for a fee.

(6) The Utah decal shall be displayed on the registered aircraft in accordance with instructions given with the decal.

Decals must be applied and maintained in a manner that permits identification of the calendar-year expiration date and the registration number. In the event of loss or damage, a decal replacement shall be obtained for a fee.

R873-22M-22. Salvage Certificate and Branded Title Pursuant to Utah Code Ann. Sections 41-1a-522, 41-1a-1001, 41-1a-1004, and 41-1a-1009 through 41-1a-1011.

A. If a vehicle with an out-of-state branded title is roadworthy, a comparably branded Utah certificate of title may be issued upon proper application and payment of applicable fees.

B. The Utah registration of a vehicle qualifying for any of the following designations expires effective with that qualification or declaration and the title to that vehicle is restricted from that time:

1. salvage vehicle,

2. dismantled vehicle,

3. any vehicle for which a dismantling permit has been issued in accordance with Section 41-1a-1010;

4. any vehicle for which a certificate of abandoned and inoperable vehicle has been issued in accordance with Section 41-1a-1009; and

5. manufacturer buyback nonconforming vehicle.

C. For purposes of Section 41-1a-1001, the cost to repair or restore a vehicle for safe operation is the total cost shown on a certified and notarized repair order or estimate from an authorized representative of an insurance adjusting firm, or a bonded Utah automobile dealer or body shop. The repair order or estimate must be current at the time of application and must show all costs, including a detailed list of all parts, materials, and labor, required to repair the vehicle.

R873-22M-24. Salvage Vehicle Definitions Pursuant to Utah Code Ann. Sections 41-1a-1001 and 41-1a-1002.

A. "Cosmetic repairs" means repairs that are not necessary to promote the structural soundness or safety of the vehicle or to prevent accelerated wear or deterioration.

1. Cosmetic repairs include:

a) cracks or chips in windows if the vehicle will pass a safety inspection;

b) paint chips or scratches that do not extend below the rust preventive primer coating;

c) decals or decorative paint;

d) decorative molding and trim made from plastic, light metal, or other similar material;

e) hood ornaments;

f) wheel covers;

g) final coats of paint applied over any rust preventive primer, primer surfacer, or primer sealer;

h) vinyl roof covers or imitation convertible tops;

i) rubber inserts in bumpers or bumper guards; and

j) minor damage to seats, dashboard, door panels, carpet, headliner, or other interior components if the damage does not affect the comfort of the driver or passengers, or the safe operation of the vehicle.

2. Cosmetic repairs do not include:

a) primer coats or sealer necessary to prevent deterioration of any structural body component, such as fenders, doors, hood, or roof;

b) repair or replacement of any sheet metal;

c) repair or replacement of exterior or interior body panels;

d) repair or replacement of mounting or attachment brackets and all other components and attaching hardware associated with the body of the vehicle; and

e) cracks or chips in windows if the vehicle will not pass a safety inspection.

3. The determination of whether a specific repair is cosmetic shall be made by the Administrator of the Motor Vehicle Enforcement Division.

B. "Collision estimating guide recognized by the Motor Vehicle Enforcement Division" means the current edition of the:

1. Mitchell Collision Estimating Guide;

2. Motor Estimating Guide;

3. Delmar Auto Series Complete Automotive Estimating;

4. CCC Autobody Systems EZEst Software;

5. ADP Collision Estimating Services; or

6. an equivalent estimating guide recognized by the industry.

C. For purposes of Section 41-1a-1002, the determination of whether a vehicle is seven years old or older is made by subtracting the model year of the vehicle from the current calendar year.

R873-22M-25. Written Notification of a Salvage Certificate or Branded Title Pursuant to Utah Code Ann. Section 41-1a-1004.

A. The Motor Vehicle Division shall brand a vehicle's title if, at the time of initial registration or transfer of ownership, evidence exists that the vehicle is a salvage vehicle.

B. Written notification that a vehicle has been issued a salvage certificate or branded title shall be made to a prospective purchaser on a form approved by the Administrator of the Motor Vehicle Enforcement Division.

C. The form must clearly and conspicuously disclose that the vehicle has been issued a salvage certificate or branded title.

D. The form must be presented to and signed by the prospective purchaser and the prospective lienholder, if any, prior to the sale of the vehicle.

E. If the seller of the vehicle is a dealer, the form must be prominently displayed in the lower passenger-side corner of the windshield for the period of time the vehicle is on display for sale.

F. The original disclosure form shall be given to the purchaser and a copy shall be given to the new lienholder, if any. A copy shall be kept on file by the seller for a period of three years from the date of sale if the seller is a dealer.

R873-22M-26. Interim Inspections and Repair Standards Pursuant to Utah Code Ann. Section 41-1a-1002.

A. Each certified vehicle inspector shall independently determine:

1. if one or more interim inspections are required; and

2. when any required interim inspection shall be made.

B. A vehicle that is repaired beyond the point of a required interim inspection prior to that interim inspection may not receive an unbranded title.

C. A vehicle is repaired in accordance with Motor Vehicle Enforcement Division standards if it meets or exceeds the standards established by the Inter-Industry Conference on Auto Collision Repair ("I-CAR").

1. Repairs must be performed in licensed body shops.

2. All repairs must be certified by an individual who:

a) owns or is employed by that body shop;

b) has repaired the vehicle or supervised any repairs he did not make;

c) is certified with I-CAR for structural repair and has either five years experience in repairing structural collision damage in a licensed body shop, or three years experience in repairing structural collision damage in a licensed body shop and an associate degree in the structural repair of an automobile from an accredited institution; and

d) completes ten hours of division approved continuing training in repair of structural collision damage every three years.

D. Individuals certifying repairs under Subsection (C) must be certified with I-CAR by January 1, 1994.

E. A person who repairs or replaces major damage

identified by a certified vehicle inspector shall keep records of the repairs made, and the time required to make those repairs, for a period of three years from the date of repair.

R873-22M-27. Issuance of Special Group License Plates Pursuant to Utah Code Ann. Sections 41-1a-418, 41-1a-419, 41-1a-420, and 41-1a-421.

(1) Except as otherwise provided, a special group license plate shall consist of a symbol affixed to the left-hand side of the plate, followed by a total of five characters and numerals.

(2)(a) Legislature special group license plates shall carry the letter combination SEN or REP with the number of the district from which the legislator was elected or appointed.

(b) A state legislator may register a maximum of two vehicles with Legislature special group license plates.

(c) Upon leaving office, a legislator may not display the Legislature special group license plates on any motor vehicle. Legislators not reelected to office may not display the Legislature special group license plates after December 31 of the election year.

(3)(a) United States Congress special group license plates shall carry, in the case of representatives, the letter combination HR, followed by the number of the district from which the representative was elected or appointed, or, in the case of senators, USS 1 or USS 2, signifying the senior and junior senators.

(b) Upon leaving office, a member of Congress may not display United States Congress special group license plates on any motor vehicle. A member of Congress not reelected to office may not display United States Congress special group license plates after December 31 of the election year.

(4) Survivor of the Japanese attack on Pearl Harbor special group license plates may be issued to qualified U.S. military veterans who:

(a) provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division verifying dates and locations of active service; or

(b) present evidence of membership in the Pearl Harbor Survivors Association.

(5) Former prisoner of war special group license plates shall be issued to qualified U.S. military veterans who provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division indicating that the veteran was classified as a prisoner of war.

(6) Recipient of a purple heart special group license plates shall be issued to qualified U.S. military veterans who:

(a) provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division indicating the veteran was awarded the purple heart; or

(b) present evidence of current membership in the Military Order of the Purple Heart.

(7) An applicant for a National Guard special group license plate must present a current military identification card that shows active membership in the Utah National Guard.

(8) The issuance, renewal, surrender, and design of disability special group license plates and windshield placards shall be subject to the provisions of the federal Uniform System for Parking for Persons with Disabilities, 23 C.F.R. Ch. 11, Subch. B, Pt. 1235.2 (1991), which is adopted and incorporated by reference.

(9)(a) An applicant for a licensed amateur radio operator special group license plate shall present a current Federal Communication Commission (FCC) license.

(b) The license plate number for a licensed amateur radio operator special group license plate shall be the same combination of alpha and numeric characters that comprise the FCC assigned radio call letters of the licensed operator.

(c) Only one set of licensed amateur radio operator special group license plates may be issued per FCC license.

(10) A farm truck special group license plate may be issued for a vehicle that is qualified to register as a farm truck under Section 41-1a-1206.

(11)(a) To qualify for a firefighter special group license plate, an applicant must present one of the following:

(i) evidence indicating the applicant has a current membership in the Utah Firefighters' Association;

(ii) an official identification card issued by the firefighting entity identifying the applicant as an employee or volunteer of that firefighting entity;

(iii) a letter on letterhead of the firefighting entity, or the municipality or county in which the firefighting entity is located, identifying the applicant as an employee or volunteer of that firefighting entity; or

(iv) a letter on letterhead from a firefighting entity, or the municipality or county in which the firefighting entity is located, identifying the applicant as a retired firefighter, whether employed or volunteer, of that firefighting entity.

(b) The division shall revoke a firefighter special group license plate issued under Section 41-1a-418 upon receipt of written notification from the head of a firefighting entity indicating:

(i) the name of the individual whose license plate is revoked;

(ii) the license plate number that is revoked;

(iii) the reason the license plate is revoked; and

(iv) that the firefighting entity has provided the individual described in Subsection (11)(b)(i) at least 30 days notice that the license plate will be revoked.

(12)(a) To qualify for a search and rescue special group license plate, an applicant must present one of the following:

(i) an official identification card issued by a county sheriff's office identifying the applicant as an employee or volunteer of that county's search and rescue team; or

(ii) a letter on letterhead of the county sheriff's office of the county in which the search and rescue team is located, identifying the applicant as an employee or volunteer of that county's search and rescue team.

(b) The division shall revoke a search and rescue special group license plate issued under Section 41-1a-418 upon receipt of written notification from the county sheriff's office of the county in which the search and rescue team is located, indicating:

(i) the name of the individual whose license plate is revoked;

(ii) the license plate number that is revoked;

(iii) the reason the license plate is revoked; and

(iv) that the search and rescue team has provided the individual described in Subsection (12)(b)(i) at least 30 days notice that the license plate will be revoked.

(13) An individual who no longer qualifies for the particular special group license plate may not display that special group license plate on any motor vehicle and must reregister the vehicle and obtain new license plates.

R873-22M-28. Option to Exchange Horseless Carriage License Plates Issued Prior to July 1, 1992, Pursuant to Utah Code Ann. Section 41-1a-419.

The registered owner of a vehicle that is forty years old or older and for which a horseless carriage license plate was issued prior to July 1, 1992, may exchange that plate at no charge for a vintage vehicle special group license plate issued after July 1, 1992.

R873-22M-29. Removable Windshield Placards Pursuant to Utah Code Ann. Section 41-1a-420.

(1) A removable windshield placard is a two-sided placard, renewable on an annual basis, which includes on each

side:

(a) the International Symbol of Access, the wheelchair symbol adopted by Rehabilitation International in 1969, which is at least three inches in height, is centered on the placard, and is white on a blue background;

(b) an identification number;

(c) a date of expiration which is one year from the later of the initial issuance of the placard or the most recent renewal of the placard; and

(d) a facsimile of the Great Seal of the State of Utah.

(2) Upon application, a removable windshield placard shall be issued to a person with a disability which limits or impairs ability to walk or for a vehicle that is used by an organization primarily to transport persons with disabilities that limit or impair their ability to walk.

(a) The definition of the phrase "persons with disabilities which limit or impair the ability to walk" shall be identical to the definition of that phrase in Uniform System for Handicapped Parking, 58 Fed. Reg. 10328, 10329 (1991).

(b) An applicant for a removable windshield placard shall present a licensed physician's certification upon initial application, stating that the applicant has a permanent disability which limits or impairs ability to walk, or sign an affidavit attesting that the vehicle is used by an organization primarily for the transportation of persons with disabilities that limit or impair their ability to walk.

(c) A physician's certification is not required for renewal of a removable windshield placard.

(d) The Tax Commission may, on a case by case basis, issue a removable windshield placard to persons with disabilities other than disabilities which limit or impair the ability to walk.

(e) The original and one additional removable windshield placard shall be issued free of charge. Replacement placards, for placards that are lost or destroyed, shall be issued for a fee.

(3) A temporary removable windshield placard is a two-sided placard, issued on a temporary basis, which includes on each side:

(a) the International Symbol of Access, the wheelchair symbol adopted by Rehabilitation International in 1969, which is at least three inches in height, is centered on the placard, and is white on a red background;

(b) an identification number;

(c) a date of expiration not to exceed six months from the date of issuance; and

(d) a facsimile of the Great Seal of the State of Utah.

(4) Upon application, a temporary removable windshield placard shall be issued.

(a) The application must be accompanied by the certification of a licensed physician that the applicant meets the definition of a person with a disability which limits or impairs ability to walk. The certification shall include the period of time that the physician determines the applicant will have the disability, not to exceed six months.

(b) Applications for renewal of a temporary removable windshield placard shall be supported by a licensed physician's certification of the applicant's disability dated within the previous three months.

(c) The Tax Commission may, on a case by case basis, issue a temporary removable windshield placard to persons with disabilities other than disabilities which limit or impair the ability to walk.

(d) The original and one additional temporary removable windshield placard shall be issued free of charge. Replacement placards, for placards that are lost or destroyed, shall be issued for a fee.

(5) Any placard, whether permanent or temporary, shall be hung from the rearview mirror so that it may be viewed from the front and rear of any vehicle utilizing a parking space reserved for persons with disabilities. If there is no rearview mirror, the placard shall be clearly displayed on the dashboard of the vehicle. The placard shall not be displayed when the vehicle is moving.

R873-22M-30. Standards for Issuance of Original Issue License Plates Pursuant to Utah Code Ann. Section 41-1a-416.

A. "Series" means the general alpha-numeric sequence from which plate numbers are assigned.

B. An original issue license plate is unique and does not conflict with existing plate series in the state if the particular plate number is not currently registered or displayed on the motor vehicle master file record.

R873-22M-32. Rescinding Dismantling Permit Pursuant to Utah Code Ann. Section 41-1a-1010.

A. For purposes of Section 41-1a-1010, a Utah certificate of title does not include a salvage certificate, an Affidavit of Facts, or Tax Commission form TC-839, Certificate of Sale.

B. An applicant with a vehicle eligible for retitling under Section 41-1a-1010 shall receive a title consistent with the title of the vehicle at the time of application for a permit to dismantle.

R873-22M-33. Private Institution of Higher Education Pursuant to Utah Code Ann. Section 41-1a-422.

(1) "Private institution of higher education" means a private institution that is accredited pursuant to Section 41-1a-422 and that issues a standard collegiate degree.

(2) "Standard collegiate degree" means an associate, bachelor's, master's, or doctorate degree.

R873-22M-34. Rule for Denial of Personalized Plate Requests Pursuant to Utah Code Ann. Sections 41-1a-104 and 41-1a-411.

(1) The personalized plate is a non-public forum. Nothing in the issuance of a personalized plate creates a designated or limited public forum. The presence of a personalized plate on a vehicle does not make the plate a traditional public forum.

(2) Pursuant to Subsection 41-1a-411(2), the division may not issue personalized license plates in the following formats:

(a) Combination of letters, words, or numbers with any connotation that is vulgar, derogatory, profane, or obscene.

(b) Combinations of letters, words, or numbers that connote breasts, genitalia, pubic area, buttocks, or relate to sexual and eliminatory functions. Additionally, except as provided in Subsection 41-1a-411(3), "69" formats are prohibited unless used in a combination with the vehicle make, model, style, type, or commonly used or readily understood abbreviations of those terms, for example, "69 CHEV."

(c) Combinations of letters, words, or numbers that connote:

(i) any intoxicant or any illicit narcotic or drug;

(ii) the sale, use, seller, purveyor, or user of any intoxicant or any illicit narcotic or drug; or

(iii) the physiological or mental state produced by any intoxicant or any illicit narcotic or drug.

(d) Combinations of letters, words, or numbers that express contempt, ridicule, or superiority of a race, religion, deity, ethnic heritage, gender, or political affiliation.

(e)(i) Combinations of letters, words, or numbers that express affiliations or actions that may be construed to suggest endangerment to the public welfare.

(ii) Examples of letters, words, or numbers described in Subsection (2)(e)(i) include words, signs, or symbols that represent:

(A) illegal activity;

(B) organized crime associations; or

(C) gang or gang terminology.

(iii) The division shall consult with local, state, and national law enforcement agencies to establish criteria to determine whether a combination of letters, words, or numbers express affiliations or actions that may be construed to suggest endangerment to the public welfare.

(3) If the division denies a requested combination, the applicant may request a review of the denial, in writing, within 15 days from the date of notification. The request must be directed to the Director of the Motor Vehicle Division and should include a detailed statement of the reasons why the applicant believes the requested license plates are not offensive or misleading.

(4) The director shall review the format for connotations that may reasonably be detected through linguistic, numerical, or phonetic modes of communication. The review may include:

(a) translation from foreign languages;

(b) an upside down or reverse reading of the requested format; and

(c) the use of references such as dictionaries or glossaries of slang, foreign language, or drug terms.

(5) The director shall consider the applicant's declared definition of the format, if provided.

(6) If the requested format is rejected by the director, the division shall notify the applicant in writing of the right to appeal the decision through the appeals process outlined in Tax Commission rule R861-1A-22.

(7) If, after issuance of a personalized license plate, the commission becomes aware through written complaint that the format may be prohibited under Subsection (2), the division shall again review the format.

(8) If the division determines pursuant to Subsection (2) that the issued format is prohibited, the holder of the plates shall be notified in writing and directed to surrender the plates. This determination is subject to the review and appeal procedures outlined in Subsections (3) through (7).

(9) A holder required to surrender license plates shall be issued a refund for the amount of the personalized license plate application fee and for the prorated amount of the personalized license plate annual renewal fee, or shall be allowed to apply for replacement personalized license plates at no additional cost.

(10) If the holder of plates found to be prohibited fails to voluntarily surrender the plates within 30 days after the mailing of the notice of the division's final decision that the format is prohibited, the division shall cancel the personalized license plates and suspend the vehicle registration.

R873-22M-35. Reissuance of Personalized License Plates Pursuant to Utah Code Ann. Sections 41-1a-413 and 41-1a-1211.

A. If a person who has been issued personalized license plates fails to renew the personalized license plates within six months of the plates' expiration, the license plates shall be deemed to be surrendered to the division and the division may reissue the personalized license plates to a new requestor.

R873-22M-36. Access to Protected Motor Vehicle Records Pursuant to Utah Code Ann. Section 41-1a-116.

A. "Advisory notice" means:

1. notices from vehicle manufacturers, the manufacturers' authorized representative, or government entities regarding information that is pertinent to the safety of vehicle owners or occupants; and

2. statutory notices required by Sections 38-2-4 and 72-9-603 or by other state or federal law directing a party to mail a notice to a vehicle owner at the owner's last known address as shown on Motor Vehicle Division records.

B. Telephone accounts.

1. Public records may be released by phone to any person who has established a telephone account pursuant to Section 41-1a-116 (7).

2. A person who is authorized to access protected records must submit a written request in person, by mail, or by facsimile to the Motor Vehicle Division. Protected records may be released by phone to a person who has established a telephone account only under the following conditions:

a) The applicant for a telephone account must complete an application form prescribed by the Commission annually.

b) Protected records may be released by phone to private investigators, tow truck operators or vehicle mechanics who are licensed to conduct business in that capacity by the appropriate state or local authority.

c) Towers and mechanics are entitled to access protected records only for the purpose of making statutory notification of the owner at the last known address according to motor vehicle records. Prior to release of the information, the tower or mechanic must deliver or fax to the Motor Vehicle Division a copy of the work order or other evidence of a possessory lien on the vehicle. The lien claim must arise under a statute that requires notification of the vehicle owner at the owner's last known address according to state motor vehicle records.

C. An authorized agent of an individual allowed access to protected records under Section 41-1a-116 must evidence a signed statement indicating that he is acting as an authorized representative and the extent of that representative authority.

D. Utah law governs only the release of Utah motor vehicle records. The Motor Vehicle Division shall not release out-of-state motor vehicle registration information.

R873-22M-40. Age of Vehicle for Purposes of Safety Inspection Pursuant to Utah Code Ann. Section 53-8-205.

A. The age of a vehicle, for purposes of determining the frequency of the safety inspection required under Section 53-8-205, shall be determined by subtracting the vehicle model year from the current calendar year.

R873-22M-41. Issuance of Salvage Certificate in Certain Circumstances Pursuant to Utah Code Ann. Section 41-1a-1005.

(1) Subject to Subsection (3), an insurance company shall receive a salvage certificate in the insurance company's name if the insurance company provides the commission:

(a) evidence that the insurance company has declared a particular vehicle a salvage vehicle;

(b) a copy of the check issued to the registered owner of the vehicle; and

(c) a copy of at least two letters the insurance company has mailed to the registered owner of the vehicle and any lien holder of that vehicle requesting:

(i) in the case of an insurance company that has not received a certificate of title from the registered owner of the vehicle, a copy of the certificate of title or other evidence of ownership; or

(ii) in the case of an insurance company that has received an improperly endorsed certificate of title from the registered owner of the vehicle, correction of the improperly endorsed certificate of title.

(2) The information described in Subsection (1) shall accompany the Application for Utah Title.

(3) If the requirements of Subsections (1) and (2) are satisfied, the Motor Vehicle Division shall issue a salvage certificate to an insurance company:

(a) in the case of an insurance company that has not received a certificate of title from the registered owner of the vehicle, no sooner than 30 days from the settlement of the loss; or

(b) in the case of an insurance company that has received an improperly endorsed certificate of title from the registered owner of the vehicle, no sooner than 30 days from the insurance

company's receipt of an improperly endorsed certificate of title.

R873-22M-42. Issuance of Nonrepairable Certificate in Certain Circumstances Pursuant to Utah Code Ann. Section 41-1a-1005.5.

(1) Subject to Subsection (3), an insurance company shall receive a nonrepairable certificate in the insurance company's name if the insurance company provides the commission:

(a) evidence that the insurance company has declared a particular vehicle a nonrepairable vehicle; and

(b) a copy of the check issued to the registered owner of the vehicle; and

(c)(i) the properly endorsed certificate of title, or other evidence of ownership acceptable to the Motor Vehicle Division; or

(ii) a copy of at least two letters the insurance company has mailed to the registered owner of the vehicle and any lien holder of that vehicle requesting:

(A) in the case of an insurance company that has not received a certificate of title from the registered owner of the vehicle, a copy of the certificate of title or other evidence of ownership; or

(B) in the case of an insurance company that has received an improperly endorsed certificate of title from the registered owner of the vehicle, correction of the improperly endorsed certificate of title.

(2) The information described in Subsection (1) shall accompany the Application for Utah Title.

(3) If the requirements of Subsections (1) and (2) are satisfied, the Motor Vehicle Division shall issue a nonrepairable certificate to an insurance company:

(a) in the case of an insurance company that has not received a certificate of title from the registered owner of the vehicle, no sooner than 30 days from the settlement of the loss; or

(b) in the case of an insurance company that has received an improperly endorsed certificate of title from the registered owner of the vehicle, no sooner than 30 days from the insurance company's receipt of an improperly endorsed certificate of title.

KEY: taxation, motor vehicles, aircraft, license plates
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41-1a-102
41-1a-104
41-1a-108
41-1a-116
41-1a-211
41-1a-215
41-1a-214
41-1a-401
41-1a-402
41-1a-411
41-1a-413
41-1a-414
41-1a-416
41-1a-418
41-1a-419
41-1a-420
41-1a-421
41-1a-422
41-1a-522
41-1a-701
41-1a-1001
41-1a-1002
41-1a-1004
41-1a-1005
41-1a-1009 through 41-1a-1011
41-1a-1101
41-1a-1209
41-1a-1211
41-1a-1220
41-6-44
53-8-205
59-12-104
59-2-103
72-10-109 through 72-10-112
72-10-102

R895. Technology Services, Administration.
R895-3. Computer Software Licensing, Copyright, Control, Retention, and Transfer.
R895-3-1. Purpose.

The purpose of this rule is to establish the State of Utah's position and its intent to:

(1) comply with computer software licensing agreements and applicable federal laws, including copyright and patent laws;

(2) define the methods by which the State of Utah (State) will control and protect computer software; and

(3) establish the State's right, title and interest in state-developed computer software, including the sale and transfer of such software under certain conditions.

R895-3-2. Application.

All state agencies of the executive branch of the State government shall comply with this rule, which applies to the use, acquisition and transfer of all computer software, regardless of the operating environment or source of the software.

R895-3-3. Authority.

This rule is issued by the Chief Information Officer under the authority of Section 63F-1-206 of the Technology Governance Act, and in accordance with Section 63G-3-201 of the Utah Rulemaking Act, Utah Code Annotated.

R895-3-4. Definitions.

As used in this rule:

(1) "Audit" means to review compliance with laws, rules and policies that apply to computer software and related documentation; and to report findings and conclusions.

(2) "Commercial computer software" means computer software that is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices.

(3) "Computer program" means a set of statements or instructions used in an information processing system to provide storage, retrieval, and manipulation of data from the computer system and any associated documentation and source material that explain how to operate the program.

(4) "Computer software" means sets of instructions or programs structured in a manner designed to cause a computer to carry out a desired result.

(5) "Spot Audit" means a periodic audit described in (1) and conducted by a person or persons performing the State Software Controller function.

(6) "State agency" means any agency or administrative sub-unit of the executive branch of the State government except:

(a) the State Board of Education; and

(b) the Board of Regents and institutions of higher education.

(7) "State-developed computer software" means computer software and related documentation developed under contract with the State or by State employees under the conditions set forth in the Employment Inventions Act, Section 34-39-1 et seq., Utah Code Annotated.

R895-3-5. Compliance and Responsibilities: Software Licensing.

(1) Each state agency and its employees shall comply with computer software licensing agreements, state laws, federal contracts, federal funding agreements, and federal laws, including copyright and patent laws.

(2) All management personnel will discourage software piracy and take appropriate personnel action up to and including dismissal, against any employee who has been found to be in violation of software license agreements. Personnel action shall be in full accordance with the Department of Human Resource Management Rule R477-11-1 et seq., Utah Administrative Code.

(3) Each state agency shall:

(a) establish a software coordinating function that will work with the DTS software coordinator to provide responsibility and authority to manage software licenses, software licensing agreements, software inventory;

(b) Inform employees that are engaged in developing or controlling the distribution of software for the State, that any state-developed software is an asset owned by the State and controlled according to the terms of this rule.

(4) A state software controller function is established within the Department of Technology Services with the following responsibilities:

(a) coordinate all centralized software purchases;

(b) manage software licenses, software licensing agreements and software inventory for centralized software purchases;

(c) coordinate and provide information to employees who are responsible for the software controller function within each state agency;

(d) provide to employees notices of the state agency's software use policy at appropriate locations. Appropriate locations may include computing facilities, offices, lunchrooms or websites.

(e) keep and maintain an inventory of all state-owned computer software and software licensing agreements tracked by agency by:

(i) establishing accurate software inventories and maintaining them;

(ii) establishing a baseline inventory of software already purchased;

(iii) acquiring and using auditing tools to assist in establishing the inventory baseline and performing the ongoing reconciliation;

(f) coordinate with DTS technical personnel to:

(i) dispose of software in accordance with the software license agreement;

(g) Understand the conditions of computer software licensing agreements before purchasing computer software, and inform State employees, whose responsibility it is to monitor the State's compliance with computer software licensing agreements, of these conditions.

(h) coordinate statewide audits or spot audits as needed.

R895-3-6. Compliance and Responsibilities: Retention and Transfer of State-Developed Computer Software.

(1) Unless otherwise prohibited by federal law, regulation, contract or funding agreement, the State of Utah may retain the right, title and interest in any state-developed computer software. To do so, the agency shall:

(a) clearly define in all contracts that it controls the ownership rights for computer software development and related documentation; and

(b) mark all computer software and related documentation developed by employees of the State with the copyright symbol and year, and label "Utah State Government" on all media on which the computer software or documentation is stored and at the beginning of the computer software execution.

(2) The State of Utah may sell or otherwise transfer the right, title and interest in any state-developed computer software. In order to carry this out, state agency must do the following:

(a) Obtain approval from the Chief Information Officer prior to the sale or transfer of state-developed computer software. The agency's request shall include a copy of the transfer agreement and any other contractual information. The required form to complete a transfer or sale of state-developed software agreement may be obtained from the department.

(b) Clearly specify within the transfer documents whether

the costs of development will be recovered from the receiver.

(c) Clearly specify within the transfer documents whether the costs associated with copying and sending the state-developed computer software will be recovered from the receiver.

(d) Clearly specify within the transfer documents that the receiver is responsible for acquiring any commercial computer software upon which the state-developed computer software may be dependent.

(e) Clearly specify within the transfer documents that no additional services, such as installation, training, or maintenance, will be provided unless the parties have agreed otherwise.

(f) Clearly specify within the transfer documents that the state-developed computer software is being transferred in "as is" condition, and that the State will not be held liable for any incidental or consequential damages under any circumstances.

(g) Retain a record of the transfer, and process it in accordance with the Government Records Access and Management Act, Section 63G-2-101 et seq., Utah Code Annotated.

(3) In accordance with the requirements of (2), the state may initiate an agreement to transfer state-developed computer software when reasons exist to share such software with another state or entity.

(4) The Chief Information Officer may measure compliance of a state agency and its employees with this rule by conducting periodic audits in accordance with Section 63F-1-206, Utah Code Annotated. In performing audits, the Chief Information Officer may utilize external auditors and an agency's internal auditor(s) when such resources are available and the use of such resources is appropriate.

KEY: computer software, licensing, copyright, transfer

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Notice of Continuation April 6, 2017	**63G-3-201**
	34-39-1 et seq.
	63G-2-101 et seq.

R918. Transportation, Operations, Maintenance.
R918-3. Snow Removal.
R918-3-1. Purpose and Authority.

The purpose of this rule is to indicate where and when the Utah Department of Transportation will provide snow removal services. This rule is enacted under the general rulemaking authority in Section 72-1-201.

R918-3-2 On State Roads.

(1) The Utah Department of Transportation will provide snow removal services on the following functional classes of state roads:

(a) Interstate highways
(b) Principal arterials
(c) Minor arterials
(d) Collector roads which meet the following criteria:

(i) where counties or cities provide year round fire, police and emergency services;

(ii) where mail year round delivery is provided;

(iii) where year round water and sanitary services are provided; and

(iv) where counties or cities request or concur with year round snow removal.

(2) The following state road sections are an exception to paragraph (1) above and shall be closed in the fall when snow depth requires closure, and will not be reopened until spring weather conditions permit.

TABLE 1

SR-35 (Wolf Creek Pass)	MP 12.44 to 27.51
SR-39 (Monte Cristo)	MP 36.86 to 55.4
SR-65 (Region 2 East Canyon)	MP 3.11 to 8.4
SR-65 (Region 1 Big Mountain)	MP 8.4 to 13.47
SR-92 (American Fork Canyon/ Alpine Loop)	MP 12.63 to 22.40
SR-148 (Cedar Breaks)	MP 0.15 to 2.544
SR-150 (Mirror Lake Highway)	MP 14.70 to 48.63
SR-153 (Puffer Lake)	MP 21.29 to 39.55
SR-190 (Guardsman Pass)	MP 17.71 to 21
SR-224 (Wasatch County line to Deer Valley)	MP 0.0 to 1.11

(3) Other state road sections may be closed for the winter/or not receive snow removal services, if the Region Director determines that it is not cost effective to provide snow removal services.

(4) The removal of the normal snowfall and windrows on private road approaches, both on and off the highway right-of-way, is a responsibility of the property owner. When clearing these approaches, the property owner shall not push or pile the snow onto the state right-of-way. Within towns and where curb and gutter exist, the normal parking area off the travel lane may be used for snow storage by state forces. If it is desired to remove this snow, it shall be the responsibility of the city, county or the adjacent property owner. The state shall not haul snow off the roadway except where removal by other means is impracticable.

R918-3-3. On State Roads Leading to for-profit Winter Recreational Areas.

(1) State roads leading to for-profit winter recreational areas not qualifying above may qualify for weekend and holiday snow removal services. Each for-profit winter recreational area will be evaluated individually.

(2) To receive weekend and holiday snow removal services, owners or operators of a for-profit winter recreational area shall:

(a) request, in writing to the Region Director, weekend and/or holiday snow removal services;

(b) provide parking away from the highway for all employees, guests, and users; and

(c) clear snow from all winter recreation site parking areas.

(3) The Region Director may authorize weekend and holiday snow removal services based on UDOT Policy 06A-42, functional classification of the road, and available resources.

(4) The Region Director may suspend, delay, postpone, accelerate, or terminate weekend and holiday snow removal services based on resource availability, avalanche danger, unusual snowfall accumulation, or other factors determined by the Region Director as presenting unacceptable risk to the traveling public or snow removal personnel.

R918-3-4. Other Than Roadways on the State System.

(1) Snow removal service will not be provided for the following, except where provided through written agreement with the Utah Department of Transportation:

(a) sidewalks;
(b) overhead crosswalk structures;
(c) walkways attached to structures;
(d) driveways;
(e) parking lots;
(f) roads not on the state system;
(g) overhead vehicular structures not on the state system; or
(h) bike and pedestrian trails.

KEY: snow removal
February 7, 2012 72-1-201
Notice of Continuation July 7, 2017 72-1-205

R918. Transportation, Operations, Maintenance.
R918-6. Maintenance Responsibility at Intersections, Overcrossings, and Interchanges between Class A Roads and Class B or Class C Roads.
R918-6-1. Authority.

Section 72-1-201 assigns to the Utah Department of Transportation general responsibility for the maintenance of the state transportation system, and directs the department to make policy and rules governing the same, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. Sections 72-3-102, 72-3-103, and 72-3-104 assign maintenance responsibility for Class A Roads (state roads), Class B Roads (county roads), and Class C Roads (city streets), to the state, counties, and municipalities, respectively. Section 72-1-208 directs the department to cooperate with counties and municipalities in the maintenance of highways and allows the department to provide maintenance services to them under terms mutually agreed upon. Section 72-3-109 delineates the division of responsibilities for state highways within cities and towns. Section 72-6-105 provides that the department may enter into written agreements with counties and municipalities for the maintenance of any highway.

R918-6-2. Purpose and Background.

(1) The purpose of this rule is to assign maintenance responsibility between the department and the local government entity for roadway and roadside features at the intersection of state and local roads, including grade-separated interchanges, overcrossings, undercrossings, and at-grade intersections.

(2) In general, the department is responsible for the maintenance of all state roads, including roadside features associated with those roads, except as otherwise delineated in state law. Likewise, county and municipal governments are responsible for roads under their jurisdiction. Where state roads intersect with roads under local jurisdiction, confusion sometimes arises regarding the maintenance responsibility for specific features at those locations. This rule is intended to clarify which jurisdiction has responsibility for which elements at those locations, and to address the large majority of such situations. Sometimes, however, unusual circumstances or geometry may render a logical division of responsibilities difficult. In those cases, formal agreements between the parties involved are appropriate and encouraged. The language in this rule was developed to encourage consistency regarding maintenance responsibilities between the department and local government. It is recognized the traveling public may benefit in some cases from deviations from the guidelines set forth in this rule to meet the capabilities and skills available individually at the department's maintenance sheds and/or local road departments. In such cases, Region Directors of the department and local officials should together evaluate the guidelines and deviate from them as necessary and as mutually agreed upon, to meet the needs of a specific situation. Open and frequent communication supported by a written agreement is strongly encouraged.

R918-6-3. Definitions.

For the purpose of this rule, the following definitions apply.

(1) "Local road" means any road under the jurisdiction of any public entity other than UDOT. The entity may be a county, a municipality, or an agency of the federal government.

(2) "Overcrossing" means a grade-separated intersection where no access between the intersecting roadways is provided, and where the state road or interstate highway crosses over the local road.

(3) "Undercrossing" means a grade-separated intersection where no access between the intersecting roadways is provided, and where the state road or interstate highway crosses under the local road.

(4) "Grade-separated interchange" means an intersection where the state road or interstate highway and the local road are separated from each other by one or more structures, and where access between the two roads is provided by means of entrance and exit ramps.

(5) "At-grade intersection" means a surface street intersection that may be signalized or unsignalized, where one or more of the intersecting streets are state routes;

(6) "Department", or "UDOT", means the Utah Department of Transportation.

(7) "Full control of access", means access to adjoining land that is designated as no access or limited access by means of the right-of-way instrument.

R918-6-4. General Maintenance Responsibilities.

(1) Signal Systems. Maintenance responsibility for all signal systems on state roads, and components that are required for the functionality of those systems, belongs to UDOT. This includes detection and signing on the local legs of the intersection.

(2) Park Strips, Sidewalks, and Pedestrian Ramps. Maintenance responsibility for park strips and sidewalks, including that portion of pedestrian access ramps behind the curb, belongs to the local government. Replacement and upgrading as part of road improvement projects may be done by UDOT.

(3) Curb and Gutter. Maintenance responsibility for curb and gutter belongs to UDOT for state routes, and to the local government for local routes. UDOT responsibility on the local leg extends to the point of tangency of the curb radius.

(4) Snow Removal. Responsibility for snow removal from the roadway belongs to UDOT for state routes, and to the local government for local routes. UDOT is responsible for snow removal on ramps at interchanges on state routes.

(5) Pavement Maintenance. Responsibility for roadway pavement maintenance belongs to UDOT for state routes, and to the local government for local routes. This includes the pavement surface on or under bridges. For at-grade intersections, UDOT is responsible for pavement maintenance through the intersection, bounded by a line extending to the point of tangency of the edge of oil, or of the curb return if a curb exists, on the local leg. If the geometry of the approach is unusual, such as angled instead of rounded, UDOT responsibility shall extend to a point agreeable to both parties. In no case, however, shall UDOT responsibility extend beyond the right-of-way line. UDOT is responsible for pavement maintenance on ramps at interchanges on state routes.

(6) Traffic Islands. Responsibility for traffic islands belongs to UDOT for state routes, and to the local government for local routes. For at-grade intersections, UDOT is responsible for island maintenance through the intersection. Maintenance responsibility for any landscaping within traffic islands is described in R918-6-4(15).

(7) Pavement Striping and Messages. Responsibility for pavement striping and marking belongs to UDOT for state routes, and to the local government for local routes. Local jurisdiction responsibility includes stop bars and crosswalks on the local legs of unsignalized intersections. At signalized intersections, UDOT is responsible for stop bars and crosswalks on all legs, and the local government is responsible for lane lines and other markings or messages on the local legs.

(8) Highway Lighting. Responsibility for maintenance, including payment of power bills, repairs and replacement when necessary, of highway lighting is divided as follows.

(a) UDOT is responsible for:

(i) mainline interstate, interchange, and underpass lighting;

(ii) cross street underpass lighting at interchanges with on/off ramps;

(iii) sign lighting on state routes or along the interstate corridor;

(iv) traffic signals on state routes or interstate corridor off ramps;

(v) un-signalized intersection lighting at on or off ramp intersecting cross street; and

(vi) signal-attached lighting at non-traditional signalized intersections, such as Diverging Diamond Interchanges (DDI), and Single Point Urban Interchanges (SPUI).

(b) Local government is responsible for:

(i) street lighting along state routes, other than interstate;

(ii) cross street underpass lighting where no interchange on or off ramps occur;

(iii) all decorative lighting requested by the municipality or county including street, bridge, and underpass lighting; and

(iv) lighting at traditional signalized intersections along state routes.

(9) Signs. Responsibility for signs belongs to UDOT for signs facing traffic on state routes, and to the local government for signs facing traffic on local routes, with the exception that UDOT is responsible for traffic control, route marker, junction, and guide signs associated with a state route but facing traffic on a local route. For STOP and YIELD signs on the local legs of unsignalized intersections, the local government is responsible for initial installation and non-safety critical maintenance such as minor vandalism, graffiti, or leaning, and UDOT is responsible for safety critical maintenance such as replacement of knock-downs. At signalized intersections, UDOT is responsible for signs mounted on the signal mast arm. UDOT will coordinate the installation of signs on local routes with the local agency prior to sign installation. The local government is responsible for street name signs, except those mounted on signal mast arms.

(10) Crash Cushions, Barrier, Etc. Responsibility for crash cushions, barrier, guardrail, and end treatments, belongs to UDOT for those elements protecting traffic on state routes, and to the local government for those protecting traffic on local routes.

(11) Sweeping. Responsibility for roadway sweeping belongs to UDOT for state routes, and to the local government for local routes. UDOT is responsible for sweeping on ramps at interchanges.

(12) Graffiti. Graffiti removal from structures is the responsibility of the entity having the best access to the graffiti. In general, that is the entity having jurisdiction of the road underneath the structure.

(13) Cattle Guards. UDOT provides cattle guards within the rural area of the State at all freeway access points to fully controlled access highways, either on the cross road or the entrance ramps, as necessary to meet the requirements of the particular location. Responsibility for maintenance of these cattle guards belongs to UDOT. Where cattle guards exist along partially controlled access state roads, either across a local road or a private road, responsibility for maintenance of the cattle guard belongs to the local jurisdiction or to the private property owner.

(14) Weed Control. In accordance with Section 72-3-109, responsibility for weed control and mowing behind the curb or beyond the shoulder at at-grade intersections, both signalized and unsignalized, belongs to the local government. On facilities with full control of access, UDOT will be responsible for weed control and mowing to a point that ensures adequate sight distance.

(15) Decorative Landscaping. Responsibility for maintenance of landscaping beyond the baseline described in UDOT Aesthetics Guidelines, including irrigation systems, belongs to the local jurisdiction.

(16) Drainage Facilities such as catch basins, culverts, etc. In general, storm drain systems and culverts will be maintained by the owner of the drainage facility, unless otherwise stipulated in a cooperative agreement. Catch basins and their connector pipes at intersections will be maintained by the entity having jurisdiction for the road.

R918-6-5. Maintenance Responsibility at Overcrossings and at Interchanges where the State Route Crosses Over the Local Route.

(1) UDOT is responsible for:

(a) maintenance, repairs, and replacement of all structure elements, including decks, parapets, bent caps, beams, columns, footings, abutments, approach slabs, and slope protection;

(b) maintenance of drains on the structure;

(c) maintenance of retaining walls;

(d) fence maintenance on the structure and its approaches and ramps; and

(e) vegetation control, including mowing, along the state route, as demarcated by access control or Right-of-Way fencing.

(2) The local jurisdiction is responsible for:

(a) maintenance of drainage under the structure;

(b) vegetation control, including mowing, along the local route, as demarcated by access control or Right-of-Way fencing; and

(c) maintenance of decorative landscaping beyond the UDOT Aesthetics Guideline baseline, as described in R918-6-4(15).

(3) If the local entity proposes a pavement treatment that would decrease vertical clearance under the structure to less than the current standard, such work shall be done in consultation with UDOT.

R918-6-6. Maintenance Responsibility at Undercrossings and at Interchanges where the State Route Crosses Under the Local Route.

(1) UDOT is responsible for:

(a) major structure maintenance, including repair or replacement of parapets, bent caps, beams, columns, footings, abutments, approach slabs, and slope protection;

(b) deck maintenance where necessary to preserve the structural integrity of the bridge such as where the rebar is exposed;

(c) maintenance of retaining walls;

(d) maintenance of drainage under the structure;

(e) vegetation control, including mowing, along the state route, as demarcated by access control or Right-of-Way fencing; and

(f) fence maintenance under the structure.

(2) The local jurisdiction is responsible for:

(a) minor deck and parapet maintenance which includes maintenance of the wearing surface down to the first mat of reinforcing steel, and of any bituminous surfacing above that. This maintenance should include preventive sealing as well as repair of spalls and delaminations. If UDOT performs a deck rehabilitation project involving pothole patching, waterproofing membrane and asphalt overlay, the responsibility to maintain the asphalt wearing surface would also default to the local owner upon completion of the initial installation. If the local entity proposes a deck treatment that would add static load to the structure, such work shall be done in consultation with UDOT;

(b) maintenance of drains on the structure;

(c) fence maintenance on the structure and its approaches;

(d) vegetation control, including mowing, along the local route, as demarcated by access control or Right-of-Way fencing; and

(e) maintenance of decorative landscaping beyond the UDOT Aesthetics Guideline baseline, as described in R918-6-4(15).

KEY: maintenance, intersections, interchanges, structures

August 20, 2012	**72-1-201**
Notice of Continuation July 19, 2017	**72-1-208**
	72-3-102
	72-3-103
	72-3-104
	72-3-109
	72-6-105.

R920. Transportation, Operations, Traffic and Safety.
R920-1. Utah Manual on Uniform Traffic Control Devices.
R920-1-1. Purpose and Authority.

The purpose of this rule is to adopt standards and establish specifications for a uniform system of traffic-control devices used on all highways open to public travel, to establish criteria and specifications for the establishment, location, and operation of school crosswalks, school zones, and reduced speed school zones, and to establish specifications for uniform signage or markings to clearly identify school bus parking zones. This rule is authorized and required by Sections 41-6a-301, 41-6a-303 and 41-6a-1307.

R920-1-2. Incorporation.

Incorporated by reference is the Utah Manual on Uniform Traffic Control Devices, 2009 Edition with revisions through June 30, 2015 (Utah MUTCD). This manual was determined to be in substantial conformance with the 2009 MUTCD by the Federal Highway Administrator which, in accordance with Title 23, U.S. Code, Section 655, is the standard for all highways open to public travel in accordance with Title 23, U.S. Code, Sections 109(d) and 402(a). Included in Part 7 of the Utah MUTCD is the Utah Traffic Controls for School Zones establishing the criteria and specifications authorized and required by Sections 41-6a-303 and 41-6a-1307.

R920-1-3. Authority of Executive Director or Designee.

All authority shall rest with the Utah Department of Transportation Executive Director or his designee to develop or modify the Utah MUTCD, including the Utah Traffic Controls for School Zones, as the standard for all highways open to public travel in Utah.

KEY: traffic control, pedestrians, school zones, traffic signs
August 24, 2015 **41-6a-301**
Notice of Continuation July 7, 2017 **41-6a-303**
41-6a-1307

R920. Transportation, Operations, Traffic and Safety.
R920-2. Rural Conventional Road Definition.
R920-2-1. Purpose and Authority.

The purpose of this rule is to adopt standards and establish specifications for the definition of rural conventional roads as required in Section 72-7-504 (amended 2015).

R920-2-2. Definitions.

Rural conventional roads are roads that are in rural areas.

Rural areas are communities and unincorporated county not within the boundaries of urbanized areas and urban clusters as identified by the Department.

R920-2-3. Authority of Executive Director or Designee.

All authority shall rest with the Utah Department of Transportation Executive Director or his designee to develop or modify the definition in R920-2-2.

KEY: rural conventional roads, unincorporated county, tourist-oriented directional signs, urbanized areas
August 24, 2015 72-7-504
Notice of Continuation July 12, 2017

R920. Transportation, Operations, Traffic and Safety.
R920-4. Special Road Use or Event.
R920-4-1. Purpose, Authority, Scope, and Definitions of Rule.

(1) The purposes of this rule are to:

(a) Ensure the right of Utahns and visitors to speak and protest in public forums and other public places owned or maintained by the Utah Department of Transportation;

(b) Encourage and support special events such as parades, runs and walks, bicycle races, and film-related activities, recognizing their importance to Utah's economy and to the well-being of residents of and visitors to Utah;

(c) Manage limited resources and multiple requests for the use of the same roadways in a responsible and content-neutral manner;

(d) Encourage collaboration with local governments in the review and management of Special Road Uses;

(e) Provide guidelines and an appeal process for the review of applications for special road use permits; and

(f) Set reasonable time, place, and manner restrictions for the safe use of roadways for free speech events, and set reasonable requirements on other special events on highways and land under the jurisdiction of the Department to protect public safety, persons, and property, and to accommodate the interests of persons not participating in the assemblies to use the roadways for travel;

(2) This rule is intended to further the following governmental interests:

(a) The rights of Utahns to speak, protest, and peaceably assemble;

(b) The safety of all participants in, and spectators of, special events;

(c) The safety of the travelling public;

(d) The ability of emergency service providers to access and care for participants and spectators in special use events, and for residents near to such event;

(e) The management of limited resources;

(f) Utah's tourism industry and its strong economy;

(g) The ability of residents and others not participating in any special event, to travel on the roadways and to access private property without unreasonable disruption; and

(h) The protection against unreasonable financial burdens on the Department or the State.

(3) This rule is authorized by Sections 72-1-201, 72-1-212 and 41-6a-1111 of the Utah Code Annotated. This rule applies to all highways and adjacent rights-of-way under the Department's jurisdiction.

(4) Definitions.

The following definitions shall apply for purposes of Rule 920-4:

(a) The "Applicant" means an individual, corporation, unincorporated association, Local Government, or other organization, seeking a Special Event Permit. "Applicant" also includes any predecessors or successors in interest to the Applicant, and, if the Applicant is an entity, any officers and principals of the Applicant.

(b) A "Day" means a calendar day, except as otherwise expressly stated in this Rule.

(c) "Department" means the Utah Department of Transportation.

(d) A "Free Speech Road Use" means a type of Special Road Use conducted for the purpose of persons expressing their political, social, religious, or other views protected by the First Amendment to the United States Constitution and Article I, Section 15 of the Utah Constitution during the event. A "Free Speech Road Use" does not include:

(i) Solicitations or events which primarily propose a commercial transaction;

(ii) Bicycle races or events;

(iii) Foot races, including fun-runs, races, walks, and similar events;

(iv) Motorcycle rallies, parades, and similar events; or

(v) Use of highways and adjacent rights-of-way for filming.

(e) "Local Government" means a municipality as defined in Utah Code Subsection 10-1-104(5), a county, or an institution of higher education defined in Utah Code Section 53B-2-101.

(f) A "Short-Notice Free Speech Road Use" means a type of Free Speech Road Use which arises out of, or is related to, events or other public issues which cannot be reasonably anticipated far enough in advance of the occurrence to allow compliance with the deadlines otherwise required in this Rule. An Applicant bears the burden of demonstrating that a proposed Free Speech Road Use is a Short-Notice Free Speech Road Use.

(g) A "Special Event Permit" means a permit sought or granted by the Department for a Special Road Use.

(h) A "Special Road Use" means a use or event taking place on a highway or adjacent to a highway other than normal traffic or lawful pedestrian movement.

(i) A Special Road Use includes:

(A) A demonstration, rally, vigil, picket line or similar gathering;

(B) A parade or march;

(C) A bicycle race or event;

(D) A foot race, including a fun-run, race, walk, or similar event;

(E) A motorcycle rally, parade, ride or similar event; and

(F) The use of highways and adjacent rights-of-way for filming.

(ii) A "Special Road Use" does not include:

(A) Outdoor advertising, regulated by the Protection of Highways Act, Utah Code Section 72-7-501 et seq. and Utah Admin. Code R933-2;

(B) Encroachment on, or the placement, construction, or maintenance of, roads, driveways, advertising, and utilities, regulated by Utah Code Section 72-7-701 et seq., and Utah Admin. Code R930-7; and

(C) The sole display of unattended signs or banners on or appurtenant to the roadway.

R920-4-2. Permit Required for Special Road Use; Exceptions.

(1) A Special Event Permit shall be required for any Special Road Use. A Special Road Use shall not occupy the roadway until a permit is issued. A permit shall be obtained by submitting a completed application form to the Department for the particular type of Special Road Use requested, accompanied by the fees as listed within the Department fee schedule and any other documents or attachments as required by this Rule.

(2) An Applicant shall send an application to the regional office in which the Special Road Use originates. If the Special Road Use continues through multiple Department Regions, the Department may designate a regional office to coordinate the application process throughout all other affected regions.

(3) A Special Event Permit shall not be required for activities that occur entirely on a sidewalk, crosswalk, or dedicated pedestrian passageway adjacent to or nearby a roadway so long as:

(a) Pedestrians are lawfully permitted to be present in the area;

(b) Reasonable measures are taken to ensure that the activity does not encroach upon the roadway or otherwise affect normal vehicular traffic flow; and

(c) Non-participating pedestrians have access to the sidewalk or passageway.

R920-4-3. Timeline for Submitting Applications.

(1) Subject to the requirements of this section, Applicants are encouraged to submit applications for a Special Event Permit as far in advance as is practicable to allow sufficient time for the completion of the application, for the negotiation of any conditions to the application, and for appeal, if permitted.

(2) A completed application for a Special Event Permit shall be submitted at least 30 days before the proposed Special Road Use. Any applications not received by the specified deadline may be considered by the Department if;

(a) The Applicant pays the expedited review fee as defined in R920-4-4, and

(b) There is sufficient time to process the application, to coordinate with the Applicant, and to ensure that the Applicant will comply with the terms of the permit.

(3) No application may be filed more than one year before the proposed event date.

(4) Subsection (2) does not apply to:

(a) A Special Event Permit for a Short-Notice Free Speech Road Use; or

(b) A Special Event Permit sought by a Local Government for a Special Road Use if the Local Government is responsible for the supervision and safety of the Special Road Use.

R920-4-4. Fees for Filing Applications; Exceptions.

(1) An application for a Special Event Permit shall be accompanied by the appropriate nonrefundable review fees as listed within the Department fee schedule. The fees are imposed as a regulatory measure and are charged only to defray the expenses of processing the application, reviewing for acceptability, and monitoring the event to ensure conformity with the intent expressed in Section R920-4-1 above.

(2) Any Special Event Permit not received by the deadline in subsection (2) of R920-4-3 shall be accompanied with a nonrefundable expedited review fee as listed within the Department fee schedule. Payment of the expedited fee does not guarantee that the Department will process the application.

(3) Subsection (1) does not apply to:

(a) A Special Event Permit sought by a Local Government if the Local Government is responsible for the supervision and safety of the Special Road Use.

(b) An application for a Special Event Permit for Free Speech Road Use if the Applicant demonstrates, by sufficient evidence, that the payment of the fee would affect the ability of the Applicant to provide for the necessities of life. If an Applicant is an organization, the Department may require proof that the organization's membership is similarly unable to pay.

(4) Subsection (2) does not apply to a Special Event Permit for a Short-Notice Free Speech Road Use. An application for a Special Event Permit for a Short-Notice Free Speech Road Use shall pay the nonrefundable fee specified in subsection (1), unless one of the exceptions in subsection (3) also applies.

R920-4-5. Restrictions on Special Event Permits.

(1) The Region Permit Officer shall not issue a Special Event Permit if, in the two years preceding the date of the Application:

(a) The Applicant had been granted a Special Event Permit, and the Applicant

(i) Violated a condition of the Permit, or

(ii) Failed to take reasonable care in preventing the participants in the Special Road Use from violating a condition of the permit; or

(b) The Applicant engaged in a Special Road Use without first securing a Special Event Permit.

(2) The Region Permit Officer shall not issue a Special Event Permit for Special Road Use on an overpass above a highway, if the Special Road Use is intended to draw the attention of the traffic below, and is not an incidental traversing of the overpass as part of the event path.

(3) The Region Permit Officer shall not issue a Special Event Permit for any portion of the same roadway for a period of more than 24 continuous hours, per Special Road Use.

(a) This subsection does not apply to a Special Event Permit sought by a Local Government for a Special Road Use if the Local Government is responsible for the supervision and safety of the Special Road Use.

(b) Deviations from provisions of this subsection may be allowed if they do not violate state and federal statutes, law, or regulations, and the use will be for the public good without compromising the transportation purposes of the roadway.

(c) Requests for deviations may be considered by the Department on an individual basis, upon justification submitted by the Applicant.

(d) In determining whether to grant the deviation, the Region Permit Officer shall consider the Purposes of the Rule as articulated in Rule R920-4-1(1), The Applicant shall have the burden to prove that the deviation is in the public interest and will not substantially affect the ability of residents and others not participating in any special event to travel on the roadways and to access private property without unreasonable disruption. The Region Permit Officer may require the Applicant to provide additional proof, such as a traffic impact study, to satisfy the Applicant's burden for the deviation.

R920-4-6. Applications for Special Event Permits for Non-Free Speech Road Uses.

This section governs the standards for review of all applications for Special Event Permits other than those covered in R920-4-7.

In addition to an Application for Special Event Permit, the Region Permit Officer shall require the Applicant to provide as necessary:

(a) Insurance coverage, waiver and release of damages and indemnification as described in R920-4-9;

(b) A traffic control plan as described in R920-4-10;

(c) Public notification as described in R920-4-11;

(d) A contingency plan, as described in R920-4-12;

(e) A route map as described in R920-4-13; and

(f) Proof that the applicant has obtained any applicable city, county, or other governmental agency approvals or permits as described in R920-4-14.

(2) In reviewing any Application for Special Event Permit, the Region Permit Officer may place reasonable restrictions on the Special Road Use. Except as provided by R920-4-5(1), no such restriction shall be based on the identity of the applicant or of persons expected to participate in the Special Road Use. The restrictions include, but are not limited to:

(a) A limitation of the total time the permittee may occupy a particular portion of roadway;

(b) A limitation on the particular time of day the permittee may occupy the roadway;

(c) A limitation on the number of lanes the permittee may occupy on the roadway;

(d) A limitation on the number or size of banners or signs any participants may carry on the roadway; and

(e) A prohibition on the use of a particular roadway and the requirement of an alternate route.

(3) The Region Permit Officer may place reasonable terms, conditions, and limitations on a Free Speech Road Use as allowed by this Rule and otherwise required by law. In placing restrictions on the Special Road Use, the Region Permit Officer shall consider:

(a) The annual number of other Special Use events scheduled on the roadway;

(b) Planned construction or repairs of the roadway or utilities underneath or adjacent to the roadway;

(c) The nature of the roadway requested for use, and the

volume of traffic normally occupying the roadway at the requested time of use;

(d) The amount of time requested for use;

(e) The safety of all participants in special events;

(f) The safety of the travelling public;

(g) The ability of emergency service providers to access and care for participants and spectators in special use events, and for residents near to such event; and

(h) The ability of residents and others not participating in any special event, to travel on the roadways and to access private property without unreasonable disruption; and

(i) The overall economic impact on nearby businesses and the traveling public resulting from the Special Road Use.

(4) Applications for Special Event Permits governed by this section shall be processed. If the Region Permit Officer determines the application is incomplete, he or she shall notify the Applicant with a notice of incomplete application once the deficiency is discovered.

(5) Once the application is complete, the Region Permit Officer shall apply best efforts to provide approval, approval with conditions, or denial of the Application:

(a) Within 30 days of receipt of a complete application, or seven days before the scheduled event, whichever is earlier.

(b) In the case of an application submitted along with an expedited fee, within three business days of its receipt as complete.

R920-4-7. Review of Applications for Special Event Permits for Free Speech Road Uses.

This section governs the standards for review of applications for Special Event Permits for Free Speech Road Uses.

(1) In addition to any Application for Special Event Permit for Free Speech Road Use, the Region Permit Officer shall require the Applicant to provide, as necessary:

(a) A traffic control plan as described in R920-4-10;

(b) Public notification as described in R920-4-11;

(c) A contingency plan, as described in R920-4-12;

(d) A route map as described in R920-4-13; and

(e) Proof that the applicant has obtained any applicable city, county, or other governmental agency approvals or permits as described in R920-4-14.

(2) In reviewing any Application for Special Event Permit for Free Speech Road Use, the Region Permit Officer may place reasonable time, place, and manner restrictions on the Free Speech Road Use. No such restriction shall be based on the content of the beliefs expressed or anticipated to be expressed during the Free Speech Road Use, or on factors such as the identity or appearance of persons expected to participate in the assembly.

(3) In placing reasonable time, place, and manner restrictions on the Special Road Use, the Region Permit Officer shall consider:

(a) The annual number of other Special Use events scheduled on the roadway;

(b) Planned construction or repairs of the roadway or utilities underneath or adjacent to the roadway;

(c) The nature of the roadway requested for use, and the volume of traffic normally occupying the roadway at the requested time of use;

(d) The amount of time requested for use;

(e) The safety of all participants in special events;

(f) The safety of the travelling public;

(g) The ability of emergency service providers to access and care for participants and spectators in special use events, and for residents near to such event; and

(h) The ability of residents and others not participating in any special event, to travel on the roadways and to access other public and private property without unreasonable disruption.

(4) The Region Permit Officer may place reasonable terms, conditions, and limitations on a Free Speech Road Use as allowed by this Rule and otherwise required by law. In placing time, place, or manner restrictions on a Free Speech Road Use, the Region Permit Officer shall select restrictions that are tailored to address any identified risks of harm or other articulated governmental interests. The restrictions include, but are not limited to:

(a) A limitation of the total time the permittee may occupy a particular portion of roadway;

(b) A limitation on the particular time of day the permittee may occupy the roadway;

(c) A limitation on the number of lanes the permittee may occupy on the roadway;

(d) A limitation on the number or size of banners or signs any participants may carry on the roadway;

(e) A prohibition on the use of a particular roadway and the requirement of an alternate route, where other restrictions will not protect the governmental interests affected by the Free Speech Road Use, and ample alternatives for speech exist.

(5) Once the application is complete, the Region Permit Officer shall apply best efforts to provide approval, approval with conditions, or denial of the Application within 30 days of receipt of a complete application, or seven days before the scheduled event, whichever is earlier.

(6) Applications for Special Event Permit for a Short-Notice Free Speech Road Use shall be processed on an expedited basis, and the Region Permit Officer shall apply best efforts to provide approval, approval with conditions, or denial of the application within three business days of its receipt as complete.

R920-4-8. Special Use Double Booking Conflict Resolution.

(1) In cases where a double booking conflict arises, the Department will encourage any secondary, or subsequent, Applicant to review the feasibility of collocating with the original Applicant. If collocating proves impracticable, the Department will encourage any secondary, or subsequent, Applicant to offer a viable alternative strategy that meets the needs of all Applicants, while also ensuring adequate public safety measures remain intact.

(2) For non-Free Speech Special Road Uses, the Department may also rely on local agency assistance with establishing special event permitting priorities and reserves the authority to exercise the discretion in giving priority consideration to an applicant based on an evaluation of historic use, potential economic benefit, and other relevant factors.

(3) In cases where none of the aforementioned conflict resolution strategies prove effective in remedying a continuing dispute between multiple applicants, and the Department determines that collocating is impracticable, the Special Event Permit will be issued based on the earliest recorded application time and date where the Department has determined the Applicant has fully completed all application requirements.

R920-4-9. Minimum Liability Coverage, Waiver and Release of Damages Form, and Indemnification Form Completion Requirements.

(1) The Applicant for a Special Event Permit governed by R920-4-7 shall obtain and provide proof of liability insurance at time of application naming the "State of Utah, the Department and its Employees" as an additional insured under the certificate, with a minimum $1,000,000 coverage per occurrence and $3,000,000 in aggregate. The name of the insured on the insurance policy and the name of the Applicant shall be identical.

(2) The Applicant may fulfill the requirements of Subsection (1) by providing

(a) Sufficient proof that the Applicant has secured liability

insurance for the event required by another governmental entity which meets the minimum coverage requirements contained in Subsection (1), and

(b) The Applicant has included the "State of Utah, the Department of Transportation, and its Employees" as an additional insured on the policy.

(3) The Applicant shall complete the appropriate "Waiver and Release of Damages" and "Indemnification" forms prior to permit issuance. All event participants shall also complete the "Waiver and Release of Damages" form prior to participating in the permitted event.

(4) The Applicant is responsible for ensuring each participant completes the "Waiver and Release of Damages" form prior to participating in the event. The originating Applicant is the custodian of all signed participant waivers, as specified in subsection (3), and shall produce these upon demand for inspection and review by the Department at any time within 12 months after the completion of the event.

R920-4-10. Traffic Control Requirements and Considerations.

(1) All traffic control is the responsibility of the Applicant. A traffic control plan, in accordance with R920-1, R930-6 and Department Standard and Supplemental Drawings, shall be provided to, and approved by, the Region Traffic Engineer, or other authorized Department designee. If the Region Traffic Engineer deems it necessary, considering the nature of the Applicant's Special Road Use and the proposed event path, the Applicant may be required to perform and provide a traffic impact study for the Special Road Use.

(2) Road closures will require appropriate traffic control. Appropriate traffic control may include by uniformed state, county, or local peace officers, or a private company, identified event staff, or physical devices, as determined by the Department.

(3) The Region Permit Officer may require an alternate route, or alternative time, if the proposed Special Road Use occurs when traffic volumes are high, active road construction is present, an alternate event is already occupying the road, a safer route can accommodate the event, or the event poses a significant inconvenience to the traveling public.

(4) All railroad crossings and bridges shall be given special attention. The Applicant shall coordinate with the appropriate railroad representatives to ensure the event schedule does not conflict with the operation of the railroad.

(5) The Applicant shall restore the particular road segment to its original condition, free from litter and, other material changes.

(6) The Department may monitor and ensure compliance with the terms and conditions of any Special Event Permit, and require the Applicant to pay a monitoring and compliance fee at the rates authorized within the Department's fee schedule.

R920-4-11. Public Notification Requirements.

(1) As determined by the Region Permit Officer, the Applicant may be required to provide advance notification to the general public regarding the Special Road Use, depending on the nature of the roadway being used, the time of day of the use, and the impact on the non-participating travelling public and adjacent businesses.

(2) The Region Permit Officer may require the Applicant to inform the general public about the date, time, affected roads, traffic impacts, an estimate of the anticipated length of delay, and other information necessary to provide reasonable notice to the public of the Special Road Use. The methods of notification may include:

(a) A news release distributed to all local radio stations, television stations, and newspapers that announce the event and advise residents of alternate routes and potential delays.

(b) The posting of signs, including variable message signs, along the Special Road Use route for a reasonable period of time prior to the event;

(c) Attempts by the Applicant to personally contact residents and businesses along the Special Road Use route;

(d) The retention of a dedicated agent or public relations firm to maximize the distribution of the message.

(3) Any signs required to be posted pursuant to this rule, including any variable message signs, shall not advertise the event itself or any private products or services.

R920-4-12. Contingency Plan and Participant Notification Requirements.

(1) Considering the nature of the planned Special Road Use, the Applicant shall develop:

(a) Contingency or emergency plans,

(b) Planned rest areas, water facilities, and trash cleanup, and

(c) Plans to ensure that participants obey the conditions of the Special Event Permit and all other generally applicable traffic laws, lights, and signs.

(d) The Region Permit Officer may require that the Applicant provide notice to participants, bystanders, or the public of all plans enumerated in subsection (1) of this Rule. The amount of and method of notice shall be dependent on the circumstances of the Special Road Use.

R920-4-13. Event Route Identification and Private Property Use Requirements.

The Applicant shall provide a detailed map showing the proposed course and direction of the event. Locations of parking areas, water stations, toilet facilities, and other appropriate information shall also be included on the map if deemed necessary by the Region Permit Officer. These areas cannot be located within the state right-of-way. The applicant is responsible for obtaining appropriate permission to locate these facilities on private property.

R920-4-14. Adherence to Municipal, County, or other Governmental Agency Permitting Requirements.

The Applicant shall procure any applicable city, county, or other governmental agency approvals or permits.

R920-4-15. Appeal.

(1) An Applicant may appeal the following determinations of a Region Permit Officer:

(a) Any denial of a Special Event Permit;

(b) A denial of a deviation request as described in Rule R920-4-5(3)(b);

(c) A determination that a proposed Special Road Use is not a Free Speech Road Use or Short-Notice Free Speech Road Use; and

(d) Any time, place, or manner restriction placed on a Special Event Permit for a Free Speech Road Use that the Applicant believes is unreasonable or illegal.

(2) The following process shall be used for an appeal:

(a) An Applicant may appeal the determinations described in subsection (1) decision to the Department's Program Development Director,

(b) Any appeal to the Department's Program Development Director shall be in writing and shall include:

(i) A statement of the basis for the objection,

(ii) Any supporting documents to be used in the appeal, and

(iii) A copy of any written decision issued by the Region Permit Officer.

(c) The Department's Program Development Director shall make a decision on appeal, based on the written submissions of the Applicant, and the Department's file.

(d) The Department's Program Development Director shall concur with, modify, or overrule the decision of the Region Permit Officer. The decision shall be in writing and shall explain the reasons for the decision.

(3) Appeals shall be resolved within the following timelines:

(a) For appeals brought under subsections (1)(c) or (d), the Department's Program Development Director shall issue a decision as soon as reasonably practicable, but no later than three business days after the Department's Program Development Director receives the written appeal.

(b) For all other appeals, the Department's Program Development Director shall issue a decision no later than 14 days prior to the planned date of the Special Road Use, or within 30 days after the appeal has been lodged, whichever is later.

KEY: parades, permits, road races, special events

January 7, 2016	**41-6a-1111**
Notice of Continuation July 12, 2017	**41-22-15**
	72-1-201
	72-1-212

R920. Transportation, Operations, Traffic and Safety.
R920-6. Snow Tire and Chain Requirements.
R920-6-1. Purpose.

The purpose of this rule is to allow a Region Director of the Utah Department of Transportation to designate travel restrictions on certain state highways located in the State of Utah, that may not be safely traversed by the public or which would tend to create a hazard or hamper road maintenance activities, unless the vehicle traversing said highway is adequately equipped with certain safety devices.

R920-6-2. Authority.

The authority for this rule is in Sections 72-1-201 and 72-3-102; Title 72, Chapter 4, Part 1, Transportation Code, and Sections 41-6a-302 and 41-6a-1636.

R920-6-3. Provisions.

(1) Locations shall be designated by the Department of Transportation's Region Director after coordinating with the local Utah Highway Patrol office. The designations by the Region Director shall be established through a Traffic Engineering Order (TEO) from the Division of Traffic and Safety to the Region Director's office wherein the designated highway is located.

(2) The Utah Department of Transportation's Division of Traffic and Safety shall maintain and annually publish a listing of those highways so designated for distribution to:

(a) Utah Department of Transportation Region Offices;

(b) Utah Highway Patrol;

(c) county offices; and

(d) local law enforcement officials.

(3) When any designated highway is so restricted no vehicle shall be allowed or permitted the use of the highway, during the period between October 1 and April 30, or when conditions warrant due to adverse, or hazardous weather or roadway conditions, as determined by the Utah Department of Transportation, unless:

(a) said vehicle is equipped with either:

(i) steel link chains or have chains in possession;

(ii) mounted snow tires; (tires with an M/S designation with or without studs);

(iii) elastomeric tire chains, designed for use with radial tires; or

(iv) four-wheel drive vehicles with a minimum of two mounted snow tires.

(4) Radial tires without snow tread do not meet the requirements.

(5) An operator of a commercial vehicle with four or more drive wheels, other than a bus, shall affix tire chains to at least four of the drive wheel tires.

(6) An operator of a bus or recreational vehicle shall affix tire chains to at least two of the drive wheel tires.

R920-6-4. Responsibilities.

(1) Authorized personnel on location to enforce this rule, may permit vehicles not equipped with the traction aids defined in the preceding paragraph to travel a designated state highway if, in the opinion of said personnel, the vehicle may do so without endangering the public safety or creating a hazard to or interference with, highway maintenance operations.

(2) The Utah Department of Transportation requests the Utah Highway Patrol, or designated local law enforcement agency, to enforce this rule. The Utah Highway Patrol may request to enforce this rule by contacting the Region Director, or designated Department of Transportation representative where designated highway is located.

(3) The Utah Department of Transportation will notify the county officials of counties in which highways are so restricted, as outlined above.

(4) All authority shall rest with the Executive Director or his designee to control use of highways where avalanche danger and other threats to the public safety are concerned.

(5) The Region Director or designee shall work with the Utah Highway Patrol in establishing working criteria for the adequate enforcement of the above provisions.

KEY: tires, snow

November 21, 2011	**41-6a-1636**
Notice of Continuation July 7, 2017	**72-1-201**
	72-3-102
	41-6a-302

R920. Transportation, Operations, Traffic and Safety.
R920-50. Ropeway Operation Safety.
R920-50-1. Purpose.

This rule establishes regulations, requirements, and provides standards for the design, construction, and operation of a passenger ropeway, except private residence passenger ropeways as defined in Section 72-11-102(11), and establishes the procedures necessary to implement the powers and duties of the Utah Passenger Ropeway Safety Committee (Committee). Previously the Committee was known as the Utah Passenger Tramway Safety Committee. The Committee has also been referred to as the Tramway Board.

R920-50-2. Authority.

This rule is authorized by Section 72-11-210 to implement Title 72, Chapter 11, Passenger Ropeway Systems Act.

R920-50-3. Definitions.

In addition to terms defined at Section 72-11-102, the following terms are defined:

(1) "Aerial lift specialist" as used in American National Standards Institute (ANSI) B77.1 sections 3.3.4.1 and 4.3.4.1, means a Ropeway Inspector.

(2) "Aerial tramway specialist" as used in ANSI B77.1 section 2.3.4.1 means a Ropeway Inspector.

(3) "Air Space" means the area bounded by vertical planes commencing at a point thirty-five (35) feet from the intersection of the vertical planes of the ropes and ground surface.

(4) "Annual general inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to verify preservation of original design integrity and to determine that components and systems of the passenger ropeway are in proper working order and in accordance with this rule.

(5) "Audible warning devices" means an audible warning device that signals an impending start of the aerial lift.

(6) "Conveyor specialist" as used in ANSI B77.1 section 7.3.4.1 means a Ropeway Inspector.

(7) "Dynamic Testing Logs" means a record of the data collected during the dynamic test.

(8) "Experienced personnel" means an individual who has acquired knowledge and skills through study, training, or experience in ropeway maintenance, operation, or testing.

(9) "Existing ropeway" means any passenger ropeway that shall have been operated for passengers in excess of one calendar year.

(10) "Incident inspection" means an inspection of a passenger ropeway incident made by an approved Ropeway Inspector or a qualified engineer at the request of the Committee.

(11) "Land surveyor" means an individual licensed under Section 58-22-102 as a professional land surveyor.

(12) "Modification" means any change as defined in ANSI B77.1 Section 1.2.4.4, ANSI B77.2 Section 1.2.4.4, and the replacement of a ropeway component by one that alters the certified design or construction provided by the passenger ropeway manufacturer or designer.

(13) "New ropeway" means any passenger ropeway that is registered for the first time for passenger operation during its first calendar year of operation.

(14) "Operational inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to determine compliance with the operation and maintenance requirements of the Governing Standard and with this rule.

(15) "Operating personnel" means persons employed by the operator for the purpose of supervising the operation, or engaged in servicing, checking, inspecting or maintaining the machinery or structures of a ropeway and when specifically on duty for such purpose on that ropeway.

(16) "Passenger" means any person riding a ropeway, other than "operating personnel."

(17) "Passenger Ropeway Incident" means:

(a) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in bodily injury to any person on, or inside the load or unload zone of, a passenger ropeway;

(b) Any deropement regardless of whether or not the passenger ropeway is evacuated;

(c) Any evacuation of the passenger ropeway other than by prime mover or auxiliary power unit, regardless of cause;

(d) Any fire involving a passenger ropeway component or adjacent structure;

(e) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in a loss of control of the passenger ropeway as defined in ANSI B77.1 Section X.2.3.1 or ANSI B77.2 Section 2.2.1.7.2;

(f) Any wire rope damage which exceeds the requirement in ANSI B77.1 Section A.4.1.3 or ANSI B77.2 Section 3.4.1.1; and

(g) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component or its primary connection that has the apparent potential for causing bodily injury to any person, including but not limited to, the following:

(i) Terminal Structure;
(ii) Bullwheel;
(iii) Brake System;
(iv) Tower Structure;
(v) Sheave, Axle, or Sheave Assembly;
(vi) Carrier; and
(vii) Grip.

(18) "Portable Ropeway" means a ropeway expressly designed to be portable, operated without a permanent foundation, and that has a design range of maximum grade.

(19) "Pre-operational inspection" means an inspection made by a Ropeway Inspector prior to the operation of any new or modified passenger ropeway requiring an Acceptance Inspection and Test.

(20) "Qualified engineer" means any engineer who is licensed to practice engineering in the state of Utah and who has been approved by the Committee.

(21) "Qualified personnel" as used in ANSI B77.1 sections 2.1.1.11, 3.1.1.11, 4.1.1.11, 5.1.1.11, 6.1.1.11, and 7.1.1.11 means a qualified engineer.

(22) "Relocated ropeway" means any passenger ropeway moved to a new location.

(23) "Responsible charge" means effective control and direction of the installation or modification of a passenger ropeway.

(24) "Ropeway Inspector" means an engineer licensed to practice engineering in the state of Utah, independent of the ropeway owner, and approved by the Committee to inspect passenger ropeways.

(25) "Structure" means any edifice, including residential and public buildings, or any other structure or equipment that could reasonably be expected to interfere with the safe operation of a ropeway. Ropeway components required for the operation of the ropeway are not structures.

(26) "Surface lift specialist" as used in ANSI B77.1 section 5.3.4.1, means a Ropeway Inspector.

(27) "Tow specialist" as used in ANSI B77.1 section 6.3.4.1 means a Ropeway Inspector.

R920-50-4. General Requirements for Passenger Ropeways.

(1) Passenger ropeways operating in the State of Utah shall be registered annually with the Committee, and no passenger ropeway shall be operated for passengers without a valid certificate of registration.

(2) Ropeways require a qualified engineer to certify the design, manufacturing, and construction of the ropeway. A

Qualified Engineer or Land Surveyor is required to complete the "as-built" profile and certification.

(3) Existing ropeways, when removed and reinstalled, shall be classified as new installations.

(4) Ropeway operators shall be covered by a liability insurance of a minimum of $300,000. The Utah Passenger Ropeway Safety Committee shall be notified of a lapse or termination of insurance coverage pursuant to the terms of the policy.

R920-50-5. Application to Register a Passenger Ropeway.

(1) Each year prior to operating a passenger ropeway the ropeway operator shall apply to the Committee, for a Certificate of Registration. In the event a new operator is assigned, the operator shall notify the Committee of such action and shall apply for a Certificate of Registration.

(2) Term - Passenger ropeways shall be registered annually starting November 1st of each year, and each registration expires on October 31st next following date of issue.

(3) Application for Certificate of Registration for existing ropeways shall include the following:

(a) Annual General Inspection Report;

(b) Annual registration fee;

(c) Approved request for exception, if applicable;

(d) Certification of Compliance; and

(e) Certificate of Insurance.

(4) Application for Certificate of Registration for new ropeways shall include the following:

(a) Annual registration fee;

(b) Approved request for exception, if applicable;

(c) Certification of Compliance;

(d) Certificate of Insurance;

(e) Certifications required in R920-50-6;

(f) Documents required in R920-50-7; and

(g) Preoperational Inspection Report.

(5) Submittal of application for registration of ropeways - All applications for registration of new or existing ropeways shall be submitted in such form as the Committee shall designate and in accordance with requirements of these rules. Applications shall be made in writing and addressed to:

Utah Department of Transportation
Passenger Ropeway Safety Committee
Traffic and Safety Division
4501 South 2700 West
Salt Lake City, Utah 84119

R920-50-6. Certifications Required for Ropeways.

(1) The Certifications listed below must include the following information:

(a) Name, address and telephone number of operator of the ropeway, name of ropeway supervisor, operator's designation of the ropeway;

(b) Designated certifying statement;

(c) A certification of design, and construction must also include the name, address, seal, and Utah license of the qualified engineer making the certification; and

(d) A certification of "as-built" profile must also include the name, address, seal, and Utah license of the qualified engineer or land surveyor making the certification.

(2) A Certification of Compliance for Passenger Ropeway shall be made on the Application for Certificate of Registration for the Ropeway.

(a) The certification shall be signed and dated by the ropeway owner or area operator.

(b) The certification shall include the following statement: "I certify that the reports, requests and certificates attached hereto were provided and signed by the persons required by law to provide them, and the deficiencies noted in the inspection report have been corrected with the exception of those listed in the Request for Exception from Standards for Passenger Ropeway."

(3) A Certification of Ropeway Design for New or Modified Passenger Ropeways, must be submitted.

(a) The Qualified Engineer in responsible charge of the design shall certify to the Committee that the design, plans and specifications conform to the Utah Passenger Ropeway Safety Act, the Governing Standard and the Utah Ropeway Operation Safety Rule.

(b) The Certification must be submitted prior to the performance of the Acceptance Inspection and Test.

(c) The certification must state the following:

"I hereby certify that the design for this ropeway or ropeway modification is in complete compliance with the Utah Passenger Ropeway Safety Act, Governing Standard and the Utah Ropeway Operation Safety Rule."

(d) This statement shall be placed on the top of the drawing packet and signed and sealed by the qualified engineer. Each additional sheet of this drawing packet shall be sealed by the qualified engineer.

(e) The drawings and specifications shall include the quality assurance methods used for the evaluation of the re-used components and shall be submitted for review a minimum of 30 days prior to installation. Any component on the Utah Passenger Ropeway Safety Committee Lift Data Form must be addressed.

(4) A Certification of Construction for Passenger Ropeways must be submitted by a Qualified Engineer directly responsible for the construction for the ropeway.

(a) The Certification must be submitted prior to the performance of the Acceptance Inspection and Test.

(b) The certification must state the following:

"I hereby certify that the construction and installation has been completed in accordance with the drawings and specifications issued for this ropeway or ropeway modification by the Qualified Design Engineer."

(5) A Certification of "as-built" profile for the Passenger Ropeway must be submitted by a Qualified Engineer or Land Surveyor licensed in the State of Utah.

(a) The "as-built" profile must be submitted prior to the performance of the Acceptance Inspection and Test.

(b) The certification must state the following:

"I hereby certify that the attached "as-built" profile of the herein-identified ropeway is as represented on the attached profile drawing and that the completed ropeway conforms to the profile as identified in the plans and specifications prepared by the Qualified Design Engineer."

R920-50-7. Documents Required for Ropeways.

(1) A Utah Passenger Ropeway Safety Committee Lift Data Form must be submitted along with other requested supporting documents. This form must be submitted prior to the performance of the Acceptance Test.

(2) A copy of the acceptance test procedure proposed and submitted by the designer or manufacturer must be provided to the Committee for review at least fourteen (14) days before acceptance testing begins. The qualified engineer determines the acceptance test requirements.

(3) The owner or area operator shall notify the Committee in writing before the acceptance test that the continuous operation requirements of ANSI B77.1 section X.1.1.11 or ANSI B77.2 section 2.1.1.11.2 have been completed.

(4) A final acceptance test report must be submitted to the Committee prior to opening the lift to the public. The qualified engineer shall approve any changes to the acceptance test procedure.

(5) "As-built" drawings for each passenger ropeway shall be submitted no later than 60 days after the project is completed and the Acceptance Test is finished. Any variation from the

design drawings shall be noted in the as-built drawings and approved by the Qualified Design Engineer.

(6) The area operator shall send a "letter of intent" to the Committee at least 45 days prior to beginning the construction of a new lift. The letter of intent must include the name of the qualified engineer, the design standard, the anticipated dates to begin and complete construction, and the available lift manufacturing data.

R920-50-8. Certificate of Registration.

(1) If the application for Certificate of Registration and supporting documentation attest that the ropeway complies with the Governing Standard and this rule, the Committee, if satisfied with the facts stated in the application, shall issue a Certificate of Registration to the operator.

(2) Identification number - For each ropeway, upon receipt of the first application for a Certificate of Registration, the Committee shall assign an identification number to the ropeway, which shall remain as a permanent identification number for the life of the ropeway. All correspondence with the Committee pertaining to any ropeway shall refer to the identification number assigned to that ropeway.

R920-50-9. Governing Standards.

(1) The governing standards in Utah include "ANSI B-77.1, 2011" and "ANSI B77.2, 2014" as modified by rule of the Committee. Use of these standards is authorized by Section 72-11-201.

(2) The Utah Passenger Ropeway Safety Committee reserves the right to modify, add, or delete provisions included in the Governing Standard.

(3) Existing installations need not comply with the new or revised requirements of the Governing Standard and this rule except as set forth in R920-50-11 "Applicable Provisions."

R920-50-10. Revised and Additional Provisions.

The revised and additional provisions of this section shall only apply when referenced in R920-50-11 "Applicable Provisions."

(1) "New installations and relocated installations." ANSI B77.1 Section 1.2.4.3 is modified by the following requirement: New ropeways and relocated ropeways shall comply with the new or revised requirements of the Governing Standard and with these rules at the time of the acceptance test.

(2) "Auxiliary drives." Installations shall meet the requirements for auxiliary drives, as set forth in ANSI B77.1-1992, 2.1.2.1.1, 3.1.2.1.1, 4.1.2.1.1.

(3) "Electronic speed-regulated drives." Installations shall meet the requirements for electronic speed-regulated drives as set forth in ANSI B77.1-1992, 2.2.1.8.2, 3.2.1.8.2, 4.2.1.8.2, 5.2.1.8.2, 6.2.1.8.2.

(4) "Rope position monitoring." Installations shall meet the requirements for rope position monitoring, as set forth in ANSI B77.1-1992, 3.1.3.3.2, paragraph 6.

(5) "Friction type brakes." Installations shall meet the requirements for friction type brakes, as set forth in ANSI B77.1-1992, 2.1.2.5, 3.1.2.5, 4.1.2.5, 5.1.2.5, 6.1.2.5.

(6) "Fire detection." All machine rooms that are in an enclosed structure located adjacent to the rope of the tramway (vaulted) shall have a fire detection system installed in accordance with the National Fire Alarm Code. This system shall initiate a visual and audible alarm monitored at the drive terminal operator station.

(7) "Grips, clips, and carrier testing." Testing shall be completed according to section ANSI B77.1 sections 2.3.4.3, 3.3.4.3, 4.3.4.3, and ANSI B77.2 section 2.3.4.4 except as modified by this rule.

(a) Testing personnel shall be qualified in accordance with American Society for Nondestructive Testing (ASNT) Recommended Practice No. SNT-TC-1A-1992. Testing agency shall provide certification of qualification of personnel performing testing.

(b) Testing agency inspector shall certify to the owner or area operator that the passenger ropeway components tested were non-destructively tested in accordance with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(c) Sampling size and method of obtaining the sample shall comply with the Governing Standard or the manufacturer's requirement, which ever is more stringent.

(d) Rejection rate and retest procedures shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(e) Types of inspections to be performed and the procedures to be used shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(f) Criteria for acceptance/rejection of samples shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(8) "Wire rope inspection." Inspections shall be performed according to ANSI B77.1 Annex A.4.1 and ANSI B77.2 3.4.1 and shall be performed by a competent inspector defined by the Governing Standard and who is approved by the Committee. The wire rope inspector shall certify to the owner or area operator whether the wire rope in its present condition meets requirements for continued operation.

(9) "Operation and maintenance." All installations shall comply with the Operation and Maintenance requirements of the Governing Standard. These requirements are stated in ANSI B77.1, 2.3, 3.3, 4.3, 5.3, 6.3, 7.3, and ANSI B77.2 2.3.

(10) "Audible warning devices." Requirements for audible warning devices.

(a) Installations shall meet the requirements for audible warning devices as specified by ANSI B77.1, 2.2.10, 3.2.10.

(b) ANSI B77.1 Section 4.2.10 is modified by the following requirement: The aerial lift shall incorporate an audible warning device that signals an impending start of the aerial lift. After the start button is pressed, the device shall sound an audible alarm for a minimum of two seconds before the aerial lift begins to move. The audible device shall be heard inside and outside all terminals and machine rooms above the ambient noise level.

(11) "Conveyor Standards."

(a) Loading and unloading area requirements of ANSI B77.1 section 7.1.1.9 shall also accommodate the use of adaptive devices.

(b) Power units referred to in ANSI B77.1 section 7.1.2.1 may not have reverse capability.

(c) "Power supply cords" referred to in ANSI B77.1 section 7.2.1.5.6 shall be protected from snow grooming, skiers, and other equipment and shall be ground fault protected.

(d) The belt transition entry stop device referred to in ANSI B77.1 section 7.2.3.3 shall include redundant (double) sensors. Each sensor shall be part of an independent control circuit that can initiate an emergency shutdown of the conveyor. The device shall be so designed and maintained that no single point of failure can cause the entry stop device to malfunction. The device shall not be remotely resettable and shall require the operator to reset the device prior to restarting the conveyor.

(12) "Dynamic Testing Logs." Maintenance logs shall include documentation of the dynamic testing.

(13) "Air Space Requirements." ANSI B77.1-2006, 2.1.1.3, 3.1.1.3, 4.1.1.3, 5.1.1.3, and 6.1.1.3 and ANSI B77.2

section 2.1.1.2 shall also include the following: No structure (temporary or permanent) shall be permitted to encroach into the air space of the ropeway.

(14) "Portable Ropeways." Portable ropeways shall not be considered new ropeways when moved to different locations but remaining under the jurisdiction of the same operator.

(15) "Tows Requirements."

(a) The requirements of ANSI B77.1 section 6.2.3.2.b) shall also require the stop gate to extend across the incoming and outgoing rope.

(b) Handle Tows shall have stop gates above and below the rope.

(16) "Existing Installations - Annex F" ANSI B77.1-2011 Section 1.2.4.1 Existing installations is modified by the following: Operation and maintenance is not required to comply with normative Annex F Combustion engine(s) and fuel handling.

R920-50-11. Applicable Provisions.

Installations shall comply with the "Revised and Additional Provisions" of R920-50-10 in the categories listed below, on or before the date specified. These provisions establish the minimum requirement.

(1) The following apply to all ropeways:

(a) New installations and relocated installations R920-50-10(1);

(b) Fire detection R920-50-10(6); effective November 1, 1995;

(c) Wire rope inspection R920-50-10(8); and

(d) Operation and maintenance R920-50-10(9).

(e) Existing Installations - Annex F R920-50-10(16); effective June 7,2012.

(2) The following provisions apply to an Aerial Tramway:

(a) Auxiliary drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Friction type brakes R920-50-10(5); effective November 1, 1995;

(d) Grips, clips, and carrier testing R920-50-10(7);

(e) Audible warning devices R920-50-10(10); effective November 1, 2001;

(f) Dynamic testing logs R920-50-10(12); and

(g) Air space requirements R920-50-10(13); effective November 1, 2006.

(3) The following provisions apply to a Detachable Grip Aerial Lift:

(a) Auxiliary drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Rope position monitoring R920-50-10(4); effective November 1, 1994;

(d) Friction type brakes R920-50-10(5); effective November 1, 1995;

(e) Grips, clips, and carrier testing R920-50-10(7);

(f) Audible warning devices R920-50-10(10);

(g) Dynamic testing logs R920-50-10(12); and

(h) Air space requirements R920-50-10(13); effective November 1, 2006.

(4) The following provisions apply to a Fixed Grip Aerial Lift:

(a) Auxiliary Drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Friction type brakes R920-50-10(5); effective November 1, 1995;

(d) Grips, clips, and carrier testing R920-50-10(7);

(e) Audible warning devices R920-50-10(10);

(f) Dynamic testing logs R920-50-10(12); and

(g) Air space requirements R920-50-10(13); effective November 1, 2006.

(5) The following provisions apply to a Surface Lift:

(a) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(b) Friction type brakes R920-50-10(5); effective November 1, 1995; and

(c) Air space requirements R920-50-10(13); effective November 1, 2006.

(6) The following provisions apply to a Rope Tow:

(a) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(b) Friction type brakes R920-50-10(5); effective November 1, 1995;

(c) Air space requirements R920-50-10(13); effective November 1, 2006;

(d) Tow requirements R920-50-10(15); and

(e) Portable Ropeways R920-50-10(14).

(7) The following provisions apply to a Conveyor:

(a) Conveyor standards R920-50-10(11); and

(b) Portable Ropeways R920-50-10(14).

R920-50-12. Exceptions to Standards.

(1) In the event that the ropeway does not conform with the governing standards and the Ropeway Operation Safety Rule, the Committee may issue a certificate of registration with an exception. Two types of exceptions may be granted after a Request for Exception from Standards is submitted.

(a) Annual Exception - This type of exception must be reviewed annually by the Committee. This type of exception is subject to cancellation at any time pursuant to a determination by the Committee that a change is necessary.

(b) Limited Exception - This type of exception is granted only for a fixed time period to be determined by the Committee.

(2) The nature of the exception shall be stated in the Request for Exception from Standards.

(3) The Committee shall, as expeditiously as possible, and within thirty (30) days of receipt of a Request for Exception from Standards, notify the operator in writing of its action on the Request.

(4) The Request for Exception from Standards shall include the following information:

(a) Reasons for requesting an exception;

(b) Identification of the manner in which the ropeway does not conform to the governing standards or this rule; and

(c) Procedures, with estimated time and cost, which would be required to bring the ropeway into conformance.

(5) Except as required in R920-50-12(7), the Committee shall issue a Certification of Registration with an exception if the operator satisfies the requirements stated in R920-50-12(4) and also supplies the following for new or existing ropeways:

(a) New Ropeways.

(i) A design certification by a qualified engineer attesting that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those that meet requirements set forth in the Governing Standard and this rule.

(ii) Any known items that require a Request for Exception from Standards for Passenger Ropeways must be submitted to the Committee before work begins.

(b) Existing Ropeways.

(i) A design certification by a qualified engineer attesting that the ropeway is so designed and equipped that it's devices or methods provide features that are comparable in performance and safety to the requirements of the Governing Standard and this rule.

(ii) A statement by the operator certifying that the ropeway

feature for which the exception is requested has been operated safely and without any passenger ropeway incident, as defined in R920-50-3(17) item (a) or (g), for at least 2 years prior to the date of the Request for Exception from Standards.

(6) In exceptional circumstances, the Committee may issue a certificate of registration with an exception even if the operator does not satisfy the requirements defined in the Governing Standard or this rule if the Committee determines that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety.

(7) Where doubt exists as to the safety of a ropeway, the Committee may require an inspection to ascertain that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those of the governing standards and this rule.

(8) The issuance of a certificate of registration with an annual exception shall not bind the Committee to issue such a certificate for the ropeway involved in subsequent years, nor to issue such a certificate for another ropeway of same or similar design.

R920-50-13. Operation of Ropeways.

(1) Every passenger ropeway incident shall be reported to the Committee regardless of the time of year in which it occurs and regardless of whether or not the ropeway was open to the public at the time of the incident. The operator shall meet the requirements stated in R920-50-14.

(2) When a ropeway is modified the ropeway operator shall notify the Committee, or its appointed representative. The operator shall meet the requirements stated in R920-50-15.

R920-50-14. Incidents.

(1) Reporting of Incidents.

(a) Every passenger ropeway incident, as defined in R920-50-3(18) shall be verbally reported to the Committee, or the Committee's appointed representative, as soon as reasonably possible, but no later than twenty-four (24) hours after the time of the incident. A written report shall be delivered to the Committee within five (5) days of the incident.

(b) The reports required by this section are to be maintained for administrative enforcement, licensing and certification purposes only. The reports are "protected" records under the Government Records Management Act, Section 63G-2-305 and are also governed by Section 63G-2-207.

(2) Suspension of Operations. When a passenger ropeway incident, as defined in R920-50-3(17) (a) or (g), occurs, the owner or area operator of the ropeway shall suspend operation of the ropeway and shall notify the Committee through the Committee's appointed representative. The owner or area operator of the ropeway, with the Committee or the Committee's appointed representative, shall perform a joint incident inspection of the ropeway. The inspection shall precede any authorization to resume public operation of the passenger ropeway.

R920-50-15. Modification of a Ropeway.

(1) The Committee, or its appointed representative shall determine the certifications that will be required.

(2) Depending on the nature and extent of the modification the Committee, or its appointed representative may require an Acceptance Inspection and Test.

(3) The following certifications may be required: design; construction, and As-Built profile.

(4) The certifications must be submitted by a qualified engineer and attached to the cover of the modification documents. The modification documents shall include the drawings, descriptions, or specifications pertaining to the affected systems and their connections with existing systems.

(5) A revised lift data form shall be submitted.

(6) The ropeway shall not resume operating until authorized by the Committee, or its appointed representative.

R920-50-16. Inspections and Testing.

(1) Inspections shall verify that the intent of the design and operational requirements imposed by the Governing Standard and this rule are met. The Committee may order other inspections in accordance with Section 72-11-211. Ropeway inspectors may inspect ropeways at any time during the operation of the ropeway (spot check). All reports, logs, etc. shall be made available to them upon request.

(2) Acceptance Inspection and Test.

(a) The Committee, or its appointed representative, will schedule acceptance inspection and test as the procedures are received.

(3) Annual General Inspection.

All existing ropeway shall have an annual general inspection.

(a) A ropeway inspector shall make the inspection.

(b) The inspection shall occur prior to approval of any registration application.

(c) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner.

(d) The report shall include the name and address of the inspector and the date of the inspection.

(e) The area operator shall notify the Committee, or its appointed representative of the annual general inspection. The area operator should give 7 days notice of the inspection.

(f) The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report.

(4) Incident Inspection.

Incident inspections shall occur as required in R920-50-14.

(5) Operational Inspection.

An Operational inspections may be made periodically during each season of use.

(a) A ropeway inspector shall make the inspection.

(b) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner.

(c) The report shall include the name and address of the inspector and the date of the inspection.

(d) The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report.

(6) Pre-operational Inspection.

A pre-operational inspection is required for new and modified lifts.

(a) A ropeway inspector shall make the inspection.

(b) The inspection shall occur prior to approval of any registration application.

(c) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner.

(d) The report shall include the name and address of the inspector and the date of the inspection.

(e) If the inspection does not take place at the acceptance inspection and testing the area operator shall notify the Committee, or its appointed representative of the inspection. The area operator should give 7-days notice of the inspection.

(f) The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report.

R920-50-17. Ropeway Inspector and Qualified Engineer.

(1) General.

(a) Any person performing inspection services must be a "ropeway inspector" as required by this rule, and any person performing design services must be a "qualified engineer", as required by this rule.

(b) The Committee shall maintain up-to-date lists of

qualified engineers and ropeway inspectors, which lists shall be open to inspection by the public.

(c) Any person desiring to be approved by the Committee as a ropeway inspector or qualified engineer shall submit a written request to the Committee enumerating his or her professional experience and attesting as far as possible to meeting the requirements stated in R920-50-17(2).

(2) Requirements.

(a) Applicant shall satisfy the Committee that by his or her education, training and experience gained by participation in ropeway inspections or designs as a principal or an assistant to a recognized ropeway inspector or ropeway designer, he or she is qualified to be, respectively, an approved inspector or designer or both.

(b) Applicant shall satisfy the Committee that he has a working familiarity and understanding of drawings and design data such as are furnished to design, construct, test, and inspect passenger ropeways, and that he or she has an understanding and working knowledge of the governing standard and this rule.

(c) The Committee may approve qualifications based on experience gained by an applicant through work under direct supervision of a qualified ropeway inspector or qualified ropeway designer.

(d) The Committee may approve employees of the state or individuals retained by the state as qualified ropeway inspectors. Such engineers may be given certain assignments where time is of the essence or a private engineer is not available or willing to undertake the inspection or investigation. It shall be the policy of the Committee to use the services and talents of qualified private engineers wherever possible.

(3) Revocation or suspension of approval as ropeway inspector or qualified engineer.

The committee may revoke or suspend the approval of any qualified engineer or ropeway inspector who is found by the committee to have:

(a) practiced any fraud, misrepresentation, or deceit in applying for approval;

(b) caused damage to another by gross negligence in the practice of passenger ropeway designing, construction, or inspection; or

(c) been engaged in acts of unlawful or unprofessional conduct.

R920-50-18. Violations.

The Committee may address violations of this rule pursuant to Sections 72-11-212 and 72-11-213.

R920-50-19. Administrative Procedures.

Appeals from orders issued pursuant to any provision of this rule shall be governed by R907-1.

KEY: transportation safety, tramways, ropeways, tramway permits
August 9, 2016 72-11-201 through 72-11-216
Notice of Continuation July 6, 2017

R982. Workforce Services, Administration.
R982-401. Energy Assistance: General Provisions.
R982-401-1. Purpose.

The Home Energy Assistance Target (HEAT) program serves to provide assistance in meeting home energy costs for certain low-income families and individuals.

R982-401-2. Authority.

These rules are authorized by Section 35A-8-1403.

R982-401-3. Definitions.

The following definitions apply to R982-401-1 through R982-401-8:

(1) "Applicant" means any person requesting assistance under the program discussed.

(2) "Assistance" means payments made to individuals under the program discussed.

(3) "Assistance unit" or "household" means any individual or group of individuals who are living together as one economic unit and for whom residential heating is customarily purchased in common or who make payments for heat in the form of rent.

(4) "Department" means the Department of Workforce Services.

(5) "Recipient" or "client" means any individual receiving assistance under the program discussed.

(6) "Confidential information" means information that has limited access as provided in Chapter 63G-2.

(7) "HEAT" means Home Energy Assistance Target program.

(8) "IRS" means Internal Revenue Service.

(9) "Moratorium" means a period of time in which involuntary termination for nonpayment by residential customers of essential utility bills is prohibited.

(10) "Vulnerability" means having to pay a home heating cost.

R982-401-4. Client Rights and Responsibilities.

(1) Any client may apply or reapply for HEAT assistance any time during the HEAT season, which runs from November 1 to April 30 or until funds run out whichever comes sooner, by completing and signing an application and turning it in at the the applicant's local HEAT office.

(2) If the client needs help to apply, help will be given by the local HEAT office staff. Clients will be notified of eligibility decisions in writing and will be provided with a reason if denied.

(3) The client's home will not be entered without permission.

(4) Clients may contact a supervisor or manager to resolve a dispute.

(5) Clients have the right to have confidential, personal information safeguarded.

(6) Anyone may look at a copy of the program manuals located at any local HEAT office or the State energy Assistance Lifeline web site.

(7) The client must give complete and correct information and verification.

(8) The client must immediately report any address change while under the protection of the moratorium.

(9) The client is responsible for repaying any overpayments of assistance.

R982-401-5. Information.

(1) The department will comply with with Chapter 63G-2.

(2) Client may review and copy anything in their case record unless it is confidential or information obtained by a third party.

(a) The Client requests for release of information shall be in writing and include:

(i) the date;

(ii) the name of the person receiving the information;

(iii) the time period covered by the information.

(b) Information classified as confidential shall not be used in a hearing.

(c) Information classified as confidential shall not be used to close, deny or reduce benefits.

(d) Clients may request a copy of information from their file. Up to ten pages are free. If the client wants more than ten copies, the client must pay the cost of making the extra copies.

(e) The client cannot take the case record from the office.

(3) Releasing information to sources other than the client.

(a) If the client wants information released to an authorized representative, the representative must be designated in writing by the client.

(b) Information will not be released when it is to be used for a commercial or political purpose.

(c) The client's permission will be obtained before sharing any information regarding their case record.

(i) Information may be released without the client's permission if the outside source making the request has comparable rules for safeguarding information.

(ii) Information may be released in an emergency. The director or designee will decide what constitutes an emergency.

(4) Information released without the client's permission.

(a) Information, with the exception of confidential information, may be released without the client's permission when that information is to be used in:

(i) The administration of any federal or state means-tested program.

(ii) Any audit or review of expenditures in connection with the HEAT or Moratorium program.

(iii) Any investigation, prosecution, criminal or civil proceeding connected with the administration of the HEAT or Moratorium programs.

(5) If a case file is subpoenaed by an outside source, the State HEAT Program Manager is contacted immediately. The State Program manager will consult with the legal counsel for the Housing and Community Development Division (HCD).

R982-401-7. Hearings.

Department rules R986-100-122 through R986-100-133 and rule R986-100-135 apply to the HEAT program including any alleged overpayment except all requests for a fair hearing on a HEAT issue must be in writing.

KEY: client rights, hearings, confidentiality of information
October 1, 2014 35A-8-1403
Notice of Continuation July 6, 2017

R982. Workforce Services, Administration.
R982-405. Energy Assistance: Program Benefits.
R982-405-1. Program Benefits.

Each household may apply for HEAT Crisis assistance up to a maximum of $500 per utility (two separate utilities) per program year - October 1 through September 30. Any amount that adds up over $500, whether it is made through a combination of HEAT Crisis payments, or one crisis payment throughout the year must get prior approval from the State.

R982-405-2. Standard Payment Levels.

The energy assistance benefit payment level is based on a household's income and energy burden (energy burden is the proportion of a household's income used to pay for home heating). For example, households with the lowest income and the highest energy burden will receive the highest energy assistance benefit payment available. Households with children under age six years, the elderly (age 60 plus years), and/or disabled people may receive an additional energy assistance benefit amount.

R982-405-3. Benefit Payments.

Direct client payments will be made only when a contract with the primary heat source cannot be obtained or if the primary heat source is the landlord.

R982-405-4. Split Payments.

(1) If the client has more than one utility provider and the State of Utah only has a contract with one of the utility providers, up to 50% of the HEAT payment may be made to the client.

(2) Payment disbursements may be split only in the percentages listed below:

(a) 100%
(b) 50%/50%
(c) 75%/25%

KEY: energy assistance, benefits
October 1, 2014 **35A-8-1403**
Notice of Continuation July 6, 2017

R982. Workforce Services, Administration.
R982-406. Energy Assistance: Eligibility Determination.
R982-406-1. Eligibility Determination.

The local HEAT Office shall determine a household's eligibility for HEAT by applying the program and income standards to the household's circumstances, and by establishing the validity and accuracy of the information given by the applicant household.

R982-406-2. Acceptable Verification.

1. All factors of eligibility must be verified.
2. It is the applicant's responsibility to obtain acceptable verification.
3. If the household refuses to obtain the required verification and refuses to assist the HEAT Office in obtaining the verification, the application will be denied.

R982-406-3. Determination of The Primary Fuel Type.

The primary fuel type is the type of fuel for which the house is designed. If the household is actually using a less expensive fuel type as the primary heat source, the fuel type is the type of heat the household is actually using.

R982-406-4. Date of Application.

The date of application is the date the application is accepted at the correct HEAT office.

R982-406-5. Date of Approval or Denial.

The date of approval or denial is the action date of the application including applications forwarded by Outreach workers.

R982-406-6. Date of Payment.

The payment date is the date the HEAT check is actually issued.

KEY: energy assistance
July 9, 2012 **35A-8-1403**
Notice of Continuation July 6, 2017

R982. Workforce Services, Administration.
R982-407. Energy Assistance: Records and Benefit Management.
R982-407-1. Records Management.

(1) Documentation of the eligibility decision and amount of HEAT assistance is kept in the household's HEAT folder in the local HEAT office or in the SEALWorks computer system. Every person who completes an application shall have a case record.

(2) HEAT case records shall not be removed from the local HEAT Office except by subpoena or request of the State HEAT Office (SHO) or in accordance with the Archives Schedule.

R982-407-2. Notification.

(1) The local HEAT office shall provide all HEAT applicants with a written notice of any action that affects the amount, form, or requirements of the assistance.

(2) Written notice shall include an explanation of the action, the reason for the action, and the effective date of the action. The notice shall also include an explanation of the applicant's hearing rights and how to file a hearing if the applicant is not satisfied with the decision on the case.

R982-407-3. Checks.

(1) All HEAT payments to clients or vendors are issued by check.

(2) If the payee dies before endorsing the check, the local Heat Office director or designee may authorize another person to endorse the check to use it on behalf of the payee or other person in the case.

(3) Lost or stolen HEAT checks.

(a) The client must report a lost or stolen check within one year of the issuance date. A check that is reported lost or stolen more than one year after the issuance date will not be replaced.

(b) The client must complete and sign a Lost Check Replacement Form and send it to the State HEAT Office for processing in order to have a check re-issued.

KEY: energy assistance, benefits, government documents, state HEAT office records
October 1, 2014 35A-8-1403
Notice of Continuation July 6, 2017

R982. Workforce Services, Administration.
R982-408. Energy Assistance: Special State Programs.
R982-408-1. Moratorium.

The department shall require compliance with Section 35A-8-1501.

(1) The moratorium program protects eligible persons from winter utility shut offs.

(2) A household can apply for moratorium protection only one time per utility per program year.

(3) The protection of the Moratorium lasts from November 15 through the following March 15.

The Department has the option of beginning The Moratorium program earlier or extending it later when severe weather conditions warrant such action.

(4) The moratorium applicant must:

(a) Be the adult residential account holder, or the adult resident applying for service. A residential utility customer is any adult person who has an account with a utility or any adult who is applying for residential utility service;

(b) Be living at the address where Moratorium protection is needed;

(c) Have a termination notice from the utility company or have been refused service if the utility is not active;

(d) Have been approved for HEAT;

(e) Have applied for assistance through the Salvation Army; and

(f) Have made a good faith effort to pay their utility bill on a consistent basis during the moratorium

(5) In addition the applicant must meet at least one of the following criteria:

(a) have a gross household income in the month of, or the month prior to the month of the moratorium application must be less than 125% of the federal poverty limit;

(b) have suffered a medical or other emergency in either the month of application or the month prior to the month of application;

(c) have suffered a loss of employment in either the month of application or the month prior to the month of application; or

(d) have suffered a 50% drop in income in either the month of application or the month prior to the month of application.

(5) Required Verification

(a) All factors of eligibility must be verified.

(b) It is the applicant's responsibility to obtain acceptable verification.

(c) If the household refuses to obtain the required verification and refuses to assist the local HEAT office in obtaining the verification, the moratorium application will be denied.

(6) Good Faith Payment Effort

(a) Each month during the moratorium the household must pay the utility company at least 5% of the gross income received in the month prior to the month of the moratorium application, unless the home is heated by electricity.

(b) If the home is heated by electricity the household must pay the utility company at least 10% of the gross income received in the month prior to the month of application.

(c) The minimum allowed monthly payment is $5.00 even if the client has no income in the month prior to the month of application.

(7) In order to activate the moratorium, including the restoration of service to those households which are shut off, the first good faith payment is due at the time of application. Payments for subsequent months are due on or before the last day of each month.

(8) For clients who defaulted during a previous Moratorium season the default payment is due before the client is eligible for protection under the current moratorium.

(a) When a client defaults on a moratorium application, the client is not eligible for moratorium protection on that particular utility for the remainder of that moratorium season.

(b) The client must pay the amount of any previous defaulted payment before they are eligible for the moratorium.

(c) When a utility company notifies the HEAT office of a client default, the HEAT office will notify the client that of the default.

(9) Regulated companies operating in Utah are subject to the Moratorium with the exception of the Mexican Hat Association.

KEY: energy assistance, energy industries
October 1, 2014 35A-8-1403
Notice of Continuation July 6, 2017

R982. Workforce Services, Administration.
R982-501. Olene Walker Housing Loan Fund (OWHLF).
R982-501-1. Authority.

(1) Pursuant to Section 35A-8-501 et seq., Utah Code, the Olene Walker Housing Loan Fund Board (OWHLF) determines how federal and state monies deposited to the fund shall be allocated and distributed.

(2) The Program Guidance and Rules govern the allocation and distribution of funds. The Program Guidance and Rules may be amended from time to time as new guidelines and regulations are issued or as the Board deems necessary to carry out the goals of the OWHLF.

R982-501-2. Purpose.

(1) Pursuant to Subsection 35A-8-502(1)(a), the Housing and Community Development Division (HCD) shall administer the OWHLF as the designee of the executive director of the Department of Workforce Services (DWS).

(2) The objective of the OWHLF is to rehabilitate or develop housing that is affordable to very low, low and moderate-income persons through a fair and competitive process.

(3) In administering this fund, this rule incorporates by reference 24 CFR 84-85 as authorized under Utah Code Annotated Section 35A-8-503 through 508.

R982-501-3. Definitions.

In addition to terms defined in Section 35A-8-501:

(1) "Application" means the form provided and required by HCD to be submitted to request funds from the OWHLF.

(2) "Board" means the Olene Walker Housing Loan Fund Board.

(3) "BRC" means a Board Review Committee(s), consisting of members selected by the Board.

(4) "Consolidated Plan" means a plan of up to five years in length that describes community needs, resources, priorities and proposed activities to be undertaken under certain HUD programs, including Community Development Block Grant (CDBG), HOME, Emergency Shelter Grant Housing Opportunities for Persons with AIDS (HOPWA), and other partner funding sources.

(5) "Subsidy-layering" means an evaluation of the project conducted by HCD staff to ensure that the lowest amount of HOME and other funds necessary to provide affordable housing are invested in the project.

(6) "HOME, CDBG, or HOPWA" means HUD programs that provide funds for housing and community needs.

(7) "Affordable Housing" means assisting persons at or below 80% of area median income (as defined by HUD) to find decent, and safe housing at a reasonable cost.

(8) "Loan" means funds provided with the requirement of repayment of principal and interest over a fixed period of time.

(9) "Grant" means funds provided with no requirement or expectation of repayment.

(10) "Local Agency" means public housing authorities, counties, cities, towns, and association of governments.

(11) "Funding Cycle" means period of time in which OWHLF funds are allocated.

(12) "Allocation Plan" means an annual plan that describes housing needs, priorities, funding sources, and the process and policies to request funds from the OWHLF.

(13) "Other Funding Sources" means funds from other federal programs and community partners (including CRA funds).

R982-501-4. Applicant and Project Eligibility.

(1) The Board shall consider for funding, only those applications submitted by an eligible applicant as defined in Section 35A-8-506, Utah Code.

(2) The Board shall consider for funding only those eligible projects as defined in Section 35A-8-505, Utah Code and meet one or more of the following priorities established by the Board:

(a) Efficiently utilize funds, through cost containment and resource leveraging,

(b) Provide that largest numbers of units shall charge the lowest monthly rental amount at levels that are attainable over the longest periods of time,

(c) Provide the most equitable geographic distribution of resources,

(d) Provide housing for special-needs populations including: (i) transitional housing, (ii) elderly and frail elderly housing, and (iii) housing for physically and mentally disabled persons,

(e) Strengthen and expand the abilities of local governments, non-profits organizations and for-profit organizations to provide and preserve affordable housing,

(f) Assist various Community Housing Development Organizations (CHDO) in designing and implementing strategies to create affordable housing, and

(g) Promote partnerships among local government, non-profit and for-profit organizations, and CHDO.

(h) Meet the goals of the Utah Consolidated Plan and any local area plans regarding affordable housing.

R982-501-5. Application Requirements.

(1) OWHLF funds shall be distributed in accordance with an application process defined in this rule. Funds shall be issued during a scheduled funding cycle. The Board conducts four cycles during a calendar year.

(2) An applicant seeking to obtain funds shall submit a completed application form furnished by the HCD prior to the cycle's deadline.

(3) All completed applications will be reviewed by staff, which will present the application to the Board Review Committee (BRC) during the cycle in which the application is received. Applications will be ranked and scored according to how completely each application meets the criteria established by the Board.

(4) Applicants submitting incomplete applications will be notified of deficiencies. Each incomplete request(s) will be held in a file, pending submission of all required information by the applicant.

(5) A decision on each application will generally be made no later than the award notification date for each cycle. The Board may delay final decisions in order to accommodate scheduling and processing problems peculiar to each cycle.

(6) The Board may modify a given cycle and change submission deadlines to dates other than those previously scheduled. In doing so, the Board will make reasonable efforts to inform interested parties of such modifications.

(7) For Single-Family Program applicants, the Board may delegate responsibilities to local agencies for application intake, loan underwriting, processing, approval, project development, construction and weatherization oversight, and management. Local agencies will be governed by policies and procedures approved by the Board.

R982-501-6. Project Selection Process.

(1) The BRC shall select applications for funding according to the following process and requirements as outlined in the Allocation Plan:

(a) Project underwriting and threshold review,

(b) Scoring and documentation review,

(c) Market study and project reasonableness review,

(d) Calculation of OWHLF subsidy amount.

R982-501-7. Funding Approval.

(1) After each application has been processed and the funding amount has been determined for a given cycle, staff will present projects to the BRC at its next regularly scheduled meeting. The BRC shall hear comments from applicants at the committee meeting and obtain sufficient information to inform the full board about the project, its financial structure, and related general information.

(2) A copy of the BRC recommendation, including all conditional requirements imposed by the BRC and staff, shall become a part of the permanent record and placed in the applicant's file. Recommendations will be presented at the next regularly scheduled quarterly Board meetings. The board will approve, deny, or delay the application.

(3) An applicant may request a change in the terms as outlined in the original motion of the board by reapplying to HCD, with all updated, applicable financial information included, in subsequent funding rounds.

R982-501-8. Project Reporting.

(1) All projects receiving funding approval will be required to provide status reports at a scheduled frequency, in a format prescribed by the staff, and approved by the Board.

(2) Projects that have not begun construction within one year from the date of approval for funding must submit to staff a summary of significant progress made to date and an explanation of why the project is behind schedule. Staff will present this information to the BRC.

(3) The BRC may choose to extend the period of the project, to rescind the approval, or require the project to re-apply in accordance with current parameters.

R982-501-9. Compliance Monitoring.

(1) Monitoring of the project by HCD staff will be completed to ensure program compliance. Program non-compliance or lack of response to inquiries from staff will be reported to the HCD administration, the Board, HUD, and the Attorney General's Office as deemed necessary.

R982-501-10. Administration Fees.

(1) The local agencies listed below may use previously designated funds for project administration costs as approved by the Board. Such projects are still subject to on-site administrative supervision, staff oversight, or monitoring by HDC. The agencies include:

(a) Public Housing Authorities.

(b) Counties, cities and towns.

(c) Associations of Governments.

(2) The agencies shall be expected to demonstrate a significant level of business management and administrative experience and ability in order to receive administrative funds. They shall also demonstrate an acceptable level of background and experience to perform housing rehabilitation/reconstruction and implementation functions.

R982-501-11. Financial Subsidy Review.

(1) HCD staff shall conduct "subsidy layering" reviews on projects that directly or indirectly receive financial assistance from the U.S. Department of Agriculture Rural Development Service ("RD or RDS"), the U.S. Department of Housing and Urban Development ("HUD") exclusive of HOME, CDBG, or HOPWA assistance, (i.e., the "Subsidy Layering Review") and other federal agencies.

(2) Subsidy Layering Reviews shall be conducted in accordance with guidelines established by the cognizant federal agency with respect to the review of any financial assistance provided by or through these agencies to the project and shall include a review of:

(a) The amount of equity capital contributed to a project by investors,

(b) The project costs including developer fees, and

(c) The contractor's profit, syndication costs and rates.

(3) In the course of conducting the review, the staff may disclose or provide a copy of the application to the cognizant federal agency for its review and comments and shall take any other action deemed necessary to satisfy its obligations under the respective review requirements. HCD staff will consider the results of any review completed by Utah Housing Corporation (UHC).

R982-501-12. Sharing of Information.

(1) Application information may be shared with participating lenders, IRS and UHC.

(2) In administering this program, the HCD staff shall conduct all functions in accordance with the provisions of the state GRAMA statute and the federal Freedom of Information Act.

R982-501-13. Portfolio Management.

(1) HCD staff will track the status of the OWHLF portfolio to assess any problem loans needing special loan servicing. Staff will make recommendations to the BRC regarding loan review, changes, and approvals.

(2) HCD staff will work with the board and the Attorney General's office to develop policies and procedures to govern special portfolio management issues such as loan restructuring, bankruptcies, and asset disposal.

KEY: Olene Walker Housing Loan Fund, affordable housing, housing development
July 9, 2012 35A-8-504
Notice of Continuation July 6, 2017

R990. Workforce Services, Housing and Community Development.
R990-8. Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance.
R990-8-1. Purpose.

The Permanent Community Impact Fund Board (the Board) provides loans and/or grants to State agencies and subdivisions of the State which are or may be socially or economically impacted, directly or indirectly, by mineral resource development. Authorization for the Board is contained in Section 35A-8-301 et seq.

R990-8-2. Eligibility.

Only those applications for funding assistance which are submitted by an eligible applicant for an eligible project shall be funded by the Board.

Eligible projects include: a) planning; b) the construction and maintenance of public facilities; and c) the provision of public services. "Public Facilities and Services" means public infrastructure or services traditionally provided by local governmental entities.

Eligible applicants include state agencies and subdivisions of the state and Interlocal agencies as defined in Subsection 35A-8-302, which are or may be socially or economically impacted, directly or indirectly, by mineral resource development.

R990-8-3. Application Requirements.

A. Applicants shall submit their funding requests on the Board's most current application form, furnished by the Housing and Community Development Division (HCD). Applicants submitting incomplete applications will be notified of deficiencies and their request for funding assistance will be held by the Board's staff pending submission of the required information by the applicant.

Complete applications which have been accepted for processing will be placed one of the Trimester's upcoming "Application Review Meeting" agendas.

B. Additional general information not specifically covered by the application form should also be furnished to the Board and its staff when such information would be helpful to the Board in appraising the merits of the project.

C. For proposed drinking water and sewer projects, sufficient technical information must be provided to the Utah Department of Environmental Quality (DEQ) to permit their review. The Board will not act on any drinking water or sewer project unless they receive such review from DEQ.

D. Planning grants and studies normally require a fifty percent cash contribution by the applicant. Planning assistance requests shall be reviewed and/or provided by the Rural Planning Group.

E. The Board requires all applicants to have a vigorous public participation effort. All applicants shall hold at least one formal public hearing to solicit comment concerning the size, scope and nature of any funding request prior to its submission to the Board. In that public hearing, the public shall be advised the financing may be in the form of a loan, even if the application requests a grant.

Complete and detailed information shall be given to the public regarding the proposed project and its financing. The information shall include the expected financial impact including potential repayment terms and the costs to the public as user fees, special assessments, or property taxes if the financing is in the form of a loan. The Board may require additional public hearings if determines the applicant did not adequately disclose to the public the impact of the financial assistance during the initial public hearing.

When the Board offers the applicant a financial package that is substantially different in the amounts, terms or conditions initially requested by an applicant, the Board may require additional public hearings to solicit public comment on the modified funding package.

A copy of the public notice and transcript or minutes of the hearing shall be attached to the funding request. Public opinion polls may be submitted in addition to the transcript or minutes.

F. Letters of comment outlining specific benefits (or problems) to the community and State may be submitted with the application.

G. All applicants are required to notify in writing the applicable Association of Governments of their intention to submit a funding request to the Board. A copy of any comments made by the Association of Governments shall be attached to the funding request. It is the intent of the Board to encourage regional review and prioritization of funding requests to help ensure the timely consideration of all worthwhile projects.

H. Section 9-8-404 requires all state agencies before they expend any state funds or approves any undertaking to take into account the effect of the undertaking on any district, site, building structure or specimen that is included in or eligible for inclusion in the National Register of Historic Places or the State Register and to allow the state historic preservation officer (SHPO) a reasonable opportunity to comment on the undertaking or expenditure. In order to comply with that duty, the Board requires all applicants provide the Board's staff with a detailed description of the proposed project attached to the application. The Board's staff will provide SHPO with descriptions of applications which may have potential historic preservation concerns for SHPO's review and comment in compliance with the CIB/SHPO Programmatic Agreement. SHPO comments on individual applications will be provided to the Board as part of the review process outline in R990-8-4. Additionally the Board requires that if during the construction of the project the applicant discovers any cultural/paleontological resources, the applicant shall cease project activities which may affect or impact the cultural/paleontological resource, notify the Board and SHPO of the discovery, allow the Board to take into account the effects of the project on cultural/paleontological resources, and not proceed until further approval is given by the Board.

I. All applicants must provide evidence and arguments to the Board as to how the proposed funding assistance provides for planning, the construction and maintenance of public facilities or the provision of public services.

J. All applicants must demonstrate that the facilities or services provided will be available and open to the general public and that the proposed funding assistance is not merely a device to pass along low interest government financing to the private sector.

K. All applicants must demonstrate that any arrangement with a lessee of the proposed project will constitute a true lease, and not a disguised financing arrangement. The lessee must be required to pay a reasonable market rental for the use of the facility. In addition, the applicant shall have no arrangement with the lessee to sell the facility to the lessee, unless fair market value is received.

L. Each applicant must submit evidence and legal opinion that it has the authority to construct, own and lease the proposed project. In the case of a request for an interest bearing loan, the applicant must provide an opinion of nationally-recognized bond counsel that the interest will not be subject to federal income taxes.

M. All applicants shall certify to the Board that they will comply with the provisions of Titles VI and VII of the Civil Rights Act of 1964 (42 USC 2000e), as amended, which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agree to abide by Executive Order No. 11246, as amended,

which prohibits discrimination on the basis of sex; 45 CFR 90, as amended, which prohibits discrimination on the basis of age; Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and 28 CFR 35, as amended, which prohibit discrimination on the basis of disabilities; Utah Anti-Discrimination Act, Section 34A-5-101 et seq., which prohibits discrimination against any employee or applicant for employment because of race, color, sex, age, religion, national origin, or handicap, and to certify compliance with the ADA to the Board on an annual basis and upon completion of the project.

R990-8-4. Board Review Procedures.

A. The Board will review applications and authorize funding assistance on a "Trimester" basis. The initial meetings of each "Trimester" are "Project Review Meetings". The final meeting of each "Trimester" is the "Project Funding Meeting". Board meetings shall be held monthly on the 1st Thursday of each month, unless rescheduled or cancelled by the chairman or by formal motion of the board. The Trimesters shall be as follows:

1. 1st Trimester: application deadline, June 1st; Project Review Meetings, July, August, September; Project Funding Meeting October.

2. 2nd Trimester: application deadline, October 1st; Project Review Meetings, November, December, January; Project Funding Meeting, February.

3. 3rd Trimester: application deadline, February 1st; Project Review Meetings, March April, May; Project Funding Meeting, June.

B. The process for review of new applications for funding assistance shall be as follows:

1. Submission of an application, on or before the applicable deadline to the Board's staff for technical review and analysis.

2. Incomplete applications will be held by the Board's staff pending submission of required information.

3. Complete applications accepted for processing will be placed on one of the Trimester's upcoming "Project Review Meeting" agendas.

4. At the "Project Review Meeting" the Board may either:

a. deny the application;

b. place the application on the "Pending List" for consideration at a future "Project Review Meeting" after additional review, options analysis and funding coordination by the applicant and the Board's staff;

c. place the application on the "Priority List" for consideration at the next "Project Funding Meeting".

C. Applicants and their representatives shall be informed of any "Project Review Meeting" at which their applications will be considered. Applicants shall make formal presentations to the Board and respond to the Board's questions during the "Project Review Meetings". If an applicant or its representatives are not present to make a presentation, the board may either:

1. deny the application;

2. place the application on the "Pending List" for consideration at a future "Project Review Meeting".

D. No funds shall be committed by the Board at the "Project Review Meetings", with the exception of circumstances described in Subsection F.

E. Applications for funding assistance which have been placed on the "Priority List" will be considered at the "Project Funding Meeting" for that Trimester. At the "Project Funding Meeting' the Board may either:

1. deny the application;

2. place the application on the "Pending List" for consideration at a future "Project Review Meeting".

3. authorize funding the application in the amount and terms as determined by the Board.

F. In instances of bona fide public safety or health emergencies or for other compelling reasons, the Board may suspend the provisions of this section and accept, process, review and authorize funding of an application on an expedited basis.

R990-8-5. Local Capital Improvement Lists.

A. A consolidated list of the anticipated capital needs for eligible entities shall be submitted from each county area, or in the case of state agencies, from HCD. This list shall be produced as a cooperative venture of all the eligible entities within each county area.

B. The list shall contain a short term (one year) and a medium term (five year) component.

C. The list shall contain the following items: jurisdiction, summary description, project time frame, anticipated time of submission to the Board, projected overall cost of project, anticipated funding sources, the individual applicant's priority for their own projects, and the county area priority for each project. The county area priority for each project shall be developed as a cooperative venture of all eligible entities within a county area.

D. Projects not identified in a county area's or HCD's list, will not be funded by the Board, unless they address a bona fide public safety or health emergency or for other compelling reasons.

E. An up-dated list shall be submitted to the Board no later than April 1st of each year. The up- dated list shall be submitted in the uniform format required by the Board.

F. If the consolidated list from a county area does not contain the information required in R990-8-5-C, or is not in the uniform format required in R990-8-5-E, all applications from the affected county area will be held by the Board's staff until a future Trimester pending submission of the required information in the uniform format.

G. The Board has authorized its staff to hold any application that does not appear on the applicable local capital improvement list. Such applications will be held until a future Trimester to allow the applicant time to pursue amending the local capital improvement list.

H. The amendment to include an additional project must follow the process used for the original list, and it must contain the required information and be submitted in the uniform format, particularly the applicant and county area prioritization.

I. The regional Association of Governments are the compilers of the capital improvement lists. The AOG cannot simply add additional applications to any given list without the applicant meeting the process requirements outlined in Subsection C.

J. Not withstanding Subsection I, allowing an applicant to add a project to the capital improvement list just prior to the application deadline subverts the intent of the capital improvement list process. Such applications will be held by the Board's staff until the next Trimester.

R990-8-6. Modification or Alteration of Approved Projects.

A recipient of PCIFB grant funds may not, for a period of ten years from the approval of funding by the Board, change or alter the use, intended use, ownership or scope of a project without the prior approval of the Board. A recipient of PCIFB loan funds may not, for the term of the loan, change or alter the use, intended use, ownership or scope of a project without the prior approval of the Board. The recipient shall submit a written request for such approval and provide such information as requested by the Board or its staff, including at a minimum a description of the modified project sufficient for the Board to determine whether the modified project is an eligible use of PCIFB funds.

The Board may place such conditions on the proposed

modifications or modified project as it deems appropriate, including but not limited to modifying or changing the financial terms, requiring additional project actions or participants, or requiring purchase or other satisfaction of all or a portion of the Board's interests in the approved project. Approval shall only be granted if the modified project, use or ownership is also an eligible us of PCIFB funds, unless the recipient purchases or otherwise satisfies in full the Board's interest in the previously approved or the proposed project.

R990-8-7. Procedures for Electronic Meetings.

A. These provisions govern any meeting at which one or more members of the Board or one or more applicant agencies appear telephonically or electronically pursuant to Section 52-4-7.8.

B. If one or more members of the Board or one or more applicant agencies may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the CIB not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

C. Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided to at least one newspaper of general circulation within the state and to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

D. Notice of the possibility of an electronic meeting shall be given to the members of the Board and applicant agencies at least 24 hours before the meeting. In addition, the notice shall describe how the members of the Board and applicant agencies may participate in the meeting electronically or telephonically.

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

F. The anchor location shall be designated in the notice. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location has space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

R990-8-8. Major Infrastructure Set Aside Fund.

A. Creation of Fund

1. There is hereby created within the Permanent Community Impact Fund the Major Infrastructure Set Aside Fund.

2. The Purpose of this Fund is to allow the Board to participate and fund major transportation and other significant infrastructure studies and projects where the Board participation may exceed five million dollars ($5,000,000).

B. Transfer of Monies to the Fund

1. At each funding meeting, after action is taken on all projects on the prioritization list, the Board shall consider whether to transfer any money in the Permanent Community Impact Fund to the Major Infrastructure Set Aside Fund. The Board may transfer such amounts as it deems appropriate, in its discretion, based on motion and a majority vote of the Board.

2. When money is transferred to the Major Infrastructure Set Aside Fund the Board shall identify whether the money being transferred is Bonus or Mineral Lease money. The status of the money as Bonus monies or Mineral Lease monies shall continue while the monies are in the Major Infrastructure Set Aside Fund and may only be granted or loaned in accordance with that status.

3. The Division shall maintain an accounting of the funds in the Major Infrastructure Set Aside Fund as bonus funds or mineral lease funds and shall separately identify the status of the money in the Major Infrastructure Set Aside Fund in its briefings to the Board.

C. Use of the Fund

1. Money in the Major Infrastructure Set Aside Fund may only be used to fund major transportation and other significant infrastructure studies and projects. These projects would include pipelines, roadways, rail lines, and other major infrastructure activities where the cost may exceed five million dollars ($5,000,000) and where the project is within the purposes for the creation and use of the Fund. The Board, on motion and majority vote, shall designate and allow the use of the money from the Fund, specifying whether the money comes from the Bonus or Mineral Lease monies in the Fund.

2. Repayment on any loans from the Major Infrastructure Set Aside Fund shall be credited to and placed in the Major Infrastructure Set Aside Fund. Payments on Bonus money loans shall maintain their status as Bonus monies. The Division shall maintain a separate accounting of all loan payments in the Major Infrastructure Set Aside Fund.

D. Reconversion of Monies from the Fund

1. The Board may, at any time on motion and majority vote, reconvert and transfer funds from the Major Infrastructure Set Aside Fund back to the general Permanent Community Impact Fund. The motion and action of the Board shall specify if the money being transferred back to the general Permanent Community Impact Fund is Bonus or Mineral Lease money, and that status of the money shall continue in the general Permanent Community Impact Fund.

KEY: grants
March 10, 2015 35A-8-305(1)(a), (b), and (c)
Notice of Continuation July 6, 2017 35A-8-306
35A-8-307(1)(a)

R990. Workforce Services, Housing and Community Development.
R990-9. Policy Concerning Enforceability and Taxability of Bonds Purchased.
R990-9-1. Enforceability.

In providing any financial assistance in the form of a loan, the (Board/Committee) representing the State of Utah (the "State") may purchase Bonds or other legal obligations (the "Bonds") of various political subdivisions (interchangeably, as appropriate, the "Issuer" or "Sponsor") of the State only if the Bonds are accompanied by a legal opinion of recognized municipal bond counsel to the effect that the Bonds are legal and binding under applicable Utah law.

R990-9-2. Tax-Exempt Bonds.

In providing any financial assistance in the form of a loan, the (Board/Committee) may purchase either taxable or tax-exempt Bonds; provided that it shall be the general policy of the (Board/Committee) to purchase Bonds of the Issuer only if the Bonds are tax-exempt and are accompanied by a legal opinion of recognized municipal bond counsel to the effect that interest on the Bonds is exempt from federal income taxation. This does not apply for Bonds carrying a zero percent interest taxation. This tax opinion must be provided by the Issuer in the following circumstances:

a. When Bonds are issued and sold to the State to finance a project which will also be financed in part at any time by the proceeds of other Bonds, the interest on which is exempt from federal income taxation.

b. When (i) Bonds are issued which are no subject to the arbitrage rebate provision or Section 148 of the Internal Revenue Code of 1986 (or any successor provisions of similar intent) (the "Code"), including, without limitation, Bonds covered by the "small governmental units" exemption contained in Section 148 (f) (4) (c) of the Code, and (ii) when Bonds are issued which are not subject to arbitrage rebate because the gross proceeds from the loan will be completely expended within six months after the issuance of the Bonds.

Notwithstanding the above, the (Board/Committee) may purchase taxable Bonds if it determines, after evaluating all relevant circumstances including the Issuer's ability to pay, that the purchase of the taxable Bonds is in the best interests of the State and the Issuer.

R990-9-3. Parity Bonds.

In addition to the policy stated above, it is the general policy of the (Board/Committee) that Bonds purchased by the (Board/Committee) shall be full parity Bonds with other outstanding Bonds of the Issuer. Exceptions to this parity requirement may be authorized by the (Board/Committee) if the (Board/Committee) makes a determination that

(i) the revenues or other resources pledged as security for the repayment of the Bonds are adequate (in excess of 100% coverage) to secure all future payments on the Bonds and all debt having a lien superior to that of the Bonds and

(ii) the Issuer has covenanted not to issue additional Bonds having a lien superior to the Bonds owned by the (Board/Committee) without the prior written consent of the (Board/Committee), and

(iii) requiring the Issuer to issue parity bonds would cause undue stress on the financial feasibility of the project.

KEY: grants
July 9, 2012 **35A-8-1004**
Notice of Continuation July 6, 2017

R990. Workforce Services, Housing and Community Development.
R990-10. Procedures in Case of Inability to Formulate Contract for Alleviation of Impact.
R990-10-1. Purpose.

A. The following procedures are promulgated and adopted by the Permanent Community Impact Fund Board ("Board") of the Department of Workforce Services of the State of Utah pursuant to Section 35A-8-306(4), UCA 1953 as amended.

B. In the event a project entity or a candidate ("Complainant") submits a request for determination to the Board under Section 11-13-306, UCA 1953 as amended, the Board shall hold a hearing on the questions presented. These proceedings shall be conducted informally, in accordance with the requirements of the Utah Administrative Procedure Act ("Act"), Section 63G-4-202(1), UCA 1953 as amended, unless the Board at its discretion converts the proceeding to a formal proceeding, in accordance with Section 63G-4-202(3) UCA 1953 as amended, if such action is deemed to be in the public interest and does not unfairly prejudice the rights of any party.

C. The only grounds available for relief are those set forth in Section 11-13-306, UCA 1953 as amended, or those reasonably inferred therefrom.

R990-10-2. Commencement of the Procedure Requesting a Determination.

A. Commencement of the procedure to request a determination from the Board shall be conducted in conformity with Section 63G-4-201(3).

1. A complainant requesting a determination from the Board must submit such a request:

a. In writing;

b. Signed by the person invoking the jurisdiction of the Board or by that person's representative; and

c. Including the following information:

1. The names and addresses of all parties to whom a copy of the request for a hearing is being sent;

2. The Board's file number or other reference number;

3. The name of the adjudicative proceeding, if known;

4. The date the request for the hearing was mailed;

5. A statement of the legal authority and jurisdiction under which action by the Board is requested;

6. A statement of relief sought from the Board; and

7. A statement of facts and reasons forming the basis for relief.

B. The Complainant shall file the request for a determination with the Board and at the same time, shall serve a copy of the request upon the party complained against (the "Respondent"). The Complainant shall also mail a copy of the request to each person known to have a direct interest in the request for a determination by the Board.

C. The Respondent shall serve a response within fifteen (15) days after the request is served upon the Respondent. The Respondent may admit, deny or explain the point of view of Respondent as to each allegation in the request. Not to respond to any allegation is to admit that allegation. The Respondent may pose a counteroffer to Complainant's request for relief. Any counteroffer must be supported by reasons. Requests and responses may be directed at multiple parties.

R990-10-3. Notification of Parties.

A. The Board shall promptly give notice by mail to all parties that the hearing will be held, stating the following:

1. The Board's file number or other reference number;

2. The name of the proceedings;

3. Designate that the proceeding is to be conducted informally according to the provisions or rules enacted under Section 63G-4-202 and Section 63G-4-202, UCA 1953 as amended, with citation to Section 63G-4-202 authorizing the designation;

4. State the time and place of the scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate may be held in default; and

5. Give the name, title, mailing address and telephone number of the presiding officer for the hearing.

B. At any time twenty (20) or more days before the hearing begins, either party may serve upon the adverse party an offer to agree to specific terms and payments. If, within ten (10) days after the service of the offer, the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service thereof, and the Board shall enter a corresponding order. An offer not accepted shall be deemed withdrawn and evidence concerning it is not admissible except in a proceeding to determine costs. If the order finally obtained from the offeree is not more favorable than the offer, the offeree shall pay the costs incurred after the making of the offer, including a reasonable attorney's fee. The fact that an offer is made but not accepted does not preclude a subsequent offer.

R990-10-4. Informal Hearing Procedures.

A. Within forty (40) days after receiving a request for determination, the Board shall hold a public hearing on the questions at issue.

B. The Board may appoint an administrative law judge to preside in its stead at the hearing and to hear such preliminary motions and manage such ancillary matters as the Board deems necessary and appropriate.

C. In the hearing, the parties named in the request for determination shall be permitted to testify, present evidence, comment on the issues and bring forth witnesses who may be examined and cross-examined. The hearing may be adjourned from time to time in the interest of a full and fair investigation of the facts and the law.

D. Discovery is prohibited, and the Board may not issue subpoenas or other discovery orders.

E. All parties shall have access to information contained in the Board's files and to all materials and information gathered by any investigation to the extent permitted by the law.

F. Any intervention is prohibited.

G. All hearings shall be open to all parties.

H. Within twenty (20) days after the close of the hearing, the Board or the administrative law judge shall issue a signed order in writing that states:

1. The decision;

2. The reasons for the decision;

3. A notice of any right for administrative or judicial review available to the parties; and

4. The time limits for filing a request for reconsideration or judicial review.

I. The order issued by the Board or by the administrative law judge shall be based on the facts appearing in the Board's files and on the facts presented in evidence at the hearing.

J. Any determination order issued by the Board or by the administrative law judge shall specify:

1. The direct impacts, if any, or methods determining the direct impacts to be covered; and

2. The amounts, or methods of computing the amounts, of the alleviation payments, if any, or the means to provide for impact alleviation, provisions assuring the timely completion of the facilities and the furnishing of the service, if any; and

3. Other pertinent matters.

K. A copy of the Board's or the administrative law judge's order shall be promptly sent to all parties.

L. All hearings shall be recorded at the Board's expense. Any party, at his own expense, may have a reporter approved by the Board prepare a transcript from the Board's record of the hearing.

R990-10-5. Formal Hearing Procedures.

A. At any time prior to issuance of the final order, the Board at its discretion may convert the informal adjudicative hearing into a formal adjudicative hearing, as allowed in Section 63G-4-202(3). The procedures to be followed in such a formal adjudicative hearing are given below.

B. The Board may appoint an administrative law judge to preside in its stead at the hearing and to hear such preliminary motions and manage such ancillary matters as the Board deems necessary and appropriate.

C. A party may be represented by an officer or the party or by legal counsel.

D. In the hearing, the parties named in the request for determination shall be permitted to testify, present evidence, comment on the issues and bring forth witnesses who may be examined and cross-examined. The hearing may be adjourned from time to time in the interest of a full and fair investigation of the facts and the law.

E. Utah Rules of Evidence shall be in effect; however,

1. Copies of original documents may be introduced into evidence unless objected to for reasons of illegibility or tampering.

2. Hearsay will be considered for its weight but will not be conclusive in and of itself as to any matter subject to proof.

F. Discovery in formal proceedings shall be limited. Because negotiation between the parties shall have been proceeding prior to a request for determination being submitted, the Board or the administrative law judge shall assume that discovery is complete when a request is submitted. However, upon motion and sufficient cause shown, the Board or the administrative law judge may extend the period of discovery.

G. All parties shall have access to information contained in the Board's files and to all materials and information gathered by any investigation to the extent permitted by the law.

H. The Board or the administrative law judge may give a person not a party to the proceeding the opportunity to present oral or written statements at the hearing.

I. 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.

J. All hearings shall be open to all parties.

K. Intervention into the formal hearing will be allowed on the following basis:

1. Any person not a party may file a signed, written petition to intervene in a formal adjudicative hearing with the Board. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

a. The Board's file number or other reference number;

b. The name of the proceeding;

c. A statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative hearing, or that the petitioner qualifies as an intervenor under any provision of law; and

d. A statement of the relief the petitioner seeks from the Board.

2. The Board or the administrative law judge shall grant a petition for intervention if it determines that:

a. The petitioner's legal interests may be substantially affected by the formal adjudicative hearing; and

b. The interests of justice and the orderly and prompt conduct of the adjudicative hearing will not be materially impaired by allowing the intervention.

3. Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

4. An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative hearing that are necessary for a just, orderly, and prompt conduct of that hearing. Such conditions may be imposed by the Board or the administrative law judge at any time after the intervention.

L. Within twenty (20) days after the close of the hearing, the Board or the administrative law judge shall issue a signed order in writing that states:

1. The decision based upon findings of fact and conclusions of law;

2. The reasons for the decision;

3. A notice of any right for administrative or judicial review available to the parties; and

4. The time limits for filing a request for reconsideration or judicial review.

M. The order issued by the Board or by the administrative law judge shall be based on the facts appearing in the Board's files and on the facts presented in evidence at the hearing.

N. Any determination order issued by the Board or by the administrative law judge shall specify:

1. The direct impacts, if any, or methods determining the direct impacts to be covered; and

2. The amounts, or methods of computing the amounts, of the alleviation payments, if any, or the means to provide for impact alleviation, provisions assuring the timely completion of the facilities and the furnishing of the service, if any; and

3. Other pertinent matters.

O. A copy of the Board's or the administrative law judge's order shall be promptly sent to all parties.

P. All hearings shall be recorded at the Board's expense. Any party, at his own expense, may have a reporter approved by the Board prepare a transcript from the Board's record of the hearing.

R990-10-6. Default.

A. The Board or the administrative law judge may enter an order of default against a party if that party fails to participate in the adjudicative proceedings.

B. The order shall include a statement of the grounds for default and shall be mailed to all parties.

C. A defaulted party may seek to have the Board set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure.

D. After issuing the order of default, the Board or the administrative law judge shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulted party.

R990-10-7. Reconsideration by the Board.

Within ten (10) days after the date that a final order is issued by the Board or the administrative law judge, any party may file a written request for reconsideration in accordance with the provisions of Section 63G-4-302, UCA 1953 as amended. Upon receipt of the request, the disposition by the Board of that written request shall be in accordance with Section 63G-4-302(3), UCA 1953 as amended. With the exception of reconsideration, all orders issued by the Board or the administrative law judge shall be final. There shall be no other review except for judicial review as provided below.

R990-10-8. Judicial Review.

An aggrieved party may also obtain judicial review of final orders issued by the Board or by the administrative law judge by filing a petition for judicial review of that order in compliance with the provisions and requirements of Section 63G-4-401 and Section 63G-4-402, UCA 1953 as amended.

KEY: impacted area programs
July 9, 2012 35A-8-306
Notice of Continuation July 6, 2017 35A-8-1004

R990. Workforce Services, Housing and Community Development.
R990-11. Community Development Block Grants (CDBG).
R990-11-1. Purpose and Authority.

This rule incorporates by reference 24 CFR 570 (1996) as authorized by Section 35A-8-202.

R990-11-2. State and Regional Funding Processes.

(1) CDBG funds are to be distributed based on regional prioritization of projects by utilizing a rating and ranking system developed and applied by the regional review committees (RRC). The role of each RRC is to receive, review and to prioritize the CDBG applications in its region.

(2) The RRC shall develop a rating and ranking system prior to the receipt of grant application. Upon completion of the rating and ranking process, each RRC shall present to the state a list of:

(a) all projects submitted to them for ranking,

(b) copies of ranking result sheets,

(c) the rationale for not ranking any submitted projects, and

(d) a summary of all final ranking results.

R990-11-3. Eligible Grant Applicants, National Objectives and Eligible Projects.

(1) Eligible applicants for the State CDBG Program are:

(a) incorporated cities and towns with populations of less than 50,000, except Clearfield and jurisdictions located in Salt Lake County;

(b) all of Utah's counties except Salt Lake County;

(c) units of local government recognized by the Secretary of The Department of Housing and Urban Development (HUD).

(2) National Objective Compliance Pursuant to 24 CFR 570.208.

(a) The national objective may be met in three possible ways:

(i) activities that benefit low and moderate income individuals, families and communities.

(ii) activities aiding in the prevention or elimination of slums or blight.

(iii) activities that address urgent health and welfare needs.

(3) Inclusive Federal Compliance Requirements.

(a) applicants shall comply with all regulations in 24 CFR part 570 and all applicable federal and state regulations, laws and overlay statutes.

(b) additional federal overlay statutes and regulations may apply to the state program if directed by HUD and Congress.

(4) Eligible activities are those defined by Section 105 of the Housing and Community Development Act of 1974, as amended.

R990-11-4. Responsibilities of Grantee, Regions and State.

(1) Grantee Responsibilities

(a) Grantees are allowed to take up to 10% of the contract amount for administration purposes. Administrative cost must be broken out from the rest of the project costs when the application and contract budget are prepared.

(b) The formal contract with the state must include an environmental review, federal labor standards and civil rights.

(2) Regional Responsibilities.

(a) Prioritization - Each RRC shall rate and rank all applications based on a set of criteria available to the public for comment.

(b) Public participation - Each RRC is required to hold at least one public hearing yearly to assist applicants and obtain comments and suggestions regarding the CDBG process.

(c) Application completion - Each RRC has the responsibility to assure that applications are completed in full prior to submission to the state.

(d) Administrative Capacity - The RRC will assess the ability of each applicant to administer a CDBG grant.

(3) State Responsibilities.

(a) Public Participation - The state is required to hold at least one public hearing yearly to notify the public, explain the community development program and to receive comments.

(b) Review of Applications - Upon receipt of the CDBG prioritized applications from the regions, the state staff shall begin a review process.

(c) Timely Distribution of Funds - The state is required by HUD to ensure that CDBG funds are allocated and distributed in a timely manner.

(i) Application - Each applicant shall make their final application decision prior to submitting it to the RRC.

(A) Contracts will be sent out in April and Grantees will have until June 1, to sign and return all copies of the contract to the Housing and Community Development Division (HCD) of the Department of Workforce Services.

(B) On a case by case basis, RRCs may allow a one month extension to grantees experiencing unavoidable delays. Grantees must notify their RRC prior to the deadline;

(C) Funds from all contracts not returned to HCD by July 1, will be returned to the appropriate RRC for reallocation;

(D) Any funds not reallocated by the RRC by August 1, will be returned to the State. The State will reallocate the funds to an approved project;

Grantees may not delay the processing of the current application based on the possibility of receiving an allocation in the following year.

(d) Five Percent Withholding - The state reserves the right to withhold five percent of the CDBG grant amount pending a satisfactory final programmatic financial monitoring review of all projects.

(e) Cost Overruns - The state may authorize the funding of project cost overruns requested by the RRC.

(f) Fund Leveraging - One of the state's roles in the CDBG funding process is to provide assistance to grantees in leveraging other available financial resources.

(g) Program Monitoring - During the course of each CDBG contract the state must monitor all grantees.

(h) Grant Close Out - A grant close out packet will be submitted to the state at the completion of each CDBG-funded activity.

R990-11-5. Threshold Requirements.

Minimum threshold requirements are those defined by Section 105(e) of the Housing and Community Development Act of 1974, as amended and as stipulated in section 4 of the State CDBG Application Guide available from HCD.

(1) The determination of eligibility for recipients and activities shall be made by the RRC and State CDBG staff under state and federal criteria and regulations contained in 24 CFR part 500 and the State CDBG Application Guide available by contacting HCD at 140 E 300 S, Salt Lake City, UT 84111.

(2) Each grant application must clearly demonstrate that the project will meet one of the three National Objectives identified in R990-1-3.

(3) Each grant applicant must demonstrate consistency with the Consolidated Plan, available from HCD at 140 E 300 S, Salt Lake City, UT 84111.

(4) Each grant application may contain more than one activity addressing identified needs; however, these activities must be interrelated.

(5) All costs incorporated with the grant must be realistic given the nature and type of activities to be performed.

(6) Program income generated as a result of CDBG activities may be retained by the grantee when income is applied to continue the activity from which the income was derived, or when used for other community development projects eligible

under Section 105 of the Housing and Community Development Act of 1974, as amended, and after the preparation of a plan, approved by the state, specifying the proposed activity and stating the method that will be employed for its use.

R990-11-6. Length of Contract and Type of Grants.

(1) All grantees shall have 18 months depending upon contract execution, or until October 31, of the following year to complete their project.

(2) There are two types of grants: Single year and multi-year.

R990-11-7. Adjudicative Proceedings to Appeal Decisions of RRC.

(1) Classification of Actions. Adjudicative proceeding to appeal decisions of RRC by CDBG applicant agencies shall be conducted in accordance with section 63G-4-203.

(2) Commencement of Appeals Procedure. An applicant agency requesting an appeal hearing from HCD, shall submit a request:

(a) in writing;

(b) signed by the chief elected official; and

(c) include the following information:

(i) the names and addresses of all persons to whom a copy of the request for a hearing is being sent;

(ii) the RRC file number;

(iii) the name of the adjudicative proceeding;

(iv) the date the request for an appeals hearing was mailed;

(v) a statement of the legal authority and jurisdiction under which CDBG action is requested;

(vi) a statement of relief sought from HCD; and

(vii) a statement of facts and reasons forming the basis for relief.

(d) The request for an appeals hearing must be submitted within ten days following the notice of decision by the RRC. At this point it shall be necessary for HCD to place a hold on processing any contracts from the region in which the dispute has occurred until the matter is settled.

(3) Notification of interested parties.

(a) The CDBG applicant agency that requests an appeals hearing shall file the request with the Director of HCD and shall send a copy by mail to each person known to have a direct interest in the requested hearing.

(b) The Director of HCD, or a hearing officer appointed by the Director of HCD, will within five working days after the appeals request, set the time and date for an appeals hearing. The Director of HCD or the hearing officer shall promptly give notice by mail to all parties, stating the following:

(i) HCD and RRC file number;

(ii) the name of the proceeding;

(iii) a statement indicating that the proceeding is to be conducted informally and according to the provisions of rules enacted under Sections 63G-4-203 authorizing informal proceedings.

(iv) the time and place of the scheduled appeals hearing, the purpose of the hearing, and that a party may be held in default if failing to attend or participate in the hearing.

(v) the name, title, mailing address and telephone number of the director of HCD or the hearing officer.

(vi) Hearing Procedures

(a) hearing shall be held only after notice to interested parties is given in conformance with R990-7-1C;

(b) no answer or other pleading responsive to the request for a hearing need be filed.

(c) the following issues shall be reviewed at the appeals hearing:

(i) whether reasonable and equitable criteria are established for reviewing CDBG applications by the RRC

(ii) whether the priority ranking process is fair to all applicants;

(iii) whether the criteria and process were applied equitably and consistently to all applicants.

(d) in the appeals hearing, the parties named in the request for a hearing shall be permitted to testify, present evidence, and comment on the issues.

(e) discovery is prohibited, and HCD may not issue subpoenas or other discovery orders.

(f) all parties shall have access to information contained in HCD's files and to all materials and information gathered by any investigation to the extent permitted by law.

(g) any intervention is prohibited.

(h) all hearings shall be open to all parties.

(i) within 21 days after the close of the hearing, the Director of HCD shall issue a signed order in writing that states:

(i) the decision;

(ii) the reason for the decision;

(iii) a notice of any right for administrative or judicial review available to the parties; and

(iv) the time limits for filing a request for reconsideration or judicial review.

(j) the Director of HCD's order shall be based on the facts appearing in HCD's files and on the facts presented in evidence at the appeals hearing.

(k) a copy of the Director of HCD's order shall be promptly mailed to the parties.

(l) all hearings shall be recorded at the expense of HCD. Any party, at his own expense, may have a reporter approved by HCD prepare a transcript from HCD's record of the hearing.

(5) Default

(a) the Director of HCD may enter an order of default against a party if a party fails to participate in the adjudicative proceeding.

(b) the order shall include a statement of the grounds of default and shall be mailed to all parties.

(c) a defaulted party may seek to have HCD set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure.

(d) after issuing the order of default, the Director of HCD will conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and will determine all issues in the adjudicative proceeding, including those affecting the defaulted party.

(6) Reconsideration by HCD. Within ten days after the date that a final order is issued by the Director of HCD, any party may file a written request for reconsideration in accordance with the provisions of the Administrative Procedures Act, Section 63G-4-302. Upon receipt of the request, the disposition by the Director of HCD of that written request shall be in accordance with Section 63G-4-302. With the exception of reconsideration, all orders issued by the Director of HCD shall be final. There shall be no other review except for judicial review as provided below.

(7) Judicial Review. An aggrieved party may also obtain judicial review of final HCD orders by filing a petition for judicial review of that order in compliance with the provisions and requirements of the Utah Administrative Procedures Act, Sections 63G-4-401and 63G-4-402.

KEY: community development, grants
July 9, 2012 **35A-8-202**
Notice of Continuation July 6, 2017

R990. Workforce Services, Housing and Community Development.
R990-100. Community Services Block Grant Rules.
R990-100-1. Authority.

This rule is authorized under Section 35A-8-1004, U.C.A. 1953, which allows the Housing and Community Development Division (HCD) to receive funds for and to administer federal aid programs.

R990-100-2. Purpose.

The purpose of this rule is to establish standards and procedures for the Community Services Block Grant (CSBG) authorized under the Omnibus Reconciliation Act of 1981 (Title XVII, Chapter 2, Sections 671 through 683), contracted to eligible entities (counties or combinations of counties and Community Action Programs) to provide a range of services and activities having a measurable and potentially major impact on causes of poverty in the local communities.

R990-100-3. Eligible Grantees for CSBG Programs and Projects.

A. Utah shall distribute at least 90 percent of available funds as pass-through grants to eligible entities (hereinafter referred to as local grantees) for them to administer directly or, at their option, to sub-contract (hereinafter referred to as local sub-grantees) for the performance of eligible activities. Eligibility for the 5 percent discretionary funds will be established by the state plan each fiscal year.

B. Whenever a public grantee chooses to sub-contract all program operations to a private entity rather than administer them directly, the private entity must be a non-profit organization directed by a board whose composition complies with Section 675 (c)(3) of the Community Services Block Grant Act.

R990-100-4. Assurances Required by CSBG Act.

All grantees shall be required to submit a certification of assurances based on CSBG programmatic, administrative and financial requirements of the Act as outlined by Community Services Block Grant Program Directives prepared by the State Community Services Office (SCSO).

R990-100-5. Compliance.

Local grantees must maintain their eligibility to receive CSBG funds by being in compliance with applicable laws, regulations, and contractual agreements. The state reserves the right to examine all aspects of CSBG funded activities to ensure that this is the case.

R990-100-6. Qualifications.

Local grantees must demonstrate that they have in place, or shall have in place prior to undertaking CSBG funded program activities, management systems adequate to ensure that CSBG funds shall be spent efficiently and effectively. When activities are sub-contracted, the local grantee must have in place a system and assume the responsibility for monitoring and evaluating sub-contracts. Files must be retained containing such monitoring and evaluation results. In no case shall the state provide funds to a grantee if available evidence suggests that the grantee cannot fulfill its obligations under the terms of the assurances required by the CSBG Act and the state plan for the use of CSBG funds.

R990-100-7. Program Participant Eligibility.

Income eligibility for program participation shall be based on the Office of Management and Budget official poverty guidelines as described in Section 673 of the CSBG Act.

R990-100-8. Funds Allocation.

A. CSBG funds shall be allocated on the basis of federal fiscal years beginning October 1 to local agencies by the following formula:

(1) All agencies selected for funding shall be awarded an equal, minimum base amount.

(2) The amount remaining after subtraction of the sum of the minimum base amount shall be allocated among the local grantees based on the census counts (or updates) of low-income residents and other related criteria such as long-term unemployment.

R990-100-9. Approval Process.

Criteria shall be used to review applications for CSBG funds and shall be distributed to eligible grantees as a SCSO Community Services Block Grant Program Directives. A panel will screen and give a numerical rating to every application submitted by an eligible grantee based on the criteria outlined. The Community Services Office will compile these ratings and will make a final determination as to proposals that will receive funding and as to the level of funding that will be provided. Proposals must score a minimum number of points to be considered eligible. Prospective CSBG grantees shall be notified of application status 60 days or less after the closing date of application submissions. Any application found to be incomplete or inadequate will be returned to the local grantee for appropriate changes. The Community Services Office will provide technical assistance to any eligible agency scoring below the minimum.

R990-100-10. Award Procedures.

The state shall enter into a contract with local grantees October 1 contingent upon Federal authorization and appropriation for CSBG. Once signed, this contract shall be binding on both parties.

R990-100-11. Fiscal Operations Procedures.

A. Each local grantee shall have an acceptable procedure describing functions of its fiscal office and including at a minimum:

(1) Purchasing procedure
(2) System of cash control
(3) Payroll system
(4) Internal and external reporting systems

B. Fiscal procedures shall be in compliance with applicable state and federal regulations and conform with generally accepted accounting procedures.

R990-100-12. Financial Reports and Reimbursements.

Financial reports (Form CSBG 611-D) are to be submitted on a monthly basis, no later than twenty (20) days following the end of each month. Local grantees shall receive reimbursement based on a monthly financial status report and certification of work program activities. All reports must have an authorized signature, i.e., the contract signatory or someone designated by the signatory, with a letter of designation filed with the state.

R990-100-13. Administrative Cost.

Administrative costs include allowable expenditures incurred to administer the CSBG through an indirect cost plan, approved by a cognizant Federal Agency or a cost allocation plan approved by the SCSO. Such costs should not exceed 10%.

R990-100-14. Travel and Per Diem.

Travel, per diem and allowances for staff and board members shall be determined by approved local agency guidelines which establish rates of reimbursement.

R990-100-15. Purchasing, Receiving and Accounts Payable.

A. Grantee agencies shall develop and have approved procedures for handling purchasing, receiving, and accounts payable. (In the absence of a local procedure, the state procedure shall be followed.) These procedures should include:

(1) Pre-numbered purchase orders and/or vouchers for all items of cost and expense.

(2) Procedures to insure procurement at competitive prices.

(3) Receiving reports to control the receipt of merchandise.

(4) Effective review following prescribed procedures for program coding, pricing and extending vendors' invoices.

(5) Invoices matched with purchase orders and receiving reports.

(6) The local grantee must have adequate controls, such as checklists for statement - closing procedures to insure that open invoices and uninvolved amounts for goods and services are properly accrued or recorded in the books or controlled through worksheet entries.

(7) Adequate segregation of duties in that different individuals are responsible for:

(a) Purchase;

(b) Receipt of merchandise or services; and

(c) Voucher approval

B. A list of anticipated equipment purchases must accompany the application for funding. Purchases over $1,000 must receive written state approval.

R990-100-16. Property and Equipment.

A. Each local grantee shall develop procedures for control of property and equipment. These procedures should include; but are not limited to:

(1) An effective system of authorization and approval of equipment purchase;

(2) Accounting practices for recording assets;

(3) Detailed records of individual assets which are maintained and periodically balanced with the general ledger accounts;

(4) Effective procedures for authorizing and accounting for equipment disposal; and

(5) Secure storage of property and equipment.

R990-100-17. Purchase or Improvement of Land or Buildings.

Funds shall not be used for purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy related home repairs) of any building or other facility except as this prohibition may be waived under conditions described in Section 680 (b) of the CSBG act.

R990-100-18. Personnel Policies.

A. Each local grantee shall maintain written personnel policies, available for review, which should include:

(1) Classification and pay plan;

(2) Policies governing selection and appointment;

(3) Conditions of employment and employee performance;

(4) Employee benefits;

(5) Employee-management relations including procedures for filing and handling grievances, complaints and rights of appeal;

(6) Personnel records and payroll procedures;

(7) Job description for all positions;

(8) Drug Free Work Place Policy.

R990-100-19. Civil Rights.

A. All CSBG funded programs shall comply with the nondiscrimination provisions contained in Section 677 of the Community Services Act.

B. Local grantees shall be required to have on file an affirmative action plan that describes what they will do to ensure that current and prospective employees and program participants are treated in a non-discriminatory manner. This plan shall also include a grievance procedure to deal with allegations of discrimination on the part of prospective and current staff members or program participants.

C. The provisions of this section shall apply to any and all grantees and sub-grantees, except where special conditions apply, i.e., Indians, migrants, or seasonal farm workers.

R990-100-20. Prohibition of Political Activities.

Each CSBG grantee shall be responsible for assuring adherence to political activity prohibitions contained in Sec. 675 (c) (7) of the CSBG Act. Monitoring of sub-grantees shall be required as a part of administrative responsibilities. A description of this process is to be available for state review during monitoring visits or upon request. Violations of the prohibitions are to be reported to the state CSO immediately along with reports of measures taken by the grantee to restore compliance.

R990-100-21. Audits and Inspection.

Each local grantee shall have performed by an independent certified public accounting firm an annual audit that conforms with the provisions and requirements of OMB Circular A-128, A-122 and A-133. The audit shall be due no later than one year following the end of the grantee's fiscal year.

R990-100-22. Suspension or Termination of Funds.

A. HCD may suspend funding to a local grantee if monitoring reports or independent audit reports indicate continuing, substantial non-compliance with contract requirements, accounting procedures, or fiscal control requirements. If problems identified are not corrected within a reasonable length of time, but not to exceed 60 days, HCD may terminate its contract with local grantee and make the remaining funds available to other eligible entities. Action to suspend or terminate funding will not be taken, however, unless timely and reasonable communication with the local grantee fails to produce corrective action to HCD's satisfaction. The local grantee shall not be relieved of liability to the state for funds expended for improper purpose or federal audit exceptions sustained by the state by virtue of any breach of the contract by the agency, and the state may withhold or recover any payments to the grantee for the purpose of setoff until such time as the exact amount of damage due the state from the grantee is determined.

B. Pursuant to the provisions of the contract between the state and local grantee, delegation of funds and activities to others may not be made without prior approval of HCD, SCSO.

R990-100-23. Transfer of Funds.

Because of the limited funds anticipated to be made available, HCD shall not transfer any of the CSBG to eligible entities under the Older Americans Act of 1965, Head Start, or Low-income Home Energy Assistance, nor consider a grantee in compliance if such transfers are made locally.

R990-100-24. Amendments/Waivers.

A. Prior approval for budget changes is required in the following instances:

(1) The dollar amount of transfers among budget categories exceeds or is expected to exceed $10,000 or five percent of the grant budget, whichever is greater, for grants of $100,000 or larger.

(2) For grants under $100,000, approval is required if transfers exceed or are expected to exceed five percent of the grant budget.

(3) Limited flexibility in budget adjustments will be

allowed as follows (submit informational copies of adjusted CSBG forms to SCSO):

(a) Rebudgeted funds within the Personnel Services portion of their CSBG budget;

(b) Rebudgeted funds within the Supportive Services portion of their CSBG budget;

(c) On a one-time basis, allowable transfers from the Personnel Services budget to Supportive Services;

(d) On a one-time basis, allowable transfers from the Supportive Services budget to Personnel Services;

B. Program goals may be amended by submitting changes for approval on appropriate CSBG forms. At any point during the program year it appears that a goal may be achieved at less than 90%, a program and budget amendment must be submitted for approval.

C. Grantees may also request contract period end dates be extended for up to sixty (60) days in order to spend program or project carryover funds amounting to less than ten (10) percent, or an amount approved by the state, of the total contract amount.

R990-100-25. Project Monitoring and Evaluations.

A. Monitoring will be accomplished through review of the fiscal and progress reports and on-site. On-site visits shall automatically be initiated in response to a written complaint of financial or programmatic non-compliance.

B. Evaluation of CSBG funded programs shall be conducted either by the state or by the local CSBG grantees and shall be distinct from both compliance monitoring and the state's examination of CSBG grantees to ensure that they are eligible to receive CSBG funds and that they are in compliance with all CSBG related obligations. Monitoring will relate to grantee compliance with federal assurances and state requirements in program management and operation. Evaluation will involve an attempt to measure program performance project results, and to determine the impact a grantee's efforts have had on the causes of a problem being addressed and on the problem itself.

C. For the most part, CSBG evaluations will be a joint state/local effort, but the state does reserve the right to conduct evaluations of CSBG programs at any time for purposes it deems appropriate. In such cases, reasonable efforts will be made to accommodate the concerns of any local grantee that is involved.

R990-100-26. Program Reporting Requirements.

Local grantees shall be required to maintain client profile sheets on individual clients, households or groups of clients, if appropriate. A compiled report of the number and characteristics of clients served, by category, shall be submitted to SCSO on the prescribed CSBG Form thirty (30) days after the end of each quarter of the program period. The program progress report is also due at the same time.

R990-100-27. Appeals Procedure.

A. Grantees identified in the state plan as eligible to receive funding from the Community Services Block Grant can use the following procedure to appeal decisions made by the State Community Services Office in regards to program and funding.

B. Any substantive decision of SCSO which a local grantee believes to be unfair or unreasonable and having a major adverse impact on the local program, may be appealed by the grantee. The appeal process is as follows:

(1) Within fifteen (15) days of receipt of a SCSO decision that is believed to be unfair or unreasonable, the grantee believing itself to be aggrieved must submit a letter to the executive director of DWS or designee, approved and signed by its elected officials, setting forth:

(a) The decision that is being questioned;

(b) The date on which the grantee received notice of the decision;

(c) The rationale of the grantee for considering the decision to be substantial and unfair or unreasonable to the grantee;

(d) A request for a hearing, including a statement as to the desired outcome of such a hearing.

(2) Within ten (10) working days of the receipt of the grantee's request for a hearing, the executive director shall name a hearing officer, who shall schedule a hearing date no later than two (2) weeks after being so named and will notify the appellant grantee. The hearing officer will be independent of HCD.

(3) Prior to the scheduled hearing, the SCSO staff shall contact the Board of Directors of the appellant grantee:

(a) To obtain additional information pertinent to the issue;

(b) To clarify any misunderstanding of fact or policy;

(c) To explore possible alternatives that would eliminate the necessity for a hearing;

(d) To obtain a written withdrawal of the request for a hearing if the issue is resolved through negotiation.

(4) The hearing, should there be one, shall be conducted by the hearing officer. The appellant grantee may be represented by whomever it chooses at the hearing, but must notify HCD at least five (5) working days prior to the hearing who that person will be.

(5) The hearing officer shall review all testimony and evidence presented at the hearing and recommend a decision to the DWS Executive Director or designee. The DWS Executive Director or designee shall issue a written decision on the appeal within 10 working days after receipt of the hearing officer's recommendations.

(6) The decision resulting from the hearing shall be final. Any necessary hearings shall be held in Salt Lake City or at a site more convenient to the appellant agency, at the discretion of the Executive Director of DWS.

R990-100-28. Citizen Participation.

A. The state requires citizen participation and supports maximum participation of all interested persons and groups in the development and implementation of the CSBG programs at the state and local level, in advisory or administering capacity.

1. Tripartite boards are required for governing boards of private, non-profit organizations and for the administering/advisory boards of public agencies and shall conform to the requirements outlined in Sec. 675 (c) (3).

a. A minimum of one third of the board is to represent low income. A description of the democratic selection process for representatives of the poor is to be available for review.

b. One third of the members of the board are to be elected public officials, currently holding office, or their representatives, except if not enough public officials are willing or available, appointed public officials may serve. Minutes of meetings or letters of appointment must be on file for review.

c. The remainder of the members are to be officials or members of business, industry, labor, religious, welfare, education or other major groups in the community. A description of the process used for selection of private sector representatives is to be available for review. The description should include a process for interested private sector groups to petition for membership and how the petition will be considered.

B. As a part of the problem assessment portion of the planning phase (conducted every three years), each local agency shall conduct public forums for low-income residents of the areas. These forums are to allow a discussion and listing of problems as viewed by the low-income and their suggestions for solutions.

R990-100-29. Federal Program Regulations.

The CSBG is subject to regulations periodically published

in the Federal Register.

R990-100-30. Required Documentation and Forms.

The required application, budget and reporting forms shall be designated through SCSO Community Services Block Grant Program Directives.

R990-100-31. Application Process and Submission Timetable.

A. The grant application phase of CSBG for local grantees involves:

(1) A local poverty problem identification process developed under prescribed criteria outlined in a Community Services Block Grant Program Directives, problem analysis, resource analysis, service delivery system description, prioritization process and coordination policy process with appropriate documentation submitted to SCSO by May 15 every three (3) years, starting in 1998;

(2) The development of a work program for addressing problems identified and prioritized includes;

(a) Community review of draft work program;

(b) Approval of final plan by local boards or by local officials;

(c) Submission to state office by June 30 of each year.

(3) As part of the application package, the applicant must submit an administrative budget separate from the program operation budget.

R990-100-32. Budget Estimate.

By May 1, the state shall make available to eligible applicants, an estimate of funding amounts for each geographical area, based on the formula contained in the State Plan.

R990-100-33. Public Review and Comment.

A. After the work program has been prepared, but before Board approval, the applicant must provide ample opportunity for its' review by low-income residents, the community as a whole, and relevant community organizations and agencies. Notice of the availability of the application for citizen review and comment shall also be given by providing written notice to organizations and agencies, to the local media, and posting of notice in public places convenient to low-income residents. The grantee must submit all of the comments of persons and organizations choosing to respond with the application to the State Office of Community Services.

R990-100-34. Senate Bill 50 - Sales Tax Refund on Donated Food.

A. The State Community Services Office shall:

(1) Provide definitions for certification and de-certification of eligible agencies to receive the sales tax refund;

(2) Provide criteria for an organization to apply for recognition as a qualified emergency food agency;

(3) Provide procedures to be used in the certifying and de-certifying of agencies for Rules and Procedure infractions;

(4) Provide standards for determining and verifying the amount of the donated food;

(5) Certify organizations to receive the Sales Tax Refund to the State Tax Commission;

(6) Provide monitoring to insure certified agencies maintain required weighing capabilities and inventory records;

(7) Develop other procedures necessary to implement Senate Bill 50 in consultation with the State Tax Commission.

KEY: antipoverty programs, grants, community action programs, food sales tax refunds
July 9, 2012 35A-8-1004
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R990. Workforce Services, Housing and Community Development.

R990-101. Qualified Emergency Food Agencies Fund (QEFAF).

R990-101-1. Designation as a Qualified Emergency Food Fund Agency.

(1) A qualified emergency food agency, hereinafter referred to as Qualified Agency, is an organization that is;

(a) exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code, or

(b) an association of governments or a municipality which, as part of its activities operates a program that has as the program's primary purpose to;

(i) warehouse and distribute food to other agencies and organizations providing food and food ingredients to low-income persons, or

(ii) provide food and food ingredients directly to low-income persons.

(2) For initial designation as a Qualified Agency, an organization must file an application with, and must be approved by, the State Community Services Office (SCSO) before receiving distributions under Utah Code Section 35A-8-1009. The application form and instructions are available on the SCSO Website at http://housing.utah.gov/scso/qefaf.

(3) After initial designation as a Qualified Agency, a non-profit 501(c)(3) organization must maintain a current Charitable Solicitations Permit issued by the Utah Department of Commerce, Division of Consumer Protection per Utah Code Section 13-22-6 or be exempt under Utah Code Section 13-22-8. An association of governments or a municipality must continue to operate a program which has, as the program's primary purpose, to warehouse and distribute food to other agencies and organizations providing food and food ingredients to low-income persons, or provide food and food ingredients directly to low-income persons.

(4) All entities applying to be designated as a Qualified Agency must submit a list of current members of the entity's Board of Directors and contact information for the individual primarily responsible for maintaining the organization's financial records. This information should be submitted with the signed copies of the Qualified Agency's Memorandum of Understanding each year.

R990-101-2. Use of Funds.

Funds received from the QEFAF program must be expended by the Qualified Agency only for purposes related to warehousing and distributing food and food ingredients to other agencies and organizations providing food and food ingredients to low-income persons, or providing food and food ingredients directly to low-income persons.

R990-101-3. Allowable Expenditures.

(1) Warehousing - Expenditures directly related to receiving, sorting, weighing, handling, and storing of food and food ingredients, including direct staff costs for warehousing activities, scales, fork lifts, pallet jacks, shelving, refrigeration equipment, supplies for food storage, and space costs associated with the warehousing activity such as utilities, insurance, cleaning supplies, pest control, and minor repairs and maintenance.

(2) Distributing - Expenditures directly related to packaging and transporting food and food ingredients to other agencies and organizations which provide food and food ingredients to qualified low-income individuals and households, including direct staff costs, transportation equipment costs such as refrigeration units, insurance on vehicles used exclusively to pick up and drop off food and food ingredients, fuel, licensing, repairs and maintenance.

(3) Providing - Expenditures directly related to providing

food and food ingredients directly to low-income individuals and households, including direct staff costs for client intake, case management, meal preparation and/or delivery of meals to home-bound clients or congregate meal sites; operational expenditures, including telephones, computer systems used to track client eligibility, food intake and distribution; staff and volunteer training costs such as food safety training; food handler's permits; and other direct costs which are reasonable and necessary.

(4) Direct staff costs - Salaries and wages, employer's payroll taxes, and fringe benefits for staff directly involved in collecting, transporting, receiving, weighing, sorting, handling, and packaging food and food ingredients; dispensing food and food ingredients directly to eligible clients; preparing, serving and/or delivering meals to eligible clients; and providing case management services directly to eligible food bank clients. Personnel costs for staff who also work in non-QEFAF supported activities are allowable only to the extent the staff are engaged in the activities described in this section and must be supported by time and activity reports.

(5) Administrative expenditures - QEFAF funds expended by a Qualifying Agency for administrative costs shall not exceed 5% of the total distributions received by that Qualifying Agency under the QEFAF program for any fiscal year.

R990-101-4. Non-Allowable Expenditures.

Expenditures that do not directly pertain to warehousing, distributing, or providing food and food ingredients to low-income persons, other than the maximum 5% administrative costs as provided in R990-101-3(5), are not allowed. Specifically, expenditures associated with soliciting or promoting cash or food donations, recognizing donors and volunteers, and transportation costs other than picking up and delivering food and food ingredients, are not allowed. Expenditures not specifically listed in R990-101-3 are not allowed.

R990-101-5. Submission of Claims.

(1) A Qualified Agency may not submit more than one claim per month. Claims must be submitted online using the Web Grants system at the following website address: http://www.webgrants.community.utah.gov

(2) QEFAF funds expended prior to the end of the fiscal year but not reimbursed as of the end of the fiscal year may be submitted as claims within a reasonable time after the fiscal year ends.

R990-101-6. Determination of Funding Amounts; Needs Assessment; Discretionary Funds.

(1) For purposes of this section, the following definitions apply:

(a) "Available appropriation amount" means eighty percent (80%) of the total QEFAF funds appropriated to SCSO for a given fiscal year.

(b) "Designated amount" means the amount of QEFAF funds designated to be available for a Qualified Agency in a given fiscal year, without taking into account the award of any discretionary funds. Designated amounts shall be calculated as follows:

(i) For existing Qualified Agencies:

(A) For fiscal years 2018, 2019, and 2020, by calculating the yearly average of the amount of QEFAF funds allowed to the Qualified Agency over the preceding four (4) fiscal years, or if the Qualified Agency has been designated as a Qualified Agency for a shorter period of time, by calculating the yearly average of the amount of QEFAF funds allowed to the Qualified Agency during the period since it was designated as a Qualified Agency;

(B) For all subsequent fiscal years, as determined by SCSO in its discretion and in consultation with a needs assessment as described in Subsection (3);

(ii) For new Qualified Agencies, as determined by SCSO in its discretion and in consultation with a needs assessment as described in Subsection (3), or if no needs assessment has been completed, as determined by SCSO in its discretion after taking into account:

(A) The needs of the Qualified Agency;

(B) SCSO's available funding;

(C) The Qualified Agency's other sources of funding;

(D) The needs of the community being served by the Qualified Agency;

(E) Any other relevant factors.

(c) "Discretionary funds" means any QEFAF funds which are not included in the available appropriation amount, or which are returned or recouped from a Qualified Agency under Section R990-101-9.

(2) Each Qualified Agency may submit claims under Section R990-101-5 up to the Qualified Agency's designated amount in each fiscal year. The sum total of all claims submitted by all Qualified Agencies shall not exceed the available appropriation amount. If the available appropriation amount is insufficient to fund all the Qualified Agencies in their designated amounts, the funding for each Qualified Agency shall be reduced on a pro rata basis relative to the available appropriation amount.

(3) SCSO shall conduct, or cause to be conducted, a needs assessment for use in determining the designated amounts for existing and new Qualified Agencies as described in Subsection (2) above. Following the initial needs assessment, SCSO may conduct, or cause to be conducted, updated needs assessments at its discretion.

(4) Each Qualified Agency shall cooperate with any requests for information, inspection, or other review of the Qualified Agency's activities made in conjunction with developing a needs assessment. The results of each needs assessment shall be made available to the Qualified Agencies.

(5) A Qualified Agency may submit a request for discretionary funds through the process described in Section R990-109-5. Discretionary funds are limited, and no Qualified Agency has any entitlement to receive discretionary funds for any purpose.

(6) SCSO shall evaluate requests for discretionary funds based on the factors described in Subsection (1)(b)(ii).

R990-101-7. Recordkeeping Requirements.

Each Qualified Agency must maintain;

(1) receipts and other original records for donations of food and food ingredients, including schedules and work papers supporting claims made under the OEFAF program for a period of five years following the date of the claim,

(2) a financial management system that provides accurate, current, and complete disclosure of the receipt and disbursements of all QEFAF funds, including accounting records that are supported by source documentation sufficient to determine that QEFAF funds were expended only for purposes as stated in Utah Code Section 35A-8-1009 and R990-101-2, and

(3) effective control and accountability for all QEFAF funds and all property, equipment, and other assets acquired with QEFAF funds. Qualified Agency agrees to adequately safeguard all such assets and assure they are used solely for authorized purposes. Such records must be maintained by Qualified Agency for a period of five years following the date of the claim.

R990-101-8. Monitoring.

SCSO will monitor Qualified Agency claims and may conduct one or more site visits to inspect records supporting the claims being made. SCSO may also review financial records to

determine that distributions received are expended in accordance with Utah Code Section 35A-8-1009(8) and rule R990-101-3. The Qualified Agency agrees to provide all information requested by SCSO in performing this monitoring responsibility and will make such records available, upon reasonable notice, for said monitoring.

R990-101-9. Return of Unused Funds; Overpayment Recoupment.

(1) If a Qualified Agency does not use all the QEFAF funds it receives in the same fiscal year in which those funds are awarded, the unused funds shall be returned to SCSO at the conclusion of the fiscal year.

(2) Expenditures of QEFAF funds determined by audit to be unallowable because the funds were used for purposes not specified above under R990-101-2 or expenditures which are not supported by adequate source documentation shall be; immediately returned to SCSO, or properly segregated in the Qualified Agency's accounting records and identified as temporarily restricted until such time as those funds are used for the purposes specified in R990-101-2 and R990-101-3.

R990-101-10. Training and Technical Assistance.

SCSO agrees to provide training and technical assistance to a Qualified Agency for help in accessing and submitting a claim online using the Web Grants system. The Qualified Agency is responsible for ensuring that its staff receives such training and assistance.

KEY: Qualified Emergency Food Agencies Fund, QEFAF, antipoverty programs, community action programs
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R993. Workforce Services, Rehabilitation.
R993-300. Certification Requirements for Interpreters for the Deaf and Hard of Hearing.
R993-300-301. Authority and Purpose.

(1) This rule is authorized by 35A-13-601 et seq.

(2) This rule is to establish standards and procedures for the certification of interpreters in the state of Utah.

R993-300-302. Definitions and Acronyms.

(1) "Certified interpreter" means an individual who provides interpreter services and is certified as required by state or federal law. This certification is obtained by completing and passing both a knowledge and performance (skills) based test.

(2) "Department" means the Department of Workforce Services.

(3) "Director" means the director of USOR.

(4) "Division" means the division of Services for the Deaf and Hard of Hearing.

(5) "Interpreter service" means a service that facilitates effective communication between individuals through American Sign Language (ASL) or a language system or code that is modeled after ASL, in whole or in part, or is in any way derived from ASL.

(6) "ICB" means the Interpreters Certification Board.

(7) "Manual" means the policy and procedures manual governing the certification of interpreters used by the Division. The Manual is available on the Utah Interpreter Program website.

(8) "NAD-RID" means the National Association of the Deaf (NAD) and the Registry of Interpreters for the Deaf, Inc. (RID).

(9) "USOR" means the Utah State Office of Rehabilitation.

R993-300-303. Certification Requirements.

(1) Except as stated in 35A-13-609, an individual is required to be certified, or qualified as required by state or federal law, as a certified interpreter to provide interpreter services.

(2) There are three types of certification certified by the division.

(a) Novice: An entry level certification where an individual has the skills, knowledge and judgment to facilitate communication in a variety of situations, excluding more complex, technical, or other specialized situations.

(b) Professional: A master level certification where an individual has the skills, knowledge and judgment to be able to facilitate communication in almost any situation, including more complex, technical or other specialized situations.

(c) Certified Deaf Interpreter (CDI): A certification where a deaf or hard of hearing individual facilitates communication between:

(i) deaf or hard of hearing individuals and hearing individuals, or

(ii) deaf or hard of hearing individuals and other deaf or hard of hearing individuals, either as part of a team or independently.

The CDI brings a wider range of cultural and linguistic expertise to the interaction. Unlike Novice and Professional certification levels, this certification level allows the CDI to check the deaf or hard of hearing individual's understanding of what is being communicated, rather than solely interpreting the communication. The usage of a CDI is determined by the deaf, hard of hearing and hearing individuals' needs for effective communication.

(3) To be eligible for any level of certification as an interpreter, a candidate must:

(a) submit a completed, signed application;

(b) be of good moral character as defined in the Manual and by the ICB;

(c) have a high school diploma, GED, or equivalent;
(d) be 18 years or older;
(e) submit the appropriate certification examination application fees; and
(f) successfully pass the necessary examinations.
(4) Upon certification, the individual agrees to abide by NAD-RID Code of Professional Conduct as written in the Manual.

R993-300-304. Examination of Candidate for Certification.
The division will test and rate a candidate applying for interpreter certification consistent with the Manual. A candidate must pass both a knowledge and a performance examination. The knowledge examination must be successfully passed before a candidate is eligible to take the performance examination.

R993-300-305. Renewal.
(1) A Professional interpreter certificate or CID may be valid for up to four years. Each year, in order to maintain certification, an individual must pay a renewal fee and complete a renewal form. By the end of the certification period, in order to renew the certificate, an individual must also complete the requisite number of hours of continuing education.
(2) A Novice interpreter certificate expires after four years. Each year, in order to maintain certification, an individual must pay a renewal fee, complete a renewal form and complete the requisite number of hours of continuing education. Novice certified interpreters must successfully obtain a Professional level interpreter certificate or certifications recognized by the ICB prior to the end of four years. Novice certified interpreters that do not obtain an advanced level must wait four years before applying again for a Novice interpreter certification.
(3) Qualified continuing education is defined as education that is relevant to the profession, enhances the skills of the interpreter and is approved by the director in consultation with the ICB. The requisite number of hours of qualified continuing education is set by the director in consultation with the ICB.

R993-300-306. Temporary Exemptions from Certification.
With approval from the division, an individual may engage in the practice of a certified interpreter without being certified as provided in Section 35A-13-609 and the Manual.

R993-300-307. Unlawful and Unprofessional Conduct.
(1) Unprofessional conduct is conduct by a certified interpreter that:
(a) violates, or aids or abets another in violating, generally accepted professional or ethical standards applicable to the profession of a certified interpreter;
(b) physically, mentally, or sexually abuses or exploits an individual through conduct connected with a certified interpreter's practice; or
(c) violates any provision of the NAD-RID Code of Professional Conduct which is available on National Association of the Deaf (NAD) website and the Registry of Interpreters for the Deaf, Inc. (RID) website.
(2) Unlawful conduct is defined in Section 35A-13-611.
(3) A complaint alleging unlawful or unprofessional conduct by a certified interpreter must be filed with the Division within 30 days from the incident, and will be referred to the director.
(a) Complaints not filed within 30 days due to exceptional circumstances beyond the complainant's control may be accepted if the complainant contacts the Division within five days of the date of the exceptional circumstance.
(b) The director or designee will determine if the exceptional circumstance qualifies for an extension to the 30 day time frame.
(4) The director or a designee will review and investigate each complaint as described in the Manual. This includes contacting, or otherwise providing notice to, the interpreter if it appears the interpreter may have engaged in unlawful or unprofessional conduct.
(5) If it is determined the certified interpreter engaged in unlawful or unprofessional conduct, the director will issue a written decision which will include the appropriate discipline and appeal rights.
(6) An individual whose interpreter certificate has been suspended or revoked for unlawful or unprofessional conduct may apply for reinstatement to the director or designee. The director or designee may, after consultation with the ICB, require the applicant for reinstatement to complete the procedure for certification or designate the areas of the application process that need to be completed.

R993-300-308. Grounds for Denial of Certification and Disciplinary Proceedings.
(1) Based on r993-300-307, the director may, with the guidance of the ICB:
(a) refuse to issue a certification to an applicant;
(b) refuse to renew a certificate;
(c) revoke, suspend or restrict a certificate;
(d) place a certified interpreter on probation; or
(e) otherwise act on the certificate of a certified interpreter who does not meet the qualification for certification under the Interpreter Services for the Deaf and Hard of Hearing Act or these rules.
(2) The director will issue a decision if any of the actions described in subsection (1) of this section is taken. The decision will be in writing and will:
(a) advise an applicant or interpreter on conditions under which he or she may obtain certification, reinstatement or renewal of certification if any. This may include completing the procedure for certification; and
(b) notify the applicant or interpreter of his or her appeal rights.
(3) Within 30 days of the date the decision of the director is issued, the interpreter may appeal the decision by filing a written appeal with the Adjudication and Appeals Division. Hearings will be conducted in accordance with Department rules r993-100-104 through r993-100-114 and the Utah Administrative Procedures Act. Hearings are declared to be informal however the Department reserves the right to record hearings.
(4) Either party has the option of appealing the decision of the ALJ to either the Executive Director or person designated by the Executive Director or to the District Court. The appeal must be filed, in writing, within 30 days of the issuance of the decision of the ALJ.

R993-300-309. Interpreters Certification Board Responsibilities.
(1) The ICB functions as an advisory board to the director and performs duties under the director's direction.
(2) The ICB reviews complaints regarding certified interpreters and applicants. Complaints that are regarding division employees or individuals that are not certified interpreters or applicants are not handled by the ICB.
(3) The ICB makes recommendations to the director regarding:
(a) Actions to take on complaints,
(b) Rules, policy and standards regarding the certification of interpreters,
(c) All other duties listed within 35A-13-604.

KEY: certification, interpreters
July 10, 2017 **35A-13-601 et seq.**