R13. Administrative Services, Administration.
R13-1. Public Petitions for Declaratory Orders.
R13-1-1. Purpose.

(1) As required by Section 63G-4-503, this rule provides the procedures for submission, review, and disposition of petitions for agency declaratory orders on the applicability of statutes, rules, and orders governing or issued by the agency.

(2) In order of importance, procedures governing declaratory orders are:

(a) procedures specified in this rule pursuant to Title 63G, Chapter 4;

(b) the applicable procedures of Title 63G, Chapter 4;

(c) applicable procedures of other governing state and federal law; and

(d) the Utah Rules of Civil Procedure.

R13-1-2. Definitions.

Terms used in this rule are defined in Section 63G-4-103, except and in addition:

(a) "agency" means the pertinent division or office of the Department of Administrative Services;

(b) "applicability" means a determination if a statute, rule, or order should be applied, and if so, how the law stated should be applied to the facts;

(c) "declaratory order" means an administrative interpretation or explanation of rights, status, and other legal relations under a statute, rule, or order;

(d) "director" means the agency head or governing body with jurisdiction over the agency's adjudicative proceedings;

(e) "order" is defined in Section 63G-3-102; and

(f) "superior agency" means the Executive Director's Office of the Department of Administrative Services.

R13-1-3. Petition Form and Filing.

(1) The petition, or request for agency action, shall be addressed and delivered to the director, who shall mark the petition with the date of receipt.

(2) The petition shall:

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

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

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

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

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

(f) declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

(g) be signed by the petitioner.

R13-1-4. Reviewability.

The agency may not review a petition for declaratory orders that is:

(a) not within the jurisdiction and competence of the agency;

(b) trivial, irrelevant, or immaterial; or

(c) otherwise prohibited by state or federal law.

R13-1-5. Intervention.

A person may file a petition for intervention under Section 63G-4-207 if delivered to the director within 20 days of the director's receipt of the declaratory order petition filed under Section R13-1-3.

R13-1-6. Petition Review and Disposition.

(1) The director shall promptly review and consider the petition and may:

(a) meet with the petitioner;

(b) consult with counsel or the Attorney General; and

(c) take any action consistent with law that the agency deems necessary to provide the petition adequate review and due consideration.

(2) The director may issue an order pursuant to Subsection 63G-4-503(6).

(3) If the director orders an adjudicative proceeding under Subsection 63G-4-503(6):

(a) the proceeding shall be formal and governed by the procedures of Title 63G, Chapter 4 or other applicable law if a petition for intervention has been filed within the limits of Section R13-1-5; and

(b) shall be designated as informal and follow the appropriate procedures of Title 63G, Chapter 4, agency rules, or other applicable law, if a petition for intervention has not been filed within the limits of Section R13-1-5.

R13-1-7. Administrative Review.

A petitioner may seek review or reconsideration of a declaratory order by petitioning the director under the procedures of Sections 63G-4-301 and 63G-4-302.

(a) If the presiding officer issuing the declaratory order is the director, the petitioner may seek the review of the superior agency.

(b) The petitioner may appeal a director's review or reconsideration decision to the superior agency.

(c) If the petitioner receives no response from the superior agency within 20 days of filing a petition for review or reconsideration, the appeal shall be considered denied.

KEY: appellate procedures, administrative procedures
1988 63G-4
Notice of Continuation July 5, 2018

R23. Administrative Services, Facilities Construction and Management.
R23-30. State Facility Energy Efficiency Fund.
R23-30-1. Purpose.

This rule is for the purposes of:

(1) conducting the responsibilities assigned to the State Building Board and the Division of Facilities Construction and Management in managing the State Facility Energy Efficiency Fund and implementing the associated revolving loan program established in Utah Code Section 63A-5-603; and

(2) establishing requirements for eligibility for loans from the State Facility Energy Efficiency Fund, procedures for accepting, evaluating, and prioritizing applications for loans, and the terms and conditions for loans.

R23-30-2. Authority and Requirements for This Rule.

This Rule is authorized by Section 63A-5-603.

R23-30-3. Definitions.

(1) "Board" means the State Building Board.

(2) "Energy cost payback" or "cost payback" means the period of time, generally expressed in years, that is needed for the energy cost savings of an energy efficiency project to equal the cost of the energy efficiency project. It does not include the time-value of money.

(3) "Energy savings" means monies not expended by a state agency as the result of energy efficiency measures.

(4) "Fund" means the State Facility Energy Efficiency Fund under Section 63A-5-603.

(5) "Quarter" means a three month period beginning with one of the following dates: January 1, April 1, July 1, and

October 1.

(6) "SBEEP" means the State Building Energy Efficiency Program, a program within the Division of Facilities Construction and Management, which is required by Section 63A-5-603 to serve as staff to the revolving loan program associated with the State Facilities Energy Efficiency Fund.

(7) "DFCM" means the Division of Facilities Construction and Management.

(8) "State Agency" means a state agency as defined in Section 63A-5-701.

(9) "SBEEP Manager" means the designee of the DFCM Director that manages the SBEEP Program.

R23-30-4. Eligibility of Projects for Loans.

(1) Eligibility for loans from the Fund is limited to state agencies.

(2) Loans may be used only by state agencies to fully or partially finance energy efficiency projects within buildings owned and controlled by the state.

(3) For energy efficiency projects involving renovation, upgrade, or improvement of existing buildings, the following project measures may be eligible for loan financing from the Fund:

(a) building envelope improvements;

(b) increase or improvement in building insulation;

(c) lighting upgrades;

(d) lighting delamping;

(e) heating, ventilation, and air conditioning (HVAC) replacements or upgrades;

(f) improvements to energy control systems;

(g) other energy efficiency projects or programs that a state agency can demonstrate will result in a reduction in the consumption of energy; and

(h) renewable energy projects.

(4) There is no limit to the total number of loans a single state agency may receive from the Fund.

(5) An energy efficiency project is eligible for a loan only if the loan criteria is met, including an energy cost payback, all subject to approval by the Board.

R23-30-5. Eligible Costs.

(1) This Rule R23-30-5 defines the specific costs incurred by an energy efficiency project that may be eligible for financing from the Fund.

(2) The following direct costs of an energy efficiency project may be eligible for financing, subject to the remaining conditions of this section:

(a) building materials;

(b) doors and windows;

(c) mechanical systems and components including HVAC and hot water;

(d) electrical systems and components including lighting and energy management systems;

(e) labor necessary for the construction or installation of the energy efficiency project;

(f) design and planning of the energy efficiency project;

(g) energy audits that identify measures included in the energy efficiency project; and

(h) inspections or certifications necessary for implementing the energy efficiency project.

(3) The following costs are not eligible for financing from the Fund: the costs of a renovation project that are not directly related to energy efficiency measures;

(4) in cases for which the state agency receives a financial incentive or rebate from a utility or other third party for undertaking some or all of the measures in an energy efficiency project, such incentives or rebates are to be deducted from the costs that are eligible for financing from the Fund. No loans made from the Fund may exceed the final cost incurred by the state agency for the project after third party financing.

(5) For an energy efficiency project undertaken as part of the renovation of an existing building, building components or systems that are covered by the prescriptive requirements of the Utah Energy Code must exceed the minimum Utah Energy Code requirements in order for their costs to be eligible for a loan from the Fund. In addition, each project must comply with all applicable DFCM energy design requirements as well as all applicable codes, laws and regulations.

R23-30-6. Loan Application Process.

(1) The Board shall receive and evaluate applications for loans from the Fund. Notice of due dates for applications will be made available to state agencies no less than thirty (30) days in advance of the next scheduled Board meeting at which applications will be evaluated.

(2) State agencies interested in applying for a loan should first contact the SBEEP Manager. The SBEEP Manager will consult or meet with the state agency to make an initial assessment of the strength or weakness of a proposed project. The SBEEP Manager may also choose to conduct a site visit and inspection of the proposed project location prior to the submittal of an application and the state agency shall cooperate with the SBEEP Manager in making the relevant aspects of site available for such site visit and inspection. The SBEEP Manager may assist state agencies in assessing potential project measures and in preparing an application.

(3) Applications for loans will be made using forms developed by the SBEEP Manager. State agencies shall provide the following information on the forms developed by the SBEEP Manager and approved by the Board:

(a) name and location of the state agency;

(b) name and location of the building or buildings where the energy efficiency project will take place;

(c) a description of the building or buildings, including what the building is used for, seasonal variations in use, general construction of the building, and square footage;

(d) a description of the current energy usage of the building, including types and quantities of energy consumed, building systems, and the age of the building and the particular systems and condition;

(e) a description of the energy efficiency project to be undertaken, including specific measures to be undertaken, the cost or incremental cost of each measure, and the equipment or building materials to be installed;

(f) projected or estimated energy savings that result from each measure undertaken as part of the project;

(g) projected or estimated energy cost savings from each measure undertaken as part of the project;

(h) a description of how energy savings and cost savings will be measured and verified using objective and verifiable post-construction measures, that take into account fluctuations in energy cost and temperature, as well as describing the commissioning procedures for the project;

(i) a description of any additional community or environmental benefits that may result from the project; and

(j) plans and specifications shall accompany the form which describes the proposed energy efficiency measures.

(4) Applications shall be received for the Board by the SBEEP Manager. The SBEEP Manager will conduct an initial review of each application. This initial review will be for the purpose of determining the completeness of the application, whether additional information is needed, provide advice on the likelihood that proposed projects, measures, and costs may be eligible for loan financing, and to assist the state agency in improving its application.

(5) When the SBEEP Manager has determined that an application is complete and that the proposed project complies with this rule, the application will be forwarded to the Board for

its evaluation.

(6) The SBEEP Manager shall make a recommendation for each application to the Board. Based upon the score as determined by the SBEEP Manager, the SBEEP Manager will make recommendations to the Board for the funding of energy efficiency projects. The SBEEP Manager may have the assistance of others with the appropriate expertise to assist with the review of the application. The SBEEP Manager and any others that assist the SBEEP Manager in scoring the application must disclose to the Board any conflicts of interest that exist in regard to the review of the application. The SBEEP manager shall make a recommendation to the Board based on the following criteria and scoring:

(a) the feasibility and practicality of the project (maximum 30 points);

(b) the projected energy cost payback period of the project (maximum 20 points);

(c) the energy cost savings attributable to eligible energy efficiency measures (maximum 30 points); and

(d) the environmental and other benefits to the state and local community attributable to the project (maximum 20 points);

(e) the availability of another source of funding may result in a reduction in the number of overall points in proportion to the likelihood of such other source of funding and the degree to which the source of other funding will fund the entire project. If the other source of funding is likely and funds the entire project, then the SBEEP Manager may recommend to the Board that the project is ineligible for funding and the Board may so determine;

(f) if there are matching funds from another source that are available for the project, the SBEEP Manager may add points to the overall score to the project in proportion to the likelihood that the matching funds will be available and the degree to which the matching funds applies to the entire project; and

(g) the SBEEP Manager may deduct points from the score of the entire project if the state agency has not used funds properly in the past, not performed the work properly in the past, not provided annual reports or access for inspections, any of which based on the degree of noncompliance.

(7) The SBEEP Manager shall provide advice and recommendations to the Board. For applications that receive an average score of less than 70 points, the SBEEP Manager shall recommend that the Board not provide a loan from the Fund. Applications receiving an average score over 70 will normally be recommended by the SBEEP Manager for funding. However, if the current balance of the fund does not permit for the funding of all projects with an average score over 70, the SBEEP Manager will recommend, beginning with the highest scoring application and working downward in score, those applications that may be funded given the current balance of the Fund. The SBEEP Manager is not authorized to make decisions regarding the public's business in connection with the Fund. The Board is the decision making authority with regard to the award of loans from the Fund.

(8) Based upon the SBEEP Manager's scoring, evaluations and recommendations, SBEEP will prepare a memorandum for the Board that will:

(a) provide a brief description of each project reviewed by the SBEEP Manager;

(b) list the energy savings, energy cost savings, and cost payback for each project as estimated by the applicant;

(c) list the energy savings, energy cost savings, and cost payback for each project as estimated by the SBEEP technical specialist for the program;

(d) list the total score and the score for each evaluation criterion for each application;

(e) specify projects recommended for funding and those not recommended for funding;

(f) provide a brief explanation of the SBEEP Manager's rationale for each application that is not recommended for funding.

This memorandum is to be provided to each member of the Board no less than seven (7) calendar days prior to the next scheduled Board meeting at which applications will be evaluated.

(9) At its next scheduled meeting after the SBEEP Manager has submitted the recommendations to the Board, the Board will consider pending applications for loans from the Fund and will review the SBEEP Manager's recommendations for each project. The Board will also provide an opportunity for applicants and other interested persons to comment regarding the recommendations and information provided by the SBEEP Manager.

(10) When considering Loan applications, the Board may modify the dollar amount or project scope for which a loan is awarded if the Board determines that individual measures included in a project do not meet the requirements of this rule, are not cost effective, or that funds could better be used for funding of other projects.

(11) In reviewing energy efficiency measures for possible funding after receiving the report and recommendations of the SBEEP Manager and other testimony and documents provided to the Board, the Board shall:

(a) review the loan application and the plans and specifications for the energy efficiency measures;

(b) determine whether to grant the loan by applying the loan eligibility criteria; and

(c) if the loan is granted by the Board, prioritize the funding of the energy efficiency measures by applying the prioritization criteria.

(12) The Board may condition approval of a loan application and the availability of funds on assurances from the state agency that the Board considers necessary to ensure that the state agency:

(a) uses the proceeds to pay the cost of the energy efficiency measures; and

(b) implements the energy efficiency measures.

R23-30-7. Loan Terms.

(1) The amount of a loan award approved by the Board represents a maximum approved project cost. The final value of any loan may vary from the Board-approved amount according to the actual incursion of costs by the state agency. In cases where costs have exceeded those presented in the initial application, a state agency may request that the Board increase its loan award, by filing a written request with the SBEEP Manager. The Board can approve such request if good cause has been submitted by the state agency for such increase, and may deny a request in its sole discretion.

(2) After approval of a loan application by the Board, a state agency must complete the project in accordance with the construction schedule provided in the approved application for the energy efficiency project. If the state agency is unable to complete the project on time, prior to the deadline, the state agency may request an extension from the Board, by filing a written request with the SBEEP Manager, if good cause has been submitted by the state agency for such extension.

(3) Loan amounts from the Fund will be disbursed only upon documentation of actual costs incurred from the state agency during construction of the energy efficiency project.

(4) Once a project has been completed as determined by the SBEEP Manager, the state agency shall provide to the SBEEP Manager, documentation of actual costs incurred, such as invoices from contractors, as well as information on any third party financial incentives received. SBEEP will use this information to determine the actual cost of the project measures approved by the Board.

(5) The final loan amount will be equal to actual costs incurred for the project minus the value of any third party incentives received unless:

(a) this amount exceeds the amount approved by the Board, in which case the loan amount will be set at the amount originally approved by the Board; or

(b) this amount exceeds the amount approved by the Board and the Board increases the loan award at the request of the state agency.

(6) The Board will establish repayment terms and interest rates.

(7) State Agencies that are approved by the Board for a loan award will enter into a contract with the Board that specifies all terms applying to the loan, including the terms specified in this rule and other contract terms deemed necessary by the Board to carry out the purposes of this rule. The Board may authorize the SBEEP Manager to execute the contract on its behalf. The SBEEP Manager shall thereafter provide a copy of the contract to the Board at its next available regular meeting after complete execution of the contract, in order that the Board be kept apprised of all contracts.

R23-30-8. Reporting and Site Visits.

(1) In the period between Board approval and project completion, the state agency shall complete and provide to the SBEEP Manager, a written report at the beginning of each calendar quarter. The report shall include information on the state agency's progress in completing the energy efficiency project, its most-current estimate for the time of project completion, and any notable problems or changes in the project since Board approval, such as construction delays or cost overruns.

(2) After loan funds have been disbursed, the state agency shall complete and provide to the SBEEP manager, a report which shall include the following:

(a) a description of the performance of the building and of the performance of the measures included in the energy efficiency project using the approved objective and verifiable post-construction measures, that take into account fluctuations in energy costs and temperature, approved in the loan application process;

(b) a description of any problems that have occurred with the building or the project;

(c) a description of any changes to the building or to its operations that would cause a change in its energy consumption;

(d) copies of energy bills incurred for the building during the prior year such as electric and utility bills or shipping invoices for fuels such as fuel oil or propane;

(e) documentation of energy consumed by the building in the prior year; and

(f) other information requested by the SBEEP Manager or deemed important by the state agency.

(3) Approximately one year after project completion, the SBEEP Manager will conduct a site visit to the location of the energy efficiency project to verify project completion and assess the success of the project. Additional site visits may also be conducted by the SBEEP Manager during the repayment period. Loan recipients will assist the SBEEP Manager with such site visits, including providing access to all components of the energy efficiency project.

KEY: energy, efficiency, agencies, loans
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R25. Administrative Services, Finance.
R25-7. Travel-Related Reimbursements for State Employees.

R25-7-1. Purpose.

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

R25-7-2. Authority and Exemptions.

This rule is established pursuant to:

(1) Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses; and

(2) Section 63A-3-106, which authorizes the Division of Finance to make rules governing meeting per diem and travel expenses for board members attending official meetings.

R25-7-3. Definitions.

(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.

(2) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.

(3) "Department" means all executive departments of state government.

(4) "Finance" means the Division of Finance.

(5) "Home-Base" means the location the employee leaves from and/or returns to.

(6) "Per diem" means an allowance paid daily.

(7) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(8) "Rate" means an amount of money.

(9) "Reimbursement" means money paid to compensate an employee for money spent.

(10) "State employee" means any person who is paid on the state payroll system.

R25-7-4. Eligible Expenses.

(1) Reimbursements are intended to cover all normal areas of expense.

(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

R25-7-5. Approvals.

(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization".

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

R25-7-6. Reimbursement for Meals.

(1) State employees who travel on state business may be eligible for a meal reimbursement.

(2) The reimbursement will include tax, tips, and other expenses associated with the meal.

(3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is $43.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	$10.00
Lunch	$14.00
Dinner	$19.00
Total	$43.00

(b) The daily travel meal allowance for out-of-state travel is $46.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	$10.00
Lunch	$14.00
Dinner	$22.00
Total	$46.00

(4) When traveling to a Tier I premium location (Anchorage, Chicago, Hawaii, New York City, San Francisco, and Seattle), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to $69 per day.

When traveling to a Tier II premium location (Atlanta, Baltimore, Boston, Dallas, Los Angeles, San Diego, and Washington, DC), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to $59 per day.

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the premium location allowance as follows:

Tier I Location

(i) If breakfast is provided deduct $16, leaving a premium allowance for lunch and dinner of actual up to $53.

(ii) If lunch is provided deduct $20, leaving a premium allowance for breakfast and dinner of actual up to $49.

(iii) If dinner is provided deduct $33, leaving a premium allowance for breakfast and lunch of actual up to $36.

Tier II Location

(i) If breakfast is provided deduct $13, leaving a premium allowance for lunch and dinner of actual up to $46.

(ii) If lunch is provided deduct $17, leaving a premium allowance for breakfast and dinner of actual up to $42.

(iii) If dinner is provided deduct $29, leaving a premium allowance for breakfast and lunch of actual up to $30.

(c) The traveler must use the same method of reimbursement for an entire day.

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed the actual meal cost, with original receipts, not to exceed the federal reimbursement rate for the location as of the date of travel.

(a) The traveler may use both reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day the traveler leaves their home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

TABLE 3

The Day Travel Begins

1st Quarter a.m.	2nd Quarter a.m.	3rd Quarter p.m.	4th Quarter p.m.
12:00-5:59	6:00-11:59	12:00-5:59	6:00-11:59
*B, L, D	*L, D	*D	*no meals
In-State			
$43.00	$33.00	$19.00	$0
Out-of-State			
$46.00	$36.00	$22.00	$0

*B = Breakfast, L = Lunch, D = Dinner

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance. However, continental breakfasts will not reduce the meal allowance. Please Note: For breakfast, if a hot food item is offered, it is considered a complimentary meal, no matter how it is categorized by the hotel/conference facility. The meal is considered a "continental breakfast" if no hot food items are offered.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day the traveler returns to their home base, as illustrated in the following table.

TABLE 4

The Day Travel Ends

1st Quarter a.m.	2nd Quarter a.m.	3rd Quarter p.m.	4th Quarter p.m.
12:00-6:00	6:01-12:00	12:01-6:00	6:01-11:59
*no meals	*B	*B, L	*B, L, D
In-State			
$0	$10.00	$24.00	$43.00
Out-of-State			
$0	$10.00	$24.00	$46.00

*B = Breakfast, L = Lunch, D = Dinner

(7) An employee may be authorized by the Department Director or designee to receive a taxable meal allowance when the employee's farthest destination is at least 100 miles one way from their home base and the employee does not stay overnight.

(a) Breakfast is paid when the employee leaves their home base before 6:00 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves their home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves their home base and returns after 6:00 p.m.

(d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the

Department Director or designee.

R25-7-7. Meals for Statutory Non-Salaried State Boards.

(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

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

R25-7-8. Reimbursement for Lodging.

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

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

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to $70 per night for single occupancy plus tax and any mandatory fees charged by the hotel except as noted in the table below:

TABLE 5

Cities with Differing Rates

Beaver	$75.00 plus tax and mandatory fees
Blanding	$75.00 plus tax and mandatory fees
Bluff	$95.00 plus tax and mandatory fees
Brigham City	$80.00 plus tax and mandatory fees
Bryce Canyon City	$80.00 plus tax and mandatory fees
Cedar City	$80.00 plus tax and mandatory fees
Duchesne	$85.00 plus tax and mandatory fees
Ephraim	$75.00 plus tax and mandatory fees
Farmington	$85.00 plus tax and mandatory fees
Fillmore	$75.00 plus tax and mandatory fees
Garden City	$80.00 plus tax and mandatory fees
Green River	$85.00 plus tax and mandatory fees
Hanksville	$75.00 plus tax and mandatory fees
Heber	$85.00 plus tax and mandatory fees
Kanab	$90.00 plus tax and mandatory fees
Layton	$90.00 plus tax and mandatory fees
Logan	$85.00 plus tax and mandatory fees
Mexican Hat	$90.00 plus tax and mandatory fees
Moab	$110.00 plus tax and mandatory fees
Monticello	$80.00 plus tax and mandatory fees
Ogden	$90.00 plus tax and mandatory fees
Panguitch	$75.00 plus tax and mandatory fees
Park City/Midway	$110 plus tax and mandatory fees
Price	$75.00 plus tax and mandatory fees
Provo/Orem/Lehi/American Fork/ Springville	$85.00 plus tax and mandatory fees
Roosevelt/Ballard	$90.00 plus tax and mandatory fees
Salt Lake City Metropolitan Area (Draper to Centerville), Tooele	$100.00 plus tax and mandatory fees
St.George/Washington/Springdale/ Hurricane	$85.00 plus tax and mandatory fees
Torrey	$85.00 plus tax and mandatory fees
Tremonton	$90.00 plus tax and mandatory fees
Vernal	$95.00 plus tax and mandatory fees
All Other Utah Cities	$70.00 plus tax and mandatory fees

(3) State employees traveling less than 50 miles from their home base are not entitled to lodging reimbursement. Miles are calculated from either the departure home-base or from the destination to the traveler's home-base. The traveler may leave from one home-base and return to a different home-base. For example, if the traveler leaves from their residence, then the home-base for departure calculations is their residence. If the traveler returns to where they normally work (ie. Cannon Health Building), then the home-base for arrival calculations is the Cannon Health Building.

(a) In some cases, agencies must use judgement to determine a traveler's home-base. The following are some things to consider when determining a traveler's home-base.

(i) Is the destination less than 50 miles from the traveler's home or normal work location? If the destination is less than 50 miles from either the traveler's home or from their normal work location, then generally the employee should not be reimbursed for lodging.

(ii) Is there a valid business reason for the traveler to go to the office (or to some other location) before driving to the destination?

(iii) Is the traveler required to work at the destination the next day?

(iv) Is the traveler going directly home after the trip, or is there a valid business reason for the traveler to first go to the office (or to some other location)?

(v) Even if "it is not specifically against policy", would the lodging be considered necessary, reasonable and in the best interest of the State?

(4) When the State of Utah pays for a person from out-of-state to travel to Utah, the in-state lodging per diem rates will apply.

(5) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel, not to exceed the federal lodging rate for the location. These reservations must be made through the State Travel Office.

(6) The state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel for in-state or out-of-state travel stays where the department/traveler makes reservations through the State Travel Office.

If lodging is not available at the allowable per diem rate in the area the employee needs to stay, the State Travel Office will book a hotel with the best available rate. In this circumstance, the employee will be reimbursed at the actual rate booked.

If an employee chooses to stay at a hotel that costs more than the allowable per diem rate, the employee will only be reimbursed for the allowable per diem rate plus tax and any mandatory fees charged by the hotel. These instances will be audited 100% by the State Finance Post-Auditors.

(7) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add $20, for triple state employee occupancy, add $40, for quadruple state employee occupancy, add $60.

(8) Exceptions will be allowed for unusual circumstances when approved in writing by the traveler's Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51B or FI 51D.

(9) A proper receipt for lodging accommodations must accompany each request for reimbursement.

A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date(s) of occupancy, amount and date paid, number in the party, and (single, double, triple, or quadruple occupancy).

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

(11) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) $25 per night with no receipts required or

(ii) Actual cost up to $40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(12) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - $46 per day for lodging and meals. No receipt is required.

R25-7-9. Reimbursement for Incidentals.

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

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips, transportation costs, maid service, and bellman. Gratuities/tips for various services such as taxi/shuttle, assistance with baggage, maid service, and bellman, may be reimbursed up to a combined maximum of $5.00 per day.

(a) Tips for doormen and meals are not reimbursable.

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above $19.99.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) The maximum that airport parking will be reimbursed is the economy lot parking rate at the airport they are flying out of. A receipt is required for amounts of $20 or more.

(3) Registration should be paid in advance on a state warrant, or with a state purchasing card.

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when they arrive, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with them.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51B.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls.

(5) Allowances for personal telephone calls made while out of town on state business overnight may be based on the number of nights away from home. The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for personal telephone calls.

(a) Four nights or less - actual amount up to $2.50 per night.

(b) Five to eleven nights - actual amount up to $20.00

(c) Twelve nights to thirty nights - actual amount up to $30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to $18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of $5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

(8) Travel on a Weekend during Trips of More Than 10 Nights' Duration - A department may provide for employees to return home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

R25-7-10. Reimbursement for Transportation.

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

(1) Air transportation is limited to Air Coach or Excursion class. Priority seating charges will not be reimbursed unless preapproved by the department director or designee.

(a) All reservations (in-state and out-of-state) should be

made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the long term parking rate at the airport they are flying out of.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B for amounts of $20 or more.

(c) Travelers may be reimbursed, up to the maximum reimbursements rate, for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the rate of 42 cents per mile or 54 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at 54 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 42 cents per mile.

(c) Agencies may establish a reimbursement rate that is more restrictive than the rate established in this Section.

(d) Any exceptions to this mileage reimbursement rate guidance must be approved in writing by the employees Executive Director or designee.

(e) Mileage will be computed using Mapquest or other generally accepted map/route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.

(f) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(g) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51B, if other costs associated with the trip are to be reimbursed at the same time.

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

(a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 42 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director or designee.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) A comparison printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(iii) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(c) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(d) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in advance by the Department Director or designee.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director or designee.

(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director or designee.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director or designee that the pilot is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, the pilot must certify the existence of at least $500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least $500,000 for liability coverage.

(d) Reimbursement will be made at 53 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 20 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the

Department Director, the Executive Director of the Department of Administrative Services, and the Governor is required.

KEY: air travel, per diem allowances, state employees, transportation
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Notice of Continuation February 8, 2018 63A-3-106

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

The request for proposals standard procurement process shall be conducted in accordance with the requirements set forth in, Utah Procurement Code 63G-6a, Part 7. The request for proposal process may be used by a procurement unit to select the proposal that provides the best value or is the most advantageous to the procurement unit. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

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

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

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

(b) instructions for submitting price.

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

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

(b) approving content of attachments;

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

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

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

(f) for executive branch procurement units the requirements of Section 63G-6a-110(6).

R33-7-103. Multiple Stage RFP Process.

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

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

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

R33-7-103a. Multiple Stage Cost Qualification RFP Process.

In accordance with Section 63G-6a-710, a procurement unit may use a multiple stage RFP process to assist the procurement unit in selecting the proposal that provides the best value or is the most advantageous to the procurement unit. This Rule sets forth the process for issuing a multiple stage RFP process where cost is evaluated prior to the technical requirements. The concept behind this "multiple stage cost qualification RFP process" is that for certain types of procurements, a procurement unit may not want to spend time evaluating the technical responses of proposals with cost estimates that exceed the stated budget or significantly exceed the lowest cost proposal. Statute does not restrict the number of stages that may occur in a multiple stage RFP, the number or type of criteria that may be used to evaluate proposals or the sequencing of when evaluation criteria must be evaluated. However, statute does place restrictions on procedures such as separating cost, when the evaluation committee can and cannot change scores, issuing a justification statement and, if applicable, conducting a cost-benefit analysis, and so on. The instructions contained in this multiple stage cost qualification RFP process comply with all provisions set forth in Utah Code Title 63G-6a, Part 7 and associated Rule R33-7.

(1) Definitions:

(a) "Multiple stage cost qualification RFP process" means a multiple stage RFP process in which cost proposals are evaluated prior to the evaluation of technical criteria and are used to reject offerors based on established cost criteria.

(b) "Maximum cost differential percentage threshold" is a cost ceiling that is established by the conducting procurement unit that an offeror's cost proposal must not exceed or the offeror's proposal will be rejected and the offeror will not be allowed to proceed to a subsequent stage. The maximum cost differential percentage threshold may be based on the following:

(i) The lowest cost proposal submitted;

(ii) The conducting procurement's stated budget; or

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

(2) The chief procurement officer or head of procurement unit with independent procurement authority may issue a multiple stage RFP where cost is used to qualify offerors for subsequent stages or to narrow the number of offerors that will move on to subsequent stages in accordance with the requirements set forth in Utah Code 63G-6a, Part 7 and Rule R33-7.

(3) When using the multiple stage cost qualification RFP process the conducting procurement unit shall establish and include in the RFP:

(a) The minimum mandatory pass or fail requirements that proposals must meet in stage one in order to move on to stage two;

(b) The maximum cost differential percentage threshold that proposals must not exceed in stage two in order to move on to stage three;

(c) The technical criteria and a score threshold that proposals must meet in stage three in order to be eligible to move on to stage four; and

(d) If applicable, the total combined score threshold in stage four that proposals must meet to determine best value and be eligible for contract award.

(4) Except as provided in Section 63G-6a-707, the following process shall be used to evaluate proposals and award a contract under this multiple stage process:

(a) During stage one, an individual assigned by the conducting procurement unit shall evaluate each offeror's proposal in response to the minimum mandatory pass or fail requirements set forth in the RFP:

(i) Offerors with proposals that do not meet the mandatory minimum pass or fail requirements shall be rejected and are not allowed to move on to subsequent stages and are not eligible to receive a contract award;

(ii) Offerors with proposals that meet the mandatory minimum pass or fail requirements shall be deemed qualified to move on to stage two;

(b) During stage two, the issuing procurement unit shall assign an individual, who is not a member of the evaluation committee, to evaluate the cost proposals of offerors qualified in stage one in response to the cost criteria and maximum cost differential percentage threshold set forth in the RFP.

(i) The individual assigned by the issuing procurement unit to evaluate cost proposals shall do so outside the presence of the evaluation committee and shall not share the cost proposals or the results of the cost proposal evaluations with the

evaluation committee until all technical scoring is completed in stage three;

(ii) Offerors with cost proposals that exceed the maximum cost differential percentage threshold shall be rejected, not allowed to move on to subsequent stages, and not eligible to receive a contract award;

(iii) Offerors with cost proposals that do not exceed the maximum cost differential percentage threshold shall be deemed qualified to move on to stage three;

(iv) Cost shall be evaluated in accordance with Section 63G-6a-707; and

(v) A cost score shall be calculated based on the cost formula set forth in the RFP for each proposal identified in Subsection (3)(b)(iii) of this Rule;

(c) During stage three, the evaluation committee shall score the proposal of each offeror qualified in stage two, in response to the technical evaluation criteria set forth in the RFP, without having access to any information relating to the cost or the scoring of the cost. Technical criteria shall be scored in accordance with Section R33-7-704 or rules established by the applicable rulemaking authority;

(d) During stage four, the individual assigned by the issuing procurement unit, who is not a member of the evaluation committee, shall add the cost scores to the evaluation committee's final recommended technical scores to derive the total combined score for each proposal in accordance with the process set forth in Section 63G-6a-707;

(e) In order to determine best value to the procurement unit, the evaluation committee shall prepare a justification statement and, if applicable, a cost-benefit analysis, in accordance with Section 63G-6a-708 and 709; and

(f) A contract may be awarded to the offeror with the proposal having the highest total combined score, or multiple contracts may be awarded to offerors with proposals meeting the total combined score threshold set forth in the RFP, in accordance with Section 63G-6a-709.

(5) Maximum cost differential percentage thresholds include the following examples:

(a) Lowest Cost Proposal Example: The maximum cost differential percentage threshold is within 10% above the lowest cost proposal:

(i) Offerors with cost proposals that exceed 10% above the proposal with the lowest cost will be rejected. Offerors with cost proposals that do not exceed 10% above the proposal with the lowest cost will move on to the subsequent stage;

(b) Stated Budget Example: The maximum cost differential percentage threshold is within 5% above the conducting procurement unit's stated project budget:

(i) Offerors with cost proposals that exceed 5% above the stated budget will be rejected. Offerors with cost proposals that do not exceed 5% above the stated budget will move on to the subsequent stage; and

(a) Combination Lowest Cost Proposal and Stated Budget Example: the maximum cost differential percentage threshold is within 8% above the lowest cost proposal and within 2% above the conducting procurement unit's stated project budget:

(i) Offerors with cost proposals that exceed 8% above the proposal with the lowest cost will be rejected and offerors with cost proposals that exceed 2% above the stated budget will be rejected. Offerors with cost proposals that do not exceed 8% above the proposal with the lowest cost and do not exceed 2% above the stated budget will move on to the subsequent stage.

(6) Additional multiple stage RFP processes may be developed and used to cover the wide range of different procurements that public entities encounter, provided the processes comply with the requirements set forth in the Utah Procurement Code and Title R33.

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

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

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

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

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

(a) that are determined to be excessive;

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

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

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

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

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

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

R33-7-105. Protected Records.

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

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

(c) Other Protected Records under GRAMA.

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

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

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

R33-7-106. Notification.

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

(2) Except as provided by court order, the procurement unit to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under Section R33-7-105 but which the procurement unit or State Records

Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. Section R33-7-106 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

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

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

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

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

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

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

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

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

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

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

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

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

(i) attendance in person;

(ii) teleconference participation;

(iii) webinar participation;

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

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

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

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

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

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

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

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

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

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

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

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

(i) the attendance log;

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

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

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

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

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

(a) making changes to:

(i) the scope of work;

(ii) the schedule;

(iii) the qualification requirements;

(iv) the criteria;

(v) the weighting; or

(vi) other requirements of the Request for Proposal.

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

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

R33-7-402. Rejection of Late Proposals -- Delivery and Time Requirements.

(1) Except as provided in Subsection (4), an issuing procurement unit may not accept a proposal after the deadline for receipt of solicitation responses to a request for proposals has passed as set forth in Section 63G-6a-704(2).

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

be accepted.

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

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

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

R33-7-501. Evaluation of Proposals.

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

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

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

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

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

R33-7-501.5. Minimum Score Thresholds.

(1) A procurement unit may establish minimum score thresholds to advance proposals from one stage in the RFP process to the next, including contract award.

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

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

(i) Minimum scores for each evaluation category;

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

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

(b) Thresholds may not be based on:

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

(ii) A predetermined number of offerors.

R33-7-502. Voluntary Withdrawal of a Proposal.

An offeror may voluntarily withdraw a proposal at any time before a contract is awarded with respect to the RFP for which the proposal was submitted provided the offeror is not engaged in any type of bid rigging, collusion or other anticompetitive practice made unlawful under other applicable law.

R33-7-601. Best and Final Offers.

Best and Final Offers shall be conducted in accordance with the requirements set forth in Section 63G-6a-707.5 of the Utah Procurement Code. Rule R33-7 provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

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

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

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

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

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

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

(i) a management plan;

(ii) references;

(iii) statements of qualifications; and

(iv) a management fee.

(b) the management fee contains only the following:

(i) preconstruction phase services;

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

(iii) overhead and profit for the construction phase.

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

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

R33-7-701.1. Cost-Benefit Analysis.

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

R33-7-702. Only One Proposal Received.

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

(a) conduct a review to determine if:

(i) the proposal meets the minimum requirements;

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

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

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

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

R33-7-703. Evaluation Committee Procedures for Scoring Non-Priced Technical Criteria.

Evaluation committee members, employees of procurement units, and any other person involved in an RFP evaluation process are required to review Utah Code Title 63G-6a, Parts 7 and 24; and Section R33-7-703 prior to participating in the evaluation process.

(1)(a) In accordance with Section 63G-6a-704, the conducting procurement unit may conduct a review of proposals to determine if:

(i) the person submitting the proposal is responsible;

(ii) the proposal is responsive; and

(iii) the proposal meets the mandatory minimum requirements set forth in the RFP.

(b) An evaluation committee may not evaluate proposals deemed non-responsive or not meeting the mandatory minimum requirements of the RFP, or vendors determined to be not responsible.

(2)(a) Prior to the evaluation and scoring of proposals, an employee from the issuing procurement unit will meet with the evaluation committee, staff members of the conducting procurement unit, and any other person involved in the procurement process that may have access to the proposals to:

(i) Explain the evaluation and scoring process;

(ii) Discuss requirements and prohibitions pertaining to:

(A) socialization with vendors as set forth in Section R33-24-104;

(B) financial conflicts of interest as set forth in Section R33-24-105;

(C) personal relationships, favoritism, or bias as set forth in Section R33-24-106;

(D) disclosing confidential information contained in proposals or the deliberations and scoring of the evaluation committee; and

(E) ethical standards for an employee of a procurement unit involved in the procurement process as set forth in Section R33-24-108.

(iii) review the scoring sheet and evaluation criteria set forth in the RFP; and

(iv) provide a copy of Section R33-7-703 to the evaluation committee, employees of the procurement unit involved in the procurement, and any other person that will have access to the proposals.

(b) Prior to participating in any phase of the RFP process, all members of the evaluation committee must sign a written statement certifying that they do not have a conflict of interest as set forth in Section 63G-6a-707 and Section R33-24-107.

(i) At each stage of the procurement process, the conducting procurement unit is required to ensure that evaluation committee members, employees of the procurement unit and any other person participating in the procurement process:

(A) do not have a conflict of interest with any of the offerors;

(B) do not contact or communicate with an offeror concerning the procurement outside the official procurement process; and

(C) conduct or participate in the procurement process in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.

(3) Unless an exception is authorized by the head of the issuing procurement unit, the evaluation committee is prohibited from knowing, or having access to, any information relating to the cost, or the scoring of the cost, of a proposal until after the evaluation committee has finalized its scoring of non-price technical criteria for each proposal and submitted those scores to the issuing procurement unit as set forth in Section 63G-6a-707.

(4)(a) In accordance with Section 63G-6a-707, the conducting procurement unit shall appoint an evaluation committee to evaluate each responsive proposal submitted by a responsible offeror that has not been rejected from consideration under the provisions of the Utah Procurement Code, using the criteria described in the RFP.

(b) Using the provisions set forth in Section R33-7-705, the evaluation committee shall exercise independent judgement in the evaluation and scoring of the non-priced technical criteria in each proposal.

(c) Proposals must be evaluated solely on the criteria listed in the RFP. The evaluation committee shall assess each proposal's completeness, accuracy, and capability of meeting the technical criteria listed in the RFP.

(d) The evaluation committee may receive assistance from an expert or consultant authorized by the conducting procurement unit in accordance with the provisions set forth in Section 63G-6a-707(4).

(e) The evaluation committee may enter into discussions, conduct interviews with, or attend presentations by responsible offerors with responsive proposals that meet the mandatory minimum requirements of the RFP for the purpose of clarifying information contained in proposals in accordance with the provisions set forth in Section 63G-6a-707(5).

(5) After each proposal has been independently evaluated by each member of the evaluation committee, each committee member independently shall assign a preliminary draft score for each proposal for each of the non-priced technical criteria listed in the RFP.

(a) After completing the preliminary draft scoring of the non-priced technical criteria for each proposal, the evaluation committee shall enter into deliberations to:

(i) review each evaluation committee member's preliminary draft scores;

(ii) resolve any factual disagreements;

(iii) modify their preliminary draft scores based on their updated understanding of the facts; and

(iv) derive the committee's final recommended consensus score for the non-priced technical criteria of each proposal.

(b) During the evaluation process, the evaluation committee may make a recommendation to the conducting procurement unit that:

(i) a proposal be rejected for;

(A) being non-responsive,

(B) not meeting the mandatory minimum requirements, or

(C) not meeting any applicable minimum score threshold, or

(ii) an offeror be rejected for not being responsible.

(c) If an evaluation committee member does not attend an evaluation committee meeting, the meeting may be canceled and rescheduled.

(d) In order to score proposals fairly, an evaluation committee member must be present at all evaluation committee meetings and must review all proposals, including if applicable oral presentations. If an evaluation committee member fails to attend an evaluation committee meeting or leaves a meeting early or fails for any reason to fulfill the duties and obligations of a committee member, that committee member shall be removed from the committee. The remainder of the evaluation committee members may proceed with the evaluation, provided there are at least three evaluation committee members remaining.

(i) Attendance or participation on an evaluation committee via electronic means such as a conference call, a webcam, an online business application, or other electronic means is permissible.

(6)(a) The evaluation committee shall derive its final recommended consensus score for the non-priced technical criteria of each proposal using the following methods:

(i) the total of each individual evaluation committee member's scores for each proposal shall be the consensus score for the evaluation committee; or

(ii) an average of each individual evaluation committee member's scores for each proposal shall be the consensus score for the evaluation committee.

(b) The evaluation committee shall submit its final score sheet, signed and dated by each committee member, to the issuing procurement unit for review.

(7) The evaluation committee may not change its consensus final recommended scores of the non-priced technical criteria for each proposal after the scores have been submitted to the issuing procurement unit, unless the issuing procurement unit authorizes that a best and final offer process to be conducted under the provisions set forth in Section 63G-6a-707.5 and Section R33-7-601.

(8) In accordance with Section 63G-6a-707, the issuing procurement unit shall:

(a) review the evaluation committee's final recommended

scores for each proposal's non-priced technical criteria and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter or cancel the solicitation in accordance with Sections 63G-6a-106(4) or 63G-6a-303(3).

(b) score the cost of each proposal based on the applicable scoring formula; and

(c) calculate the total combined score for each proposal.

(9) The evaluation committee may, with approval from the issuing procurement unit, request best and final offers from responsible offerors who have submitted responsive proposals that meet the minimum qualifications, evaluation criteria, or applicable score thresholds identified in the RFP, under the circumstances set forth in Section 63G-6a-707.5 and Section R33-7-601.

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

(11) The issuing procurement unit's role as a non-scoring member of the evaluation committee will be to facilitate the evaluation process within the guidelines of the Utah Procurement Code and applicable Rules.

(12)(a) The head of the issuing procurement unit may remove a member of an evaluation committee for:

(i) having a conflict of interest or the appearance of a conflict of interest with a person responding to a solicitation;

(ii) having an unlawful bias or the appearance of unlawful bias for or against a person responding to a solicitation;

(iii) having a pattern of arbitrary, capricious, or clearly erroneous scores that are unexplainable or unjustifiable;

(iv) having inappropriate contact or communication with a person responding to a solicitation;

(v) socializing inappropriately with a person responding to a solicitation;

(vi) engaging in any other action or having any other association that causes the head of the issuing procurement unit to conclude that the individual cannot fairly evaluate a solicitation response; or

(vii) any other violation of a law, rule, or policy.

(b) The head of the issuing procurement unit may reconstitute an evaluation committee in any way deemed appropriate to correct an impropriety described in Subsection (12)(a). If an impropriety cannot be cured by replacing a member, the head of the issuing procurement unit may appoint a new evaluation committee, cancel the procurement or cancel and reissue the procurement.

R33-7-704. Scoring of Evaluation Criteria, Other Than Cost, for Proposals in the RFP Process.

(1) Scoring shall be based upon each applicable evaluation criteria as set forth in the RFP, and may include but is not limited to:

(a) Technical specifications;

(b) Qualifications and experience;

(c) Programming;

(d) Design;

(e) Time, manner, or schedule of delivery;

(f) Quality or suitability for a particular purpose;

(g) Financial solvency;

(h) Management and methodological plan; and

(i) Performance ratings or references.

(2) The standard scoring methodology is:

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

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

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

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

(e) One point (Poor): The proposal inadequately addresses the requirements or criteria described in the RTF or cannot be assessed due to incomplete information; or

(f) Zero (Fail): The proposal fails to address the requirements or criteria described in the RFP or cannot be assessed due to missing information.

(3) A procurement unit may select another scoring methodology to score proposals, as long as:

(i) the scoring methodology is published in the RFP; and

(ii) the scoring methodology allows for competition and is reasonable.

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

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

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

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

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

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

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

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

R33-7-802. Publicizing Awards.

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

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

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

(c) the rankings of the proposals;

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

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

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

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

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

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

(c) non-public financial statements; and

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

R33-7-900. Public-Private Partnerships.

(1) Except as provided in Section 63G-6a-802, a procurement unit shall award a contract for a public-private partnership, as defined in Section 63G-6a-103, by the request for proposals standard procurement process set forth in Section 63G-6a, Part 7.

KEY: government purchasing, request for proposals, standard procurement process
July 26, 2018 63G-6a
Notice of Continuation July 8, 2014

R68. Agriculture and Food, Plant Industry.
R68-20. Utah Organic Standards.
R68-20-1. Authority.

Promulgated under authority of Sections 4-2-103(1)(i), 4-3-201, 4-4-102, 4-5-104, 4-9-103, 4-11-103, 4-12-3, 4-14-106, 4-16-103, 4-32-109, 4-37-109(2).

A. The Utah Department of Agriculture and Food (UDAF) adopts and incorporates by reference CFR, October 1, 2017 edition, Title 7 Part 205, National Organic Program Final Rule.

1. UDAF will make available to all its applicants for certification and producers of organic products, copies of the National Organic Program Final Rule.

R68-20-2. Definitions and Terms.

A. For the purpose of this rule, words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand.

1. "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food, or the commissioner's representative.

2. "Distributor" means a handler that purchases products under its own name, usually from a shipper, processor, or another distributor. Distributors may or may not take physical possession of the merchandise. A distributor is required to be certified if that person both takes title to the organic products and substantially transforms, processes, repackages or re-labels these products.

3. "Food (and food products)" means material, usually of plant or animal origin, containing or consisting of essential body nutrients, as carbohydrates, fats, proteins, vitamins, and minerals, that is taken in and assimilated by an organism to maintain life and growth. Food products include all agricultural and horticultural products of the soil, apiary and apiary products, poultry and poultry products, livestock and livestock products, dairy products and aquaculture products.

4. "Registration" means an agreement or contract that grants a certified operator the right to use a certificate or certification mark in accordance with organic standards and certification requirements.

5. "Utah Department of Agriculture and Food Organic Seal" means the seal to be displayed on packaging of certified organic foods and food products intended for retail sale, indicating compliance with provisions of this rules.

R68-20-3. Compliance.

A. Violations of the State Organic Program will be handled in compliance to Section 4-2-302.

R68-20-4. Fees for Organic Certification.

Fees for Organic Certification Services.

A. Fees shall be in accordance with the fee schedule in the annual appropriations act passed by the Legislature and signed by the Governor. The person, firm, corporation or other organization requesting registration as a producer, handler, processor or certification agency or requesting inspection or laboratory services shall pay such fees. All fees are payable to the Utah Department of Agriculture and Food.

B. Registration of producers, handlers, processors or combinations thereof. Applications for registration may be obtained from the Utah Department of Agriculture and Food and submitted with the annual fees. Annual registration is required for all producers, handlers, processors or combinations thereof and shall have applications submitted and be paid by February 1 of each year. New applicant shall have 120 days to complete their initial application and have it accepted by the Department or the applicant shall reapply.

C. Registration of Certifying Agencies. Applications for registration may be obtained from the Utah Department of Agriculture and Food and submitted with the annual fees. Annual registration is required for all certifying agencies and shall be paid by February 1 each year. Failure to pay by this date will result in late fees and a prohibition from conducting business in the State of Utah.

D. Gross sales fees. Payment of annual gross sales fees shall accompany the annual registration application and fees and shall be based on the previous year's gross sales of state certified producers and processors.

E. Any producers, handlers, processors or combinations thereof that conduct business under exemption listed in CFR, October 1, 2017 edition, Title 7 Part 205.101 within the State of Utah shall register annually with the Utah Department of Agriculture Organic Program before conducting business.

R68-20-5. UDAF Seal.

Use of the UDAF Organic Seal

A. The UDAF seal may be used only for raw or processed agricultural products in paragraphs (a), (b), (e)(1), and (e)(2) of CFR 205.301.

B. The UDAF seal must replicate the form and design and must be printed legibly and conspicuously.

1. On a white background with a double black circle the words, Utah Department of Agriculture and Food, within the borders of the circles. At the bottom of the circle a teal green horizontal line.

2. Within the inner circle a black outline of the State of Utah, and inscribed in italics in a teal green color, slanting upward from left to right, the word "Certified Organic".

3. A copy of the seal is available at the Department of Agriculture and Food, 350 North Redwood Road, PO Box 146500, Salt Lake City, Utah 84114-6500.

KEY: inspections
July 9, 2018 4-2-103(1)(i)
Notice of Continuation December 30, 2014 4-3-201
4-4-102
4-5-104

4-9-103
4-11-103
4-12-3
4-14-106
4-16-103
4-32-109
4-37-109(2)

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

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

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

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

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

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

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

R81-4C-2. Application.

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

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

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

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

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

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

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

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

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

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

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

R81-4C-3. Bonds.

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

R81-4C-4. Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R81-4C-8. Alcoholic Product Flavoring.

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

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

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

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

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

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

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

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

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

(1) Contents of Alcoholic Beverage Menu.

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

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

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

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

R81-4C-12. Identification Badge.

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

R81-4C-13. Brownbagging.

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

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

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

R81-4C-14. Grandfathered Bar Structures.

(1) Authority 32B-1-102; 32B-6-302; and 32B-6-305.3.

(2) The purpose of this rule is to define terms for full service restaurant licenses as required by 32B-6 Part 3.

(3) Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) "remodels the grandfathered bar structure or dining area" for purposes of 32B-6-305.3(4)(a)(ii) means that:

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

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

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

(f) "remodels the grandfathered bar structure or dining area" does not:

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

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

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

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

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

(ii) a remodel of a "grandfathered bar structure or dining area".

KEY: alcoholic beverages
December 28, 2017 **32B-2-202**
Notice of Continuation July 3, 2018 **32B-5-303(3)**
32B-6-207
32B-6-301 through 305.1

R81. Alcoholic Beverage Control, Administration.
R81-4D. On-Premise Banquet License.
R81-4D-1. Licensing.

(1) An on-premise banquet license may be issued only to a hotel, resort facility, sports center or convention center as defined in this rule. An on-premise banquet sublicense may be issued to a resort licensee pursuant to 32B-6-601 to -604. Any reference in the rules in this chapter 4D to an on-premise banquet license or licensee shall be interpreted as including an on-premise banquet sublicense or sublicensee.

(a) "Hotel" is a commercial lodging establishment:

(i) that offers temporary sleeping accommodations for compensation;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the hotel to provide complete meals; and

(iv) that has at least 1000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 75 people, provided that in cities of the third, fourth or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(b) "Resort facility" is a publicly or privately owned or operated commercial recreational facility or area:

(i) that is designed primarily to attract and accommodate people to a recreational or sporting environment;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the resort to provide complete meals; and

(iv) that has at least 1500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(c) "Sports center" is a publicly or privately owned or operated facility:

(i) that is designed primarily to attract people to and accommodate people at sporting events;

(ii) that has a fixed seating capacity for more than 2,000 persons;

(iii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iv) that has adequate kitchen or culinary facilities on the premises of the sports center to provide complete meals; and

(v) that has at least 2500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(d) "Convention center" is a publicly or privately owned or operated facility:

(i) the primary business or function of which is to host conventions, conferences, and food and beverage functions under a banquet contract;

(ii) that has adequate kitchen or culinary facilities on the premises of the convention center to provide complete meals;

(iii) that is in total at least 30,000 square feet or until October 31, 2011 the facility is a "grandfathered facility" under 32B-6-603(4); and

(iv) that has at least 3000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated counties, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(2)(a) A "banquet contract" as used in this rule means an agreement between an on-premise banquet licensee and a host of a banquet to provide alcoholic beverage services at a meal, reception, or other private banquet function at a defined location on a specific date and time for a pre-arranged, guaranteed number of attendees at a negotiated price.

(b) Each "banquet contract" shall:

(i) clearly define the location of the private banquet

function;

(ii) require that the private banquet function be separate from other areas of the facility that are open to the general public; and

(iii) require signage at or near the entrance to the private banquet function to indicate that the location has been reserved for a specific group.

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

R81-4D-2. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of an on-premise banquet license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204 and 32B-6-604 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation of an on-premise banquet catering license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the on-premise banquet premise.

(2) The application shall include a floor plan showing the locations of function space in or on the applicant's business premises that may be reserved for private banquet functions where alcoholic beverages may be stored, sold or served, and consumed. Hotels shall also indicate the number of sleeping rooms where room service will be provided and include a sample floor plan of a guest room level. No application will be accepted that merely designates the entire hotel, resort, sports center or convention center facility as the proposed licensed premises.

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

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

(c) A completed application filed after the deadline in Subsection (3)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

(4) Pursuant to 32B-6-604(6)after an on-premise banquet license has been issued, the licensee may apply to the department for approval of additional locations in or on the premises of the hotel, resort, sports center or convention center that were not included in the licensee's original application. The additional locations must:

(i) be clearly defined;

(ii) be configured to ensure separation between any private banquet function and other areas of the facility that are open to the general public; and

(iii) be configured to ensure compliance with all operational restrictions with respect to the sale, storage, and consumption of alcoholic beverages required by 32B-5-301 to -308 and 32B-6-605.

R81-4D-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-604(5)(d), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4D-4. Insurance.

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

R81-4D-5. On-Premise Banquet Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when an on-premise banquet licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

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

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

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

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

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

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

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

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

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

R81-4D-6. On-Premise Banquet Licensee Operating Hours.

Allowable hours of alcoholic beverage sales shall be in accordance with Section 32B-6-605(8). However, the licensee may open the alcoholic beverage storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

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

(1) The on-premise banquet licensee shall maintain at least 50% of its total business from the sale of food pursuant to

Section 32B-6-605(9).

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

(b) If any inspection or audit discloses that the sales of food are less than 50% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 50%. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

(2) Liquor dispensing shall be in accordance with Section 32B-5-304 and Section R81-1-9 (Liquor Dispensing Systems) of these rules.

R81-4D-8. Liquor Storage.

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

R81-4D-9. Alcoholic Product Flavoring.

On-premise banquet licensees may use alcoholic products as flavoring subject to the following guidelines:

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

(2) No on-premise banquet licensee employee under the age of 21 years may handle alcoholic product flavorings.

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

(1) An on-premise banquet licensee shall have readily available for any host of a contracted banquet a printed alcoholic beverage price list, or menu containing prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer.

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

(3) Any host of a contracted banquet shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(4) The on-premise banquet licensee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4D-12. Identification Badge.

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

R81-4D-13. On-Premise Banquet License Room Service - Mini-Bottle/187 ml Wine Sales.

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

(2) Application of Rule.

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

(b) The on-premise banquet licensee must order in full case lots, and all sales are final.

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

(d) Failure of the on-premise banquet licensee to strictly adhere to the provisions of this rule is grounds for the department to take disciplinary action against the on-premise banquet licensee.

R81-4D-14. Reporting Requirement.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to 32B-6-605(3).

(2) Purpose. This rule implements the requirement of 32A-4-406(21) that requires the commission to provide by rule procedures for on-premise banquet licensees or sublicensees to report scheduled banquet events to the department to allow random inspections of banquets by authorized representatives of the commission, the department, or by law enforcement officers to monitor compliance with the alcoholic beverage control laws.

(3) Application of the Rule.

(a) An on-premise banquet licensee and an on-premise banquet sublicense licensed under 32B-8 shall file with the department at the beginning of each quarter a report containing advance notice of events that have been scheduled as of the reporting date for that quarter to be held under a banquet contract as defined in R81-4D-1.

(b) The quarterly reports are due on or before January 1, April 1, July 1, and October 1 of each year and may be hand-delivered or submitted by mail or electronically.

(c) Each report shall include the name and specific location of each event.

(d) The department shall make copies of the reports available to a commissioner, authorized representative of the department, and any law enforcement officer upon request to be used for the purpose stated in Section (2).

(e) The department shall retain a copy of each report until the end of each reporting quarter.

(f) Because any report filed under this rule contains commercial information, the disclosure of which could reasonably be expected to result in unfair competitive injury to the licensee or sublicensee submitting the information, and the licensee or sublicensee submitting the information has a greater interest in prohibiting access than the public in obtaining access

to the report:

(i) any report filed shall be deemed to include a claim of business confidentiality, and a request that the report be classified as protected pursuant to 63G-2-305 and -309;

(ii) any report filed shall be classified by the department as protected pursuant to 63G-2-305; and

(iii) any report filed shall be used by the department and law enforcement only for the purposes stated in this rule.

(g) Failure of an on-premise banquet licensee or sublicensee to timely file the quarterly reports may result in disciplinary action pursuant to 32B-3-201 to -207, and R81-1-6 and -7.

KEY: alcoholic beverages
April 30, 2013 **32-1-607**
Notice of Continuation July 3, 2018 **32B-2-202**
32B-5
32B-6-601 through 605

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;

(e) second-lien residential loan originator; and

(f) a licensed mortgage loan originator working as a junior loan officer or assistant loan officer.

(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
(6) Licensed mortgage loan originator working as a junior loan officer or as an assistant loan officer	0.5 pt/month

KEY: residential mortgage, loan origination, licensing, enforcement
July 13, 2018 61-2c-103(3)
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R277. Education, Administration.
R277-104. ADA Complaint Procedure.
R277-104-1. Authority and Purpose.

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

(2)(a) The purpose of this rule is to establish procedures for individuals to file complaints under the ADA and to provide appropriate classification of the records of complaints and appeals.

(b) A complaint filed by an employee of the Board is not subject to this rule, but is governed by Section R477-8-15.

R277-104-2. Definitions.

(1) "ADA" means the Americans with Disabilities Act, 42 U.S.C. 12201, including the ADA Amendments Act of 2008, Pub. L. No. 110-325, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination.

(2) "Days" means calendar days.

(3) "Disability" means, with respect to an individual disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual as defined in the ADA.

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

(5) "Individual with a disability" or "individual" means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities.

R277-104-3. Statement of Non-Discrimination.

The Superintendent shall comply with the ADA in administering the services, programs, and activities of the Board.

R277-104-4. Filing of Complaints.

(1) An individual may file a complaint by submitting a claim with the Superintendent no later than 30 days from the date of the alleged act of discrimination.

(2) A complaint under Subsection (1) shall be made in writing or in another format reasonable for the individual and the Superintendent.

(3) Each complaint shall include:

(a) the individual's name and address;

(b) a description of the nature and extent of the individual's disability;

(c) a description of the alleged discriminatory action in sufficient detail to inform the ADA Coordinator of the nature and date of the alleged violation;

(d) a description of the action or accommodation needed; and

(e) the signature of the individual or the individual's legal representative.

R277-104-5. Action on Complaint.

(1) The Superintendent shall investigate each complaint to the extent necessary to assure all relevant facts are determined and documented.

(2) The Superintendent may receive investigative assistance from:

(a) the Attorney General's office;

(b) the Department of Human Resource Management;

(c) State Risk Management; and

(d) Board staff.

(3)(a) The Superintendent shall notify a claimant of the Superintendent's decision in writing within 30 days of receiving a Complaint.

(b) If additional time is necessary to reasonably investigate a complaint, the Superintendent shall notify the Claimant in writing of:

(i) the reasons for the delay; and

(ii) a date certain by which a decision will be provided.

(4) Unless the claimant files a request for reconsideration under Section R277-104-6, the decision of the Superintendent is the final agency action.

R277-104-6. Reconsideration.

(1) A claimant may file a request with the Superintendent to review a decision under Subsection R277-104-5(3) within ten days of the date of the Superintendent's decision.

(2) A request for reconsideration under Subsection (1) shall outline any error alleged in the Superintendent's decision, which warrants reconsideration of the Superintendent's proposed action.

(3) Following a request for reconsideration, the Superintendent may conduct additional investigation, if warranted.

(4) The Superintendent shall issue a final decision in writing within 30 days of a request for reconsideration under Subsection (1), which action shall be the final agency action.

R277-104-7. Classification of Records.

(1) The investigative record of each complaint and all written records produced or received as part of such investigations, recommendations, or actions, shall be classified as protected under Section 63G-2-305, until the Superintendent's action is final.

(2) The Superintendent shall classify any portion of a record which pertain to an individual's medical condition as

private, in accordance with Subsection 63G-2-302(1)(b), or controlled, in accordance with Section 63G-2-304.

(3) The final written decision of the Superintendent shall be public, subject to the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.

R277-104-8. Relationship to Other Laws.

(1) This rule does not prohibit or limit the use of remedies available to an individual under:

(a) Section 67-19-32;

(b) 28 CFR, Subpart F, Complaint Procedures; or

(c) any other Utah state or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: complaints, disabled persons
July 9, 2018 28 CFR 35.107
Notice of Continuation May 11, 2018

R277. Education, Administration.
R277-107. Educational Services Outside of an Educator's Regular Employment.
R277-107-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

(b) Subsection 53E-3-401(4), which permits the Board to adopt rules to carry out its duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53E-3-512, which directs the Board to make rules that establish basic ethical conduct standards for employees who provide public education-related services or activities outside of their regular employment.

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

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

R277-107-2. Definitions.

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

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

(3) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

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

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

(i) a public education employee receives compensation; and

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

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

(i) tutoring;

(ii) lessons;

(iii) clinics;

(iv) camps; or

(v) travel opportunities.

R277-107-3. LEA Relationship to Activities Involving Educators.

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

(2) Extracurricular activities are subject to:

(a) school fee laws and rules, including the provisions of R277-407;

(b) fee waivers;

(c) procurement laws; and

(d) all other applicable laws and rules.

(3) An employee that participates in a private, but public education-related activity, is subject to the following requirements:

(a) An employee's participation in the activity shall be separate and distinguishable from the employee's public employment;

(b) An employee may not, in promoting private, but public education-related activity:

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

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

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

(a) a private activity; or

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

(5) An employee may:

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

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

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

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

(6) An employee may not condition credit and participation in a public school program or activity on a student's participation in such activities as clinics, camps, private programs, or travel activities, which are not equally and freely available to all students.

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

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

R277-107-4. Advertising.

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

(2) A paid advertisement in a school publication may identify the activity, participants, and leaders or service providers by name, provide non-school contact information, and provide details of the employee's employment experience and qualification.

(3) An employee may post or distribute posters or brochures in the same manner as could be done by a member of

the general public, advertising private services, consistent with LEA policy.

(4) Unless an activity is sponsored by the LEA, a paid advertisement in a school publication shall state clearly and distinctly that the activity is NOT sponsored by the LEA.

(5) The name of an LEA may not be used in an advertisement unless the LEA's name relates to the employee's employment history or if school facilities have been rented for the activity.

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

R277-107-5. Public Education Employees.

(1) A public education employee shall comply with Title 63G, Chapter 6a, Utah Procurement Code.

(2) A public education employee shall comply with Title 67, Chapter 16, Public Officers' and Employees' Ethics Act.

(3) Except as provided in Subsection (4), consistent with Section 63G-6a-2404 and Title 67, Chapter 16, Public Officers' and Employees' Ethics Act, a public education employee may not solicit or accept gifts, incentives, honoraria, or stipends from private sources:

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

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

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

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

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

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

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

(5) A public education employee who holds a Utah educator license may be subject to license discipline for violation of this Rule R277-107 and related provisions of Utah law.

R277-107-6. Public Education Employee/Sponsor Agreements or Contracts.

(1) An agreement between an employee and a sponsor of a private, but public education-related activity shall be signed by the employee and include the following acknowledgments:

(a) the parties understand that the activity is not sponsored by an LEA;

(b) the employee's responsibilities to the activity sponsor are outside the scope of and unrelated to any public duties or responsibilities the employee may have as a public education employee; and

(c) the employee agrees to comply with laws and rules of the state and policies regarding advertising and employee participation.

(2) An employee shall provide the LEA business administrator, superintendent, or charter school director with a signed copy of all contracts between the employee and a sponsor of a private, but public-education related activity.

(3) An LEA shall maintain a copy of a contract described in Subsection (2) in the employee's personnel file.

KEY: school personnel

July 9, 2018	**Art X Sec 3**
Notice of Continuation May 11, 2018	**53E-3-512**
	53E-3-401(4)

R277. Education, Administration.

R277-436. Gang Prevention and Intervention Programs in the Schools.

R277-436-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53F-2-410(1)(b), which appropriates funds to be used for Gang Prevention and Intervention Programs in the schools.

(2) The purpose of this rule is to establish standards and procedures for distributing funding for gang prevention and intervention programs in public schools.

R277-436-2. Definitions.

(1) "At-risk student" means any student who because of the student's individual needs requires some kind of uniquely designed intervention in order to achieve literacy, graduate and be prepared for transition from school to post-school options.

(2)(a) "Gang" means a group of three or more people who form an allegiance and engage in criminal activity, which uses violence or intimidation to further its criminal objectives.

(b) A gang may have a name, turf, colors, symbols, distinct dress, or any combination of the preceding characteristics.

(3)(a) "Gang prevention" means instructional and support strategies, activities, programs, or curricula designed and implemented to provide successful experiences for youth and families.

(b) Gang prevention activities shall promote cultural and social competence, self-management skills, citizenship, preparation for life skills, academic achievement, literacy, and interpersonal relationship skills required for school completion and full participation in society.

(4) "Gang intervention" means specially designed services required by an individual student experiencing difficulty in cultural and social competence, self-management skills, citizenship, preparation for life skills, academic achievement, literacy, and interpersonal relationships, within or outside of the school, which may impact the individual's susceptibility to gang membership or gang-like activities.

(4) "Gang Prevention and Intervention Program" means specifically designed projects and activities to help at-risk students stay in school and enhance their cultural and social competence, self-management skills, citizenship, preparation for life skills, academic achievement, literacy, and interpersonal relationship skills required for school completion and full participation in society.

R277-436-3. Application, Distribution of Funds, and Administrative Support.

(1) An LEA may apply for gang intervention funds by submitting a proposal on a form approved by the Superintendent.

(a) An school district may submit:

(i) a proposal for a single school; or

(ii) a single district-wide proposal.

(b) A charter school may apply individually or jointly with other charter schools.

(2) A proposal submitted in accordance with Subsection (1) shall:

(a) provide for distribution of funds to individuals schools;

(b) explain prevention and intervention activities and strategies planned for individual schools;

(c) identify the school's at-risk student population and demonstrate how the prevention and intervention strategies will benefit at-risk students; and

(d) demonstrate interagency collaboration between the LEA and other service providers.

(3) The Superintendent shall award gang intervention funds based on proposals submitted in accordance with Subsection (1), and subject to the annual legislative appropriation.

(4) The Superintendent shall give priority in awarding funds to:

(a) schools that demonstrate multiple risk factors for gang involvement; and

(b) schools with outcome data that show successful reduction of gang involvement.

(5) The Superintendent shall notify successful applicants of their awards by July 1 annually.

(6) An LEA or charter consortia may use up to ten percent of its funding awarded in accordance with this rule for:

(a) administrative oversight;

(b) professional development for licensed and non-licensed employees who directly in gang prevention or intervention activities; and

(c) professional and technical services.

R277-436-4. Evaluation and Reports.

(1) An LEA or charter school consortia shall provide the Superintendent a year-end evaluation report by June 30 for the previous fiscal year.

(2) A year-end report shall include:

(a) an expenditure report;

(b) a narrative description of all activities funded;

(c) copies of any and all products developed;

(d) an effectiveness report detailing evidence of individual and overall program impact on gang and gang-related activities and involvement; and

(e) any other information or data required by the Superintendent.

(3) The Superintendent may require additional evaluation or audit procedures from the grant recipient to demonstrate use of funds consistent with the law and Board rules.

R277-436-5. Waivers.

Notwithstanding Rule R277-121, the Superintendent may grant a written request for a waiver of a requirement or deadline contained in this rule, which a district or school finds unduly restrictive.

KEY: public schools, disciplinary problems, students at risk, gangs

July 9, 2018 **Art X Sec 3**
Notice of Continuation May 11, 2018 **53A-17a-166(1)(b)**
53A-1-401(3)

R277. Education, Administration.
R277-461. Elementary School Counselor Grant Program.
R277-461-1. 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 53F-5-209, which directs the Board to make rules to administer the Elementary School Counselor Grant Program; and

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide:

(a) an application procedure;

(b) criteria and procedures for awarding grants; and

(c) requirements for grant recipients.

R277-461-2. Definitions.

(1) "Grant" means funding awarded by the Board to an LEA to hire qualifying personnel for purposes of supporting school-based mental health, in accordance with Section 53F-5-209.

(2) "Qualifying personnel" means:

(a) a school counselor or school social worker, as defined in Section 53F-5-209(1)(e); or

(b) a Board-licensed school psychologist who is assigned to a school and funded by grant funds to carry out work described in Subsection 53F-5-209(1)(e)(ii).

R277-461-3. Grant Applications.

(1) The Superintendent shall develop and make available a grant application for LEAs, consistent with the requirements in Subsection 53F-5-209(4)(a).

(2) The grant application shall require the LEA to report how it intends to provide the matching funds required in Subsection 53F-5-209(4)(b), including the source of funding the LEA intends to use.

(3) For each grant cycle that the Superintendent is authorized to solicit grant applications, the Superintendent shall publish a timeline on the Board's website by March 30, including a date for the application release, and due dates for an LEA to submit required materials.

R277-461-4. Procedures and Criteria for Awarding a Grant.

(1) An LEA applying for a grant shall commit to establishing, at a minimum, a 3-year plan and program for using the grant funds.

(2) In accordance with Subsection 53F-5-209(3), the Superintendent shall prioritize LEA applications that propose to target funds as outlined in statute.

(3) For purposes of prioritizing grants under this Rule, the Superintendent shall examine behaviors and indicators in schools for childhood trauma, including:

(a) office referrals or discipline reports;

(b) absenteeism;

(c) free or reduced-price lunch;

(d) homelessness;

(e) school-reported referrals to the Utah Division of Child and Family Services (DCFS);

(f) foster care;

(g) intergenerational poverty; and

(h) grade 3 reading proficiency.

R277-461-5. Grant Recipient Requirements, Accountability, and Reporting.

(1) A grant recipient shall engage in systemic leadership and planning to align efforts in supporting school improvement and school-based mental health, based on the Utah School Counseling Program Model.

(2) Grant funds may only be used to pay for salaries and benefits for qualified personnel.

(3) A full-time equivalent (FTE) position who is a qualifying personnel funded by grant funds may not be assigned to more than two schools.

(4) Qualifying personnel funded by these grant funds shall:

(a) implement a systemic school-based mental health program;

(b) participate in USBE trainings;

(c) participate in quarterly collaboration meetings with USBE;

(d) in accordance with Subsection 53F-5-209(8), participate in trauma-informed modules; and

(e) implement data projects.

(5) A data project is a process in which qualifying personnel and others:

(a) identify a school's needs based on analysis of school data;

(b) establish one or more interventions to address the needs or problems identified from the data;

(c) design and implement, through a systemic approach, the intervention; and

(d) examine and evaluate the effectiveness of the intervention, based on the school data.

(6) The Superintendent shall establish a process and accompanying forms for grant recipients to document grant requirements, which may include an initial implementation report and a year-end accountability report.

(7) A grant recipient shall report its findings and outcomes from a data project to:

(a) the school personnel;

(b) the local school board or charter governing board; and

(c) the Superintendent.

(8)(a) If a grant recipient plans to discontinue its program for any reason at any time in the three-year period, the grant recipient shall notify the Superintendent, or the Superintendent's designee, in writing.

(b) The written notification shall include a detailed explanation of why the grant recipient is discontinuing the program before the end of its three-year commitment.

KEY: grant program, school counselor, mental health, trauma-informed practice
July 9, 2018 **Art X, Sec 3**
53A-1-401

R277. Education, Administration.
R277-469. Instructional Materials Commission Operating Procedures.
R277-469-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitutional Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;

(c) Section 53E-4-401, which directs the Board to appoint an Instructional Materials Commission and directs the Commission to evaluate instructional materials for recommendation by the Board; and

(d) Section 53E-4-408, which directs the Board to make rules that establish the qualifications of the independent parties who may evaluate and map the alignment of the primary instructional materials and requirements for the detailed summary of the evaluation.

(2) The purpose of this rule is to:

(a) provide definitions, operating procedures and criteria for recommending instructional materials for use in Utah public schools;

(b) provide for mapping and alignment of primary instructional materials to the Core consistent with Utah law; and

(c) provide rules for purchase and distribution of instructional materials within the state.

R277-469-2. Definitions.

(1) "Commission" means the Instructional Materials Commission established in accordance with Section 53E-4-401.

(2) "Core" means the core standards adopted by the Board in R277-700.

(3) "Curriculum alignment" means the assurance that the material taught in a course or grade level matches the standards, and assessments set by the state for specific courses or grade levels.

(4) "Depository" means a business dedicated to storing and distributing resources or materials in sufficient quantities to insure rapid and efficient delivery to LEAs.

(5)(a) "Instructional materials" means systematically arranged content in text, digital, Braille and large print, or audio format which may be used within the state curriculum framework for courses of study by students in public schools.

(b) "Instructional materials" include:

(i) textbooks;

(ii) workbooks;

(iii) computer software;

(iv) online or internet courses;

(v) CDs or DVDs; and

(vi) multiple forms of communication media.

(c) "Instructional materials" may be used by students or teachers or both as principal sources of study to cover any portion of a course.

(d) "Instructional materials":

(i) are designed for student use;

(ii) may be accompanied by or contain teaching guides and study helps;

(iii) shall include all textbooks, workbooks, student materials, supplements, and online and digital materials necessary for a student to fully participate in coursework; and

(iv) shall be high quality, research-based materials for supporting student learning.

(6) "Independent party" means an entity that is not part of or related to:

(a) the Board;

(b) Board staff;

(c) an employee or governing board member of an LEA;

(d) the creator or publisher of instructional materials under review; or

(e) anyone with a financial interest, however minimal, in instructional materials under review.

(7) "Instructional Materials Commission" or "Commission" means the commission appointed by the Board in accordance with Section 53E-4-401.

(8) "Integrated instructional program" means any combination of instructional materials for students, including:

(a) textbooks;

(b) workbooks;

(c) software;

(d) videos;

(e) electronic devices; or

(f) similar resources.

(9) "Instructional materials provider" means a publisher or author and self-publisher who sells or provides instructional materials for use in Utah public schools.

(10) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(11) "Mapping" means creating a visual representation listing topics in instructional materials in correlation to the standards of the Utah core.

(12) "National Instructional Materials Access Center" or "NIMAC" means the same as that term is defined in Subsection R277-800-2(14).

(13) "National Instructional Materials Accessibility Standard" or "NIMAS" means the same as that term is defined in Subsection R277-800-2(15).

(14) "Not sampled" means instructional materials that were included in a publisher bid for evaluation by the Instructional Materials Commission, but which were not

sampled to the Superintendent or the Commission.

(15) "Primary instructional material" means a comprehensive basal or Core textbook or integrated instructional program for which a publisher seeks a recommendation for Core subjects designated in Sections R277-700-4 through R277-700-6.

(16) "Recommended instructional materials" or "RIMs" means the recommended instructional materials searchable database provided as a free service by the Board for the posting of evaluations and alignments to the Core of instructional materials submitted by publishers for review by the Commission and approval of the Board.

(17) "Recommended limited" means instructional materials that are in limited alignment with the Core requirements or are narrow or restricted in their scope and sequence.

(18) "Recommended primary" means instructional materials that:

(a) are in alignment with content, philosophy, and instructional strategies of the Core;

(b) have been mapped and aligned to the Core, consistent with Section 53E-4-408;

(c) are appropriate for use by students as principal sources of study; and

(d) support Core requirements.

(19) "Recommended student resource" means instructional materials aligned to the Core that are developmentally appropriate, but not intended to be the primary instructional resource, which may provided valuable content information for students.

(20) "Recommended teacher resource" means instructional materials that are appropriate as resource materials for use by teachers.

(21) "Reviewed, but not recommended" means instructional materials that an LEA is strongly cautioned against using because the materials:

(a) do not align with the Core;

(b) are inaccurate in content;

(c) include misleading connotations;

(d) contain undesirable presentation; or

(e) are in conflict with existing law or rule.

(22) "Utah State Instructional Materials Access Center" or "USIMAC" means the same as that term is defined in Subsection R277-800-2(21).

R277-469-3. Use of State Funds for Instructional Materials.

(1) An LEA may use state funds for any primary supplemental or supportive instructional materials that support Core requirements.

(2) An LEA may select and approve instructional materials consistent with:

(a) the standards of this R277-469;

(b) established local board procedures and timelines;

(c) Subsection 53G-10-402(1)(c)(iii); and

(d) Subsection 53E-4-403(4).

(3) A school or school district that uses any funding source to purchase materials that have not been recommended or selected consistent with state law, may have funds withheld to the extent of the actual costs of those materials pursuant to Subsection 53E-3-401(8)(a)(ii).

(3)(a) An LEA may use free instructional materials that are used as primary instructional materials or that are part of primary integrated instructional programs subject to the same independent party evaluation and Core mapping as basal or Core material.

(b) If an LEA receives free materials as part of a supplemental program, the LEA may use the materials as student instructional materials only consistent with the law and this R277-469.

(4) An LEA shall include a requirement in all publisher contracts for instructional materials that the publisher shall:

(a) prepare and provide electronic files of all instructional materials in the NIMAS format to NIMAC on or before delivery of print instructional materials; or

(b) provide instructional materials that are produced in, or may be rendered in, specialized formats.

(5)(a) An LEA shall provide timely notice to all publishers with whom the LEA contracts for instructional materials that all materials shall be provided consistent with Subsection (4).

(b) An LEA's notice shall include a copy of this R277-469.

R277-469-4. Instructional Materials Commission Members Terms of Service.

(1) The Board shall appoint members of the Instructional Materials Commission in accordance with Section 53E-4-401.

(2)(a) A member appointed in accordance with Subsection (1) shall serve four year terms, staggered to ensure continuity in the efficient operation of the Commission.

(b) A member may apply for reappointment to one additional term.

(3) The Commission may establish subcommittees as needed.

R277-469-5. Commission Review of Materials.

(1) The Instructional Materials Commission shall primarily focus on reviewing materials used in subjects aligned with Core requirements to include reading, language arts, mathematics through geometry, science, in grades 4 through 12, and effectiveness of written expression, and other Core subject areas as assigned by the Board.

(2) The Commission shall determine subject areas and timelines for review based on school district and charter school needs and requests, using forms and procedures provided by the Superintendent.

(3) The Commission shall meet to review materials at least semi-annually.

(4) Following its evaluation of a submitted item, the Commission shall recommend that the Board classify materials in one of the following categories:

(a) Recommended primary;

(b) Recommended limited;

(c) Recommended teacher resource;

(d) Recommended student resource;

(e) Reviewed, but not recommended; or

(f) Not sampled.

R277-469-6. Criteria for Recommendation of Instructional Materials Following Mid-Party Evaluation of Core Curriculum.

(1) The Instructional Materials Commission and the Board, in reviewing whether to recommend instructional materials, may consider whether the instructional materials:

(a) are consistent with Core requirements;

(b) are mapped and aligned to the Core and state adopted assessments if planned for use as primary materials;

(c) are high quality, research-based, and proven to be effective in supporting student learning;

(d) provide an objective and balanced viewpoint on issues;

(e) include enrichment and extension possibilities;

(f) are appropriate to varying levels of learning;

(g) are accurate and factual;

(h) are arranged chronologically or systematically, or both;

(i) reflect the pluralistic character and culture of the American people and provide accurate representation of diverse ethnic groups;

(j) are free from sexual, ethnic, age, gender or disability bias and stereotyping; and

(k) are of acceptable technical quality.

(2) A publisher, when submitting new primary material to

be evaluated by the Superintendent, shall submit an electronic version of that material in NIMAS file format to NIMAC for use in conversion into Braille, large print, and other formats for students with print disabilities.

(3) The Superintendent may require an LEA to provide a report of instructional materials purchased by the LEA or a school in the previous five years.

(4) The Superintendent may initiate a formal or informal audit of instructional materials purchased to determine purchase or use of instructional materials consistent with the law or this rule.

R277-469-7. Agreements and Procedures for LEAs.

(1) A local board shall establish a policy for selection and purchase of instructional materials.

(2) As part of any materials adoption process or procurement contract for the purpose of purchasing instructional materials, an LEA shall provide instructional materials to all students, including blind students and other students with disabilities, in a timely manner.

(a) A publisher may provide materials in electronic files to NIMAC to make materials available to eligible students.

(b) An LEA shall include NIMAS contract language in all contracts with publishers for Core materials.

(c) An LEA may purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats for eligible students.

(3) An LEA shall require a detailed Core curriculum alignment prior to the purchase of primary instructional materials.

R277-469-8. Qualifications for Core Curriculum Alignment Independent Parties.

(1) A primary instructional materials provider shall contract with an independent party in accordance with Subsection 53E-4-408(1)(a).

(2) An independent party may only employ or contract with a reviewer who has a degree or an endorsement specific to the subject area of the primary instructional materials.

(3) A publisher shall provide proof of an independent party's credentials to the Superintendent upon request.

R277-469-9. Detailed Summary Requirements.

(1) An independent party shall submit a summary required under Subsection 53E-4-408(1)(b) in a searchable, software database format designated by the Superintendent.

(2) A summary required under Subsection 53E-4-408(1)(b) shall:

(a) include detailed alignment information that includes, at a minimum:

(i) the title of the material;

(ii) the ISBN number;

(iii) the publisher's name;

(iv) the name and grade of the Core document used to align the material;

(v) the overall percentage of coverage of the Core;

(vi) the overall percentage of coverage in ancillary resources of the material to the Core;

(vii) the percentage of coverage of the Core in the material for each standard, objective and indicator in the Core with corresponding page numbers;

(viii) percentage of coverage of the Core not covered in the material but covered in the ancillary resources for each standard; and

(ix) objective and indicator in the Core with corresponding page numbers or URLs; and

(b) provide the detailed alignment information listed in Subsection (a)(iv) for the student text for all editions of the text that are used in Utah public schools;

(c) provide the detailed alignment information listed in Subsection (a)(iv) for a teacher edition of text, if a teacher edition is used in Utah public schools; and

(d) provide an assurance, including a personal signature, that the work was completed personally and as required by the licensed and endorsed reviewer.

R277-469-10. Agreements and Procedures for Publishers.

(1) A publisher desiring to sell primary instructional materials to Utah school districts shall comply with the requirements of Section 53E-4-408 and this R277-469.

(2)(a) A publisher seeking to sell recommended materials to Utah schools or school districts shall have 10 books and tangible adopted materials or such other amount as required by a depository based on anticipated need on deposit within the state at an instructional materials depository in the business of selling instructional materials to schools or school districts in Utah.

(b) A publisher shall submit verification of compliance with Subsection (2)(a) to the Superintendent through the publisher's contracted depository prior to the Superintendent posting a review of the materials on RIMs.

(3) A publisher may make a depository agreement with one or more depository.

(4) Notwithstanding the provisions of Subsection (2), a publisher may sell instructional materials to schools or school districts in Utah directly or through means other than a designated depository.

(5) A publisher need not store digital and online resources within the state, but shall guarantee timely resource availability of a placed order and shall provide digital and online resource orders without shipping charges.

(6) If a revised edition of recommended materials retains the original title and authorship, the publisher may request its substitution for the edition currently recommended providing that:

(a) the original contract price and contract date do not change and the original contract price applies for the substituted materials;

(b) the revised edition is compatible with the earlier edition, permitting use of either or both in the same classroom;

(c) a sample copy of the revised edition is provided to the Superintendent for examination purposes; and

(d) the publisher submits a revised electronic edition in NIMAS file format to the NIMAC if the Superintendent approves the substitution request.

(7) The Commission shall make the final determination about the substitution of a new edition for a previously recommended edition with assistance from the Superintendent.

(8) A publisher's contract price for materials recommended by the Commission and the Board shall apply for five years from the contract date.

R277-469-11. Request for Reconsideration of Recommendation.

(1) The Superintendent shall provide a school district, school or publisher with the evaluations and recommendations resulting from the initial review of the Commission.

(2) A school district, school or publisher may, within 30 days of the Commission's initial recommendation, request to have materials reviewed again during the Commission's next review cycle.

(3)(a) During the period of the reconsideration request, the Superintendent shall classify materials only tentatively.

(b) The Superintendent shall not post tentatively classified materials to RIMs until recommended through the official Commission process.

(4) A school district, school or publisher may be asked to send a second set of sample materials to the Superintendent as

part of a reconsideration request.

(5) Any written information provided by a school district, school or publisher shall be available to the advisory committees during the second review.

(6) After the second review by the subject area advisory committee, the Commission shall vote on the advisory committee's recommendation at the next scheduled meeting.

(7) If the Commission votes to change the recommendation, the Superintendent shall notify the Board of the action at the next scheduled Board meeting.

(8) The Superintendent shall send a school district, school or publisher written notification of the final recommendation and new evaluation.

(9) If the Commission and Board approve materials following a request for reconsideration, the Superintendent shall post the evaluation to RIMs.

KEY: instructional materials
January 9, 2018 **Art X, Sec 3**
Notice of Continuation November 6, 2017 **53E-4-401**
53E-4-408
53E-3-401(4)

R277. Education, Administration.
R277-470. Charter Schools - General Provisions.
R277-470-1. Definitions.

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

B. "Charter school authorizers" means entities that authorize a charter school under Section 53A-1a-501.3(2).

C. "Charter schools" means schools acknowledged as charter schools by charter school authorizers under Sections 53A-1a-515, 53A-1a-521, and this rule or by the Board under Section 53A-1a-505.

D. "Charter school governing board" means the board designated by the charter school to make decisions for the operation of the school.

E. "ESEA" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.

F. "Expansion" means a proposed increase of students or adding grade level(s) in an operating charter school at a single location.

G. "Mentor," for purposes of the mentoring program, means an individual or organization with expertise or demonstrated competence, willing to advise charter schools, approved by the State Charter School Board to participate in the mentoring program.

H. "Mentoring program," for purposes of this rule, means the State Charter School Board mentoring program.

I. "Satellite school" means a charter school affiliated with an operating charter school having a common governing board and a similar program of instruction, but located at a different site or in a different geographical area. The parent school and all satellites shall be considered a single local education agency (LEA) for purposes of public school funding and reporting.

J. "State Charter School Board" means the board designated in Section 53A-1a-501.5.

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

L. "Utah Consolidated Application (UCA)" means the web-based grants management tool employed by the Utah State Office of Education by which local education agencies submit plans and budgets for approval of the Utah State Office of Education.

M. "Utah eTranscript and Record Exchange (UTREx)" means a system that allows individual detailed student records to be exchanged electronically between public education local education agencies (LEAs) and the USOE, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

R277-470-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1a-513 which directs the Board to distribute funds for charter school students directly to the charter school, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and 20 U.S.C., Section 8063(3) which directs the Board to submit specific information prior to charter schools' receipt of federal funds.

B. The purpose of this rule is to provide directions to charter schools for federal funds and startup and implementation funding. The rule also provides criteria for a charter school mentoring program and additional charter school-specific directives.

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

A. Local school boards and institutions of higher education may approve charter schools by notifying the Board by October 1 of the state fiscal year one year prior to opening of proposed charter schools, including authorized numbers of students and other information as required in Sections 53A-1a-515 and 53A-1a-521.

B. The Board, in consultation with the State Charter School Board and charter school authorizers, may approve schools, expansions and satellite charter schools for the total number of students authorized under Sections 53A-1a-502.5 and 53A-1a-501.9.

C. The number of students requested from all charter school authorizers shall be considered as students are allocated and approved by the Board.

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

A. Charter schools that desire to receive ESEA funds shall comply with the requirements of R277-470-4.

B. To obtain its allocation of ESEA formula funds, a charter school shall complete all appropriate sections of the Utah Consolidated Application (UCA) and identify its economically disadvantaged students in the October UTREx submission.

C. If the school does not operate a federal school lunch program, the school:

(1) shall determine the economically disadvantaged status for its students on the basis of criteria no less stringent than those established by the U.S. Department of Agriculture for identifying students who qualify for reduced price lunch for the fiscal year in question; or

(2) may use the Charter School Declaration of Household Income form provided by the USOE for this purpose.

D. A school which does not use the form shall maintain equivalent documentation in its records, which may be subject to audit.

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

A. Charter schools that desire to receive State Charter School Board start-up and implementation grant funds shall comply with the requirements of R277-470-5.

B. To receive a State Charter School Board start-up or implementation grant, a charter school shall be eligible and meet the requirements consistent with Section 53A-1a-507. New schools and satellite schools are eligible; school expansions are not eligible.

C. Eligible charter schools shall complete an application and may be awarded a grant for no more than 36 months.

D. Only schools that have not received state start-up or implementation grant funds in prior years are eligible.

E. The State Charter School Board shall determine amounts and conditions for distribution of state start-up or implementation grant funds.

F. Grant funds may only be used for allowable expenditures as provided by the State Charter School Board.

G. Grant recipients shall participate in monitoring activities. Grant recipients shall provide monitoring information to the USOE, as directed.

H. Charter schools shall repay grant funds to the State Charter School Board if recipients change to non-charter status within ten years of receiving grant funds. An exception may be made for schools that convert status due to either federal or state law requirements for academic purposes.

R277-470-6. Charter School Mentoring Program.

A. The State Charter School Board shall identify critical mentoring needs of charter schools and, through an RFP application process, allocate mentoring funds to one or more qualified individuals or organizations to meet identified needs.

B. Mentoring program participants shall provide information to the USOE as requested.

C. The State Charter School Board shall:

(1) receive an annual program report from participating mentors and charter schools; and

(2) evaluate the mentoring program annually.

R277-470-7. Charter School Parental Involvement.

A. Charter schools shall encourage and provide opportunities for parental involvement in management decisions at the school level.

B. Charter schools that elect to receive School LAND Trust funds shall have a committee consistent with R277-477-3A.

R277-470-8. Transportation.

A. Charter schools are not eligible for to-and-from school transportation funds.

B. A charter school that provides transportation to students shall comply with Utah law Section 53-8-211.

C. A school district may provide transportation for charter school students on a space-available basis on approved routes.

D. School districts may provide transportation or transportation information to charter school students and their parents who participate in transportation by the school district as guests. Charter schools/charter school students may forfeit with no recourse the privilege of transportation for violation of the policies.

R277-470-9. Miscellaneous Provisions.

A. The State Charter School Board shall provide a form on its website for individuals to report threats to health, safety or welfare of students consistent with Section 53A-1a-510(3).

(1) Individuals making reports about threats shall report suspected criminal activity to local law enforcement and suspected child abuse to local law enforcement or the Division of Child and Family Services consistent with Sections 62A-4a-403 and 53A-11-605(3)(a).

(2) Additionally, individuals may report threats to the health, safety or welfare of students to the charter school governing board.

(a) reports shall be made in writing;

(b) reports shall be timely;

(c) anonymous reports shall not be reviewed further.

(3) Charter school governing boards shall verify that potential criminal activity or suspected child abuse has been reported consistent with state law and this rule.

(4) Charter school governing boards shall act promptly to investigate disciplinary action, if appropriate, against students who may be participants in threatening activities or take appropriate and reasonable action to protect students or both.

B. The Board shall have authority for final approval of all charter schools that receive minimum school program funds. All charter schools shall be subject to accountability standards established by the Board and to monitoring and auditing by the Board.

KEY: education, charter schools

August 7, 2014	**Art X, Sec 3**
Notice of Continuation July 13, 2018	**53A-1a-515**
	53A-1a-505
	53A-1a-513
	53A-1-401(3)
	53A-1a-510
	53A-1a-519
	53A-1a-501.5
	53A-1-301
	53A-1a-502.5
	53-8-211
	62A-4a-403
	53A-11-605
	53A-1a-522
	53A-1a-521
	53A-1a-501.3
	53A-1a-501.9
	53A-1a-513.5

R277. Education, Administration.

R277-471. School Construction Oversight, Inspections, Training and Reporting.

R277-471-1. Definitions.

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

B. "Certified plans examiner" means a professional who has current applicable commercial certification through the International Code Council (ICC).

C. "Charter schools" means schools acknowledged as charter schools by charter school authorizers consistent with Sections 53G-5-305, 53G-5-306, and this rule or by the Board under Section 53G-5-304.

D. "Charter school responsible person or local charter school board building officer or designee (CSBBO)" means the individual or authority designated by the charter school board who has direct administrative and operational control of charter school construction/renovation and has responsibility for the charter school's compliance with Utah law and the Resource Manual on behalf of the charter school board.

E. "Certificate of inspection verification" means a form certifying that the entity responsible for providing inspection services has complied with the provisions of Sections 53E-3-706, 53E-3-708, 10-9a-305, 17-27a-305, 58-56, Section 15A, State Construction and Fire Code Act, as well as the provisions of R156-56 and this rule. The form is available on the USOE School Finance Section website.

F. "Certificate of occupancy" means the document issued upon receipt of the final inspection from the inspector of record and the 'Certificate of Fire Clearance' issued by the Utah State Fire Marshal, verifying compliance with all minimum requirements to safeguard the public health, safety and general welfare of occupants, which authorizes permanent usage or occupancy of any new building, occupiable structure or existing occupiable building or structure alteration (remodeling) or change of occupancy in an existing structure or building or space.

G. "Division" means the Division of Finance with technical assistance from the Department of Technology

Services.

H. "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality, consistent with Section 10-9a-103(13).

I. "Inspector" means a professional who holds current applicable commercial certification through the International Code Council (ICC) and is currently licensed in the state of Utah in the applicable trades the inspector is performing inspections.

J. "LEA" means local education agency, including local school boards/public school districts and charter schools.

K. "New school building project" means the construction of a school that did not previously exist in an LEA.

L. "Public school construction" means construction work on a new or existing public school building.

M. "School Building Construction and Inspection Resource Manual, April 30, 2013, (Resource Manual)" means a manual which identifies the processes and procedures an LEA shall follow when constructing a new public school building, maintenance, or renovating existing buildings. The Resource Manual was developed by the USOE consistent with Section 53E-3-707, is available on the USOE School Finance website, and is hereby incorporated by reference consistent with Section 63G-3-201(7).

N. "School District Building Official (SDBO)" means the individual or authority designated by the public school district who has direct administrative and operational control of school district construction/renovation and is responsible for the school district's compliance with Utah law and the Resource Manual.

O. "Significant school remodel" means the upgrading, changing, alteration, refurbishment, modification, or complete substitution or replacement of an existing school in an LEA with a project cost equal to or in excess of $2,000,000.

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

Q. "Temporary certificate of occupancy" means the document issued upon receipt of the temporary final inspection report from the inspector of record and the 'Temporary Certificate of Fire Clearance' issued by the Utah State Fire Marshal, verifying minimum requirements to safeguard the public health, safety and general welfare of occupants, which authorizes temporary usage or occupancy of any new building, occupiable structure or existing occupiable building or structure alteration (remodeling) or change of occupancy in an existing structure or building or space, valid for a specific time period.

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

R277-471-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Sections 53E-3-706 and 53E-3-707 which direct the Superintendent to enforce requirements and provisions about public school building and alteration, verify inspections of school buildings, and provide information annually to LEAs about the construction and inspection of public school buildings, and Subsection 53E-3-401(3) which permits the Board to adopt rules in accordance with its responsibilities and permits the Board to interrupt disbursements of state aid to any school district or charter school which fails to comply with rules adopted by the Board.

B. The purpose of this rule is to provide specific provisions for the oversight of permanent or temporary public school construction/renovation inspections and to identify LEA board responsibilities and accountability to the Board.

R277-471-3. LEA Responsible Person.

A. LEA boards shall be accountable to ensure that all school district and charter school permanent or temporary construction, renovation, and inspections are conducted in accordance with the law to provide minimum requirements to safeguard the public health, safety and general welfare of occupants while using the most comprehensive, cost effective and efficient design means and methods.

(1) Local school boards shall appoint a SDBO who has direct administrative and operational control of all construction, renovation, and inspection of public school district facilities within the school district and shall provide in writing the name of the SDBO to the USOE.

(2) Charter school boards shall be accountable to the State Charter School Board and the Board to ensure that all charter school permanent or temporary construction, renovation, and inspections are conducted in accordance with Utah law and the Resource Manual. Each local charter school board shall appoint a CSBBO who has direct operational responsibility for construction, renovation, and inspection of the charter school. The CSBBO shall report regularly to the local charter school board.

(a) The local charter school board shall provide the name of this officer in writing to the Superintendent.

(b) The local charter school board shall promptly notify the Superintendent in writing of any changes of this individual.

B. The SDBO shall monitor school district building construction to ensure compliance with the provisions of Utah law and the Resource Manual.

C. The CSBBO shall monitor all charter school building construction to ensure compliance with the provisions of Utah law and the Resource Manual.

D. The SDBO and CSBBO shall ensure that public school construction conforms with the intent and purpose of Utah law and the Resource Manual.

E. The SDBO and CSBBO may adopt and enforce supplemental LEA policies under appropriate LEA policies to clarify the application of the provisions of Utah law and the Resource Manual for LEA personnel.

R277-471-4. School Construction Inspectors.

A. LEAs shall employ inspectors for school construction inspection who are currently ICC commercially certified and licensed in Utah, in the trade specific to the inspection, consistent with Utah law and the Resource Manual requirements.

B. LEAs shall choose one of three methods for inspections:

(1) Independent inspectors:

(a) shall be approved by the local jurisdiction in which the construction activity occurs;

(b) may include inspectors working outside the municipality, county, or school district in which they are employed; and

(c) shall not be any of the following, nor an employee of: the architect, developer, contractor, a subcontractor working on the project, any management company or other agency hired by the LEA to perform construction or construction administrative services.

(2) School district inspectors shall be employed by and perform school construction inspections within the boundaries of the school district.

(3) Inspectors employed by municipalities and counties may perform school construction inspections within the boundaries of the municipality or county where they are employed.

R277-471-5. School Construction Inspections.

A. Before any school construction project begins, the SDBO or CSBBO shall obtain a construction project number from the USOE by completing and submitting construction project identification forms provided by the USOE and other

required submittals for all projects consistent with Title 53E, Chapter 3, Part 7 and the Resource Manual.

B. The appropriate currently certified plans examiner shall approve all LEA school plans and specifications before any LEA construction project begins.

C. If an LEA is unable to provide appropriate and proper school construction inspection and plan review services, the Superintendent may procure inspection services and charge the LEA for those services. The approved inspector shall establish fees in advance of inspection services.

D. LEA construction projects shall comply with Title 53E, Chapter 3, Part 7 and the Resource Manual to:

(1) ensure that each inspector is adequately and appropriately credentialed;

(2) identify and provide to the USOE and local government entity building official reports of all inspections with the name, state license number, and disciplines of each inspector performing the project inspections;

(3) submit inspection certificates and all related submittals to the USOE and appropriate local government entity building official;

(4) submit inspection summary reports monthly to the appropriate local government entity building official and the USOE;

(5) sign the final certificate of inspection and verification form, certifying all inspections were completed in compliance with all applicable laws and rules, and the Resource Manual to safeguard the public health, safety and general welfare of occupants;

(6) send the final inspection certification, inspection verification, and provide all other related project closeout submittals to the USOE and to the appropriate local government entity building official upon completion of the project; and

(7) maintain all submitted documentation at a designated LEA location for auditing or monitoring.

E. The SDBO/CSBBO may submit paper or electronic reports to satisfy this section.

R277-471-6. Coordination with Local Governments, Utility Providers and State Fire Marshal.

A. Prior to developing plans and specifications for a public school construction project, LEAs shall coordinate with affected local government land use authorities and utility providers to:

(1) ensure that the siting or expansion of a school in the intended location will comply with applicable local general plans and land use laws and will not conflict with entitled land uses;

(2) ensure that all local government services and utilities required by the school construction activities can be provided in a logical and cost-effective manner;

(3) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the public school construction and future roadways; and

(4) maximize school, student and site safety.

B. LEAs shall cooperate with municipalities and counties and conform to municipal and county land use ordinances consistent with Sections 10-9a-305 and 17-27a-305.

C. Prior to developing plans and specifications for a public school construction project, LEAs shall coordinate with local health departments and the State Fire Marshal.

D. A charter school shall have an open meeting to seek and secure a variance from the appropriate government entity if the LEA selects a school site in a municipality or county-designated zone for sexually oriented businesses or businesses that sell alcohol.

E. Parking requirements for a charter school may not exceed the minimum parking requirements for a traditional public school of a like size and grade levels or other institutional public use throughout the municipality or county.

F. LEAs shall maintain documentation for audit purposes of coordination, meetings, and agreements required under this section.

G. Prior to developing plans and specifications for a public school construction project, LEAs shall coordinate with local jurisdictions to comply with Federal Emergency Management Agency flood plain requirements and restrictions, including applicable mitigation measures.

R277-471-7. Superintendent's Authority to Request Additional Inspections.

A. The Superintendent may contract with any appropriately qualified entity or person(s) to provide inspection services that the Superintendent considers necessary to enable the Superintendent to issue a certificate authorizing temporary or permanent occupancy of the public school building.

B. The Superintendent may charge the LEA a fee not to exceed the actual cost of performing the inspection(s) for inspection services.

R277-471-8. Certification of Occupancy.

A. School districts:

(1) After completion of the project when a school district's appropriately credentialed inspector provides inspections, the SDBO shall sign a certificate of inspection verification form certifying that all inspections were completed in accordance with Utah law and the Resource Manual, and file the form with the USOE and the building official of the jurisdiction in which the building is located.

(2) After completion of the project when a local jurisdiction provides inspections, the school district shall seek a certificate authorizing permanent occupancy of a school building from the jurisdiction in which the building is located; a copy of the certificate of occupancy shall be filed with the USOE.

(3) After completion of the project when independent inspectors provide inspections, the SDBO shall seek a certificate authorizing temporary or permanent occupancy of the school from the Superintendent.

B. Charter schools:

(1) After completion of the project and inspection by an appropriately credentialed inspector when a charter school contracts with a school district for inspections, the CSBBO shall obtain a completed certificate of inspection verification form from the SDBO certifying that all inspections were completed in accordance with Utah law and the Resource Manual, and file the form with the USOE and the jurisdiction where the public school is located.

(2) After completion of the project when a local jurisdiction provides inspections, a charter school shall seek a certificate authorizing permanent occupancy of a school building from the jurisdiction in which the building is located; a copy of the certificate of occupancy shall be filed with the USOE.

(3) After completion of the project when independent inspectors provide inspections, the CSBBO shall seek a certificate authorizing temporary or permanent occupancy of the school from the Superintendent.

C. Within 30 days after the LEA files a request for the issuance of a certificate authorizing permanent occupancy of the school building from the USOE, the Superintendent shall:

(1) issue to the LEA a certificate authorizing permanent occupancy of the school building; or

(2) deliver to the LEA board a written notice indicating deficiencies in the LEA's compliance with the inspection findings.

D. If the Superintendent does not issue the certificate authorizing permanent occupancy, the LEA shall provide notice of the deficiency to the building official of the local government

entity in which the public school building is located.

E. Upon the LEA board filing the certificate of inspection verification and requesting the issuance of a certificate authorizing permanent occupancy of the school building with the USOE, the LEA shall be entitled to temporary occupancy of the school building for a period up to 90 days, beginning on the date the request is filed, if the LEA has complied with all minimum requirements to safeguard the public health, safety and general welfare of occupants.

F. Upon the LEA remedying any deficiencies and notifying the Superintendent that the deficiencies have been remedied, following certification of the information, the Superintendent shall issue a certificate authorizing permanent occupancy of the school building.

G. Upon receipt of the certificate of occupancy, the LEA shall provide a copy of the certificate to the building official of the local governmental entity in which the school building is located authorizing permanent occupancy of the school building.

R277-471-9. School Building Construction and Inspection Resource Manual.

A. The USOE shall develop and distribute a Resource Manual, or provide an electronic version, on the USOE School Finance website, consistent with Section 53E-3-707.

B. The Resource Manual shall include process, legal requirements and resource information on school building construction, operations, maintenance, minimum requirements to safeguard the public health, safety and general welfare of occupants, and inspections.

C. The USOE shall review and, if necessary, update the Resource Manual annually.

D. The Board and LEA boards, as well as LEA personnel, shall act consistent with the Resource Manual.

R277-471-10. School Construction Guidelines.

A. The Board shall adopt public school construction guidelines that take into consideration the factors identified in Section 53E-3-702 and other factors identified by USOE staff or the Division of Facilities Construction and Management Administration staff.

B. LEAs shall review and take into consideration the school construction guidelines when planning and prior to proceeding with public school construction.

R277-471-11. Enforcement.

A. An LEA which fails to comply with the provisions of this rule is subject to interruption of state dollars by the Board consistent with Subsections 53E-3-401(3) and 53F-2-202(4)(d).

(1) If an LEA fails to meet or satisfy a school construction inspection requirement or timeline designation under this rule, the Superintendent shall, as directed by the Board, send the school district superintendent or local charter school director notice by certified mail; and

(2) If after 30 days the requirement has not been met, the USOE may, as directed by the Board, interrupt the Minimum School Program fund transfer process to the following extent:

(a) 10 percent of the total monthly Minimum School Program transfer amount the first month;

(b) 25 percent in the second month; and

(c) 50 percent in the third and subsequent months.

B. If the USOE interrupts the Minimum School Program fund transfer process, the USOE shall:

(1) upon receipt of confirmation that the proper inspection(s) has (have) taken place or upon receipt of a late report, restart the transfer process within the month (if the confirmation or report is submitted before the tenth working day of the month) or in the following month (if the confirmation or report is submitted after 10:00 a.m. on or after the tenth working day of the month);

(2) inform the Board at its next regularly scheduled meeting; and

(3) inform the chair of the local governing board if the school district superintendent or charter school director is not responsive in correcting ongoing school construction inspection and reporting problems.

C. An LEA may be subject to a nonrefundable fine in the amount of one half of one percent of the total construction costs if an LEA fails to report a public school construction project consistent with Title 53E, Chapter 3, Part 7 and the Resource Manual to the USOE.

(1) The USOE, under the direction of the Board, shall deduct nonrefundable fine amounts from the respective LEA's Minimum School Program allotment at a rate sufficient to complete collection of the nonrefundable fine by the end of the current fiscal year.

(a) The USOE shall deposit school district nonrefundable fine amounts into the School Building Revolving Account; and

(b) The USOE shall deposit charter school nonrefundable fine amounts into the Charter School Building Subaccount within the School Building Revolving Account.

R277-471-12. Appeals Procedure for Nonrefundable Fines.

A. The Board designates the procedure outlined in R277-471-12 as an informal adjudicative proceeding, under Section 63G-4-203.

B. LEA boards may appeal a fine assessed under R277-471-11C consistent with the following:

(1) An LEA may not appeal a fine until a final administrative decision has been made to assess the fine by the USOE and the fine has been affirmed by the Board.

(2) A district superintendent on behalf of a local school board or a local charter board chair on behalf of a local charter school board may appeal an assessed fine by filing an appeal form provided on the USOE website.

(3) An LEA must file the appeal within 10 business days of final affirmation of USOE action/withholding by the Board.

(4) An LEA shall deliver or provide electronically the appeal to the USOE as provided by the appeal form.

(5) An LEA shall provide, as stated on the form, an explanation of unanticipated or compelling circumstances that resulted in the local board's or charter school's failure to report new construction or remodeling projects as required.

(6) The school district superintendent or local charter board chair shall provide a notarized statement that the information and explanation of circumstances are true and factual statements.

(7) At least three members of the Finance Committee appointed by the Board shall act as a review committee to review the written appeal.

(a) The appeal committee may request additional information from the LEA board.

(b) The appeal committee may ask the district superintendent or local school district or charter school board chair or LEA business staff to appear personally and provide information.

(c) The fine shall be presumed appropriate and legitimate when reviewed by the appeal committee.

(d) The appeal committee shall make a written recommendation within 10 business days of receipt of the appeal request.

(e) The full Finance Committee of the Board shall review the recommendation.

(f) The Finance Committee shall make a formal recommendation to the Board to accept, modify or reject the appeal explanation and fine.

C. The Board, in a regular monthly meeting, may accept or reject the Finance Committee's final recommendation to

affirm the fine, modify the fine, or grant the appeal.

D. Consistent with the Board's general control and supervision of the Utah public school system and given the significant public policy concern for safe schools and cost-effective public school building projects, a local board of education or a local charter board has no further administrative appeal opportunity.

R277-471-13. Annual Construction and Inspection Conference.

A. The USOE shall sponsor an annual school construction conference for representative(s) from each LEA and interested persons involved in the school building construction, design, operation, maintenance, safety and related industries.

B. Conference presenters and participants shall provide and discuss current information and training on public school building construction and inspection, including:

(1) the design, construction, operation and the inspection process of public school buildings;

(2) public school building site selection;

(3) best building life-cycle costing;

(4) construction inspection requirements and schedules; and

(5) information to improve the existing public school building design, construction, operation and safety inspection program.

R277-471-14. School Plant Capital Outlay Report.

A. The Board shall prepare an annual School Plant Capital Outlay Report of all school construction projects completed and under construction, including information on the number and size of buildings.

B. An LEA shall prepare and submit an annual School Plant Capital Outlay Report to the Utah Public Finance website, consistent with Section 63A-3-402, for each new school building construction project or significant school remodel, completed between July 1, 2004 and May 13, 2014. An LEA shall submit the report no later than May 15, 2015. For new school building projects or significant remodel projects completed after May 13, 2014, the LEA shall provide the School Plant Capital Outlay Report to the Division annually, by a date designated by the Division.

C. The School Plant Capital Outlay Report shall include information required under Section 63A-3-402(6)(c).

D. The LEA shall report to the Utah Public Finance website the actual cost, fee, or other expense for any figures required to be reported under R277-471-14B.

E. The report shall be in a format, including any raw data or electronic formatting, prescribed by applicable Division policy.

F. The Division may require an LEA to provide further itemized data on information listed in Section 63A-3-402(b) or R277-471-14B.

KEY: educational facilities

November 10, 2014	**Art X Sec 3**
Notice of Continuation September 9, 2014	**53E-3-401(3)**
	53E-3-706
	53E-3-707
	10-9a-305
	17-27-105
	53F-2-202(4)(d)

R277. Education, Administration.
R277-472. Charter School Student Enrollment and Transfers and School District Capacity Information.
R277-472-1. Definitions.

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

B. "Below capacity at the elementary and secondary level" making the grade level available for transfer students from charter schools outside of the window provided for in Subsection 53G-6-503(3) is established if the grade level or program is less than 100 percent of the district, school, or grade level average.

(1) A special program is "below capacity" or available for transfer students from charter schools if the number of assigned students is less than the designated number of students determined by valid, research-based, or federally established standards.

(2) An entire elementary or secondary school is "below capacity" if the district determines that the average class size, using calculations of classes and courses in R277-472-3, is less than 100 percent of the district elementary or secondary average class size.

C. "Elementary (K-6) class size" means the number of students with a primary assignment to a specific teacher.

(1) An extended day class in which a portion of the class arrives early and the other portion stays late shall be counted as one class.

(2) Elementary class size shall include all special education students who participate in all or part of the school day excluding those students assigned to self-contained special education classes.

D. "Secondary (7-12) class size" means the secondary school's calculation for each language arts, mathematics, and science course that is typically taught multiple times in the school day, such as 8th grade English, Algebra 1, Earth Systems.

R277-472-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Subsection 53G-6-503(2), which directs the Board to make rules for students transferring between charter schools and district schools and enrolling and withdrawing from charter schools, and Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide procedures for students transferring between district public schools and charter schools; to define capacity in district public schools to allow for transfers into district schools from charter schools; to provide notice to parents and students of schools that have space available.

R277-472-3. Class Size Calculations.

A. Elementary class size: Each school district (or school as determined by the school district) shall calculate an average class size for each grade level. Schools shall derive this calculation from the total number of students in a given grade divided by the number of full time licensed teachers assigned to that grade.

(1) Schools shall not count students assigned to multiple grade level classes (and their respectively assigned teachers) in determining average class size for a grade level.

(2) Schools shall calculate elementary classes that group students in programs other than by grade level, such as gifted and talented or English Learner programs, as a class if students participate for the entire instructional day.

(a) If schools count students that participate in special programs for part of the school day, schools shall count the students as part of their age-appropriate grade level (together with respective teachers) for purposes of this calculation.

(b) If multiple classes of special programs exist (including self-contained special education classes), a school shall determine an average class size for special programs consistent

with state, federal and program standards.

B. Elementary school size: Each school district (or school) shall calculate a school-wide average class size by dividing the total full time teachers assigned to direct teaching situations by the total number of students receiving instruction.

(1) Schools shall not include self-contained special education students and teachers in this calculation.

(2) Schools shall include all other special education students and teachers.

C. Secondary average class size: Each school district (or secondary school as determined by the district) shall calculate an average class size for each language arts, mathematics and science course that is taught multiple times during a typical school day by dividing the total number of full time teachers assigned to direct teaching situations by the total number of students enrolled.

(1) Schools shall not include self-contained special education students and teachers in this calculation.

(2) Schools shall include all special education students, other than full-time self-contained students, in the calculation.

D. District average: Each school district shall calculate the district-wide average class size for each grade level, each elementary program that enrolls students across grade levels and for each language arts, mathematics, and science course.

(1) School districts shall derive the calculation by dividing the total number of full time teachers (FTEs) assigned to direct teaching situations by the total number of fully enrolled students.

(2) School districts shall derive all calculations using October 1 enrollment and employment data.

E. In a school district with only one elementary or secondary school, or only one class of any subject or grade level, school districts may calculate the average class size for an entire school or the entire school district by averaging all the classes in the school or the school district. The school district may then determine that any class size less than the school district or school average class size is below capacity.

R277-472-4. School District School Capacity Information.

A. School districts shall provide and post the following information to facilitate transfer of students on school district or school websites:

(1) Elementary schools within the school district that are below capacity and available for transfer students;

(2) Grade levels and special programs within elementary schools that are below capacity and available for transfer students;

(3) Secondary schools that are below capacity and available for transfer students based on calculated capacity of language arts, science and mathematics; and

(4) Special programs within secondary schools that are below capacity and available for transfer students.

B. Below capacity standards for individual schools, grade levels, courses or programs do not apply if a school has documentation that the school community council in a public meeting has designated more than one-half of a school's school LAND trust annual allotment to reduce class size in a specific school, grade level, program or course.

R277-472-5. Application Procedures for Students Entering and Exiting Charter Schools.

A. Each charter school shall post on its website information and procedures required under Subsection 53G-6-503(2).

B. Each charter school shall develop and post admissions procedures for the charter school including:

(1) Lottery dates and procedures;

(2) Admission forms;

(3) School calendar;

(4) Non-discrimination assurances;

(5) A clear explanation, including timelines required in the law and provided in individual charter school policies, of student transfer procedures from a charter school to another charter school or to a district school;

(6) A readily accessible transfer form; and

(7) Assurance and parent signature that student has been admitted to only one public school.

R277-472-6. Enrollment of Transferring Charter School Students in District Schools.

A. A school district shall enroll as soon as possible, but no later than two weeks after specific formal parental request, a student who is a resident of a school district, who desires to transfer from a charter school to the resident school after June 30 and who submits enrollment information consistent with all school district students in a district school that is below capacity.

B. Schools may limit students who are transferring from a charter school to a district school after June 30 for the upcoming school year to schools, grade levels, programs and courses that have space available or are below capacity at the district schools.

C. A school district shall not require enrollment procedures or forms from students moving from a charter school to a district school that differ in any way from enrollment procedures/forms required for district students if the charter school students are leaving a charter school after the final grade level offered by the charter school.

D. Parents/Students who are enrolled at charter schools and are seeking enrollment at district schools should check with the school district office (or school principal if designated by the school district) for official current capacity information about schools, grade levels, programs or courses before leaving a charter school and forfeiting a charter school enrollment right.

E. If a school changes the location of services for a student with disabilities, the new location may only be considered a change of placement as determined by the student's IEP and consistent with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400, Part B.

F. Consistent with Subsection 53G-8-205(3), schools may deny enrollment to students in a public school if they have been expelled from another public school.

G. Schools may deny students' enrollment in a public school if they leave a public school with disciplinary procedures pending at the previous Utah public school until previous allegations have been resolved.

H. Charter schools and district schools shall notify each other of student enrollment consistent with Subsection 53G-6-503(4).

KEY: charter schools, students, transfers

August 7, 2014	**Art X, Sec 3**
Notice of Continuation June 10, 2014	**53G-6-503(2)**
	53E-3-401(4)

R277. Education, Administration.
R277-474. School Instruction and Human Sexuality.
R277-474-1. 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) Subsections 53G-10-402(1) and (3), which direct the Board to adopt rules to allow local boards to adopt human sexuality education materials or programs as described in this R277-474 and provide human sexuality instruction as provided

in Section 53G-10-402; and

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide:

(a) requirements for LEAs and individual educators to select instructional materials about human sexuality and maturation;

(b) notice to parents of proposed human sexuality and maturation discussions and instruction; and

(c) direction to public education employees regarding instruction and discussion of maturation and human sexuality with students.

R277-474-2. Definitions.

(1) "Curriculum materials review committee" or "committee" means a curriculum materials review committee formed at the school district or charter school level as described in Section R277-474-5.

(2) "Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g" or "FERPA" means a federal law designed to protect the privacy of students' education records.

(3) "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.

(4) "Instructional materials commission" means the advisory commission authorized under Section 53E-4-402.

(5) "LEA" for purposes of this rule, includes the Utah Schools for the Deaf and the Blind.

(6) "Maturation education" means instruction and materials used to provide fifth or sixth grade students with age appropriate, medically 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.

(7) "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.

(8) "Parental notification form" means a form developed by the Superintendent and used exclusively by LEAs or public schools for parental notification of subject matter identified in this rule.

(9) "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.

(10) "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.

(11) "Utah Professional Practices Advisory Commission (UPPAC)" means a Commission established under Section 53E-6-501 and designated to review allegations against educators and recommend action against educators' licenses to the Board.

R277-474-3. General Provisions.

(1) The following may not be taught in Utah public schools through the use of instructional materials, direct instruction, or online instruction:

(a) the intricacies of intercourse, sexual stimulation or erotic behavior;

(b) the advocacy of premarital or extramarital sexual activity; or

(c) the advocacy or encouragement of the use of contraceptive methods or devices.

(2) Educators are responsible to teach the values and information identified under Subsection 53G-10-402(1)(b).

(3) Utah educators shall follow all provisions of federal and state law including the parental notification and prior written parental consent requirements described in Sections 76-7-322 and 76-7-323 when teaching any aspect of human sexuality.

(4) While human sexuality instruction and related topics are most likely to take place in such courses as health education, health occupations, human biology, physiology, parenting, adult roles, psychology, sociology, child development, and biology, this rule R277-474 applies to any course or class in which these topics are the focus of discussion.

R277-474-4. State Board of Education Responsibilities.

The Superintendent shall:

(1) develop and provide professional development and assistance with training for educators on law and rules specific to human sexuality instruction and related issues.

(2) develop, for Board approval, a parental notification form and timelines for use by LEAs.

(3) 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.

(4) approve only medically accurate human sexuality instruction programs.

(5) 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.

(1) An LEA shall require all newly hired or newly assigned Utah educators with responsibility for any aspect of human sexuality instruction to attend professional development outlining the human sexuality curriculum and the criteria for human sexuality instruction in any courses offered in the public education system.

(2) An LEA governing board shall provide training consistent with Subsection R277-474-5(1) at least once during every three years of employment for Utah educators.

(3) An LEA governing board shall form a curriculum materials review committee at the school district or charter school level as described in Subsection (4).

(4)(a) An LEA governing board shall annually appoint and review members of the LEA's curriculum materials review committee on or before August 1.

(b) An LEA's curriculum materials review committee shall include parents, health professionals, school health educators, and administrators, with at least as many parents as school employees.

(c) The members of an LEA's committee shall:

(i) meet on a regular basis, as determined by the membership;

(ii) select officers; and

(iii) comply with Title 52, Chapter 4, Open and Public Meetings Act.

(5) An LEA's curriculum materials review committee shall:

(a) be organized consistent with Subsection R277-474-2(1);

(b) designate a chair and procedures; and

(c) 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 presentation.

(6) The committee may not authorize the use of any human sexuality instructional program or maturation education program not previously:

(a) approved by the Board;

(b) approved consistent with R277-474-6; or

(c) approved under Subsection 53G-10-402(1)(c)(ii).

(7) The district superintendent or charter school administrator shall report educators who willfully violate the provisions of this rule to the Utah Professional Practices Advisory Commission for investigation and possible discipline.

(8)(a) Students may not participate in human sexuality instruction, maturation education, or other instructional programs without prior affirmative parent consent, as evidenced by a completed parental notification form, on file.

(b) An LEA shall obtain parental consent from a student's parent using 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.

(9) The parental notification form shall:

(a) explain a parent's right to review proposed curriculum materials in a timely manner;

(b) request the parent's permission to instruct the parent's student in identified course material related to human sexuality or maturation education;

(c) allow the parent to exempt the parent's student from attendance for a class period where identified course material related to human sexuality instruction or maturation education is presented and discussed;

(d) be specific enough to give parents fair notice of topics to be covered;

(e) 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;

(f) be retained on file with affirmative parental consent for each student prior to the student's participation in discussion of issues protected under Section 53G-10-402; and

(g) be maintained at the student's school for a reasonable period of time.

(10) An 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 Superintendent upon request.

(11) If a student is exempted from course material required by the Board-approved Core Standards consistent with Subsections 53G-10-205(1), (2) and (3), the school shall:

(a) waive the participation requirement; or

(b) provide a reasonable alternative to the requirement.

R277-474-6. Local School Board or Charter School Governing Board Adoption of Human Sexuality Education and Maturation Education Instructional Materials.

(1) An LEA governing board may adopt the LEA's instructional materials if the instructional materials meet the requirements of Subsection 53G-10-402.

(2) Instructional materials adopted as described in Subsection (1) shall:

(a) comply with the criteria of Subsection 53G-10-402(1)(c)(iii) and:

(b) be medically accurate;

(c) be approved by a majority vote of the LEA governing board present at a public meeting of the LEA governing board; and

(d) be available for reasonable review opportunities to residents of the school district or parents of charter school students prior to consideration for adoption.

(3) An LEA shall comply with the reporting requirement of Subsection 53G-10-402(1)(c)(iii)(D).

(4) A report to the Board shall include:

(a) a copy of human sexuality instructional materials or maturation education materials not approved by the Instructional Materials Commission that the local board or local charter board seeks to adopt;

(b) documentation of the materials' adoption in a public board meeting;

(c) documentation that the materials or program meets the medically accurate criteria as defined in Subsection R277-474-2(7);

(d) documentation of the recommendation of the materials by the committee; and

(e) a statement of the local board's or local charter board's rationale for selecting materials not approved by the instructional materials commission.

(5) An LEA governing board's adoption process for human sexuality instructional materials and maturation education materials shall include a process for annual review of the LEA governing board's decision.

R277-474-7. Utah Educator Responsibilities.

(1) Utah educators shall participate in training provided under Subsections R277-474-5(1) and (2).

(2) Utah educators shall use the common parental notification form or a form approved by the educator's LEA, and follow timelines approved by the Board.

(3) Utah educators shall individually record parent and community complaints, comments, and the educators' responses regarding human sexuality instructional programs.

(4) 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: health education, human sexuality education, schools
November 7, 2017 Art X Sec 3
Notice of Continuation September 13, 2017 53G-10-402(1) and (3)
53E-3-401(4)

R277. Education, Administration.
R277-475. Patriotic, Civic and Character Education.
R277-475-1. Definitions.

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

B. "Character education" means reaffirming values and qualities of character which promote an upright and desirable citizenry.

C. "Civic education" means the cultivation of informed, responsible participation in political life by competent citizens committed to the fundamental values and principles of representative democracy in Utah and the United States.

D. "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.

E. "Patriotic" means having love of and dedication to one's country.

F. "Patriotic education" means the educational and systematic process to help students identify, acquire, and act upon a dedication to one's country.

R277-475-2. 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 53G-10-304, which directs the Board to provide a rule for a program of instruction within the public schools relating to the flag of the United States, and by Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide direction for patriotic education programs in the public schools.

R277-475-3. Patriotic Education.

An LEA shall teach patriotic education in the social studies curricula of kindergarten through grade twelve. All educators shall have responsibility for patriotic, civic and character education taught in an integrated school curriculum and in the regular course of school work.

R277-475-4. School Responsibilities and Required Instruction.

A. Patriotic, civic and character education programs shall meet the requirements of Sections 53G-10-302, 53G-10-304, and 53G-10-204.

B. An LEA shall teach students the history of the flag, etiquette, customs pertaining to the display and use of the flag, and other patriotic exercises consistent with Subsection 53G-10-304(2).

C. The school shall provide the setting and opportunities to teach by example and role modeling patriotic values associated with the flag of the United States.

D. The USOE shall, under the direction of the Board, provide guidelines for both elementary age students and secondary students about the flag and patriotic exercises.

E. Instruction in United States history and government shall include:

(1) a study of forms of government including:

(a) a republic;

(b) a pure democracy;

(c) a monarchy; and

(d) an oligarchy.

(2) political philosophies and economic systems including:

(a) socialism;

(b) individualism; and

(c) free market capitalism.

(3) the United States' form of government, a compound constitutional republic.

R277-475-5. Requirements.

A. Education about the flag and the Pledge of Allegiance to the Flag shall be taught and modeled following the plan of the social studies Core Curriculum in grades kindergarten through six.

B. The Pledge of Allegiance to the Flag shall be recited by students at the beginning of each school day in each public school classroom in the state, consistent with Subsection 53G-10-304(3).

C. At least once a year students shall be instructed that:

(1) participation in the Pledge of Allegiance is voluntary and not compulsory;

(2) it is acceptable for an individual to choose not to participate in the Pledge of Allegiance for religious or other reasons; and

(3) students should show respect for individuals who participate and individuals who choose not to participate.

D. A public school teacher shall strive to maintain an atmosphere among students in the classroom that is consistent with the principles described in R277-475-5C.

R277-475-6. Parental Responsibilities.

A. An LEA shall adequately notify students and parents of lawful exemptions to the requirement to participate in reciting the Pledge.

B. A school may require an annual written request from a student's parent or legal guardian if a student or the student's parent or legal guardian requests that the student be excused from reciting the Pledge.

R277-475-7. Civic Engagement.

A. A public school shall display IN GOD WE TRUST, the national motto of the United States, in one or more prominent places in each school building, consistent with Subsection 53G-10-302(6).

B. Civic and character education shall be achieved through an integrated school curriculum and in the regular course of school work.

C. Instruction in United States history and government shall be taught consistent with the Utah social studies core curriculum and Section 53G-10-302.

D. An LEA shall make information about the flag, respect for the flag and civility toward all during patriotic activities available on the LEA's website.

R277-475-8. Reporting Requirements.

A. The Board shall submit a report to the Education Interim Committee consistent with Subsection 53G-10-204(7).

B. Each school district and the State Charter School Board shall submit a report to the Lieutenant Governor and the Commission on Civic and Character Education consistent with Subsection 53G-10-204(6).

KEY: curricula, patriotic education, civic education, character education

June 8, 2015	**Art X Sec 3**
Notice of Continuation May 1, 2013	**53G-10-304**
	53E-3-401(4)

R277. Education, Administration.

R277-479. Funding for Charter School Students With Disabilities on an IEP.

R277-479-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Constitution and state law;

(c) Subsection 53E-3-501(1)(c)(vi)(A), which directs the Board to adopt rules regarding services for persons with disabilities; and

(d) Section 53E-7-202, which directs the Board to set standards for state funds appropriated for students with disabilities.

(2) The purpose of this rule is to specify standards and procedures for funding of charter school students with disabilities on an IEP.

R277-479-2. Definitions.

(1) "Base" means prior year special education add-on WPU.

(2) "Charter school" means a school authorized by a charter school authorizer under:

(a) Section 53G-5-305;

(b) Section 53G-5-306; or

(c) Section 53G-5-304.

(3) "Charter school authorizer" or "authorizer" has the same meaning as that term is defined in Subsection 53G-5-102(4).

(4) "Estimated enrollment" means a charter school's projected student enrollment in the school's first year of operation as approved by the Superintendent.

(5) "Foundation" means the average of self-contained and resource special education students average daily membership over the previous five years.

(6) "Negative growth adjustment" means prior year special education add-on WPU minus weighted negative growth.

(7) "New charter school" means a charter school with less than five years of operation.

(8) "Positive growth adjustment" means prior year special education add-on WPU plus weighted growth.

(9) "Prevalence rate" means the percentage of students with disabilities within the total student enrollment.

(10) "Previous five years" means the five year span between the seventh and second prior fiscal year.

(11) "Significant expansion" means a substantial increase in the number of students attending a charter school due to a significant event, such as the addition of new grade levels or additions of sites, that is unlikely to occur on a regular basis.

(12) "Special education" means specially designed instruction and related services to meet the unique needs of a student with a disability in accordance with R277-750.

(13) "State Charter School Board" or "SCSB" means the charter school authorizer created in accordance with Section 53G-5-201.

(14) "Student with a disability" means a student, evaluated in accordance with Utah State Board of Education Special Education Rules, and determined to be eligible for special education and related services.

(15) "Total enrollment" means the total number of all students enrolled in all campuses of a school as of the October 1 UTREx update.

(14) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows:

(a) individual detailed student records to be exchanged electronically among public education LEAs and the Superintendent; and

(b) electronic transcripts to be sent to any post-secondary institution that participates in the e-transcript service.

R277-479-3. Charter School Special Education Add-On Funding.

(1) For existing charter schools, the Superintendent shall calculate the foundation based on the average ADM of students with disabilities for the previous five years.

(2)(a) For new charter schools, the Superintendent shall calculate the foundation based on the average special education ADM for the number of years the new charter school has been in operation beyond the first year.

(b) In its first operational year, a new charter school shall receive special education funding based on estimated enrollment.

(c) Unless a new charter school identifies a purpose and target population in its application focusing on students with disabilities, the estimate of students with disabilities for a new charter school shall be 10 percent of the estimated enrollment.

(3) The foundation is the minimum amount a charter school may receive for special education-add on funding.

(4)(a) The Superintendent shall apply a positive growth adjustment to a charter school's foundation for weighted growth.

(b) Weighted growth is determined by comparing special education ADM and total ADM from the third and second prior fiscal years.

(c) The rate of growth in special education ADM may not exceed the rate of growth in total ADM.

(d) The Superintendent shall multiply positive weighted growth by a factor of 1.53 and add the result to a charter school's foundation.

(e) The Superintendent may not impose a funding cap based on the charter prevalence rate because a charter school is designed and authorized specifically to serve students with disabilities.

(f) When there is no growth, either because a charter school is new or because the same number of students are enrolled, the Superintendent may not apply a positive growth adjustment.

(5)(a) The Superintendent shall apply a negative growth adjustment to a charter school's base for decline in special education ADM.

(b) The negative growth adjustment is the base multiplied by the percentage of enrollment decline.

(c) The Superintendent shall subtract the result calculated under Subsection (5)(b) from the base to determine WPU.

(d) When there is no decline in a charter school's enrollment of students with disabilities, either because the charter school is new or because the same number of students are enrolled, the Superintendent may not apply a negative growth adjustment to the charter school's allotment.

(e) If a negative growth adjustment brings the WPU below the foundation, the charter school shall receive the foundation WPU.

(6)(a) If an authorizer approves a significant expansion for a charter school, during the first and second years of expansion, the Superintendent shall apply an additional funding adjustment after the entire add-on WPU formula is calculated.

(b) After the first and second years of a charter school's expansion, the special education formula provided in this R277-479-3 shall account for the expansion.

(c) The Superintendent shall calculate a significant expansion adjustment by estimating the number of students with disabilities who will enroll as part of the expansion, and providing funding for these anticipated students.

(d)(i) The Superintendent shall base the estimate under Subsection (6)(c) on a projected expansion adjustment calculated by the Superintendent accounting for expansion information provided by a charter school's authorizer.

(ii) The Superintendent shall multiply the projection by the prevalence rate of students with disabilities for the charter school for the most recent year calculated in the add-on formula.

(iii) The Superintendent shall allocate the resulting significant expansion adjustment WPU as an expansion supplement to the charter school's add-on WPU.

KEY: charter schools, students with disabilities
August 7, 2017 **Art X, Sec 3**
Notice of Continuation March 15, 2017 **53E-3-501(1)(c)(vi)(A)**
53E-7-202
53E-3-401(4)

R277. Education, Administration.
R277-480. Charter School Revolving Account.
R277-480-1. Definitions.

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

B. "Charter schools" means schools acknowledged as charter schools by local boards of education under Section 53G-5-305, by the Board under Section 53G-5-304, and by boards of trustees of higher education institutions under Section 53G-5-306.

C. "Charter School Revolving Account" means a restricted account created within the Uniform School fund to provide assistance to charter schools to:

(1) meet school building construction and renovation needs; and

(2) pay for expenses related to the start up of a new charter school or the expansion of an existing charter schools.

D. "Charter School Revolving Account Committee" means the committee established by the Board under Subsection 53F-9-203(6).

E. "Superintendent" means the State Superintendent of Public Instruction as designated under 53E-3-301.

F. "Urgent facility need," as provided for in Subsection

53F-9-203(5), means an unexpected exigency that affects the health and safety of students such as:

(1) to satisfy an unforeseen condition that precludes a school's qualification for an occupancy permit; or

(2) to address an unforeseen circumstance that keeps the school from satisfying provisions of public safety, public health, or public school laws or Board rules.

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

R277-480-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53F-9-203(2)(b) which requires the Board to administer the Charter School Revolving Account, and Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish procedures for administering the Charter School Revolving Account to determine membership of the Charter School Revolving Account Committee, and to determine loan amounts and loan repayment conditions.

R277-480-3. Charter School Revolving Account Committee.

A. The Board shall establish a Charter School Revolving Account Committee consistent with Subsection 53F-9-203(6).

B. The State Charter School Board shall submit a list of at least three nominees per vacancy who meet the requirements of Subsection 53F-9-203(6)(b) for appointment by the Board consistent with timelines established by the Board.

C. The Board shall annually accept nominations of individuals provided by the State Charter School Board who meet the qualifications of Subsection 53F-9-203(6)(b).

D. The Board may only select Charter School Revolving Account Committee members who satisfy conditions of Subsection 53F-9-203(6).

E. Charter School Revolving Account Committee members appointed by the Board after May 1, 2010 shall be appointed for two year terms.

F. The USOE Charter School Director or designee shall be a non-voting Charter School Revolving Account Committee member.

R277-480-4. Charter School Revolving Account Application and Conditions.

A. The Charter School Revolving Account Committee shall develop and the USOE shall make available a loan application that includes criteria designated under Section 53F-9-203, including urgent facility need criteria.

B. The Charter School Revolving Account Committee shall include other criteria or information from loan applicants that the committee or the Board determines to be necessary and helpful, including considerations of Subsection 53F-9-203(5), in making final recommendations to the Superintendent, the State Charter School Board and the Board.

C. The Charter School Revolving Account Committee shall accept applications for loans on an ongoing basis, subject to eligibility criteria and availability of funds.

(1) To apply for a loan, a charter school shall submit the information requested on the Board's most current loan application form together with the requested supporting documentation.

(2) The application shall include a resolution from the governing board of the charter school that the governing board, at a minimum:

(a) agrees to enter into the loan as provided in the application materials;

(b) agrees to the interest established by the Charter School Revolving Account Committee and repayment schedule of the loan designated by the Charter School Revolving Account Committee and the Board;

(c) agrees that loan funds shall only be used consistent with the purposes of Section 53F-9-203 and the purpose of the approved charter;

(d) agrees to any and all inspections, audits or financial reviews ordered by the Charter School Revolving Account Committee or the Board; and

(e) understands that repayment, including interest, shall be deducted automatically from the charter school's monthly fund transfers, as appropriate.

D. The Charter School Revolving Account Committee shall establish terms and conditions for loan repayment, consistent with Section 53F-9-203. Terms shall include:

(1) A tiered schedule of loan fund distribution:

(a) 50 percent (up to $150,000) disbursed no more than 12 months prior to August 15 in the school's first year of operations;

(b) 25 percent (up to $75,000) disbursed no more than six months prior to August 15 in the school's first year of operation;

(c) the balance of loan funds disbursed no more than three months prior to August 15 in the school's first year of operations.

(2) The loan amount to a charter school board awarded under Section 53F-9-203 shall not exceed:

(a) $1,000 per pupil based on the most recent October 1 enrollment count for operational schools; or

(b) $1,000 per pupil based on approved enrollment capacity of the first year of operation for pre-operational schools; or

(c) $300,000 of the total of all current loan awards by the Board to a charter school board.

R277-480-5. Charter School Revolving Account Committee Recommendations and Board Approval.

A. The Charter School Revolving Account Committee shall make recommendations to the State Charter School Board and the Board only upon receipt of complete and satisfactory information from the applicant and upon a majority recommendation from the Charter School Revolving Account Committee.

B. The submission of intentionally false, incomplete or inaccurate information from a loan applicant may result in immediate cancellation of any previous loan(s), the requirement for immediate repayment of any funds received, denial of subsequent applications for a 12 month period from the date of the initial application, and possible Board revocation of a charter.

C. The Board staff and State Charter Board staff shall review recommendations from the Charter School Revolving Account Committee.

D. Final recommendations from the Charter School Revolving Account Committee shall be submitted to the Board no more than 60 days after submission of all information and materials from the loan applicant to the Charter School Revolving Account Committee.

E. The Board may request additional information from loan applicants or a reconsideration of a recommendation by the Charter School Revolving Account Committee.

F. The Board's approval or denial of loan applications constitutes the final administrative action in the charter school building revolving loan process.

KEY: charter schools, revolving account

August 7, 2014	**Art X, Sec 3**
Notice of Continuation June 10, 2014	**53F-9-203(2)(b)**
	53E-3-401(4)

R277. Education, Administration.
R277-481. Charter School Oversight, Monitoring and Appeals.
R277-481-1. Definitions.

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

B. "Chartering entities" means entities that authorize a charter school under Section 53A-1a-501.3(3).

C. "Charter schools" means schools acknowledged as charter schools by chartering entities under Sections 53A-1a-515, 53A-1a-521, and this rule or by the Board under Section 53A-1a-505.

D. "Charter school agreement (charter agreement)" means the terms and conditions for the operation of an approved charter school. The charter school agreement shall be maintained at the USOE and is considered the final, official and complete agreement.

E. "Charter school deficiencies" means the following information:

(1) a charter school is not satisfying financial, academic or operational obligations as required in its charter agreement;

(2) a charter school is not providing required documentation after being placed on warning status;

(3) compelling evidence of fraud or misuse of funds by charter school governing board members or employees. Fraud or misuse of funds need not rise to the minimal standard. It may include failure to properly account for funds received at the school; failure to follow regularly established accounting and receipting practices or failure to provide data, financial records or information as requested by the State Charter School Board or the Board.

F. "Charter school governing board" means the board designated by the charter school to make decisions for the operation of the school.

G. "Probation" means a formal process and time period during which a school is permitted to demonstrate its full compliance with its charter agreement and all applicable laws, rules and regulations.

H. "State Charter School Board" means the board designated in Section 53A-1a-501.5.

I. "Superintendent" means the State Superintendent of Public Instruction as designated under Section 53A-1-301.

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

K. "Warning status" means an informal status in which a school is placed through written notification from the USOE for the school's failure to maintain compliance with its charter agreement, applicable laws, rules or regulations.

R277-481-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and 20 U.S.C., Section 8063(3) which directs the Board to submit specific information prior to charter schools' receipt of federal funds.

B. The purpose of this rule is to establish procedures for oversight and monitoring charter agreements and charter schools for compliance with minimum standards. The rule also provides appeals criteria and a process for schools found out of compliance with chartering entity findings.

R277-481-3. State Charter School Board Oversight, Minimum Standards, and Consequences.

A. The State Charter School Board shall provide direct oversight to the charter schools for which it is the chartering entity, including requiring all charter schools to:

(1) comply with their charter agreements containing clear and meaningful expectations for measuring charter school quality.

(2) annually review charter agreements, as maintained by the USOE;

(3) regularly review other matters specific to effective charter school operations, including a comprehensive review of governing board performance at least once every five years; and

(4) audit and investigate claims of fraud or misuse of public assets or funds.

B. All charter schools authorized by the State Charter School Board shall also meet the following minimum standards:

(1) charter schools shall have no unresolved material findings, financial condition findings or repeat significant findings in the school's independent financial audit, federal single audit or USOE audits;

(2) charter schools shall maintain a minimum of 30 days cash on hand or the cash or other reserve amount required in bond covenants, whichever is greater;

(3) charter schools shall have no violations of federal or state law or regulation, Board rules or Board directives;

(4) charter schools shall have all teachers properly licensed and endorsed for teaching assignments in CACTUS; and

(5) charter school governing boards shall ensure all employees and board members have criminal background checks on file.

C. Warning status

(1) A charter school that fails to meet any of the minimum standards or a significant number of performance standards may be placed on warning status and notified in writing by the USOE.

(2) While a school is on warning status, the school may seek technical assistance from the USOE staff to remedy any deficiencies.

D. Probation status

(1) If any minimum standard or a significant number of performance standards has not been met by an assigned date following designation of warning status, the State Charter School Board shall notify the school in writing of the specific minimum standard(s) the school did not meet.

(2) Based on the State Charter School Board's review of the charter school's noncompliance, progress and response to technical assistance, the State Charter School Board may place the school on probation for up to one calendar year following the designation of warning status.

(3) Upon placing a school on probation, the State Charter School Board shall set forth a written plan outlining those provisions in the charter agreement, applicable laws, rules and regulations with which the school is not in full compliance. This written plan shall set forth the terms and conditions and the timeline that the school shall follow in order to be removed from probation.

(4) If the school complies with the written plan in a timely manner, the State Charter School Board shall remove the school from probation.

(5) While a school is on probation, it shall be required to satisfy certain requirements and conditions set forth by the State Charter School Board. If the school fails to satisfy specific requirements and conditions by a date established by the State Charter School Board, the State Charter School Board may terminate the school's charter.

(6) While a school is on probation, the school may seek technical assistance from the USOE staff to remedy any deficiencies.

(7) The State Charter School Board may, for good cause, or if the health, safety, or welfare of the students at the school is threatened at any time during the probationary period, terminate the charter immediately.

R277-481-4. Charter School Governing Board Compliance with Law.

A. The Board may review or terminate the charter based upon factors that may include:

(1) failure to meet measures of charter school quality which includes adherence to a charter agreement required and monitored by chartering entities; or

(2) charter school deficiencies; or

(3) failure of the charter school to comply with federal or state law or regulation, Board rules or Board directives.

B. If a charter school's charter conflicts with applicable federal or state law or rule, the charter shall be interpreted to require compliance with such law or rule; all other provisions of the school's charter shall remain in full force and effect.

C. A charter school governing board may amend its charter agreement by receiving approval from its chartering entity consistent with Section 53A-1a-508.

D. Chartering entities shall obtain approval by the Board before amending charter agreements specific to (1) changes to mission and purpose; (2) waivers from Board administrative rule; (3) expansions of student enrollment; (4) expansions of grade levels that will put students in different weighted pupil unit grade level categories; and (5) revolving loans.

E. A charter school shall notify the Board and the chartering entity of any and all lawsuits filed against the charter school within 30 days of the filing of the lawsuit.

R277-481-5. Chartering Entity Oversight and Monitoring.

A. Local school board and institutions of higher education chartering entities shall:

(1) visit a charter school at least once during its first year of operation in order to ensure adherence to and implementation of approved charter and to finalize a review process;

(2) visit a charter school as determined in the review process;

(3) provide written reports to a charter school after the visits that set forth strengths, deficiencies, corrective actions, timelines and the reason for charter termination, if applicable; and

(4) audit and investigate claims of fraud or misuse of public assets or funds.

B. Chartering entities shall notify the Board within 20 days of charter school deficiencies that initiate corrective action by chartering entities.

R277-481-6. Charter School Financial Practices and Training.

A. Charter school business administrators shall attend USOE required business meetings for charter schools.

B. Charter school governing board members and school administrators shall be invited to all appropriate Board-sponsored training, meetings, and sessions for traditional school district financial personnel.

C. The Board shall work with other education agencies to encourage their inclusion of charter school representatives at training and professional development sessions.

D. A charter school shall appoint a business administrator consistent with Sections 53A-3-302 and 303. The business administrator shall be responsible for the submission of all financial and statistical information required by the Board.

E. The Board may interrupt disbursements to charter schools for failure to comply with financial and statistical information required by law or Board rules.

F. Charter schools shall comply with the Utah State Procurement Code, Title 63G, Chapter 6.

G. Charter schools are not eligible for necessarily existent small schools funding under Section 53A-17a-109(2) and R277-445.

R277-481-7. Remedying Charter School Financial Deficiencies.

A. Upon receiving credible information of charter school deficiencies, the chartering entity shall immediately direct an independent review or audit through the charter school governing board.

B. The chartering entity or the Board through the chartering entity may direct a charter school governing board or the charter school administration to take reasonable action to protect state or federal funds consistent with Section 53A-1a-510.

C. The chartering entity or the Board may:

(1) allow a charter school governing board to hold a hearing to determine financial responsibility and assist the charter school governing board with the hearing process;

(2) immediately terminate the flow of state funds;

(3) recommend cessation of federal funding to the school;

(4) take immediate or subsequent corrective action with employees who are responsible for charter school deficiencies consistent with Section 53A-1a-509; or

(5) any combination of the foregoing (1), (2), (3) and (4).

D. The recommendation by the chartering entity shall be made within 20 school days of receipt of complaint of deficiency(ies).

E. The chartering entity may exercise flexibility for good cause in making recommendation(s) regarding deficiency(ies).

F. The Board shall consider and affirm or modify the chartering entity's recommendation(s) for remedying a charter school's deficiency(ies) within 60 days of receipt of information from the chartering entity.

G. In addition to remedies provided for in Section 53A-1a-509, the chartering entity may provide for a remediation team to work with the school.

R277-481-8. Appeals Criteria and Procedures.

A. Only an operating charter school, a charter school that has been recommended for approval to the Board, or a charter school applicant that has met State Charter School Board requirements for review by the full State Charter School Board, may appeal chartering entity administrative decisions or recommendations to the Board.

B. The following chartering entity administrative decisions may be appealed to the Board:

(1) termination of a charter;

(2) denial of proposed amendments to charter agreement;

(3) denial or withholding of funds from charter school governing boards; and

(4) denial of a charter.

C. Appeals procedures and timelines

(1) The chartering entity shall, upon taking any of the administrative actions:

(a) provide written notice of denial to the charter school or approved charter school;

(b) provide written notice of appeal rights and timelines to the charter school governing board chair or authorized agent; and

(c) post information about the appeals process on its website and provide training to charter school governing board members and authorized agents regarding the appeals procedure.

(2) A charter school governing board chair or authorized agent (appellant) may submit a written appeal to the State Superintendent within 14 calendar days of the chartering entity administrative action.

(3) The Superintendent shall, in consultation with Board Leadership, review the written appeal and determine if the appeal addresses an administrative decision by a chartering entity. If the Superintendent and Board Leadership determine that the appeal is appropriate, Board Leadership shall designate three to five Board members and a hearing officer, who is not a Board member, to act as an objective hearing panel.

(4) The hearing officer, in consultation with the Superintendent, shall set a hearing date and provide notice to all parties, including the chartering entity and staff.

(5) The Hearing shall be held no more than 45 days following receipt of the written appeal.

(6) The hearing officer shall establish procedures that provide fairness for all parties, which may include:

(a) a request for parties to provide a written explanation of the appeal and related information and evidence;

(b) a determination of time limits and scope of testimony and witnesses;

(c) a determination for recording the hearing;

(d) preliminary decisions about evidence; and

(e) decisions about representation of parties.

(7) The hearing panel shall make written findings and provide an appeal recommendation to the Board no more than 10 calendar days following the hearing.

(8) The Board shall take action on the hearing report findings at the next regularly scheduled Board meeting.

(9) The recommendation of the chartering entity shall be in place pending the conclusion of the appeals process, unless the Superintendent in his sole discretion, determines that the chartering entity's recommendation or failure to act presents a serious threat to students or an imminent threat to public property or resources.

(10) All parties shall work to schedule and conclude hearings as fairly and expeditiously as possible.

(11) The Board's acceptance or rejection of the hearing report is the final administrative action on the issue.

KEY: charter schools, oversight, monitoring, appeals

February 7, 2014	**Art X Sec 3**
Notice of Continuation July 13, 2018	**53A-1-401(3)**
	53A-1a-501.3
	53A-1a-515
	53A-1a-521
	53A-1a-505
	53A-1a-501.5
	53A-1a-510
	53A-1a-509
	53A-1-301
	53A-3-302
	53A-3-303
	53A-17a-109

R277. Education, Administration.
R277-485. Loss of Enrollment.
R277-485-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53F-2-207, which allows the Board to increase funds for a school district in order to avoid penalizing it for an excessive loss in student enrollment due to factors beyond its control.

(2) The purpose of this rule is to establish guidelines for funding under Section 53F-2-207.

R277-485-2. Definitions.

(1) "ADM" means average daily membership derived from end-of-year data.

(2) "Carryforward balance" means the unobligated amount of MSP basic program education funds from the previous fiscal year.

(3) "Historical Mean ADM" means the mean of the two highest ADMs in the three years preceding the prior year.

(4) "Local Effort" means the prior year sum of tax rates imposed by the local school board.

(5) "Lost ADM" means the difference between prior year ADM and Historical Mean ADM.

(6) "Mid-year update" means the annual Minimum School Program allocation report prepared by the Superintendent by January 1 annually.

(7) "Minimum School Program" or "MSP" means the state supported Minimum School Program as defined in Title 53F, Chapter 2.

(8) "Weighted Pupil Unit" or "WPU" means the unit of measure of factors that is computed in accordance with the MSP for the purpose of determining the costs of a program on a uniform basis for each district.

R277-485-3. Eligibility.

(1) A school district may receive funding under this rule if the district's lost ADM is at least four percent less than the district's historical mean ADM.

(2) A school district that seeks funding under this rule shall file a petition with the Superintendent no later than September 15 that demonstrates that a loss of enrollment occurred due to unpredictable factors beyond the district's control.

(3) The Superintendent shall refer a petition filed in accordance with Subsection (2) to the Finance Committee to review and make a recommendation to the Board.

(4) A charter school may not receive funding under this rule.

R277-485-4. Funding.

(1) The Superintendent shall allocate funding to an eligible district under Subsection R277-485-3(1) using the unencumbered MSP carryforward balance.

(2) The Superintendent may only award funds to a district under this rule after all other authorized uses of the carryforward balance have been carried out.

(3) The total amount of funds made available for distribution shall be equal to the lesser of:

(a) the sum of lost ADM in eligible districts multiplied by 25 percent of the current year value of the WPU; or

(b) 25 percent of the current unencumbered MSP carryforward balance.

(4) The Superintendent shall distribute available funds in proportion to lost ADM (90 percent) and prior year local effort (10 percent) among eligible districts.

(5) The Superintendent may not fund an eligible district if there are not any current year unencumbered MSP funds.

(6) The Superintendent shall distribute funds annually in one lump sum with the mid-year update of the current year MSP.

KEY: students, enrollment

August 7, 2017	**Art X Sec 3**
Notice of Continuation June 6, 2017	**53E-3-401(4)**
	53F-2-207

R277. Education, Administration.
R277-486. Professional Staff Cost Program.
R277-486-1. 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. "ESEA" means the Elementary and Secondary Education Act, also known as the No Child Left Behind Act, P.L. 107-110, Title I, Part A, Subpart 1, Sec. 1119, January 8, 2002.

D. "FTE" means full time equivalent.

E. "LEA" means a local education agency, including local school boards/public school districts, and charter schools.

F. "National Board certified educator" means an educator who has been certified by the National Board for Professional Teaching Standards (NBPTS) by successfully completing a three-year process that may include national content-area assessment, an extensive portfolio, and assessment of video-taped classroom teaching experience.

G. "USOE" means Utah State Office of Education.

H. "Weighted Pupil Unit (WPU)" means the unit of measure that is computed in accordance with the Minimum School Program Act for the purpose of determining the costs of a program on a uniform basis for each LEA.

R277-486-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board, by Subsection 53F-2-305(2), which authorizes the Board to adopt a rule to require a certain percentage of a LEA's professional staff to be licensed in the area in which the teacher teaches in order for the LEA to receive full funding under the state statutory formula, and by Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to satisfy statutory or federal regulatory percentages of licensed staff and support LEAs in recruiting and retaining highly educated and experienced educators for instructional, administrative and other types of professional employment in public schools.

R277-486-3. Eligibility to Receive WPUs for Professional Staff.

A. LEAs shall receive WPUs in accordance with the formula provided in Subsection 53F-2-305(1)(a):

(1) only for those educators who hold at least a bachelors degree; and

(2) only to the extent that such educators are qualified to work in the area to which they are assigned consistent with R277-520. For example, an educator who is employed full time but is appropriately qualified in only 75% of his assignments would count for only 0.75 FTEs in the calculation of WPUs.

(3) In order to receive full (100%) funding, an LEA shall have an appropriately qualified educator in every assignment.

B. An educator who is identified as qualified under R277-520 is not necessarily highly qualified for ESEA purposes.

C. LEAs shall not receive WPUs for interns in their second or subsequent years nor for paraprofessionals in any assignment.

R277-486-4. Acceptable Experience.

A. Educator experience for purposes of this rule shall be measured in one-year increments.

B. An educator shall be credited by the USOE, for purposes of the professional staff cost calculation, with one year of experience for every school year in which he is employed at least half-time (0.5 FTE) in an instructional or administrative position in any public school in the State of Utah or in any regionally accredited:

(1) public school outside of the State of Utah;

(2) private school; or

(3) institution of higher education.

C. To obtain credit under Subsection B(1) through (3), the LEA which employs the educator shall submit to the USOE acceptable documentation verifying such experience, including documentation of the school's or institution's regional accreditation.

D. Employment in a prekindergarten position shall not be acceptable for this purpose, unless the educator is or was employed in a special education position in an accredited school.

E. Unpaid volunteer service, paid consulting, employment in non-instructional or non-administrative positions in a school setting, and a school internship shall not be acceptable experience under this rule.

F. Documentation of an educator's experience in a private school or institution of higher education may be required by USOE staff to determine relevance of experience.

R277-486-5. Acceptable Training.

Acceptable training under this rule may include:

A. Any degree at the bachelors level or above or credit beyond the current degree from a:

(1) regionally accredited institution of higher education; or

(2) postsecondary degree-granting institution accredited by any of the national accrediting agencies recognized by the United States Department of Education.

B. Any professional development activity consistent with R277-500 and approved in writing by the USOE.

R277-486-6. Mapping Degree Summary Data to Statutory Formula.

A. To ensure consistency in applying data from CACTUS to the formula, the following mapping of the relevant two-digit CACTUS Degree Summary codes to the five columns of the Professional Staff Cost formula table in Subsection 53F-2-305(1)(a) shall be used:

(1) 03 = Bachelor's Degree;

(2) 04 or 05 = Bachelors + 30 quarter hours or 20 semester hours;

(3) 06 = Master's Degree;

(4) 07 or 08 = Master's Degree + 45 quarter hours or 30 semester hours;

(5) 09 = Doctorate.

B. An LEA shall be credited for an individual with National Board certification at the doctorate level.

R277-486-7. Data Sources.

A. For LEAs that were in operation in the prior year, data shall be used from June 30 update of CACTUS as required by R277-484-3C.

B. For LEAs that were not in operation in the prior year, data shall be used from November 15 update of CACTUS as required by R277-484-3M.

KEY: professional staff

June 7, 2012	**Art X Sec 3**
Notice of Continuation March 14, 2014	**53F-2-305(2)**
	53E-3-401(4)

R277. Education, Administration.

R277-488. Critical Languages and Dual Language Immersion Program.

R277-488-1. 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 53F-2-516, which requires the Board to establish a Critical Languages Program;

(c) Section 53F-2-502, which requires the Board to establish a Dual Language Immersion program; and

(d) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) establish criteria and procedures for distributing funds to elementary and secondary schools participating in the Dual Language Immersion Program and Critical Languages Program;

(b) increase the number of students who reach proficiency in world languages;

(c) build overall world language capacity in the state of Utah; and

(d) increase the number of biliterate and bilingual students.

R277-488-2. Definitions.

(1) "Critical languages" means those languages described under Subsection 53F-2-516(1)(a).

(2) "Critical Languages Program" means the program described under Section 53F-2-516.

(3) "Dual language immersion" or "DLI" means a distinctive dual language education program in which native English speakers and active speakers of another language are integrated for academic content.

(4) "Secondary school" means grades 7-12 in whatever schools the grade levels exist.

R277-488-3. Critical Language Program Requirements.

(1) A secondary school that desires to offer critical languages, through traditional instruction or a visiting guest teacher program, shall submit an application, to the Superintendent no later than May 1.

(2) An LEA application shall be on a form provided by the Superintendent annually by April 1, which shall designate:

(a) the name of the school district or charter school;

(b) a plan and procedure to notify students and parents of the names of the critical languages that will support the dual language immersion continuation into secondary schools consistent with Subsection 53F-2-516(1); and

(c) requirements for the visiting guest teacher exchange program, including:

(i) programs shall operate under a Memorandum of Understanding between the Board and the country providing qualified guest teachers;

(ii) international teacher expenses shall be paid as provided by the designated Memorandum of Understanding; and

(iii) satisfaction of all other conditions provided by individual Memoranda of Understanding.

(3) A school applying for either the traditional instruction or the visiting guest teacher program shall use materials identified and recommended by the Superintendent, including texts and consumables, purchased with funds appropriated by the Legislature.

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

(1) The Superintendent shall disburse DLI program funds by July 1 of each fiscal year subject to state appropriation.

(2) The DLI program shall support world languages approved by the Superintendent.

(3) The Superintendent shall provide an application for an LEA to receive funding for DLI programs by April 14 annually.

(4) An LEA shall submit an application described in Subsection (3) no later than May 14 annually to be considered for elementary and secondary school DLI program funding in the subsequent school year.

(5) An application for DLI program funds shall include a plan that includes:

(a) 50 percent of instruction in English and 50 percent of instruction in another language;

(b) an instructional model identified in R277-488-2(4)(b);

(c) a language approved by the Superintendent;

(d) a timeline that begins the instructional model in kindergarten or grade 1, and adds an additional grade each year; and

(e) a plan and procedure in place to notify students and parents of the availability of at least one DLI course.

(6) The Superintendent shall give priority in DLI program funding to an LEA that:

(a) does not currently teach the requested language choice;

(b) demonstrates adequate local funding and infrastructure to begin a program or expand existing programs;

(c) demonstrates community interest and students committed and prepared to participate in a new or expanded program, including prepared instructors for the program;

(d) has adequate interest, resources, and infrastructure, but does not presently have a DLI program; and

(e) has a demonstrated community need for improved or expanded world language instruction in a specific school or community.

(7) A school receiving DLI program funds shall hire qualified language teachers who:

(a) have a world language endorsement in the language of instruction and a DLI endorsement; and

(b) are Utah licensed elementary or secondary educators.

R277-488-5. Dual Language Immersion Funds.

(1) Secondary and elementary schools shall be selected for funding for the DLI program based on an evaluation of applications by the Superintendent.

(2) The Superintendent shall make an award to an individual elementary or secondary school and allocate funds to the school's LEA to be fully distributed to the school based on the annual legislative funding allocation.

(3) The Superintendent shall notify a new school eligible for funding of a funds award for the subsequent fiscal year by June 1 annually.

R277-488-6. Evaluation and Reports.

(1) Each school selected for funding shall submit an annual evaluation report to the Superintendent.

(2) The Superintendent may request additional data from a secondary or elementary school that receives funding.

KEY: critical languages, dual language immersion

August 7, 2017	**Art X Sec 3**
Notice of Continuation June 6, 2017	**53F-2-51116**
	53F-2-502
	53E-3-401(4)

R277. Education, Administration.

R277-489. Kindergarten Entry and Exit Assessment - Early Intervention Program.

R277-489-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which permits the Board to make rules to execute the Board's duties and responsibilities under the Utah constitution and state law; and

(c) Section 53F-2-507, which directs the Board to distribute funds appropriated for the early intervention program to LEAs that apply for the funds.

(2) The purpose of this rule is to require LEAs to administer a kindergarten entry and exit assessment and establish criteria and procedures to administer the early intervention program.

R277-489-2. Definitions.

(1) "Early intervention program" means a program that provides additional instruction to kindergarten age students:

(a) as an extended period before or after school, on Saturdays, or during the summer; or

(b) through other means.

(2) "Enrollment" means class enrollment of not more than the student enrollment of other kindergarten classes within the school.

(3) "LEA plan" means the early intervention program plan submitted by an LEA and approved and accepted for funding by the Superintendent.

R277-489-3. Administration of Kindergarten Entry and Exit Assessments.

(1) Except as provided in Subsection (2), an LEA shall administer:

(a) a kindergarten entry assessment, approved by the Superintendent, to each kindergarten student sometime within:

(i) three weeks before the first day of school; and

(ii) three weeks after the first day of school; and

(b) a kindergarten exit assessment, approved by the Superintendent, to each kindergarten student sometime during the four weeks before the last day of school.

(2) A charter school that does not participate in the Early Intervention Program or the K-3 Reading Software Program described in R277-496 is not required to administer the kindergarten entry and exit assessments.

(3) The days used for the assessment shall be consistent with Subsection R277-419-11(3)(e).

(4) An LEA shall submit to the Data Gateway:

(a) kindergarten entry assessment data by September 30; and

(b) kindergarten exit assessment data by June 15.

(5) In accordance with Section R277-114, the Superintendent may recommend action to the Board, including withholding of funds, if an LEA fails to provide complete, accurate, and timely reporting under Subsection (4).

R277-489-4. Use of Kindergarten Entry and Exit Assessment Data.

(1) The Superintendent or an LEA may use entry and exit assessment data obtained in accordance with Section R277-489-3 to:

(a) provide insights into current levels of academic performance upon entry and exit of kindergarten;

(b) identify students in need of early intervention instruction and promote differentiated instruction for all students;

(c) understand the effectiveness of programs, such as extended-day kindergarten and pre-school;

(d) provide opportunities for data data-informed decision making and cost-benefit analysis of early learning initiatives;

(e) identify effective instructional practices or strategies for improving student achievement outcomes in a targeted manner; and

(f) understand the influence and impact of full-day kindergarten on at-risk students in both the short- and long-term.

(2) An LEA may not use entry and exit assessment data obtained in accordance with Section R277-489-3 to:

(a) justify early enrollment of a student who is not currently eligible to enroll in kindergarten, such as a student with a birthday falling after September 1;

(b) evaluate an educator's teaching performance; or

(c) determine whether a student should be retained or promoted between grades.

R277-489-5. Early Intervention Program.

(1) The Superintendent shall accept applications from LEAs for early intervention programs delivered through enhanced kindergarten programs that satisfy the requirements of Section 53F-2-507 and the provisions of this rule.

(2) The Superintendent shall establish timelines for submission of applications.

(3) An LEA application for early intervention program funds shall include:

(a) the names of schools for which program funds must be used;

(b) a description of the delivery methods that may be used to serve eligible students, such as:

(i) full-day kindergarten;

(ii) two half-days;

(iii) extra hours;

(iv) a summer program; or

(v) other means;

(c) a description of the evidence-based early intervention model used by the LEA;

(d) a description of how the program focuses on age-appropriate literacy and numeracy skills;

(e) a description of how the program targets at-risk students;

(f) a description of the assessment procedures and tools to be used by participating schools within the LEA; and

(g) other information as requested by the Superintendent and approved by the Board.

(4) The Superintendent shall distribute funds to eligible charter schools based on a formula identifying the percentage of students in public schools and the percentage of students with the greatest need for an enhanced kindergarten program consistent with Subsection 53F-2-507(4)(a).

(5) The Superintendent shall distribute funds to eligible school districts by determining the number of students eligible to receive free lunch in the prior school year for each school district and prorating the remaining funds based on the number of students eligible to receive free lunch in each school district.

(6) The Superintendent shall establish timelines for distribution of early intervention program funds.

(7) The Superintendent shall require all funded programs to submit an annual report.

(8) An LEA may not require a student to participate in an early intervention program.

KEY: early intervention

September 21, 2017	**Art X Sec 3**
Notice of Continuation June 6, 2017	**53E-3-401(4)**
	53F-2-507

R277. Education, Administration.

R277-490. Beverley Taylor Sorenson Elementary Arts Learning Program (BTSALP).

R277-490-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53F-2-506, which directs the Board to establish a grant program for LEAs to hire qualified arts professionals to encourage student participation in the arts in Utah public schools and embrace student learning in Core subject areas.

(2) The purpose of this rule is:

(a) to implement the BTSALP model in public schools through LEAs and consortia that submit grant applications to hire arts specialists who are paid on the licensed teacher salary schedule;

(b) to distribute funds to LEAs to purchase supplies and equipment as provided for in Subsections 53F-2-506(4) and (6);

(c) to fund activities at endowed universities to provide pre-service training, professional development, research, and leadership for arts educators and arts education in Utah public schools; and

(d) to appropriately monitor, evaluate, and report programs and program results.

R277-490-2. Definitions.

(1) "Arts equipment and supplies" includes musical instruments, recording and play-back devices, cameras, projectors, computers to be used in the program, CDs, DVDs, teacher reference books, and art-making supplies.

(2) "Arts Program coordinator" or "coordinator" means an individual, employed full-time, who is responsible to:

(a) coordinate arts programs for an LEA or consortium;

(b) inform arts teachers;

(c) organize arts professional development including organizing arts local learning communities;

(d) oversee, guide, and organize the gathering of assessment data;

(e) represent the LEA or consortium arts program; and

(f) provide general leadership for arts education throughout the LEA or consortium.

(3) "Beverley Taylor Sorenson Elementary Arts Learning Program model," "BTSALP model," or "Program" means a program in grades K-6 with the following components:

(a) a qualified arts specialist to work collaboratively with the regular classroom teacher to deliver quality, sequential, and developmental arts instruction in alignment with the state fine arts core standards;

(b) regular collaboration between the classroom teacher and arts specialist in planning arts integrated instruction; and

(c) other activities that may be proposed by an LEA on a grant application and approved by the Board.

(4) "Endowed university" means an institution of higher education in the state as defined in Subsection 53F-2-506(1)(b).

(5) "Highly qualified school arts program specialist" or "arts specialist" means:

(a) an educator with:

(i) a current educator license; and

(ii) a Level 2 or K-12 specialist endorsement in the art form;

(b) an elementary classroom teacher with a current educator license who is currently enrolled in a Level 2 specialist endorsement program in the art form;

(c) a professional artist employed by a public school and accepted into the Board Alternative Routes to License (ARL) program under Rule R277-503 to complete a K-12 endorsement in the art form, which includes the Praxis exam in the case of art, music, or theatre; or

(d) an individual who qualifies for an educator license under Board rule that qualifies the individual for the position provided that:

(i) an LEA provides an affidavit verifying that a reasonable search was conducted for an individual who would qualify for an educator license through other means; and

(ii) the LEA reopens the position and conducts a new search every two years.

(e) In addition to required licensure and endorsements, prospective teachers should provide evidence of facilitating elementary Core learning in at least one art form.

(6) "Matching funds" means funds that equal at least 20% of the total costs for salary plus benefits incurred by an LEA or consortium to fund the LEA or consortium's arts specialist.

R277-490-3. Arts Specialist Grant Program - LEA Consortium.

(1) LEAs may form a consortium to employ arts specialists appropriate for the number of students served.

(2) An LEA or a consortium of LEAs may submit a grant request consistent with time lines provided in this rule.

(3) An LEA or a consortium shall develop its proposal consistent with the BTSALP model outlined under R277-490-2(3).

(4) A consortium grant request shall explain the necessity or greater efficiency and benefit of an arts specialist serving several elementary schools within a consortium of LEAs.

(5) A consortium grant shall explain a schedule for each specialist to serve the group of schools within several of the LEAs similarly to an arts specialist in a single school.

(6) A consortium grant request shall provide information for a consortium arts specialist's schedule that minimizes the arts specialist's travel and allows the arts specialist to be well integrated into several schools.

(7) An LEA's grant application shall include the collaborative development of the application with the LEA's partner endowed university and School Community Councils if matching funds come from School LAND Trust Funds.

R277-490-4. Arts Specialist Grant Program Timelines.

(1) An LEA or a consortium shall complete a program grant application annually.

(2) The Board shall grant funding priority to renewal applications.

(3) An LEA or consortium shall submit a completed application requesting funding to the Superintendent by May 1 annually.

(4) The Board shall designate an LEA or a consortium for funding no later than June 1 annually.

R277-490-5. Distribution of Funds for Arts Specialist.

(1) A program LEA or consortium shall submit a projection of salaries, including benefits, of all program specialists the LEA or consortium expects to employ in the coming school year by May 1 annually.

(2) A program LEA or consortium shall submit complete information of salaries, including benefits, of all program specialists employed by the LEA or consortium no later than September 30 annually.

(3)(a) If a program LEA or consortium provides matching funds, the Superintendent shall distribute funds to program grant recipients annually up to 80% of the salaries plus benefits for approved hires in the program, and not to exceed the amount projected in accordance with Subsection (1), consistent with Subsections 53A-17a-162(5) and(6).

(b) The Superintendent shall determine the exact percentage awarded following review of available program funding and exact costs for continuing programs.

(c) The Superintendent may not award funds to an LEA for a new program specialist unless program funding provides 80% funding for all continuing grants.

(4) The Superintendent shall annually set the upper limit on a grant amount, which may not exceed the increase in the WPU.

(5) A grant recipient shall provide matching funds for each specialist funded through the program.

R277-490-6. Distribution of Funds for Arts Specialist Supplies.

(1) The Board shall distribute funds for arts specialist supplies to an LEA or consortium as available.

(2) A grant recipient shall distribute funds to participating schools as provided in the approved LEA or consortium grant and consistent with LEA procurement policies.

(3) A grant recipient shall require arts specialists to provide adequate documentation of arts supplies purchased consistent with the grant recipient's plan, this rule, and the law.

(4) Summary information about effective supplies and equipment shall be provided in the school or consortium evaluation of the program.

R277-490-7. LEA or Consortium Employment of Arts Coordinators.

(1)(a) An LEA or consortium may apply for funds to employ arts coordinators in the LEA or consortium.

(b) These are intended as small stipends for educators who are already employed in rural districts to help support arts education and the implementation of BTSALP.

(2) An applicant shall explain:

(a) how an arts coordinator will be used, consistent with the BTSALP model;

(b) what requirements an arts coordinator must meet; and

(c) what training will be provided, and by whom.

(3) The Superintendent shall notify an LEA that receives a grant award no later than June 1 annually.

R277-490-8. Endowed University Participation in the BTSALP.

(1) The Superintendent may consult with endowed chairs and integrated arts advocates regarding program development and guidelines.

(2) An endowed university may apply for grant funds to fulfill the purposes of this program, which include:

(a) delivery of high quality professional development to participating LEAs;

(b) the design and completion of research related to the program;

(c) providing the public with elementary arts education resources; and

(d) other program related activities as may be included in a grant application and approved by the Board.

(3) An endowed university grant application shall include documentation of collaborative development of a plan for delivery of high quality professional development to participating LEAs.

(4) The Superintendent shall determine the LEAs assigned to each endowed university.

(5) The Board may award no more than 10% of the total legislative appropriation for grants to endowed universities.

(6) The Superintendent shall monitor the activities of the grantees to ensure compliance with grant rules, fulfillment of grant application commitments, and appropriate fiscal procedures.

(7) An endowed university shall cooperate with the Superintendent in the monitoring of its grant.

(8) An endowed university that receives grant funds shall consult, as requested by the Superintendent, in the development and presentation of an annual written program report as required in statute.

R277-490-9. LEAs Cooperation with the Superintendent for BTSALP.

(1) A BTSALP staff member may visit a school receiving a grant to observe implementation of the grant.

(2) A BTSALP school shall cooperate with the Superintendent to allow visits of members of the Board, legislators, and other invested partners to promote elementary arts integration.

(3) An LEA shall accurately report the number of students impacted by the program grant and report on the delivery systems to those students as requested by the Superintendent.

(4)(a) An LEA found to be out of compliance with the terms of the grant will be notified within 30 days of the discovery of non-compliance.

(b) An LEA found to be in non-compliance will be given 30 days to correct the issues.

(c) If non-compliance is not resolved within that time frame, an LEA is subject to losing the grant funds for the school or schools found to be non-compliant.

KEY: arts programs, endowed universities, grants, public schools

March 14, 2018 **Art X Sec 3**
Notice of Continuation January 12, 2018 **53E-3-401(4)**
53F-2-506

R277. Education, Administration.

R277-492. Utah Science Technology and Research Initiative (USTAR) Centers Program.

R277-492-1. Definitions.

A. "Annual report" means information and data identified under R277-492 provided by funding recipients to the USOE annually by June 30 as a requirement for continued funding of the school or school district program.

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

C. "Extended year" means either a longer contract day or a longer contract year for participating teachers.

D. "Mathematics or science teacher" means a teacher with a secondary (7-12) mathematics or science teaching assignment.

E. "School district/charter school USTAR proposal" means a written proposal, including components required by the Board, developed and submitted by a school district/charter school applying for USTAR funding.

F. "STEM" means science, technology, engineering and mathematics.

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

H. "USTAR" means Utah Science Technology and Research.

I. "USTAR Program" means student and teacher opportunities to broaden their knowledge and experiences within STEM fields.

J. "Weighted Pupil Unit (WPU)" means the basic state funding unit.

R277-492-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3, which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-159 which appropriates funding to establish extended contracts for mathematics and science teachers as part of the Utah Science Technology and Research (USTAR) Centers Initiative. The USOE shall provide statewide supervision of the program and budget and shall recommend funding for USTAR programs based on USTAR objectives, Board funding priorities and available funds.

B. This rule establishes standards and procedures to direct recipient public school districts or charter schools to develop proposals that create USTAR Centers that will enhance their ability to retain mathematics and science teachers while simultaneously offering more opportunities for students and more effectively using capital facilities.

R277-492-3. USTAR Proposal Criteria.

A. A school district/charter school shall first identify the purpose or goal(s) of its USTAR proposal.

B. Appropriate purposes may include:

(1) improvement in student test scores;

(2) satisfaction of specific academic goals for all students or various groups of students;

(3) increased retention of licensed educators in specific areas;

(4) improved school climate;

(5) increased opportunities for students to take remedial or college preparation courses;

(6) increased student enrollment in identified courses;

(7) additional opportunities for students to learn about specific or general higher education or career opportunities in math or science fields; or

(8) other purposes consistent with Section 53A-17a-159(1)(b).

C. A school district/charter school shall provide a school schedule showing how it will extend hours of the school day (Section 53A-17a-159(1)(b)(ii)) or days of the school year (Section 53A-17-a-159(1)(b)(ii)) to maximize employee and facility resources in furtherance of the proposal's goals.

D. The USTAR proposal shall explain how employees shall be used in the extended school day or expanded school year to maximize their effectiveness with students, including how various groups of employees will participate including classified employees, licensed employees, and appropriate supervisors for all groups. Though various school employee groups may be necessary or desirable to achieve the purposes of the proposal, the proposal shall use USTAR grant funds only to pay for hours or days worked by science or mathematics teachers with valid, current Utah educator licenses.

E. The USTAR proposal shall identify the number of designated employees that will participate in the expanded year or extended day program with the understanding that USTAR grant funds may only be used for licensed mathematics and science teachers.

F. The USTAR proposal shall identify the compensation that all necessary employees shall receive, including increased insurance and benefit costs, if appropriate; compensation may be determined by groups of employees or by individual employees.

G. The USTAR proposal shall identify how licensed educators will be evaluated for the extended hours or expanded days worked.

H. The USTAR proposal shall include a budget section, including anticipated costs and narrative.

I. The USTAR proposal shall include an evaluation component that provides opportunities for student, employee and parent participation in the assessment of the proposal's effectiveness. Proposals shall provide for evaluations of program effectiveness at least annually.

R277-492-4. Board/USOE Responsibilities.

A. The USOE shall carry out the responsibilities of the Board consistent with the Board's review and direction.

B. The USOE shall solicit proposals from school districts/charter schools to participate in the USTAR grant program.

C. Proposals shall be due to the USOE by June 2 annually.

(1) The USOE will work with applicants that submit proposals early to improve proposals to the extent of resources and time available.

(2) The USOE shall deliver final charter school proposals to the State Charter School Board for Review and recommendation.

D. The USOE shall receive a consolidated request from the State Charter School Board consistent with Section 53A-17a-159(4) by June 20 annually. The State Charter Board and State Charter Board staff shall work with charter school applicants that submit proposals early to improve proposals to the extent of resources and time available.

E. The USOE shall receive all proposals from school districts, considering the consolidated request submitted by the State Charter Board as a proposal from one school district, and rank them on an objective scale or rubric prepared by the USOE.

F. The Board may appoint an expert review panel to prioritize proposals and recommend proposals for funding.

G. The expert review panel or the USOE or both shall consider the priorities of Section 53A-17a-159(5) in recommending and selecting the recipients:

(1) rural, urban, large, small, growing and declining school districts (considering the consolidated charter request as one school district) having unique circumstances;

(2) as many pilot programs shall be funded as possible; and

(3) funded proposals should address the objectives and benefits of Section 53A-17a-159(1)(b).

H. The Board shall review recommendations, make final decisions for funding and notify applicants that receive funding no later than July 31 annually.

I. The USOE shall provide funds to school districts/charter schools (or the consolidated charter recipient) consistent with USOE distribution practices for grants.

R277-492-5. School District/Charter School Consolidated Proposal Responsibilities.

A. School districts shall submit proposals that meet the standards of R277-717-3 and Section 53A-17a-159 no later than June 2 annually.

B. The State Charter Board shall complete its work under Section 53A-17a-159(4) and submit its consolidated request to the USOE no later than June 20 annually.

C. School district and charter school proposals shall clearly demonstrate that all participants necessary for the success of a proposal are voluntary participants and understand the requirements of their participation.

D. School district and charter school participants shall demonstrate parent and community notification and support of the school district/charter school proposals.

E. Proposals shall clearly demonstrate that at least 95 percent of allocated funds shall be used for extended licensed mathematics and science teacher contracts.

F. Proposals shall clearly demonstrate that the remaining five percent of allocated funds is used only for purposes identified under Section 53A-17a-159(6)(b).

G. Funded school districts and charter schools shall provide all required evaluations to the USOE as identified by their proposals consistent with USOE timelines.

H. Funded school districts and charter schools shall provide information as requested by the USOE during the time periods identified in the proposals, including allowing for visits of USOE staff and review of student work or assessments.

R277-492-6. Final Decision-making and Reporting Requirements.

A. The Board's decisions for funding are final.

B. The USOE may request additional information, data or budget information if annual reports or student assessments indicate that USTAR funding is being used ineffectively, for ineligible employees or inconsistently with the school district/charter school proposal or the intent of the law or this rule.

C. The USOE may interrupt USTAR funding to school districts/charter schools that do not meet timelines required by this rule or that do not provide complete information or

evaluations required under this rule.

D. The Board shall provide annual reports to Legislative committees as required by Section 53A-17a-159(8)

KEY: science, technology, research, USTAR
October 8, 2013 Art X Sec 3
Notice of Continuation July 13, 2018 53A-1-401(3)
53A-17a-159

R277. Education, Administration.
R277-494. Charter, Online, Home, and Private School Student Participation in Extracurricular or Co-curricular School Activities.
R277-494-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

(b) Subsection 53E-3-401(4), which permits the Board to adopt rules in accordance with its responsibilities;

(c) Subsection 53G-6-704(6)(a), which directs the Board to make rules establishing fees for a charter school student's participation in extracurricular or co-curricular activities at certain public schools; and

(d) Subsection 53G-6-705(6), which directs the Board to make rules establishing fees for an online student's participation in extracurricular or co-curricular activities at certain public schools.

(2) The purpose of this rule is to inform school districts, charter and online schools, and parents of:

(a) school participation fees; and

(b) state-determined requirements for a charter school or a public online school student to participate in an extracurricular activity at a student's boundary school.

R277-494-2. Definitions.

(1) "Activity fee" means a fee that:

(a) is approved by a local school board or public school;

(b) is charged to all students to participate in an extracurricular or co-curricular activity sponsored by or through the public school; and

(c) entitles a public school student to:

(i) participate in a school activity;

(ii) try out for an extracurricular or co-curricular school activity;

(iii) receive transportation to an activity; and

(iv) attend a regularly scheduled public school activity.

(2) "Co-curricular activity" means a school district or school activity, course, or experience that includes a required regular school day component and an after school component, including a special program or activity such as a program for a gifted and talented student, a summer program, and a science or history fair.

(3) "Extracurricular activity" means an athletic program or activity sponsored by a public school and offered, competitively or otherwise, to a public school student outside of the regular school day or program.

(4) "Online school" means a formally constituted public school that offers full-time education delivered primarily over the internet.

(5) "Qualifying school" means:

(a) for purposes of a charter school student, a school described in Subsection 53G-6-704(1);

(b) for purposes of an online school student, a school described in Subsection 53G-6-705(2); and

(c) for purposes of a private or home school student, a school described in Subsection 53G-6-703(2)(c).

(6) "School of enrollment" means the public school that maintains the student's cumulative file, enrollment information and transcript for purposes of high school graduation.

(7) "School participation fee" means the fee paid by a charter or online school to a qualifying school consistent with Subsections R277-494-3(2) or R277-494-4(2) for the charter or online school student's participation in an extracurricular or co-curricular activity.

(8) "Student activity specific fee" means the activity fee charged to all participating students by a qualifying school for a designated extracurricular or co-curricular activity consistent with Rule R277-407.

R277-494-3. Charter and Online School Student Participation in Extracurricular Activities at Another Public School.

(1) A charter or online school student may participate in an extracurricular activity at a qualifying school if:

(a) the extracurricular activity is not offered by the student's charter or online school;

(b) the student satisfies:

(i) for a charter school student, the requirements of Subsection 53G-6-704(3);

(ii) for an online school student, the requirements of Subsection 53G-6-705(3); and

(iii) the requirements of this rule;

(c) the student meets the qualifying school's standards and requirements; and

(d) the student's parent agrees to provide the student transportation to the qualifying school for the extracurricular activity.

(2)(a) A charter or online school student's school of enrollment shall pay a one-time annual school participation fee of $75.00 per student to the qualifying school at which the charter or online school student desires to participate.

(b) Upon annual payment of the school participation fee, the student may participate in all extracurricular or co-curricular school activities at the school during the school year for which the student is qualified and eligible.

(3) The school participation fee described in Subsection (2)(a) is in addition to:

(a) a student activity specific fee for a specific extracurricular activity; and

(b) the activity fee charged to all students in a qualifying school to supplement a school activity as assessed by the school consistent with this rule.

(4) Except as provided in Subsection (7), a charter or online school student who participates in an extracurricular activity at a qualifying school shall pay all required student activity specific fees to the qualifying school in accordance with deadlines set by the qualifying school.

(5) All fees, including school participation fees and student activity specific fees shall be paid prior to a charter or online school student's participation in an activity at the qualifying school.

(6) A charter or online school of enrollment shall cooperate fully with all qualifying schools:

(a) regarding students' participation in try-outs, practices, pep rallies, team fund raising efforts, scheduled games, and required travel; and

(b) by providing complete and prompt reports of student academic and citizenship progress or grades, upon request.

(7)(a) If a participating charter or online school student qualifies for a fee waiver, in accordance with Rule R277-470, the charter or online student's school of enrollment shall pay the school participation fee described in Subsection (2)(a) and any waived student activity specific fees to the qualifying school.

(b) A charter or online school that is required to pay a fee waiver student's participation fee or student activity specific fee

as described in Subsection (7)(a) shall pay the student participation fee and any student activity specific fees to the qualifying school before the charter or online school student may begin to participate in the extracurricular activity at the qualifying school.

R277-494-4. Charter or Online School Student Participation in Co-Curricular Activities.

(1)(a) A charter or online school student may participate in a co-curricular activity at a qualifying school if:

(i) the co-curricular activity is not offered by the student's charter or online school;

(ii) the student satisfies:

(A) for a charter school student, the requirements of Subsection 53G-6-704(3);

(B) for an online school student, the requirements of Subsection 53G-6-705(3); and

(C) the requirements of this rule;

(iii) the student meets the qualifying school's standards and requirements; and

(iv) the student's parent agrees to provide the student transportation to the qualifying school for the co-curricular activity.

(b) A charter or online school may negotiate with a public school other than a school described in Subsection (1) to participate in a co-curricular activity at the other public school, including:

(i) a debate, drama, or choral program;

(ii) a specialized course or program offered during the regular school day; and

(iii) a school's sponsored enrichment program or activity.

(c) A student who participates in a co-curricular activity described in Subsection (1)(b) shall meet:

(i) the same attendance, discipline, and course requirements expected of the public school's full-time students;

(ii) for a charter school student, the requirements of Subsection 53G-6-704(3); and

(iii) for an online school student, the requirements of Subsection 53G-6-705(3).

(2)(a) A charter or online school of enrollment shall determine if the school will allow students to participate in co-curricular school activities at qualifying schools.

(b) If a charter or online school allows one student to participate in a co-curricular activity at a qualifying school, the charter or online school shall allow all interested students to participate.

(3)(a) A charter or online school student's school of enrollment shall pay a one-time annual school participation fee of $75.00 per student to the qualifying school at which the charter or online school student desires to participate.

(b) If a charter or online school of enrollment pays a $75.00 school participation fee to a qualifying school as described in Subsection R277-494-3(2)(a), the charter or online school of enrollment is not required to pay an additional $75.00 school participation fee described in Subsection (3)(a) to the qualifying school in the same year.

(4) A charter or online school student participating under this rule shall:

(a) pay the required student activity specific fees for each co-curricular activity; and

(b) meet all eligibility requirements and timelines of the public school.

(5)(a) If a participating charter or online school student qualifies for a fee waiver, in accordance with Rule R277-470, the charter or online student's school of enrollment shall pay any waived student activity specific fees to the qualifying school.

(b) A charter or online school that is required to pay a fee waiver student's activity specific fees as described in Subsection (5)(a), shall pay the student activity specific fees to the qualifying school before the charter or online school student may begin to participate in the co-curricular activity at the qualifying school.

R277-494-5. Private or Home School Student Participation in Extracurricular Activities.

(1) In accordance with Section 53G-6-703, a private or home school student may participate in an extracurricular activity at a qualifying school if:

(a) for a private school student, the extracurricular activity is not offered by the student's private school;

(b) the student satisfies the requirements of:

(i) Section 53G-6-703; and

(ii) this rule; and

(c) the student meets the qualifying school's standards and requirements.

(2) Except as provided in Subsection (3), a private or home school student shall pay the required student activity specific fees for each extracurricular activity to the qualifying school:

(a) before the student may participate in the extracurricular activity at the qualifying school; and

(b) in accordance with deadlines set by the qualifying school.

(3) If a private or home school student qualifies for a fee waiver in accordance with Rule R277-407, the qualifying school shall waive any required student activity specific fees in accordance with the requirements of Rule R277-407, School Fees.

R277-494-6. Private or Home School Student Participation in Co-curricular Activities.

A private or home school student may participate in a co-curricular activity at a public school in accordance with the dual enrollment provisions of rule R277-438.

KEY: extracurricular, co-curricular, activities, student participation

March 9, 2016	**Art X Sec 3**
Notice of Continuation October 15, 2015	**53E-3-401(4)**
	53G-6-704(5)
	53G-6-705(6)

R277. Education, Administration.

R277-495. Required Policies for Electronic Devices in Public Schools.

R277-495-1. Definitions.

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

B. "Electronic device" means a device that is used for audio, video, or text communication or any other type of computer or computer-like instrument.

C. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

D. "LEA-owned electronic device" means any device that is used for audio, video, text communication or any other type of computer or computer-like instrument that is owned, provided, issued or lent by the LEA to a student or employee.

E. "Privately-owned electronic device" means any device that is used for audio, video, text communication or any other type of computer or computer-like instrument that is not owned or issued by the LEA to a student or employee.

F. "Public school" means all schools and public school programs, grades kindergarten through 12, that are part of the Utah Public School system, including charter schools, distance learning programs, and alternative programs.

G. "Student," for purposes of this rule, means any individual enrolled as a student at the LEA regardless of the part-time nature of the enrollment or the age of the individual.

H. "The Children's Internet Protection Act (CIPA)" means regulations enacted by the Federal Communications Commission (FCC) and administrated by the Schools and Libraries Division of the FCC. CIPA and companion laws, the Neighborhood Children's Internet Protection Act (NCIPA) and the Protecting Children in the 21st Century Act, require recipients of federal technology funds to comply with certain Internet filtering and policy requirements.

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

J. "Utah Education Network (UEN)" is a robust network that connects most Utah LEAs, schools, and higher education institutions to quality educational resources and services consistent with Section 53B-17-102.

R277-495-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Subsection 53E-3-401(4) which allows the Board to adopt rules in accordance with its responsibilities, and Subsection 53G-8-202(2)(c)(i) directs the State Superintendent of Public Instruction to develop a conduct and discipline policy model for elementary and secondary public schools, and 47 CFR, Part 54, Children's Internet Protection Act, which requires schools and libraries that have computers with Internet access to certify they have Internet safety policies and technology protection measures in place in order to receive discounted internet access and services.

B. The purpose of this rule is to direct all LEAs or public schools to adopt policies, individually or collectively as school districts or consortia of charter schools, governing the possession and use of electronic devices, both LEA-owned and privately-owned, while on public school premises and, for LEA-owned devices, wherever the devices are used.

R277-495-3. Local Board and Charter School Responsibilities.

A. LEAs shall require all schools under their supervision to have a policy or policies for students, employees and, where appropriate, for invitees, governing the use of electronic devices on school premises and at school sponsored activities.

B. LEAs shall review and approve policies regularly.

C. LEAs shall encourage schools to involve teachers, parents, students, school employees and community members in developing local policies; school community councils could provide helpful information and guidance within various school communities and neighborhoods.

D. LEAs shall provide copies of their policies or clear electronic links to policies at LEA offices, in schools and on the LEA website.

E. LEAs and schools within LEAs shall work together to ensure that all policies within a school or school district are consistent and understandable for parents.

F. LEAs shall provide reasonable public notice and at least one public hearing or meeting to address a proposed or revised Internet safety policy. LEAs shall retain documentation of the policy review and adoption actions.

R277-495-4. Policy Requirements.

A. Local policies shall address the following minimum components:

(1) definitions of devices covered by policy;

(2) prohibitions on the use of electronic devices in ways that bully, humiliate, harass, or intimidate school-related individuals, including students, employees, and invitees, consistent with R277-609 and R277-613, or violate local, state, or federal laws; and

(3) the prohibition of access by students, LEA employees and invitees to inappropriate matter on the Internet and World Wide Web while using LEA equipment, services or connectivity whether on school property or while using school-owned or issued devices;

(4) the safety and security of students when using electronic mail, chat rooms, and other forms of direct electronic communications (including instant messaging);

(5) unauthorized access, including hacking and other unlawful activities by LEA electronic device users; and

(6) unauthorized disclosure, use and dissemination of personal student information under the Family Educational Rights and Privacy Act, 34 CFR, Part 99.

B. Additional requirements for student policies - In addition to the provisions of R277-495-4A, policies for student use of electronic devices shall include:

(1) prohibitions against use of electronic devices during standardized assessments unless specifically allowed by statute, regulation, student IEP, or assessment directions;

(2) provisions that inform students that there may be administrative and criminal penalties for misuse of electronic devices and that local law enforcement officers may be notified if school employees believe that a student has misused an electronic device in violation of the law;

(3) provisions that inform students that violation of LEA acceptable use policies may result in confiscation of LEA-owned devices which may result in missed assignments, inability to participate in required assessments and possible loss of credit or academic grade consequences;

(4) provisions that inform students that they are personally responsible for devices assigned or provided to them by the LEA, both for loss or damage of devices and use of devices consistent with LEA directives;

(5) provisions that inform students and parents that use of electronic devices in violation of LEA or teacher instructional policies may result in the confiscation of personal devices for a designated period; and

(6) provisions that inform students that use of privately-owned electronic devices to bully or harass other students or employees and result in disruption at school or school-sponsored activities may justify administrative penalties, including expulsion from school and notification to law enforcement.

C. Additional requirements for employee policies - In addition to the provisions of R277-495-4A, policies for employee use of electronic devices shall include:

(1) notice that use of electronic devices to access inappropriate or pornographic images on school premises is illegal, may have both criminal and employment consequences, and where appropriate, shall be reported to law enforcement;

(2) notice that employees are responsible for LEA-issued devices at all times and misuse of devices may have employment consequences, regardless of the user; and

(3) notice that employees may use privately-owned electronic devices on school premises or at school sponsored activities when the employee has supervisory duties only as directed by the employing LEA; and

(4) required staff responsibilities in educating minors on appropriate online activities and in supervising such activities.

D. Local policies may also include the following:

(1) prohibitions or restrictions on unauthorized audio recordings, capture of images, transmissions of recordings or images, or invasions of reasonable expectations of student and employee privacy;

(2) procedures to report the misuse of electronic devices;

(3) potential disciplinary actions toward students or employees or both for violation of local policies regarding the use of electronic devices;

(4) exceptions to the policy for special circumstances,

health-related reasons and emergencies, if any; and

(5) strategies for use of technology that enhance instruction.

E. An LEA shall certify annually to the USOE and as required by the FCC, that the LEA has a CIPA-compliant Internet safety policy.

R277-495-5. Board and USOE Responsibilities.

A. The Board and USOE shall provide resources, upon request, for LEAs and public schools as they develop and update electronic device policies, including sources for successful policies, assistance with reviewing draft policies and amendments, and information about bullying, harassing, and discrimination via electronic devices consistent with R277-613.

B. The Board and USOE shall develop or provide a model policy or a policy framework to assist LEAs and public schools in developing and implementing their policies.

C. The Board and USOE shall promote the use of effective strategies to enhance instruction and professional development through technology.

D. The Board and USOE shall ensure that parents and school employees are involved in the development and implementation of policies.

E. The Board and USOE shall work and cooperate with other education entities, such as the PTA, the Utah School Boards Association, the Utah Education Association, the State Charter School Board and the Utah High School Activities Association to provide consistent information to parents and community members about electronic device policies and to provide for appropriate and consistent penalties for violation of policies, including violations that take place at public school extracurricular and athletic events.

KEY: electronic devices, policy
April 7, 2014 Art X Sec 3
Notice of Continuation December 16, 2013 53E-3-401(4)
53G-8-202(2)(c)(i)

R277. Education, Administration.
R277-496. K-3 Reading Software Licenses.
R277-496-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah constitution and state law; and

(c) Subsection 53F-4-203(2), which directs the Board to distribute software licenses for the K-3 reading software program to LEAs that apply for the licenses.

(2) The purpose of this rule is to establish criteria and procedures to administer the K-3 reading software program.

R277-496-2. Definitions.

(1) "Aggregate student population" means the total number of students within a school who are using a technology provider's K-3 reading software licenses.

(2) "Early interactive reading software" or "K-3 reading software license" means technology tools and software that adjust the presentation of educational material according to a student's weaknesses and strengths, as indicated by the student's responses to questions.

(3) "Use early interactive reading software in accordance with a technology provider's dosage recommendations" means when at least 80% of the aggregate student population of a school, by provider, uses a technology provider's K-3 reading software for at least 80% of:

(a) the minimum number of weeks of use recommended by the technology provider for the K-3 reading software program; or

(b) the average number of minutes of use recommended by the technology provider for the K-3 reading software program.

R277-496-3. K-3 Reading Software Licenses.

(1) The Superintendent shall select one or more technology providers through an RFP to provide early interactive reading software for students in kindergarten through grade 3.

(2) A school may apply for early interactive reading software for students in kindergarten through grade 3.

(3) The Superintendent shall accept applications from LEAs for K-3 reading software licenses that satisfy the requirements of Section 53F-4-203 and the provisions of this rule.

(4) If the number of requests for K-3 reading software licenses exceeds the number of licenses available, the Superintendent shall give priority to:

(a) requests for licenses to be used in Kindergarten or grade 1; or

(b) a school that:

(i) received a K-3 reading license in a previous school year; and

(ii) used the K-3 reading license in accordance with the technology provider's dosage recommendations.

(5) The Superintendent shall establish timelines for submission of applications. (6) A school may not require a student to participate in the K-3 reading software license program.

R277-496-4. School Probationary Re-entry Into the Program.

(1) If a school does not use the K-3 reading software licenses in accordance with the technology provider's dosage recommendations as described in Subsection 53F-4-203(3)(c), the school may not receive K-3 reading software licenses for one year.

(2) A school described in Subsection (1) may reapply to re-enter the program on a probationary basis and receive K-3 reading software licenses if the school meets the probation requirements of this Section R277-496-4.

(3) A school is on probation if the school:

(a) previously received K-3 reading software licenses;

(b) lost eligibility to participate in the program as described in Subsection 53F-4-203(3)(c); and

(c) receives K-3 reading software licenses after re-entering the program.

(4)(a) The school principal, instructional leaders, and teachers of a school on probation shall engage in all of the available technology provider support structures and interventions for probationary software programs, including:

(i) data dives;

(ii) professional learning; and

(iii) usage and fidelity updates.

(b) A technology provider shall establish the specific support structure requirements and interventions described in Subsection (4)(a) for the technology provider's software program.

(5) If a technology provider does not offer support structure requirements and interventions as described in Subsection (4), the Superintendent may not make the technology provider's software available for a school that is on probation.

(6) If a school on probation does not use the K-3 reading software licenses in accordance with a technology provider's dosage recommendations during the probationary year, the

school may not receive a K-3 reading license for the following year unless the school on probation pays for 50% of the costs of the K-3 reading license software license.

R277-496-5. Reporting.

(1) An LEA receiving K-3 reading software licenses shall provide information that is requested by the Superintendent or external evaluator selected by the Board in conducting the evaluation required in Subsection 53F-4-203(4).

(2) The Superintendent may recommend action to the Board, including withholding of funds, in accordance with Rule R277-114 for an LEA that fails to provide complete, accurate, and timely reporting as required by this rule.

KEY: reading, software, licenses
September 21, 2017 **Art X Sec 3**
53E-3-401(4)
53F-4-203

R277. Education, Administration.
R277-498. Grant for Math Teaching Training.
R277-498-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities; and

(c) Subsection 53F-5-205(2), which directs the Board to make rules to provide criteria to award a grant related to mathematics education.

(2) The purpose of this rule is to establish criteria to award a grant to:

(a) support and encourage prospective educators to earn mathematics endorsements; and

(b) assist an experienced mathematics teacher in becoming a teacher leader.

R277-498-2. Definitions.

(1) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" means the electronic file maintained on all licensed Utah educators that includes:

(a) personal directory information;

(b) educational background;

(c) endorsements;

(d) employment history; and

(e) a record of disciplinary action taken against the educator.

(2) "Endorsements in mathematics" means one or more endorsements in the mathematics teaching field that:

(a) qualify an educator or prospective educator to teach a specific or specific level of mathematics course; and

(b) is indicated by a notation on the educator's CACTUS record.

(3) "Grantee" or "prospective grantee" means:

(a) an institution of higher education; or

(b) a nonprofit educational organization.

(4) "Matching funds" means funds provided by the grant recipient in order to receive state funds under Section 53F-5-205.

R277-498-3. Board Procedures for Distributing Funds.

(1) The Superintendent shall select a grantee that meets the criteria of Section 53F-5-205 and the criteria of this rule from requests submitted by a prospective grantee.

(2) The Superintendent shall notify a selected grantee of its eligibility to receive funds under this program following:

(a) review of the request; and

(b) the assurance of matching funds.

(3) The Superintendent may identify one eligible and qualified grantee and establish a funding schedule to distribute funds or allow a prospective grantee to submit an application until March 30.

(4) The Superintendent, under the direction of the Board, shall distribute the appropriation provided for in Section 53F-5-205 by June 30.

R277-498-4. Criteria for Awarding Grants.

(1) The Superintendent shall consider the amount or percent of matching funds that a prospective grantee offers.

(2) The Superintendent shall determine that the prospective grantee requesting funds under Section 53F-5-205 shall use the funds consistent with Section 53F-5-205.

R277-498-5. Accountability and Documentation.

(1) The Superintendent shall maintain records of the distribution of funds to a grantee that requests funds provided under Section 53F-5-205 and this rule.

(2) The recipient of funds under Section 53F-5-205 shall maintain documentation of the matching funds offered by the grantee that established the grantee's eligibility.

(3) Both the Superintendent and the eligible grantee shall maintain documentation of:

(a) the number of prospective educators and the relevant training received from funding provided by Section 53F-5-205; or

(b) the number of experienced mathematics teachers and the relevant training received from funding provided by Section 53F-5-205.

KEY: grants, educators, math teaching training
October 8, 2015 **Art X, Sec 3**
Notice of Continuation August 13, 2015 **53E-3-401(3)**
53F-5-205(2)

R277. Education, Administration.
R277-499. Seal of Biliteracy.
R277-499-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53E-3-501(1)(b), which allows the Board to establish rules and minimum standards for graduation requirements.

(2) The purpose of this rule is to establish rules and procedures for a student to earn a Seal of Biliteracy in conjunction with a high school diploma.

R277-499-2. Definitions.

(1) "Intermediate-Mid" level means a level of language proficiency in terms of speaking, writing, listening, and reading in real-world situations in a spontaneous and non-rehearsed context, as established by the American Council on the Teaching of Foreign Languages or tribal education directors.

(2) "Seal of Biliteracy " means a recognition, awarded in conjunction with a student's high school diploma, which certifies that a student is proficient in English and at Intermediate-Mid level or higher in one or more world languages.

(3) "World language" means a language other than English

and includes:
(a) American Sign Language;
(b) American Native Languages, such as Navajo or Ute; and
(c) classical languages, such as Latin.

R277-499-3. Procedures for Award of Seal of Biliteracy.
(1)(a) An LEA may develop a local application process for a student who wishes to earn the Seal of Biliteracy.
(b) An LEA application process shall include procedures for:
(i) advertising the criteria for the Seal of Biliteracy;
(ii) tracking students who may qualify for the Seal of Biliteracy; and
(iii) documenting student progress.
(c) An LEA shall train counselors and world language coordinators to provide information on the application process to interested students.
(d) The Superintendent shall provide an application template which an LEA may use in the application process.
(2) An LEA may award the Seal of Biliteracy to a student who:
(a) demonstrates proficiency in an English assessment; and
(b) demonstrates a minimum of Intermediate Mid-level proficiency in a world language assessment.
(3)(a) The Superintendent shall maintain a list of acceptable national and international tests with qualifying scores to demonstrate proficiency as required by this rule.
(b) The Superintendent shall review and update the list provided by Subsection (3)(a) on a regular basis and publish the information on the Board's website.
(4) If a student meets the requirements of Subsection (2):
(a) the Superintendent shall place the Seal of Biliteracy electronically on the student's transcript; and
(b) an LEA may place a seal on the student's paper diploma.

KEY: biliteracy, seal, world languages
January 10, 2017 **Art X Sec 3**
53E-3-401(4)
53E-3-501(1)(b)

R277. Education, Administration.
R277-505. Education Leadership License Areas of Concentration and Programs.
R277-505-1. Authority and Purpose.
(1) This rule is authorized by:
(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;
(b) Section 53E-6-201, which permits the Board to issue certificates for educators; and
(c) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.
(2) The purpose of this rule is to:
(a) specify the requirements for education leadership license areas of concentration;
(b) provide standards and procedures for district-specific and charter school-specific education leadership license areas of concentration; and
(c) specify the requirements for an education leadership preparation program that must be met to receive Board approval of the program.

R277-505-2. Definitions.
(1) "Education leadership license area of concentration" means the initial credential issued by the Board that authorizes a holder to be employed in a position that requires the license holder to administer educational programs or supervise educators in improving educational practices and outcomes within the public education system, including the administration and supervision of a school.
(2) "Internship" means an on-site supervised experience in an accredited public or private school or other approved location.
(3) "Level 2 license" means a Utah professional educator license issued to an applicant after the Level 2 applicant:
(a) completes all requirements for a Level 1 license;
(b) completes the requirements under R277-522 for a teacher whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public or accredited private school;
(c) completes:
(i) at least three years of successful education experience in a Utah public LEA or accredited private school; or
(ii)(A) one year of successful education experience in a Utah public LEA or accredited private school; and
(B) at least three years of successful education experience in a public LEA or accredited private school outside of Utah; and
(d) completes additional requirements established by law or rule;
(4) "Level 3 license" means a Utah professional educator license issued to an educator who:
(a) holds a current Utah Level 2 license; and
(b) receives:
(i) National Board Certification;
(ii) a doctorate in:
(A) education; or
(B) a field related to a content area in a unit of the public education system or an accredited private school; or
(iii)(A) a Speech-Language Pathology area of concentration; and
(B) currently holds American Speech-Language Hearing Association (ASHA) certification.
(5) "LEA governing board" means:
(a) for a school district, the school district's local school board; or
(b) for a charter school, the charter school's charter school governing board.

R277-505-3. Education Leadership License Area of Concentration Positions.
(1) An LEA shall determine the various positions and settings in which an individual must hold an Education Leadership license area of concentration in accordance with the requirements of Sections:
(a) 53G-5-405;
(b) 53G-4-301;
(c) 53E-6-306;
(d) 53E-6-304; and
(e) this Board rule.
(2) An LEA's governing board shall adopt a policy, in an open and public meeting, that describes the required licenses or credentials for administrators in the LEA's schools.

R277-505-4. Education Leadership License Area of Concentration Requirements.
(1) Except as provided in Subsection (2), an applicant for an education leadership license area of concentration may be granted an education leadership license area of concentration if the applicant:
(a) holds a master's degree or more advanced degree;
(b) passes a Board-approved education leadership test; and
(c)(i) completes a Board-approved education leadership licensure program; or

(ii) subject to Subsection (3), holds an education leadership license valid in another state under the NASDTEC interstate agreement.

(2) The Board may grant an education leadership license area of concentration to an applicant for:

(a) exceptional professional experience, including non-education experience;

(b) exceptional education accomplishments; or

(c) other noteworthy experiences or circumstances.

(3) An applicant that holds an education leadership license valid in another state under the NASDTEC interstate agreement as described in Subsection (1)(c)(ii) shall complete:

(a) at least one year of education leadership experience in that state; or

(b) an education leadership internship substantially equivalent to the internship required for Board-approved education leadership licensure programs as described in this rule.

R277-505-5. Standards for the Approval of Programs for Education Leadership Licensure.

(1) The Board may approve the education leadership licensure preparation program of an institution of higher education if the program:

(a) prepares candidates to meet the Utah educational leadership Standards described in R277-530;

(b) subject to Subsection (2), establishes entry requirements designed to ensure that only high quality individuals enter the licensure program;

(c) includes coursework specifically designed to prepare candidates to:

(i) properly utilize data, including student performance data, to evaluate educator and school performance and provide actionable information to educators to improve instruction;

(ii) facilitate educator use of technology to support and meaningfully supplement the learning of students in traditional, online-only, and blended classrooms

(iii) collaborate with all stakeholder groups to create a shared vision, mission, and goals for a school;

(iv) communicate effectively with parents, community groups, staff, and students;

(v) recognize effective and ineffective instructional practice in order to ensure authentic learning and assessment experiences for all students;

(vi) counsel educators in relation to the educator's evaluation, professional learning, and student performance to improve the educator's practice;

(vii) ensure a safe, secure, emotionally protective and healthy school environment, including the prevention of bullying and youth suicide; and

(viii) connect management operations, policies, and resources to the vision and values of the school; and

(d) includes a minimum of 50 hours of clinical experience in elementary and secondary schools throughout program coursework.

(2) Beginning on January 1, 2017, the entry requirements described in Subsection (1)(b) shall require an individual entering a Board-approved education leadership licensure program to:

(a) clear a USOE fingerprint background check;

(b) hold a Level 2 or 3 Utah educator license;

(c) have been deemed effective or higher by:

(i) an evaluation system meeting the standards of R277-531; or

(ii) the LEA's equivalent on the applicant's most recent evaluation;

(d) have a recommendation from:

(i) the individual's immediate administrative supervisor; or

(ii) an LEA-level administrator with knowledge regarding the individual's potential as an education leader; and

(e) pass an interview conducted by the program to measure the potential of the individual as an education leader.

(3) A Board-approved education leadership licensure program may waive the entrance requirements described in Subsections (2)(b) through (e) based on program established guidelines for no more than ten percent of an incoming cohort.

(4) A Board-approved education leadership licensure program shall ensure that each incoming cohort after January 1, 2017 has a mean post-secondary G.P.A. of 3.0 or higher.

(5) A Board-approved education leadership licensure program is exempt from the entrance requirements in R277-502-3(C)(6).

(6) For a program applicant accepted on or after January 1, 2017, a Board-approved education leadership licensure program shall require the following opportunities for a program applicant to demonstrate application of knowledge and skills gained through the program in a culminating experience:

(a) analyzing school assessment data from common formative assessments, summative assessments, standardized assessments, and interim or benchmark assessments with school staff and with individual teachers;

(b) participating in all aspects of at least two teacher evaluations using an evaluation system that meets the requirements of:

(i) R277-531; or

(ii) the LEAs equivalent;

(c) participating in all aspects of at least one evaluation of a classified employee;

(d) planning, or participating in the planning of, organizing, conducting, and evaluating the effectiveness of a professional development activity for school staff;

(e) participating in multiple meetings of more than one school-based learning team;

(f) participating in School Community Council meetings including the annual development and evaluation of the School Improvement Plan or the School LAND Trust plan;

(g) participating in multiple classroom observations and walk-throughs;

(h) participating in multiple IEP and 504 accommodation plan meetings in support of or as the LEA representative;

(i) handling multiple cases of student discipline referred to the school office for more than one type of misconduct;

(j) supervising a variety of after school activities and monitoring the process for collecting and handling fees and gate receipts;

(k) participating in the school's screening process, including interviews and the notification of successful and unsuccessful applicants; and

(l) any additional specific experiences as defined by the program.

(7) A program applicant shall complete the competencies described in Subsection (6) by participating in one of the following culminating experiences:

(a) employment in an education leadership position where the educator:

(i) supervises other educators and that meets the following requirements:

(ii) is employed half-time or more in the position for a full school year;

(iii) is mentored by a licensed education leader that has been deemed effective or higher by:

(A) an evaluation meeting the standards of R277-531; or

(B) the LEA's equivalent on the educator's most recent evaluation;

(iv) works a minimum of 100 hours in a minimum of two hour blocks during the regular school day and the regular school year in an elementary school where the educator is not employed if the educator is not employed as an elementary

principal or vice-principal; and

(v) works a minimum of 100 hours in a minimum of two hour blocks during the regular school day and the regular school year in a secondary school where the educator is not employed if the educator is not employed as a secondary principal or vice-principal; or

(b) an internship where the educator:

(i) works a minimum of 400 hours of supervised clinical experiences, excluding additional hours required by a university for seminars or discussion sessions within the required hours;

(ii) works a minimum of 300 of the required hours in a school setting which offers the opportunity of working with:

(A) students, faculty, classified employees, parents, and patrons; and

(B) a licensed principal that has been deemed effective or higher by:

(I) an evaluation system meeting the standards of R277-531; or

(II) the LEA's equivalent on the principal's most recent evaluation;

(iii) works the remainder of the required internship hours in a school district office; at the USOE; with a Board-approved agency; or in another Board-approved program or school setting;

(iv) works the majority of the school-level supervised experience completed during the regular school day and in concentrated blocks of a minimum of two hours each when students are present;

(v) works a minimum of 150 hours in an elementary school;

(vi) works a minimum of 150 hours in a secondary school; and

(vii) works a minimum of 32 hours in concentrated blocks of a minimum of eight hours each during the regular school day and the regular school year in a school in which the intern is not employed as a teacher.

(8) The Superintendent may approve a culminating experience proposal that does not meet the requirements of Subsection (6) to pilot innovative or alternative practice if:

(a) a Board-approved education leadership licensure program and a partner LEA submit a joint proposal to the Superintendent; and

(b) the proposal is for a maximum of two years.

(9) The Superintendent shall report the results of a pilot described in Subsection (8)(a) to the Board after completion.

R277-505-6. LEA-specific Competency-based License for Education Leadership Area of Concentration.

An LEA may request an LEA-specific competency-based license for an education leadership area of concentration under Subsection R277-503-4D for an individual if the individual has successfully completed:

(1) a master's degree or more advanced degree; and

(2) a Board-approved education leadership test.

R277-505-7. Education Leadership Tier Two Credentials.

(1) The Superintendent shall work with LEAs and Board-approved licensure programs to create a tier two principal credential that may be earned by an individual employed as a principal or vice-principal.

(2) In the first year of employment as an education leader, an individual shall complete a one school year mentoring experience established and supervised by the employing LEA in consultation with a Board-approved education leadership program that includes criteria identified in R277-522-3A and B, as applied to education leaders.

(3) An individual employed for the first time as a Utah school principal or vice-principal after June 30, 2019 in a school district shall complete the tier two principal credential within the first three years of employment as a principal or vice-principal.

(4) An individual holding a Utah Administrative/Supervisory (K-12) license area of concentration shall be considered to hold an education leadership license area of concentration and the tier two principal credential for all licensure purposes.

(5) The Superintendent shall work with LEAs and Board-approved licensure programs to develop additional tier two leadership credentials intended to provide specialized skills for individuals holding an education leadership license area of concentration.

KEY: professional competency, teacher certification, accreditation
May 23, 2016 Art X Sec 3
Notice of Continuation March 30, 2016 53E-6
53E-3-401

R277. Education, Administration.
R277-506. School Psychologists, School Social Workers, School Counselors, Communication Disorders (Audiologists), Speech-Language Pathologists, and Speech-Language Technicians Licenses and Programs.
R277-506-1. Definitions.

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

B. "Career information delivery systems" means the state approved computer software program which provides specific occupation and career planning information, scholarship information, and information about postsecondary institutions.

C. "Communication Disorders license area of concentration" means the area of content required for an audiologist to provide services to individuals from birth through age 22. Communication Disorders area of concentration carries an audiology endorsement.

D. "Consultation" means consulting with parents, teachers, other educators, and community agencies regarding strategies to help students.

E. "Guidance curriculum planning" means structured, developmental experiences presented systematically through classroom and group activities which are organized in areas of self-knowledge, education and occupational exploration, and career planning directed toward meeting the Board approved student competencies.

F. "LEA" means local education agency, including local school boards/ public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

G. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to candidates who have also met all ancillary requirements established by law or rule.

H. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license as well as any additional requirements established by law or rule relating to professional preparation or experience.

I. "Practicum" means a practical, usually simulated, application of previously studied theory, monitored by a professional in the field. The experience shall include at least the following subject matter: student assessment and interpretation, guidance curriculum planning, individual and group counseling, individual education and occupational planning, and use of career information delivery systems.

J. "Speech-Language Pathologist (SLP) license" means a Speech-Language Pathologist area of concentration required for teaching students with communication disorders, birth through

age 21. A Speech-Language Pathologist license carries a Speech-Language Pathologist endorsement.

K. "Speech-Language Technician (SLT) license area of concentration" means an area of concentration in which an individual has completed a Board approved bachelor's degree in communication disorders at an accredited higher education institution and additional training as required by the USOE.

L. "Temporary license" means a designation that an applicant has met all requirements of Section 3A(1), below.

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

R277-506-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Subsections 53E-3-501(1)(a), which requires the Board to make rules regarding the qualification and certification of educators and ancillary personnel who provide direct student services, and Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify:

(1) the standards for obtaining licenses and other credentials issued by the Board for employment in the public schools as school psychologists, school social workers, school counselors, audiologists, speech-language pathologists, and speech-language technicians; and

(2) the standards which shall be met by a post-secondary institution in order to receive Board approval of its program for school psychologists, school social workers, school counselors, audiologists, speech-language pathologists, and speech-language technicians.

R277-506-3. School Psychologist.

A. A candidate for the Level 1 School Psychologist License area of concentration shall have:

(1) completed at least an approved masters degree or equivalent certification program consisting of a minimum of 60 semester (90 quarter) hours in school psychology at an accredited institution;

(2) demonstrated competence in the following:

(a) understanding the organization, administration, and operation of schools, the major roles of personnel employed in schools, and curriculum development;

(b) directing psychological and psycho-educational assessments and intervention including all areas of exceptionality;

(c) individual and group intervention and remediation techniques, including consulting, behavioral methods, counseling, and primary prevention;

(d) understanding the ethical and professional practice and legal issues related to the work of school psychologists;

(e) social psychology, including interpersonal relations, communications and consultation with students, parents, and professional personnel;

(f) coordination and work with community-school relations and multicultural education programs and assessment; and

(g) the use and evaluation of tests and measurements, developmental psychology, affective and cognitive processes, social and biological bases of behavior, personality, and psychopathology;

(3) completed a one school year internship or its equivalent with a minimum of 1200 clock hours in school psychology. At least 600 of the 1200 clock hours shall be in a school setting or a setting with an educational component; and

(4) been recommended by an institution whose program of preparation for school psychologists has been approved by the Board.

B. Current certification as a nationally certified school psychologist by the National School Psychology Certification Board shall be accepted in lieu of requirements for the Level 1 License.

C. A candidate for the Level 2 School Psychologist License area of concentration shall:

(1) satisfy requirements for the Level 1 school psychologist License;

(2) have completed at least two years of successful experience as a school psychologist under a Level 1 School Psychologist License area of concentration or its equivalent; and

(3) have been recommended by the employing LEA with consultation from a teacher education institution.

D. The Board may approve the school psychologist preparation program of an institution if the program meets the standards prescribed in the Standards for State Approval of Teacher Education for school psychologists. These standards were developed by school psychologists in Utah schools and recommended to the Board by SACTE and are available from the USOE.

R277-506-4. School Social Workers.

A. A candidate for the Level 1 School Social Worker License area of concentration shall have:

(1) completed a Board approved program for the preparation of school social workers including a Master of Social Work degree from an accredited institution;

(2) demonstrated competence in the following:

(a) articulation of the role and function of the school social worker including relationships with other professional school and community personnel, organizations, and agencies;

(b) the understanding of the organization, administration, and evaluation of a school social work program;

(c) social work practice with individuals, families, and groups;

(d) the development and interpretation on of a social history and psycho-social assessment of the individual and the family system;

(e) the analysis of family dynamics and experience in counseling and conflict management and resolution;

(f) the communication and consultation of skills in working with the client, the family, the school staff, and community and social agencies;

(g) the understanding of the teaching/learning environment;

(h) the analysis of school law and child welfare issues;

(i) the use of social work methods to facilitate the affective domain of education and the learning process; and

(j) the knowledge pertaining to the cause and effects of social forces, cultural changes, stress, disability, disease, deprivation, neglect, and abuse on learning and on human behavior and development, and the effect of these forces on minorities of race, ethnicity, and class.

(3) completed an approved school social work internship in a school setting or in an agency which includes a substantial amount of experience with children and contact with schools; and

(4) been recommended by an institution whose program of preparation for social workers has been approved by the Board.

B. A candidate for the Level 2-Standard School Social Worker License area of concentration shall have:

(1) completed at least three years of successful experience as a school social worker under a Level 1 School Social Worker License area of concentration or its equivalent; and

(2) been recommended by the employing LEA with consultation from a teacher education institution.

C. The Board may approve the social worker program of an institution if the program meets the standards prescribed in the Standards for State Approval of Teacher Education for school social workers, developed and available as provided in

R277-506-3D.

R277-506-5. School Counselors.

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

A. The Board shall issue a School Counselor Professional Educator Level 1 License:

(1) to counselors who are beginning their professional careers who have completed an approved 600 hour field experience (400 hours if the applicant has completed two or more years of successful teaching experience as approved by USOE licensing); and

(2) upon completion of an accredited counselor education program; or

(3) to candidates applying for licensure under interstate agreements.

B. School Counselor Professional Educator License Level 2 is:

(1) a license issued after satisfaction of all requirements for a Level 1 license and 3 years of successful experience as a school counselor in an accredited school in Utah; and

(2) is valid for five years.

C. Counseling Intern Temporary License is based on written recommendation from a USOE accredited program that a candidate:

(1) is currently enrolled in the program;

(2) has completed 30 semester hours of course work, including successful completion of a practicum; and

(3) has skills to work in a school as an intern with supervision from the school setting and from the counselor education program.

(a) Letters from the accredited program recommending eligible candidates shall be submitted to USOE at the beginning of each school year.

(b) The Counseling Intern Temporary License is valid for the current year only and is not renewable.

R277-506-6. Communication Disorders (Audiologist).

A. A candidate shall complete a Board approved program for teaching students with communication disorders, which includes a master's degree, to qualify for the Communication Disorders license areas of concentration (audiologist).

B. The Board may approve the preparation program for audiologists of a higher education institution if the program is aligned with the standards prescribed by ASHA.

R277-506-7. Speech-Language Pathologist (SLP).

A. A candidate shall complete a Board approved program for teaching students with speech/language impairments to qualify for the SLP area of concentration. Such programs include:

(1) a master's degree and Certificate of Clinical Competence (CCC); or

(2) a master's degree; or

(3) an international equivalent of a master's degree, earned in a communication disorders program, or equivalent after receiving a bachelor's degree at an accredited higher education institution.

B. The Board may approve the preparation program for speech-language pathologists of a higher education institution if the program is aligned with the standards prescribed by ASHA.

C. The Board may license a candidate who has been accepted into a Board approved program and the candidate may be an SLT as described in R277-506-1K. The duties and responsibilities of the candidate may not exceed the candidate's current preparation.

D. This area of concentration does not qualify the individual to provide services outside of the educational setting.

R277-506-8. Speech-Language Technician (SLT).

A. a candidate shall complete a Board approved bachelor's degree in communication disorders and additional training as required by the USOE to qualify for the SLT area of concentration. A candidate shall complete additional professional development prior to or within the first year of receiving this area of concentration, in order to meet defined competencies.

B. A SLT shall work under the supervision of a SLP who accepts full responsibility for the work of the SLT.

C. The supervising SLP maintains full responsibility for the caseload of the SLP and any SLTs supervised by the SLP.

D. A candidate for the SLT area of concentration may perform SLT functions and duties solely within the confines of the public school.

E. The SLT's function and duties shall conform to Utah's SLP/SLT Handbook, developed by the USOE, 2007.

F. The performance of SLP and SLT duties shall be strictly consistent with Utah's SLP/SLT Handbook.

G. An LEA may substitute documented clinical employment at the LEA's, for employment in education.

KEY: educational program evaluations, professional competency, educator licensing
November 10, 2014 Art X Sec 3
Notice of Continuation November 13, 2014 53E-3-501(1)(a)
53E-6-102
53E-3-401(4)

R277. Education, Administration.
R277-507. Driver Education Endorsement.
R277-507-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-501(1)(a), which directs the Board to make rules regarding the certification of educators;

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(d) Section 53G-10-507, which directs the Board to establish procedures and standards to certify teachers of driver education classes as driver license examiners.

(2) The purpose of this rule is to establish standards and procedures for secondary teachers to qualify for a driver education endorsement.

R277-507-2. Definitions.

(1) "Driver License Division" or "DLD" means the Driver License Division of the Department of Public Safety.

(2) "Endorsement" means a stipulation appended to a license setting forth the areas of practice to which the license applies.

(3) "Level 1 License" means a license issued:

(a) upon completion of an approved educator preparation program;

(b) upon completion of an alternative preparation program;

(c) pursuant to an agreement under the NASDTEC Interstate Contract to candidates who have also met all ancillary requirements established by law or rule; or

(d) in accordance with the requirements of Rule R277-511.

(4) "Level 2 License" means a license issued after satisfaction of all requirements for a Level 1 license as well as any additional requirements established by law or rule relating

to professional preparation or experience.

(5) "Level 3 License" means a license issued to an educator who holds a current Utah Level 2 license and has also received, in the educator's field of practice, National Board certification or a doctorate from an accredited institution.

(6) "NASDTEC Interstate Contract" means the contract implementing Title 53E, Chapter 6, Part 10, Compact for Interstate Qualification of Educational Personnel, which is administered through the National Association of State Directors of Teacher Education and Certification, and which provides for reciprocity of educator licenses among states.

(7)(a) "Utah Driver Handbook" means a manual, prepared and periodically updated by the DLD, containing the rules which should be followed when operating a motor vehicle in Utah.

(b) The updated Utah Driver Handbook is available at http://dld.utah.gov/handbooksprintableforms/.

R277-507-3. Endorsement Requirements.

(1) A driver education endorsement shall be added to an educator's Level 1, 2, or 3 license if the educator:

(a) has a valid and current Level 1, 2, or 3 license with an area of concentration in one or more of the following:

(i) Secondary Education;

(ii) Special Education;

(iii) School Counselor; or

(iv) Career and Technical Education;

(b) has a valid Utah automobile operator's license;

(c) has not had an automobile operator's license suspended or revoked during the two year period immediately prior to applying for the endorsement; and

(d) has completed the professional preparation requirements set forth in Subsection (2).

(2) A high school driver education teacher shall complete professional preparation which includes sixteen (16) semester hours in the area of driver and safety education, as follows:

(a) a minimum of twelve (12) semester hours shall be in the area of driver and safety education, including a practicum covering classroom, on-street, simulator, and driving range instruction;

(b) a minimum of two (2) semester hours of Driver Education State Law and Policy through Utah Education Network;

(c) a minimum of one (1) semester hour of current/valid first aid and CPR training; and

(d) a minimum of one (1) semester hour of DLD online examiners training.

(3) In order for a high school driver education teacher to be certified as a driver license examiner by the DLD, the teacher shall first be licensed and endorsed as provided in this Section R277-507-3 by the Board.

(4) After meeting the criteria of Subsection(1), a high school driver education teacher shall obtain a valid and current certificate from the DLD to administer written and driving tests, in accordance with Section 53G-10-507.

R277-507-4. Driver Education Program Standards.

A teacher preparation program of an institution may be approved by the Board if it requires demonstrated competency by the teacher in:

(1) structuring, implementing, identifying and developing support materials related to:

(a) regular classroom instruction;

(b) multimedia instruction;

(c) driving simulation;

(d) off-street multiple car driving range experiences; and

(e) on-street driving experiences;

(2) assisting students in examining and clarifying their attitudes and values about safety;

(3) understanding and explaining the basic principles of motor vehicle systems, dynamics, and maintenance;

(4) understanding and explaining the interaction of all highway transportation system elements;

(5) initiating emergency procedures under varying circumstances;

(6) motor vehicle operation and on-street instruction;

(7) understanding and explaining the physiological and psychological influences of alcohol and other drugs especially as they relate to driving;

(8) understanding and explaining seat belt safety;

(9) understanding and explaining the consequences of distracted driving;

(10) understanding and explaining due process in the legal system;

(11) communicating effectively with federal, state, and local agencies concerning safety issues;

(12) understanding and explaining the frequency, severity, nature and prevention of accidents related to driving which occur in various age groups in various life activities; and

(13) understanding and explaining the Utah Driver Handbook.

R277-507-5. Endorsement Suspension.

(1) A driver education endorsement shall be immediately suspended and the previously-endorsed individual may not be allowed to teach driver education following the suspension or revocation of the individual's automobile operator's license.

(2) Once an individual's endorsement to teach has been suspended, the individual shall maintain a driving record free of convictions for moving violations or chargeable accidents for a period of two years before the endorsement to teach may be reinstated.

KEY: professional education, driver education, educator licensure

March 14, 2017 **Art X Sec 3**
Notice of Continuation November 15, 2016 **53E-3-5501(1)(a)**
53E-3-401(4)
53G-10-507

R277. Education, Administration.
R277-509. Licensure of Student Teachers and Interns.
R277-509-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;

(c) Subsection 53E-6-201(1), which permits the Board to issue licenses for educators; and

(d) Subsection 53E-6-402(1), which directs the Board to establish a procedure for obtaining and evaluating relevant information about license applicants.

(2) The purpose of this rule is to specify the procedure under which the Board issues licenses to student teachers and interns.

R277-509-2. Definitions.

(1) "Cooperating teacher" means a licensed teacher employed by an LEA who is qualified to directly supervise a student teacher or intern during the period the student teacher or intern is assigned to the LEA.

(2)(a) "Intern" means a teacher education student, who, in an advanced stage of preparation, usually as a culminating

experience, may be employed in a school setting for a period of up to one year and receive salary proportionate to the service rendered.

(b) An intern is supervised primarily by the school system while maintaining a continuing relationship with college personnel as part of a planned program designed to produce a demonstrably competent professional.

(3) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(4) "Student teacher" means a college student preparing to teach who is assigned a period of guided teaching during which the student assumes increasing responsibility for directing the learning of a group or groups of students over a period of time.

R277-509-3. Issuing Licenses.

(1) The Superintendent shall recommend applicants enrolled in teacher preparation programs for student teacher or intern licenses.

(2) The Utah Professional Practices Advisory Commission shall review background check information and make recommendations to the Board regarding student teacher and intern license applicants in accordance with Rule R277-214.

(3)(a) An LEA may not give a student teacher or intern an unsupervised classroom assignment prior to issuance of a license in accordance with this Rule R277-509.

(b) If an LEA assigns a student teacher or intern to a position in violation of Subsection (3)(a), the Superintendent shall not recognize the service as fulfilling the student teacher's or intern's requirements for Level 1 licensure.

(c) An LEA is responsible to verify with the Board that a student teacher or intern has appropriate licensure.

(4) A teacher preparation programs may allow an unlicensed student teacher or intern to complete student teaching or intern hours only if the university provides a constant supervisor for the student teacher's or intern's work in the public schools.

(5)(a) The Superintendent may only recommend for licensure a student teacher or intern assigned to elementary, middle, or secondary schools under cooperating teachers for part of their preparation program.

(b) A supervising administrator must be permanently assigned to the building to which an intern is assigned.

(6) A student teacher or intern license is valid only for the period of time indicated on the license.

KEY: student teachers, interns, teacher preparation programs
November 7, 2017 Art X Sec 3
Notice of Continuation September 13, 2017 53E-6-201
53E-3-401

R277. Education, Administration.
R277-600. Student Transportation Standards and Procedures.
R277-600-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public schools in the Board;

(b) Subsection 53E-3-501(1)(d), which directs the Board to establish rules for bus routes, bus safety and other transportation needs;

(c) Sections 53F-2-402 and 53F-2-403, which provide for distribution of funds for transportation of public school students and disability standards for student bus riders;

(d) Section 53F-2-412, which directs the Board to make rules to implement unsafe route grants; and

(e) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to specify the standards under which school districts may qualify for and receive state transportation funds.

R277-600-2. Definitions.

(1) "ADA" means average daily attendance.

(2) "ADM" means average daily membership.

(3) "AFR" means a school district's annual financial report, one component of which is the AFR for all pupil transportation costs.

(4)(a) "Approved costs" means the Board approved costs of transporting eligible students from home to school to home once each day, after-school routes, approved routes for students with disabilities and vocational students attending school outside their regularly assigned attendance boundary, and a portion of the bus purchase prices.

(b) All approved costs are adjusted by the Superintendent consistent with a Board-approved formula per the annual legislative transportation appropriation.

(5) "Deadhead miles" means miles traveled while operating a bus with no passengers on board.

(6) "Extended school year" or "ESY" means an extension of the school district or charter school traditional school year to provide special education and related services to a student with a disability, in accordance with the student's IEP, and at no cost to the student's parents.

(7) "Hazardous" means in a state of danger or potential danger, which may result in injury or death.

(8) "Local school board" means a local school district board of education.

(9) "Multipurpose passenger vehicle" or "MPV" means any motor vehicle with less than 10 passenger positions, including the driver's position, which cannot be certified as a bus.

(10) "Pupil Transportation Advisory Committee" means the committee described in Subsection 53F-2-403(5).

(11) "Out-of-pocket expense" means gasoline, oil, and tire expenses.

(12) "Unsafe route" has the same meaning as defined in Subsection 53F-2-412(1).

R277-600-3. General Provisions.

(1)(a) The Superintendent shall use state transportation funds to reimburse school districts for the costs reasonably related to transporting students to and from school.

(b) The Board shall define the limits of a school district's transportation costs reimbursable by state funds in a manner that encourages safety, economy, and efficiency.

(2) Allowable transportation costs are divided into two categories:

(a) A Category costs include expenditures for regular bus routes established by the school district, and approved by the state.

(b) B Category costs include other methods of transporting students to and from school.

(3) The Superintendent shall develop a formula to allocate A Category costs based on a calculated rate.

(4) The Superintendent shall approve B Category costs on a line-by-line basis after:

(a) comparing the costs submitted by a school district with the costs of alternative methods of performing the designated functions; and

(b) accounting for legislative appropriation variations.

(5) The Superintendent shall develop a uniform accounting procedure for the financial reporting of transportation costs, which shall specify the methods used to

calculate allowable transportation costs.

(6) The Superintendent shall develop uniform forms for the administration of the transportation program.

(7)(a) An LEA shall record all student transportation costs, including accurate mileage, minute, and trip records.

(b) An LEA may maintain records and financial worksheets during the fiscal year for audit purposes.

R277-600-4. Eligibility.

(1) The Superintendent shall only disburse state transportation funds for transporting eligible students.

(2) The Superintendent shall determine transportation eligibility for elementary students (k-6) and secondary students (7-12) in accordance with the mileage from home, specified in Subsections 53F-2-403(1) and (2), to the school attended by assignment of the local school board.

(3) A student whose IEP identifies transportation as a necessary related service is eligible for transportation regardless of distance from the school attended by assignment of the local school board.

(4) A student who attends school for at least one-half day at a location other than the local school board designated school is not eligible for transportation for distances up to one and one-half miles.

(5) A school district that implements double sessions as an alternative to new building construction may transport, one-way to or from school, with Board approval, affected elementary students residing less than one and one-half miles from school, if the local school board determines the transportation would improve safety affected by darkness or other hazardous conditions.

(6) The distance from home to school is determined as follows: From the center of the public route (road, thoroughfare, walkway, or highway) open to public use, opposite the regular entrance of the one where the pupil is living, over the nearest public route (thoroughfare, road, walkway, or highway) open regularly for use by the public, to the center of the public route (thoroughfare, road, walkway, or highway) open to public use, opposite the nearest public entrance to the school grounds which the student is attending.

R277-600-5. Student with Disabilities Transportation.

(1)(a) A student with a disability shall be transported on regular buses and regular routes whenever possible, unless the IEP team determines otherwise.

(b) A school district may request approval, prior to providing transportation, for reimbursement for transporting students with disabilities who cannot be safely transported on regular school bus runs.

(2) A school district may be reimbursed for the costs of transporting or for alternative transportation for students with disabilities whose severity of disability, or combination of disabilities, necessitates special transportation.

(3) During the regular school year, an eligible special transportation route from the assigned school site to an alternative program location shall be for a minimum of fifteen days with primarily the same group of students.

(4) During the ESY, an eligible special transportation route from the assigned school site to an alternative program location shall be for a minimum of ten days with primarily the same group of students.

(5) ESY services shall meet the standards of Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401(3) and Board Special Education Rules.

(6) The Utah Schools for the Deaf and the Blind shall provide transportation for students who are transported to its self-contained classes, unless an exception is approved by the Superintendent.

R277-600-6. Bus Route Approval.

(1)(a) A local school board shall propose bus routes subject to approval by the Superintendent.

(b) A local school board shall provide information requested by the Superintendent prior to approval of a route.

(c) During the regular school year, an eligible route from the assigned school site to an alternative program location shall be for a minimum of fifteen days with primarily the same group of students.

(d) The Superintendent may not approve a route for reimbursement if an equitable student transportation allowance or a subsistence allowance for the necessary transportation is more cost-effective.

(2) The Superintendent may approve exceptions for good cause shown.

(3) A bus route shall:

(a) traverse the most direct public route;

(b) be reasonably cost-effective in comparison to other feasible alternatives;

(c) provide adequate safety for students;

(d) traverse roads that are constructed and maintained in a manner that does not cause property damage; and

(e) include an economically appropriate number of students.

(4)(a) The minimum number of general education students required to establish a bus route is ten.

(b) The minimum number of students with disabilities required to establish a bus route is five.

(c) A bus route may be established for fewer students upon special permission of the Superintendent.

(5) A school district shall designate safe areas for bus stops.

(6)(a) A student is responsible for the student's own transportation to bus stops up to one and one-half miles from home.

(b) A student with a disability is responsible for the student's own transportation to bus stops unless the IEP team determines otherwise.

(7)(a) A school district shall report changes made in existing routes or the addition of new routes to the Superintendent as they occur.

(b) The Superintendent shall review and may refuse to fund route changes.

(8) The Superintendent may reimburse a school district for transporting another district's students across school district boundaries so long as:

(a) the route promotes efficient transportation for both districts;

(b) the route serves a group or community of students and families rather than a single student or a single family;

(c) the local school boards of both participating districts vote in an open meeting that students who reside in one district can be better and more economically served by another district; and

(d) both districts and the Superintendent maintain documentation annually of the boards' votes and the map of the approved route.

(9) A school district may transport eligible students home after school activities held at the students' school of regular attendance and within a reasonable time period after the close of the regular school day and receive approved route mileage.

(10)(a) The Superintendent may approve atypical routes as alternatives to building construction if routes are needed to allow more efficient school district use of school facilities.

(b) Building construction alternatives include:

(i) elementary double sessions;

(ii) year-round school; and

(iii) attendance across school district boundaries.

(11)(a) A school district may use the State Guarantee

Transportation Levy or local transportation funds to transport students across state lines or out-of-state for school sponsored activities or required field trips if:

(i) the local school board has a policy that includes approval of trips at the appropriate administrative level;

(ii) the school or school district has considered the purpose of the trip or activity and any competing risk or liability;

(iii) given the distance, purpose and length of the trip, the school district has determined that the use of a publicly owned school bus is appropriate for the trip or activity; and

(iv) the local school board has consulted with State Risk Management.

(b) If school bus routes transport students across Utah state lines or outside of Utah for required to and from routes, routes are reimbursable providing a school district maintains documentation that:

(i) the routes are necessary;

(ii) the routes are more cost-effective; or

(iii) the routes provide greater safety for students than in-state routes.

R277-600-7. Alternative Transportation.

(1) The Superintendent shall analyze bus routes that involve a large number of deadhead miles to determine if an alternative method of transporting students is more efficient.

(2) Approved alternatives include the alternatives described in Subsections (3) through (9).

(3)(a) The costs incurred in transporting eligible pupils in a school district MPV are approved costs as long as the costs demonstrate efficiency; or

(b) The costs incurred in paying eligible students an allowance in lieu of school district-supplied transportation are approved costs.

(4)(a) A student may be reimbursed for the mileage to the bus stop or school, whichever is closer to the student's home.

(b) The allowance under this Subsection (4)(a) may not be less than $0.35 per mile, nor greater than the reimbursement allowance permitted by the Utah Department of Administrative Services for use of privately owned vehicles set forth in the Utah Travel Regulations.

(5) A district shall annually perform a cost-benefit analysis as part of its determination of the LEA specific reimbursement rate and make this analysis available to the public.

(6)(a) A district shall make a student mileage allowance under this Section R277-600-7 to only one student per family for each trip that is necessary for all the students within a family to attend school.

(b) If siblings are on different school schedules or ride buses that are on significantly different schedules, multiple students within a family may claim and be paid for student mileage allowances.

(7) If a student eligible for reimbursement under this Section R277-600-7 or the student's parent is unable to provide private transportation, with prior approval from the Superintendent, an amount equivalent to the student allowance may be paid to the school district to help pay the costs of school district transportation.

(8)(a) A district shall measure and certify a student's mileage in school district records.

(b) A student's ADA, as entered in school records, is used to determine the student's attendance.

(9)(a) The cost incurred in providing a subsistence allowance is an approved cost under the following conditions:

(i) a student lives more than 60 miles (one way) on well-maintained roads from the student's assigned school, a parent may be reimbursed for the student's room and board if the student relocates temporarily to reside in close proximity to the student's assigned school;

(ii) payment may not exceed the Substitute Care Rate for Family Services for the current fiscal year;

(iii) adjustments for changes made in the rate during the year shall be included in the allowance; and

(iv) in addition to the reimbursement for room and board, the subsistence allowance may include the costs of up to 18 round trips per year.

(b)(i) A subsistence allowance is not available to a parent who maintains a separate home during the school year for the convenience of the family.

(ii) A parent's primary residence during the school year is the residence of the child.

(10) A school district may contract or lease with a third party provider for pupil transportation services.

(11)(a) The cost incurred in engaging in a contract or leasing for transportation is an approved cost at the prorated amount available to school districts.

(b) The Superintendent shall determine reimbursements for school districts using a leasing arrangement in accordance with the comparable cost for the school district to operate its own transportation.

(c) Under a contract or lease, a school district's transportation administrator's time may not exceed one percent of the commercial contract cost.

(12) If a school district contracts or leases with a third party provider or other LEA for pupil transportation services, it shall maintain and provide to the Superintendent upon request the following items as if it operated its own transportation:

(a) eligible student counts;

(b) bus route mileage;

(c) bus route minutes; and

(d) service to students with disabilities and bus inventory data.

R277-600-8. Other Reimbursable Expenses.

The Superintendent may reimburse a school district for the following costs with state transportation funds:

(1) salaries of clerks, secretaries, trainers, drivers, a supervisor, mechanics, and other personnel necessary to operate the transportation program, subject to the following limitations:

(a) a full time supervisor may be paid at the same rate as other professional directors in the school district; and

(b) a school district shall ensure that a supervisor's salary is commensurate with the number of buses, number of eligible students transported, and total responsibility relative to other school district supervisory functions;

(2) a school district may claim a percentage of the school district superintendent's or other supervisor's salary for reimbursement if the school district's eligibility count is less than 600 and a verifiable record of administrative time spent in the transportation operation is maintained; and

(3) the wage time for bus drivers may include to and from school time consisting of:

(i) 10 minute pre-trip inspection;

(ii) actual driving time;

(iii) 10 minute post-trip inspection and bus cleanup; and

(iv) 10 minute bus servicing and fueling;

(4) a proportionate amount of a superintendent's or supervisor's employee benefits (health, accident, life insurance);

(5) purchased property services;

(6) property, comprehensive, and liability insurance;

(7) communication expenses and travel for supervisors to workshops or national conventions;

(8) supplies and materials for vehicles, the school district transportation office and the garage;

(9) training expenses to complete bus driver instruction and certification required by the Board; and

(10) other related costs approved by the Superintendent, which may include additional bus driver training.

R277-600-9. Non-reimbursable Expenses.

(1) AFR for all pupil transportation costs may only include pupil transportation costs and other school district expenditures directly related to pupil transportation.

(2) In determining expenditures for eligible to and from school transportation, all related costs shall be reduced on a pro rata basis for the miles not connected with approved costs.

(3) Expenses determined by the Superintendent as not directly related to transportation of eligible students to and from school may not be reimbursed.

(4)(a) A local school board may determine appropriate non-school uses of school buses.

(b) A local school board may lease or rent public school buses to:

(i) federal, state, county, or municipal entities;

(ii) entities insured by State Risk Management;

(iii) non-government entities; or

(iv) entities not insured through State Risk Management.

(c) As part of any agreement to allow non-school use of a school bus, a local school board shall:

(i) require full cost reimbursement for any non-public school use including:

(A) cost per mile;

(B) cost per minute; and

(C) bus depreciation;

(ii) require a non-school user to provide:

(A) proof of insurance through State Risk Management or private insurance coverage; and

(B) a fully executed agreement for full release of indemnification;

(iii) require that any non-school use is revenue neutral; and

(iv) consult with State Risk Management to determine adequacy of documentation of insurance and indemnity for any entity requesting use or rental of publicly owned school buses.

(5) A local school board shall approve the use of school buses by a non-governmental entity or an entity not insured through State Risk Management in an open meeting.

(6)(a) In the event of an emergency, local, regional, state or federal authorities may request the use of school buses or school bus drivers or both for the period of the emergency.

(b) A local school board shall grant a request under Subsection (a) so long as the use can be accommodated consistent with continuing student transportation and student safety requirements.

R277-600-10. Board Local Levy.

(1) Costs for school district transportation of students which are not reimbursable may be paid for from general school district funds or from the proceeds of the Board Local Levy authorized under Section 53F-2-602.

(2) The revenue from the Board Local Levy may be used for transporting students and for school bus replacement.

(3)(a) A local school board may approve the transportation of students in areas where walking constitutes a hazardous condition from general local school board funds or from the Board Local Levy.

(b) A local school board shall determine hazardous walking conditions by an analysis of the following factors:

(i) volume, type, and speed of vehicular traffic;

(ii) age and condition of students traversing the area;

(iii) condition of the roadway, sidewalks and applicable means of access in the area; and

(iv) environmental conditions.

(c) A local school board may designate hazardous conditions.

(4) Guarantee Transportation Levy

(a) The Superintendent shall distribute funds appropriated under Subsection 53F-2-403(7) according to each school district's proportional share of its qualifying state contribution.

(b) The qualifying state contribution for school districts shall be the difference between 85 percent of the average state cost per qualifying mile multiplied by the number of qualifying miles and the current funds raised per school district by an amount of revenue equal to at least .0002 per dollar of taxable value of the school district's Board Local Levy under Section 53F-2-602.

R277-600-11. Exceptions.

(1)(a) When undue hardships and inequities are created through exact application of these standards, a school district may request an exception to these rules from the Superintendent for individual cases.

(b) Hardships or inequities under Subsection (1)(a) may include written evidence demonstrating that no significant increased costs (less than one percent of a school district's transportation budget) is incurred due to a waiver or that students cannot be provided services consistent with the law due to transportation exigencies.

(c) The Superintendent may consult with the Pupil Transportation Advisory Committee in considering the exemption.

(2) A school district shall not be penalized in the computation of its state allocation for the presence on an approved to and from school route of an ineligible student who does not create an appreciable increase in the cost of the route.

(3) There is an appreciable increase in cost under Subsection (2) if, because of the presence of ineligible students, any of the following occurs:

(a) another route is required;

(b) a larger or additional bus is required;

(c) a route's mileage is increased;

(d) the number of pick-up points below the mileage limits for eligible students exceeds one; and

(e) significant additional time is required to complete a route.

(4)(a) An ineligible student may ride a school bus on a space available basis.

(b) An eligible student may not be displaced or required to stand in order to make room for an ineligible student.

R277-600-12. Grants for Unsafe Routes.

(1) The Board shall solicit proposals and award grants for unsafe routes as provided in Section 53F-2-412.

(2) Subject to Board approval, the Pupil Transportation Advisory Committee shall:

(a) develop an application and instructions regarding the process for applying for a grant and make the application available to all school districts in the state; and

(b) develop a scoring rubric to be used in ranking applications received for purposes of funding prioritization and distribute the rubric to all school districts in the state.

(3) The Pupil Transportation Advisory Committee may recommend modifications to the application and rubric developed under Subsection (2) as needed to address evolving risks and appropriations.

(4) The Superintendent shall use the following process to calculate grant awards:

(a)(i) multiply the miles traveled for the unsafe route or sub-route by the allowance per mile;

(ii) multiply the minutes required for the unsafe route or sub-route by the allowance per minute;

(iii) the allowances per mile and minute used shall be the same allowances described in Subsection 53F-2-403(3) for the respective fiscal year for each district; or

(b) Follow an alternative funding method recommended by the Pupil Transportation Advisory Committee and approved by the Board based on grant applications received from school districts.

(5) A school district may identify an alternative solution that addresses unsafe routes or other health or safety conditions and is more cost-effective than creating a new route or sub-route.

(6) A school district may use grant funds under this Section R277-600-12 to pay the costs of transporting students or for other related expenditures intended to reduce the hazards that exist along the unsafe route, as approved by the Board.

(7) A recipient of grant funds under this Section R277-600-12 shall maintain sufficient records to substantiate expenditure of grant funds and provide documentation to the Board upon request.

KEY: school buses, school transportation
November 7, 2016 Art X Sec 3
Notice of Continuation September 15, 2016 53E-3-501(1)(d)
53E-3-401(4)
53F-2-412
53F-2-403
53E-3-401(4)

R277. Education, Administration.
R277-601. Standards for Utah School Buses and Operations.
R277-601-1. Definitions.

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

B. "Local board" means the local school board of education.

R277-601-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public education in the Board, Subsection 53E-3-501(1)(d) which directs the Board to adopt rules for state reimbursed bus routes, bus safety and operational requirements, and other transportation needs and Subsection 53E-3-401(4) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards for state student transportation funds, school buses, and school bus drivers utilized by school districts.

R277-601-3. Standards.

A. The local board and school district personnel shall act consistent with the manual entitled STANDARDS FOR UTAH SCHOOL BUSES AND OPERATIONS, 2010, which includes information received from Utah school districts, the Utah Transportation Commission, and the Utah Department of Public Safety and is available at each department or agency. The STANDARDS shall include the following:

(1) Electronic and telecommunications devices

(a) A school bus operator's primary responsibility, consistent with training and policy, is the safety of passengers and the safety of the public at all times.

(b) A school bus operator shall not use a cell phone, wireless electronic device, or any headset, earpiece, earphones or other equipment that might distract a driver from his responsibilities, whether hand held or not, while the school bus is in motion and not appropriately parked or secured. This prohibition does not apply to the safe and appropriate use of two-way radios or to mounted, GPS systems. All school districts and public schools that regularly transport students shall maintain documentation of training for bus drivers and employees in the safe and appropriate use of two-way radios.

(c) Once the bus is stopped and safely parked, a school bus operator may use an electronic device for emergencies, to assist special needs students, for behavior management, for appropriate assistance for field/activity trips or for other business-related issues.

(d) A school bus operator may use an electronic device for personal use once a school bus is safely parked, appropriately secured and all passengers are safely off and at a safe distance from the bus, consistent with school district policy.

(e) Any violation of these provisions for emergency or compelling reasons may require documentation and will be addressed by the employing education entity.

(f) Violations of these provisions may result in personnel action(s) against the school bus operator consistent with school district/employer policies.

(g) Private contractors employed by school districts for student transportation shall also adhere strictly to these provisions in addition to the policies of the employer.

(2) End of bus route inspection

(a) At the end of a student delivery, both during the day and after the final route of the day, a school bus operator shall complete the delivery, stop and park the bus, and insure that all students are off the bus.

(b) Where possible, this inspection shall be completed at each school site when delivering students to school.

(c) Following each from-school route of the day, the bus operator shall complete the same type of inspection at a safe location a short distance from where the final student(s) left the bus. If children are found on the bus, they shall be immediately returned to their assigned bus stop location or to an alternate location, consistent with district policy, with express permission from the parents(s).

KEY: school, buses, school transportation
June 9, 2014 53E-3-501(1)(d)
Notice of Continuation April 4, 2014 53E-3-401(3)

R277. Education, Administration.
R277-602. Special Needs Scholarships - Funding and Procedures.
R277-602-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of the public school system under the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53F-4-305, which authorizes the Board to make rules establishing:

(i) the eligibility of students to participate in the scholarship program; and

(ii) the application process for the scholarship program.

(2) The purpose of this rule is to:

(a) outline responsibilities of a parent, an LEA, an eligible private school, and the Board in providing choice for a parent of a special needs student who chooses to have a student served in a private school; and

(b) provide accountability for the citizenry in the administration and distribution of the scholarship funds.

R277-602-2. Definitions.

(1) "Appeal" means an opportunity to discuss or contest a final administrative decision consistent with and expressly limited to the procedures of this rule.

(2) "Appeals Committee" means a committee comprised of:

(a) the special needs scholarship coordinator;

(b) the Board's Special Education Director;

(c) one individual appointed by the Superintendent; and

(d) two Board-designated special education advocates.

(3) "Assessment" means a formal testing procedure carried

out under prescribed and uniform conditions that measures a student's academic progress, consistent with Subsection 53F-4-303(1)(f).

(4) "Assessment team" means the individuals designated under Subsection 53F-4-301(1).

(5) "Days" means school days unless specifically designated otherwise in this rule.

(6) "Eligible student" means a student who meets the qualifications described in Section 53F-4-302.

(7) "Enrollment" means that:

(a) the student has completed the school enrollment process;

(b) the school maintains required student enrollment information and documentation of age eligibility;

(c) the student is scheduled to receive services at the school;

(d) the student attends regularly; and

(e) the school has accepted the student consistent with Rule R277-419 and the student's IEP.

(8) "Private school that has previously served a student with a disability" means a school that:

(a) has enrolled a student within the last three years under the special needs scholarship program;

(b) has enrolled a student within the last three years who has received special education services under an Individual Services Plan (ISP) from an LEA where the school is geographically located; or

(c) can provide other evidence to the Board that is determinative of having enrolled a student with a disability within the last three years.

(9) "Warrant" means payment by check to a private school.

R277-602-3. Parent Responsibilities and Payment Provisions.

(1) To receive a scholarship, a parent of a student shall submit an application by the deadline described in Subsection 53F-4-302(4), on a form specified by the Superintendent to:

(a) the LEA that the student is or was enrolled in; or

(b) if the student was not enrolled in an LEA in the school year prior to the school year in which the scholarship is sought, the school district that is responsible for the education of the student under the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1414.

(2) Along with the application described in Subsection (1), a parent shall submit documentation that:

(a) the parent is a resident of the state;

(b) the student is at least three years of age before September 2 of the year of enrollment;

(c) the student is not more than 21 years of age and has not graduated from high school; and

(d) the student has official acceptance at an eligible private school, as described in Section 53F-4-303.

(3) Any intentional falsification, misinformation, or incomplete information provided on the application may result in the cancellation of the scholarship to the student and non-payment to the private school.

(4) The parent shall participate in an assessment team meeting to make the determinations described in Section 53F-4-302.

(5)(a) The Superintendent shall make a scholarship payment in accordance with Section 53F-4-304.

(b) A parent shall, consistent with Subsection 53F-4-304(8), endorse the warrant received by the private school from the Superintendent no more than 15 calendar days after the private school's receipt of the warrant.

(6)(a) A parent shall notify the Board in writing within five days if the student does not continue in enrollment in an eligible private school for any reason, including:

(i) parent or student choice;

(ii) suspension or expulsion of the student; or

(iii) the student has unexcused absences during all of the prior 10 consecutive school days.

(b) If a student does not continue in enrollment, the Superintendent may:

(i) modify the payment to the private school; or

(ii) request reimbursement from the private school if payment has already been made.

(7) A parent shall cooperate and respond within 10 days to an enrollment cross-checking request from the Superintendent.

(8) The parent shall notify the Superintendent in writing by May 1 annually to indicate the student's continued enrollment.

R277-602-4. LEA Responsibilities.

(1) An LEA that receives a student's scholarship application consistent with Subsection 53F-4-302(4) shall:

(a) forward the application to the Superintendent no more than 10 days following receipt of the application;

(b) verify enrollment of the student seeking a scholarship in a previous school year within a reasonable time following contact by the Superintendent;

(c) verify the existence of the student's IEP and level of service to the Superintendent within a reasonable time;

(d) provide personnel to participate on an assessment team to:

(i) make the determination described in Section 53F-4-302; or

(ii) determine whether a student who previously received a special needs scholarship is entitled to receive the scholarship during the subsequent eligibility period.

(3) A special needs scholarship student may not participate in an extracurricular or co-curricular activity at an LEA, consistent with the parent's assumption of full responsibility for a student's services under Subsection 53F-4-302(5).

(4) An LEA shall cooperate with the Superintendent in cross-checking special needs scholarship student enrollment information to ensure scholarship payments are not erroneously made.

(5)(a) An LEA shall provide written notice to a parent of a student who has an IEP of the availability of a scholarship to attend a private school in accordance with Subsection 53F-4-302(10).

(b) The written notice shall consist of the following statement: A local education agency is required by Utah law, Subsection 53F-4-302(10), to inform parents of students with IEPs enrolled in public schools, of the availability of a scholarship to attend a private school through the Carson Smith Scholarship Program.

R277-602-5. State Board of Education Responsibilities.

(1) No later than April 1, the Superintendent shall provide an application containing acknowledgments required under Subsection 53F-4-302(5), for a parent seeking a special needs scholarship:

(a) online;

(b) at the Board office; and

(c) at LEA offices.

(2) The Superintendent shall provide a determination that a private school meets the eligibility requirements of Section 53F-4-303 as soon as possible but no more than 30 calendar days after the private school submits an application and completes documentation of eligibility.

(3) The Superintendent may:

(a) provide reasonable timelines within the application for satisfaction of private school requirements;

(b) issue letters of warning;

(c) require the school to take corrective action within a

time frame set by the Superintendent;

(d) suspend the school from the program consistent with Section 53F-4-306;

(e) establish an appropriate penalty for a private school that fails to comply with requirements described in Title 53F, Chapter 4, Part 3, Carson Smith Scholarships for Students with Special Needs Act, including:

(i) providing an affidavit under Section 53F-4-306;

(ii) administering assessments or reporting an assessment to a parent or assessment team under Subsection 53F-4-303(1)(f);

(iii) employing teachers with credentials required under Subsection 53F-4-303(g);

(iv) providing to a parent relevant credentials of teachers under Subsection 53F-4-303(i); or

(v) requiring a completed criminal background and ongoing monitoring under Title 53G, Chapter 11, Part 4, Background Checks, and take appropriate action consistent with information received; or

(f) initiate a complaint and hold an administrative hearing, as appropriate, and consistent with this rule.

(4) The Superintendent shall make a list of eligible private schools updated annually and available no later than June 1 of each year.

(5) On or before July 1, the Superintendent shall annually publish information regarding the level of funding available for scholarships for the fiscal year.

(6) The Superintendent shall mail a scholarship payment directly to a private school in accordance with Subsection 53F-4-304(8) as soon as reasonably possible.

R277-602-6. Responsibilities of Private Schools that Receive Special Needs Scholarships.

(1) To be eligible to enroll a scholarship student, a private school shall:

(a) meet the criteria described in Section 53F-4-303; and

(b) submit an application and appropriate documentation by the deadline established in Section 53F-4-303 to the Superintendent on a form designated by the Superintendent.

(2) A licensed independent certified public account that a private school contracts with to determine whether the private school has adequate working capital in accordance with Section 53F-4-303 shall define adequate working capital as a working capital ratio of greater than one calculated by dividing current assets by current liabilities.

(3)(a) A private school that seeks to enroll a special needs scholarship student shall, in concert with the parent seeking a special needs scholarship for a student, initiate the assessment team meetings required under Section 53F-4-302.

(b) A private school shall schedule a meeting at a time and location mutually acceptable to the private school, the applicant parent, and participating public school personnel.

(c)(i) A private school and public school shall confidentially maintain documentation regarding an assessment team meeting, including documentation of:

(A) a meeting for a student denied a scholarship or service; and

(B) a student admitted into a private school and the student's level of service.

(ii) Upon request by the Superintendent, a private school and public school shall provide the documentation described in Subsection (3)(c)(i) to the Superintendent for purposes of determining student scholarship eligibility or for verification of compliance.

(4) A private school that receives a scholarship payment shall provide complete student records in a timely manner to another private school or a public school that requests student records if a parent transfers a student under Subsection 53F-4-302(7).

(5) A private school shall notify the Board within five days if the student does not continue in enrollment in an eligible private school for any reason, including:

(a) parent or student choice;

(b) suspension or expulsion of the student; or

(c) the student has unexcused absenses during all of the prior ten consecutive school days.

(6) A private school shall satisfy health and safety laws and codes required by Subsection 53F-4-303(1)(d), including:

(a) the adoption of emergency preparedness response plans that include training for school personnel and parent notification for fire drills, natural disasters, and school safety emergencies; and

(b) compliance with Rule R392-200, Design, Construction, Operation, Sanitation, and Safety of Schools.

(7)(a) An approved eligible private school that changes ownership shall submit a new application for eligibility to receive a special needs scholarship payment from the Superintendent:

(i) that demonstrates that the school continues to meet the eligibility requirements of Section 53F-4-303 and this rule; and

(ii) within 60 calendar days of the date that an agreement is signed between previous owner and new owner.

(b) If the Superintendent does not receive the application within the time described in Subsection (7)(a)(ii):

(i) the new owner of the school is presumed ineligible to receive continued special needs scholarship payments from the Superintendent;

(ii) at the discretion of the Board, the Superintendent may reclaim any payments made to a school within the previous 60 calendar days; and

(iii) the private school shall submit a new application for eligibility to enroll special needs scholarship students consistent with the requirements and timelines of this rule.

R277-602-7. Special Needs Scholarship Appeals.

(1)(a) A parent of an eligible student or a parent of a prospective eligible student may appeal only the following actions under this rule:

(i) an alleged violation by the Superintendent of Sections 53F-4-301 through 308 or this rule; or

(ii) an alleged violation by the Superintendent of a required timeline.

(b) An appellant has no right to additional elements of due process beyond the specific provisions of this rule.

(2) The Appeals Committee may not grant an appeal contrary to Sections 53F-4-301 through 53F-4-308.

(3) A parent shall submit an appeal:

(a) in writing to the Board's Special Needs Scholarship Coordinator at: Utah State Board of Education, 250 East 500 South, P.O. Box 144200, Salt Lake City, UT 84114-4200; and

(b) within 15 calendar days of written notification of the final administrative action described in Subsection (1)(a).

(4)(a) The appeal opportunity does not include an investigation required under or similar to an IDEA state complaint investigation.

(b) Nothing in the appeals process established under this rule shall be construed to limit, replace, or adversely affect parental appeal rights available under IDEA.

(5) The Appeals Committee shall:

(a) consider an appeal within 15 calendar days of receipt of the written appeal;

(b) transmit the decision to a parent no more than ten calendar days following consideration by the Appeals Committee; and

(c) finalize an appeal as expeditiously as possible in the joint interest of schools and students involved.

(6) The Appeals Committee's decision is a final administrative action.

KEY: special needs students, scholarships
February 7, 2017 **Art X Sec 3**
Notice of Continuation August 13, 2015 **53E-3-401(4)**
53F-4-3

R277. Education, Administration.
R277-603. Autism Awareness Restricted Account Distribution.
R277-603-1. 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 53F-9-401, which authorizes the Superintendent to distribute autism awareness funds appropriated by the Legislature; and

(c) Subsection 53E-3-401(4); which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide procedures, timelines and accountability for distribution of funds received in the Autism Awareness Restricted Account and subsequently appropriated by the Legislature to eligible organizations.

R277-603-2. Definitions.

(1) "Autism Awareness Restricted Account" means the account established under Section 53F-9-401.

R277-603-3. Procedures.

(1) The Superintendent shall provide an application for an organization that meets the qualifications of Subsection 53F-9-401(3), to apply for available Autism Awareness Restricted Account funds to the extent of the legislative appropriation.

(2) The Superintendent shall review applications and select qualified recipients.

(3) An application shall include a budget section, a plan for use of the funds by eligible charitable organizations consistent with Subsection 53F-9-401(3), and other information as requested.

(4) The Superintendent shall distribute funds to eligible charitable organizations, to the extent of funds appropriated, annually.

R277-603-4. Timelines.

(1) The Superintendent shall announce the availability of funds annually by March 15.

(2) Applicants may apply for funds on forms available from the Superintendent.

(3) Applications shall be due June 5 annually.

(4) Applicants identified for funding shall be notified no later than July 1 annually.

(5) The Superintendent shall distribute funds annually in July.

R277-603-5. Accountability.

(1) The Superintendent shall require organizations that receive funding to complete a year-end report describing and documenting the use of funds consistent with the law and this rule.

(2) The year-end report may require an independent audit or review of a funded program.

KEY: autism awareness, restricted account
November 7, 2016 **Art X Sec 3**
Notice of Continuation September 15, 2016 **53F-9-401**
53E-3-401(4)

R277. Education, Administration.
R277-605. Coaching Standards and Athletic Clinics.
R277-605-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53E-3-501(1)(b), which directs the Board to adopt rules regarding access to programs.

(2) The purpose of this rule is to specify standards for school athletic and activity coaches and standards for athletic clinics and workshops.

R277-605-2. Athletics and the Core Curriculum.

High school competitive sports programs shall be supplementary to the high school curriculum.

R277-605-3. Coaches and School Activity Leaders as Supervisors and Role Models.

(1) Coaches and other designated school leaders shall diligently supervise student athletes at all times while on school-sponsored activities, including supervising students:

(a) on the field, court, or other competition or performance sites;

(b) in locker rooms, in seating areas, in eating establishments, and in lodging facilities; and

(c) while traveling.

(2) A coach or other designated school leader shall be an exemplary role model and may not use alcoholic beverages, tobacco, controlled substances, or participate in promiscuous sexual relationships while on school-sponsored activities.

(3) Coaches, assistants and advisors shall act in a manner consistent with Section 53G-8-209 and may not:

(a) use foul, abusive, or profane language while engaged in school related activities; or

(b) permit hazing, demeaning, or assaultive behavior, whether consensual or not, including behavior involving physical violence, restraint, improper touching, or inappropriate exposure of body parts not normally exposed in public settings, forced ingestion of any substance, or any act which would constitute a crime against a person or public order under Utah law.

R277-605-4. Athletic and Activity Clinics.

(1) School personnel, activity leaders, coaches, advisors, and other personnel may not require students to attend out-of-school camps, clinics, or workshops for which the personnel, activity leaders, coaches, or advisors receive remuneration from a source other than the school or district in which they are employed.

(2) Required or voluntary participation in summer or other off-season clinics, workshops, and leagues may not be used as eligibility criteria for team membership, participation in extracurricular activities, or for the opportunity to try out for school-sponsored programs.

KEY: extracurricular activities
December 8, 2016 **Art X Sec 3**
Notice of Continuation October 14, 2016 **53E-3-401(4)**
53E-3-501(1)(b)

R277. Education, Administration.
R277-607. Truancy Prevention.

R277-607-1. Definitions.

A. "Absence" means a student's non-attendance at school for one school day or part of one school day.

B. "Habitual truant" means a school-age minor who:

(1) is at least 12 years old;

(2) is subject to the requirements of Section 53G-6-202; and

(3)(a) is truant at least five times during one school year; and

(b) fails to cooperate with efforts on the part of school authorities to resolve the minor's attendance problem as required under Section 53G-6-206.

C. "Habitual truant citation" is a citation issued only consistent with Section 53G-6-203.

D. "IEP team" means an local education agency representative, a parent, a regular and special education educator, and person qualified to interpret evaluation results, in accordance with the Individuals with Disabilities Education Act (IDEA).

E. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

F. "Truant" means absent without a valid excuse.

G. "Unexcused absence" means a student's absence from school for reasons other than those authorized under the LEA policy.

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

I. "Valid excuse" means an excuse for an absence from school consistent with Subsection 53G-6-201(9).

R277-607-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Subsection 53E-3-401(4), which permits the Board to adopt rules in accordance with its responsibilities, and Section 53G-6-206 which directs educational entities and parents working on behalf of children to make efforts to resolve school attendance problems of school-age minors who are or should be enrolled in LEAs.

B. The purpose of this rule is to direct LEAs to establish procedures for:

(1) informing parents about compulsory education laws;

(2) encouraging and monitoring school attendance consistent with the law; and

(3) providing firm consequences for noncompliance.

C. This rule encourages meaningful incentives for parental responsibility and directs LEAs to establish ongoing truancy prevention procedures in schools especially for students in grades 1-8.

R277-607-3. General Provisions.

A. Each LEA board shall develop a truancy policy that encourages regular, punctual attendance of students, consistent with this rule and Title 53G, Chapter 6, Part 2, Compulsory Education, and shall review the policy annually.

B. LEA boards shall annually review attendance data and consider revisions to policies to encourage student attendance.

C. LEAs shall make truancy policies available for review by parents or interested parties.

D. LEAs may issue habitual truant citations to students consistent with Section 53G-6-203.

R277-607-4. LEA Responsibilities.

A. LEAs shall:

(1) establish definitions not provided in law or this rule necessary to implement a compulsory attendance policy;

(2) include definitions of approved school activity under Subsection 53G-6-201(9)(c) and excused absence to be provided locally under Subsection 53G-6-201(9)(e);

(3) include criteria and procedures for preapproval of extended absences consistent with Section 53G-6-205; and

(4) establish programs and meaningful incentives which promote regular, punctual student attendance.

B. LEAs shall include in their policies provisions for:

(1) notice to parents of the policy;

(2) notice to parents as discipline or consequences progress; and

(3) the opportunity to appeal disciplinary measures.

C. LEAs shall establish and publish procedures for use by school-age minors or their parents to contest notices of truancy.

KEY: compulsory education, truancy
October 9, 2014 Art X Sec 3
Notice of Continuation September 2, 2014 53E-3-401(4)
53G-6-206

R277. Education, Administration.
R277-608. Prohibition of Corporal Punishment in Utah's Public Schools.
R277-608-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Sections 53G-8-301 through 53G-8-305, which provide guidelines for the use of reasonable and necessary physical restraint or force in educational settings.

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

R277-608-2. Definitions.

(1) "Corporal punishment" means the intentional infliction of physical pain upon the body of a minor child as a disciplinary measure.

(2) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

R277-608-3. Reporting Requirements.

(1) Each LEA shall incorporate in the LEA plan submitted to the Superintendent annually, the prohibition of corporal punishment consistent with the law.

(2) An LEA policy shall include:

(a) a prohibition of corporal punishment consistent with the law;

(b) criteria and procedures for using appropriate behavior reduction intervention in accordance with federal and state law;

(c) appropriate sanctions for LEA employees who use corporal punishment; and

(d) appeal procedures for LEA employees disciplined for a violation of the LEA's policy.

KEY: students' rights, disciplinary problems, teachers
September 21, 2017 Art X Sec 3
Notice of Continuation July 19, 2017 53E-3-401(4)
53G-8-301 through 305

R277. Education, Administration.
R277-611. Certified Volunteer Instructors and Material Approval Requirements and Process for Firearm Safety in the Public Schools.
R277-611-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53F-6-201, which creates a Firearms Safety and Violence Prevention Pilot Program for implementation in the public schools.

(2) The purpose of this rule is to:

(a) provide a definition of certified volunteer for purposes of providing firearm safety training in a public school;

(b) direct LEAs to designate public school areas that may be used for firearm safety training for adults or students or both; and

(c) provide for voluntary firearm safety training of public school district employees or school community members or both on public school property at times determined by the local school board or local governing board.

R277-611-2. Definitions.

(1) "Certified volunteer" means an individual who:

(a) volunteers to teach an LEA employee or student in a public school about firearm safety; and

(b) is certified as required by Section R277-611-3.

(2) "Public school classroom or auditorium" means a classroom or auditorium in a public school:

(a) identified as available and appropriate; and

(b) designated by an LEA, superintendent, or director as available for firearm safety instruction.

R277-611-3. Firearm Safety and Violence Prevention Pilot Program.

(1) A local school board or charter school governing board may choose to participate in a pilot program established in accordance with the standards and limitations set forth in Section 53F-6-201.

(2) An LEA may designate anyone identified in Subsection 53F-6-201(5)(b)(ii) to provide instruction under a pilot program approved in accordance with Subsection (1).

(3)(a) A "certified firearms safety instructor" as identified in Subsection 53F-6-201(5)(b)(ii)(D) means a volunteer who is certified by the Utah Bureau of Criminal Identification to teach firearm safety on public school property consistent with LEA policy and direction.

(b) A list of certified firearms instructors by county is available through the Utah Department of Public Safety.

(4) A certified volunteer shall provide documentation of required training to the designated school administrator prior to the advertisement or notice of available training.

(5) In addition to obtaining certification through the Bureau of Criminal Identification, prior to volunteering in the pilot program identified in Section 53F-6-201, a certified firearms safety instructor shall:

(a) complete a fingerprint background check and submit to ongoing monitoring consistent with the requirements of Title 53G, Chapter 11, Part 4, Background Checks; and

(b) have the background check reviewed by an LEA administrator prior to instructing a public school age student.

R277-611-4. Voluntary Training of Adults and Public Education Employees on Public School Property.

(1) An LEA may allow a community group to use public school property for voluntary firearm safety training for a public school employee or interested community member under conditions used to approve public school buildings for non-curriculum uses.

(2) An LEA shall give the greatest consideration to availability of space and the safety of school age children and school employees in the approval of a request to use public education property for voluntary firearm safety training and instruction.

(3) Live ammunition may not be brought on public school property as a part of firearm safety instruction under this R277-611-4.

R277-611-5. Use of Public School Property for Firearm Safety Instruction.

(1) An LEA may designate which classroom or auditorium or other appropriate public school area may be used for firearm safety instruction.

(2) An LEA shall give first priority to curriculum-related groups in allowing firearm safety instruction to be held on public school property.

(3) An LEA shall give the safety of all students and community patrons the greatest consideration in allowing for firearm safety instruction or training on public school property.

(4) If appropriate or necessary, at the LEA's discretion, the LEA may post notice in and around a public school area designated for firearm instruction and training.

KEY: firearms, instruction

November 7, 2016	**Art X, Sec 3**
Notice of Continuation October 15, 2015	**53F-6-201**
	53E-3-401(4)

R277. Education, Administration.
R277-612. Foreign Exchange Students.
R277-612-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53F-2-303(3)(b), which directs the Board to make rules to administer the cap on the number of foreign exchange students for purposes of apportioning state monies for the students; and

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) administer the cap on the number of foreign exchange students that may be counted by school districts and charter schools for state funding; and

(b) provide guidance to school districts and charter schools in working with exchange student agencies and accepting foreign exchange students to provide for safety and fairness to the exchange students and Utah public school students.

R277-612-2. Definitions.

(1) "Foreign exchange student" means a student sponsored by an agency approved by an LEA governing board, subject to the limitations of Subsection 53F-2-303(3).

R277-612-3. Foreign Exchange Student Cap.

(1) The Superintendent shall allocate funds to an LEA from a specific legislative appropriation designated annually to pay the costs of educating foreign exchange students who meet all criteria of the law.

(2) School districts and charter schools are encouraged to enroll foreign exchange students and report those enrollment numbers annually to the Superintendent in the October 1 Superintendents' Report.

(3) School districts and charter schools shall include in

their report to the Superintendent only foreign exchange students that satisfy all requirements of Subsection 53G-6-707(7) and LEA policies.

(4) An LEA may enroll foreign exchange students who do not qualify for state monies and:

(a) pay the costs of the student with other LEA funds; or

(b) charge the student tuition.

(5) Nothing in this section shall prevent an LEA from enrolling a foreign exchange student in accordance with Subsection 53G-6-707(2).

R277-612-4. LEA Policy for Working with Foreign Exchange Student Agencies and Protecting Students.

(1) An LEA that enrolls foreign exchange students shall have a policy that includes:

(a) adherence to the requirements of Subsection 53G-6-707(7); and

(b) provisions which create a safe environment for foreign exchange students and school district/charter school students.

(2) Prior to accepting students through a foreign exchange student agency, each LEA shall require and maintain a sworn affidavit of compliance.

(3) A sworn affidavit of compliance shall include confirmation that the agency:

(a) is in compliance with all applicable policies of the LEA governing board;

(b) has completed a household study, including a background check consistent with Section 53G-6-707, of all adult residents of each household where foreign exchange students will reside;

(c) has reviewed the information revealed through the background checks required by Subsection (b) with an appropriate LEA official;

(d) has completed a background study to assure that the exchange student will receive proper care and supervision in a safe environment;

(e) has provided host parents with training appropriate to their positions, including information about enhanced criminal penalties under Subsection 76-5-406(10) for persons who are in a position of special trust;

(f) will send a representative to visit each student's place of residence at least monthly during the student's stay in Utah;

(g) will cooperate with school and other public authorities to ensure that no exchange student becomes an unreasonable burden upon the public schools or other public agencies;

(h) will give each exchange student names and telephone numbers of agency representatives and others who could be called at any time if a serious problem occurs, in the exchange student's native language; and

(i) will provide alternate placements so that no student is required to remain in a household if conditions appear to exist which unreasonably endanger the student's welfare.

(4) An LEA that accepts foreign exchange students shall provide each approved foreign exchange student agency with a list of names and telephone numbers of individuals not associated with the agency who could be called by an exchange student in the event of a serious problem.

(5) A foreign exchange student agency shall provide a copy of a list in the student's native language provided by an LEA in accordance with Subsection (4) to each foreign exchange student.

KEY: foreign exchange students, enrollment
May 10, 2017 **Art X Sec 3**
Notice of Continuation March 15, 2017 **53F-2-303(3)**
53E-3-401(4)

R277. Education, Administration.
R277-613. LEA Disruptive Student Behavior, Bullying, Cyber-bullying, Hazing, Retaliation, and Abusive Conduct Policies and Training.
R277-613-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

(b) Subsection 53E-3-401(4)(a), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law

(2) The purpose of the rule is to:

(a) require LEAs to develop, update, and implement bullying, cyber-bullying, hazing, retaliation, and abusive conduct policies at the school district and school level;

(b) provide for regular and meaningful training of school employees and students;

(c) provide for enforcement of the policies in schools, at the state level and in public school athletic programs; and

(d) require an LEA to review allegations of bullying, cyber-bullying, hazing, retaliation, and abusive conduct.

R277-613-2. Definitions.

(1) "Abusive conduct" means the same as that term is defined in Subsection 53G-9-601(1).

(2)(a) "Bullying" means the same as that term is defined in Subsection 53G-9-601(2).

(b) "Bullying" includes relational aggression or indirect, covert, or social aggression, including rumor spreading, intimidation, enlisting a friend to assault a child, and social isolation.

(c) The conduct described in Subsection 53G-9-601(2) constitutes bullying, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

(3) "Civil rights violation" means bullying, cyber-bullying, harassment, or hazing that is targeted at a student based upon the students' or employees' identification as part of any group protected from discrimination under the following federal laws:

(a) Title VI of the Civil Rights Act of 1964;

(b) Title IX of the Education Amendments of 1972; or

(c) Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990.

(4) "Cyber-bullying" means the same as that term is defined in Subsection 53G-9-601(4).

(5) "Disruptive student behavior" means the same as that term is defined in Subsection 53G-8-210(1)(a).

(6) "Hazing" means the same as that term is defined in Subsection 53G-9-601(5).

(7) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(8) "Participant" means any student, employee or volunteer coach participating in a public school sponsored athletic program or activity, including a curricular, co-curricular, or extracurricular club or activity.

(9) "Policy" means standards and procedures that:

(a) are required in Section 53G-9-605;

(b) include the provisions of Section 53G-8-202; and

(c) provide additional standards, procedures, and training adopted in an open meeting by an LEA board that:

(i) define bullying, cyber-bullying, hazing, retaliation, and abusive conduct;

(ii) prohibit bullying, cyber-bullying, hazing, retaliation, and abusive conduct;

(iii) require regular annual discussion and training designed to prevent bullying, cyber-bullying, hazing, and retaliation among school employees and students; and

(iv) provide for enforcement through employment action

or student discipline.

(10) "Restorative justice practice" means a discipline practice that brings together students, school personnel, families, and community members to resolve conflicts, address disruptive behaviors, promote positive relationships, and healing.

(11) "Retaliate" or "retaliation" means the same as that term is defined in Subsection 53G-9-601(7).

(12) "School employee" means the same as that term is defined in Subsection 53G-9-601(10).

(13) "Trauma-Informed Care" means a strengths-based service delivery approach that is grounded in an understanding of and responsiveness to the impact of trauma, that emphasizes physical, psychological, and emotional safety for both the alleged victim and the individual who is alleged to have engaged in prohibited conduct, and that creates opportunities for targets to rebuild a sense of control and empowerment.

R277-613-3. Superintendent Responsibilities.

(1) Subject to availability of funds, the Superintendent shall provide:

(a) a model policy on bullying, cyber-bullying, hazing, and retaliation as required in Section 53G-9-606;

(b) model training and training opportunities on:

(i) the prevention and identification of bullying, cyber-bullying, hazing, and retaliation, that an LEA may use to train the LEA's employees, contract employees, and volunteers, including coaches; and

(ii) the reporting and review requirements in Section R277-613-5;

(c) evidence based practices and policies related to the prevention of bullying, cyber-bullying, hazing, and retaliation.

(2) Although an LEA is required to have a policy on bullying, cyber-bullying, hazing, retaliation and abusive conduct as described in Section 53G-9-605 and this rule and provide training as described in Section 53G-9-607 and this rule, the LEA is not required to use the model policy or model training developed by the Superintendent described in Subsection (1).

(3) The Board may interrupt disbursements of funds consistent with Subsection 53E-3-401(8) and Rule R277-114 for failure of an LEA to comply with:

(a) Title 53G, Chapter 9, Bulling and Hazing; and

(b) this rule.

(4) In addition to the requirements of Title 53G, Chapter 9, Bullying and Hazing and this R277-613, LEAs are required to comply with applicable federal requirements.

R277-613-4. LEA Responsibility to Create or Update Bullying Policies.

(1) In addition to the requirements of Subsection 53G-9-605(3), an LEA shall:

(a) develop, update, and implement policies as required by Section 53G-9-605 and this rule, which shall include a prohibition on:

(i) bullying;

(ii) cyber-bullying;

(iii) hazing;

(iv) retaliation; and

(v) making a false report.

(b) post a copy of the LEA's policy on the LEA website;

(c) develop an action plan to address a reported incident of bullying, cyber-bullying, hazing, or retaliation; and

(d) provide a requirement for a signed statement that meets the requirements of Subsection 53G-9-605(3)(h) annually.

(2)(a) As required by Section 53G-9-605, an LEA shall notify a parent of:

(i) a parent's student's threat to commit suicide; or

(ii) an incident of bullying, cyber-bullying, hazing, or retaliation involving the parent's student as a victim or an individual who is alleged to have engaged in prohibited conduct.

(b) An LEA shall:

(i) notify a parent described in Subsection (2)(a) in a timely manner;

(ii) designate the appropriate school employee to provide parental notification; and

(iii) designate the format in which notification is provided to parents and maintained by the LEA.

(3) Subject to the parental consent requirements of Section 53E-9-203, if applicable, an LEA shall assess students about the prevalence of bullying, cyber-bullying, hazing, and retaliation in LEAs and schools, specifically locations where students are unsafe and additional adult supervision may be required, such as playgrounds, hallways, and lunch areas.

(4) An LEA shall take strong responsive action against retaliation, including assistance to victims and their parents in reporting subsequent problems and new incidents.

(5)(a) An LEA shall provide that students, school employees, coaches, and volunteers receive training on bullying, cyber-bullying, hazing, and retaliation, from individuals qualified to provide such training.

(b) The training described in Subsection (5)(a) shall:

(i) include information on various types of aggression and bullying, including:

(A) overt aggression that may include physical fighting such as punching, shoving, kicking, and verbal threatening behavior, such as name calling, or both physical and verbal aggression or threatening behavior;

(B) relational aggression or indirect, covert, or social aggression, including rumor spreading, intimidation, enlisting a friend to assault a child, and social isolation;

(C) sexual aggression or acts of a sexual nature or with sexual overtones;

(D) cyber-bullying, including use of email, web pages, text messaging, instant messaging, social media, three-way calling or messaging or any other electronic means for aggression inside or outside of school;

(E) bullying, cyber-bullying, hazing and retaliation based upon the students' or employees' identification as part of any group protected from discrimination under the following federal laws:

(i) Title VI of the Civil Rights Act of 1964, including discrimination on the basis of race, color, or national origin;

(ii) Title IX of the Education Amendments of 1972, including discrimination on the basis of sex; or

(iii) Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, including discrimination on the basis of disability; and

(F) bullying, cyber-bullying, hazing, and retaliation based upon the students' or employees' actual or perceived characteristics, including race, color, national origin, sex, disability, religion, gender identity, sexual orientation, or other physical or mental attributes or conformance or failure to conform with stereotypes;

(ii) complement the suicide prevention program required for students under Rule R277-620 and the suicide prevention training required for licensed educators consistent with Subsection 53G-9-704(1); and

(iii) include information on when issues relating to this rule may lead to student or employee discipline.

(6) The training described in Subsection (5) shall be offered to:

(a) new school employees, coaches, and volunteers; and

(b) all school employees, coaches, and volunteers at least once every three years.

(7)(a) An LEA's policies developed under this section shall complement existing school policies and research based school discipline plans.

(b) Consistent with Rule R277-609, the discipline plan shall provide direction for dealing with bullying, cyber-bullying,

hazing, retaliation and disruptive students.

(c) An LEA shall ensure that a discipline plan required by Rule R277-609:

(i) directs schools to determine the range of behaviors and establish the continuum of administrative procedures to be used by school personnel to address the behavior of students;

(ii) provides for identification, by position, of individuals designated to issue notices of disruptive student behavior, bullying, cyber-bullying, hazing, and retaliation;

(iii) designates to whom notices shall be provided;

(iv) provides for documentation of disruptive student behavior in the LEA's student information system;

(v) includes strategies to provide for necessary adult supervision;

(vi) is clearly written and consistently enforced; and

(vii) includes administration, instruction and support staff, students, parents, community council and other community members in policy development, training and prevention implementation so as to create a community sense of participation, ownership, support and responsibility.

R277-613-5. Reporting and Incident Investigations of Allegations of Bullying, Cyber-bullying, Hazing, and Retaliation.

(1) In accordance with an action plan adopted in accordance with Subsection R277-613-4(1)(c), an LEA shall:

(a) investigate allegations of incidents of bullying, cyber-bullying, hazing, and retaliation in accordance with this section; and

(b) provide an individual who investigates allegations of incidents of bullying, cyber-bullying, hazing, and retaliation with adequate training on conducting an investigation.

(2)(a) An LEA shall investigate allegations of incidents described in Subsection (1)(a) by interviewing at least the alleged victim and the individual who is alleged to have engaged in prohibited conduct.

(b) An LEA may also interview the following as part of an investigation:

(i) parents of the alleged victim and the individual who is alleged to have engaged in prohibited conduct;

(ii) any witnesses;

(iii) school staff; and

(iv) other individuals who may provide additional information.

(c) An individual who investigates an allegation of an incident shall inform an individual being interviewed that:

(i) to the extent allowed by law, the individual is required to keep all details of the interview confidential; and

(ii) further reports of bullying will become part of the review.

(3) The confidentiality requirement in Subsection (2)(c) does not apply to:

(a) conversations with law enforcement professionals;

(b) requests for information pursuant to a warrant or subpoena;

(c) a state or federal reporting requirement; or

(d) other reporting required by this rule.

(4) In conducting an investigation under this section, an LEA may:

(a) review disciplinary reports of involved students; and

(b) review physical evidence, consistent with search and seizure law in schools, which may include:

(i) video or audio;

(ii) notes;

(iii) email;

(iv) text messages;

(v) social media; or

(vi) graffiti.

(5) An LEA shall adopt a policy outlining under what circumstances the LEA will report incidents of bullying, cyber-bullying, harassment, and retaliation to law enforcement.

(6) Following an investigation of a confirmed allegation of an incident of bullying, cyber-bullying, hazing, or retaliation, if appropriate, an LEA may:

(a) in accordance with the requirements in Subsection (6), take positive restorative justice practice action, in accordance with policies established by the LEA; and

(b) support involved students through trauma-informed practices, if appropriate.

(6)(a) An alleged victim is not required to participate in a restorative justice practice with an individual who is alleged to have engaged in prohibited conduct as described in Subsection (5)(a).

(b) If an LEA would like an alleged victim who is a student to participate in a restorative justice practice, the LEA shall notify the alleged victim's parent of the restorative justice practice and obtain consent from the alleged victim's parent before including the alleged victim in the process.

(7) A grievance process required under Subsection 53G-9-605(3)(f) shall be consistent with the LEA's established grievance process.

(8) An LEA shall, as required by Subsection 53G-9-606(2), report the following annually, on or before June 30, to the Superintendent in accordance with the Superintendent's submission requirements:

(a) a copy of LEA's policy required in Section R277-613-4;

(b) implementation of the signed statement requirement described in Subsection 53G-9-605(3)(h);

(c) verification of the LEA's training of school employees relating to bullying, cyber-bullying, hazing, and retaliation described in Section 53G-9-607;

(d) incidents of bullying, cyber-bullying, hazing, and retaliation;

(e) the number of incidents described in Subsection (8)(d) required to be reported separately under federal law, including the reporting requirements in:

(i) Title VI of the Civil Rights Act of 1964;

(ii) Title IX of the Education Amendments of 1972; or

(iii) Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990; and

(f) the number of incidents described in Subsection (8)(d) that include a student who was bullied, cyber-bullied, hazed, or retaliated against based on the student's actual or perceived characteristics, including disability, race, national origin, religion, sex, gender identity, or sexual orientation.

(9) The requirements of this R277-613 are in addition to any federal requirements, including reporting civil rights violations to the appropriate entities and taking other appropriate action.

R277-613-6. Training by LEAs Specific to Participants in Public School Athletic Programs and School Clubs.

(1)(a) Prior to any student, employee or volunteer coach participating in a public school sponsored athletic program, both curricular and extracurricular, or extracurricular club or activity, the student, employee or coach shall participate in bullying, cyber-bullying, hazing, and retaliation prevention training.

(b) A training described in Subsection (1)(a) shall be offered to new participants on an annual basis and to all participants at least once every three years.

(2) An LEA shall inform student athletes and extracurricular club members of prohibited activities under this rule and potential consequences for violation of the law and the rule.

(3) An LEA shall maintain training participant lists or signatures, to be provided to the Board upon request.

R277-613-7. Abusive Conduct.

(1) An LEA shall prohibit abusive conduct.

(2) An LEA's bullying, cyber-bullying, hazing, abusive conduct, and retaliation policy, required in Section 53A-11a-301 and this rule, shall include a grievance process for a school employee who has experienced abusive conduct as described in Subsection 53G-9-605(3)(f).

KEY: abusive conduct, bullying, harassment, hazing, training

July 9, 2018	**Art X Sec 3**
Notice of Continuation August 2, 2013	**53E-3-401(4)**
	53G, Chapter 9

R277. Education, Administration.
R277-614. Athletes and Students with Head Injuries.
R277-614-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution X, Section 3, which vests general control and supervision in the Board; and

(b) Section 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to direct LEAs under the general control and supervision of the Utah State Board of Education to adopt and enforce a head injury policy for students participating in physical education and extracurricular sporting events.

R277-614-2. Definitions.

(1) "Agent" has the same meaning as described in Subsection 26-53-102(1).

(2) "Free play" means unstructured student play, games and field days during school hours.

(3) "LEA" includes for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(4) "Parent" means a parent or legal guardian of a student for whom an LEA is responsible.

(5) "Physical education class" means a structured school class that includes an adult supervisor.

(6) "Sporting event" has the same meaning as described in Subsection 26-53-102(5).

(7) "Traumatic head injury" has the same meaning as described in Subsection 26-53-102(6).

R277-614-3. Superintendent Responsibilities.

(1) The Superintendent shall, in consultation with Utah State Risk Management, provide a model policy for LEAs to use in developing the policy required in Section R277-614-4.

(2) The Superintendent shall provide model forms for LEAs to use to inform parents of LEA policies and obtain parent signatures documenting the parents' understanding of and willingness to adhere to LEA policies.

(3) The Superintendent shall provide professional development, as needed and to the extent of funds available, to assist LEAs with training to:

(a) identify students' traumatic head injuries;

(b) provide notice to parents; and

(c) comply with the law.

(4) The Superintendent shall make the resources required by this Section R277-614-3 available on the Board website.

R277-614-4. LEA Responsibilities.

(1) An LEA shall comply with Title 26, Chapter 53, Protection of Athletes with Head Injuries Act, including all responsibilities of an amateur sports organization.

(2) All LEAs shall adopt and maintain a traumatic head injury policy for students:

(a) participating in physical education classes, excluding free play, offered by the LEA; and

(b) participating in extracurricular activities sponsored by the LEA or statewide athletic associations.

(3) An LEA's policy shall include:

(a) direction to agents to remove a student from a sporting event if the student is suspected of sustaining a concussion or a traumatic head injury;

(b) the prohibition of the continued participation of a student removed under Subsection (3)(a) until the student is evaluated by a trained qualified health care professional;

(c) a written statement from a trained health care provider clearing a student removed under Subsection (3)(a) to resume participation in a sporting event;

(d) adequate training for agents, consistent with their involvement and responsibility for supervising students in sporting events and physical education classes, about traumatic head injuries and response to suspected student injuries, consistent with the law; and

(e) a requirement of notice at least annually to parents of students who participate in sporting events, to be acknowledged by a parent in writing, of an LEA's traumatic head injury policy.

(4) An LEA shall post the policy required under Subsection (2) on the LEA's website where the information will be readily accessible to the public and to parents.

KEY: athletes, head injuries

July 9, 2018	**Art X Sec 3**
Notice of Continuation May 11, 2018	**53A-1-401(3)**

R277. Education, Administration.
R277-615. Standards and Procedures for Student Searches.
R277-615-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

(b) Section 53G-8-509, which directs the Board and LEAs to adopt rules to protect students against unreasonable and excessive intrusion of personal rights; and

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to direct LEAs to adopt policies to protect student rights with procedures and provisions that balance students' rights and privacy with the responsibility of school officials for the safety and protection of students and adults while on school property or at school-sponsored events.

R277-615-2. Definitions.

(1) "Controlled substance" has the same meaning as provided in Subsection 58-37-2(1)(f).

(2)(a) "Law enforcement authorities" means officers working under the direct supervision and in the employment of police or law enforcement, as opposed to under the supervision of an LEA.

(b) Law enforcement authorities have received police officer training and are acting in that capacity.

(3) "LEA," for purposes of this rule, includes the Utah Schools for the Deaf and the Blind.

(4) "Weapon" means any item capable of causing death or serious bodily injury or a facsimile or representation of the item.

R277-615-3. Superintendent Responsibilities.

(1) The Superintendent shall provide consistent definitions for LEAs to include in search and seizure policies.

(2) The Superintendent shall develop a model search and seizure policy as guidance for LEAs.

(3) The Superintendent shall require an assurance from LEAs in the Utah Consolidated Report regarding the student search policy required under Section 53G-8-509.

R277-615-4. LEA Responsibilities.

(1) An LEA shall develop a policy for searching students for controlled substances and weapons.

(2) An LEA shall include appropriate interested parties in the development of student search policies, including:

(a) parents;

(b) school employees; and

(c) licensed school employees.

(3) An LEA policy developed pursuant to Subsection (1) shall ensure protection of individual student rights against excessive and unreasonable intrusion.

(4) An LEA shall make policies available electronically and in and in printed form to parents and students upon enrollment.

(5) An LEA shall provide adequate training to appropriate classes of employees for fair and consistent implementation of student search policies.

KEY: students, searches
May 10, 2017 **Art X Sec 3**
Notice of Continuation: March 15, 2017 **53G-8-509**
53E-3-401(4)

R277. Education, Administration.
R277-616. Education for Homeless and Emancipated Students.
R277-616-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities;

(c) Section 53G-6-202, which requires that minors between the ages of 6 and 18 attend school during the school year;

(d) Subsection 53G-6-302(6), which makes each school district or charter school responsible for providing educational services for all children of school age who reside in the school district or attend the school; and

(e) the McKinney-Vento Homeless Assistance Act of 1987, Title VII, Subtitle B, as amended, 42 U.S.C. 11431 through 11435.

(2) The purpose of this rule is to ensure that homeless children or youth have the opportunity to attend school with as little disruption as reasonably possible.

R277-616-2. Definitions.

(1) "Domicile" means the place which a person considers to be the permanent home, even though temporarily residing elsewhere.

(2) "Emancipated minor" means:

(a) a child under the age of 18 who has become emancipated through marriage or by order of a court consistent with Section 78A-6-801 et seq.; or

(b) a child recommended for school enrollment as an emancipated or independent or homeless child or youth by an authorized representative of the Utah State Department of Social Services.

(3) "Enrolled" for purposes of this rule means a student has the opportunity to attend classes and participate fully in school and extracurricular activities based on academic and citizenship requirements of all students.

(4) "Homeless child" or "homeless youth" means a child who:

(a) lacks a fixed, regular, and adequate nighttime residence;

(b) has primary nighttime residence in a homeless shelter, welfare hotel, motel, congregate shelter, domestic violence shelter, car, abandoned building, bus or train station, trailer park, or camping ground;

(c) sleeps in a public or private place not ordinarily used as a regular sleeping accommodation for human beings;

(d) is, due to loss of housing or economic hardship, or a similar reason, living with relatives or friends usually on a temporary or emergency basis due to lack of housing; or

(e) is a runaway, a child or youth denied housing by his family, or school-age unwed mother living in a home for unwed mothers, who has no other housing available.

(5) "School district of residence for a homeless child or youth" means the school district in which the student or the student's legal guardian or both currently resides or the charter school that the student is attending for the period that the student or student's family satisfies the homeless criteria.

R277-616-3. Criteria for Determining Where a Homeless or Emancipated Student Shall Attend School.

(1) Under the McKinney-Vento Homeless Assistance Act of 1987, Title VII, Subtitle B, as amended, 42 U.S.C. 11431 through 11435, homeless children are entitled to immediate enrollment and full participation even if they are unable to produce records which may include medical records, birth certificates, school records, or proof of residency normally required for enrollment.

(2) A homeless child or homeless youth shall:

(a) be immediately enrolled even if the homeless youth does not have documentation required under Sections 53G-9-402, 302, 303, 304 and Title 53G, Chapter 6, Part 3, District of Residency;

(b) be allowed to continue to attend his school of origin, to the extent feasible, unless it is against the parent's wishes;

(c) be permitted to remain in the student's school of origin for the duration of the homelessness and until the end of any academic year in which the student moves into permanent housing; or

(d) transfer to the school district of residence or charter school if space is available as defined under Subsection R277-616-1I.

(2) A determination of a residence or domicile for a homeless youth or emancipated minor may include consideration of the following criteria:

(a) the place, however temporary, where the child actually sleeps;

(b) the place where an emancipated minor or an unaccompanied youth or accompanied youth's family keeps the family's belongings;

(c) the place which an emancipated minor or an unaccompanied youth or accompanied youth's parent considers to be home; or

(d) such recommendations concerning a child's domicile as made by the State Department of Human Services.

(3) Determination of a residence or domicile for a homeless youth or emancipated minor may not be based upon:

(a) rent or lease receipts for an apartment or home;

(b) the existence or absence of a permanent address; or

(c) a required length of residence in a given location.

(4) If there is a dispute as to the residence or the status of an emancipated minor or an unaccompanied youth, the issue may be referred to the Superintendent for resolution.

(5) The purpose of federal homeless education legislation

is to ensure that a child's education is not needlessly disrupted because of homelessness.

(6) If a child's residence or eligibility is in question, the child shall be admitted to school until the issue is resolved.

R277-616-4. Transfer of Guardianship.

(1) If guardianship of a minor child is awarded to a resident of a school district by action of a court or through appointment by a school district under Section 53G-6-303, the child becomes a resident of the school district in which the guardian resides.

(2) If a child's residence has been established by transfer of legal guardianship, no tuition may be charged by the new school district of residence.

KEY: compulsory education, students' rights
November 23, 2015 Art X Sec 3
Notice of Continuation: September 28, 2015 53E-3-401(4)
53G-6-302(6)
53G-6-303

R277. Education, Administration.
R277-619. Student Leadership Skills Development.
R277-619-1. Definitions.

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

B. "Matching funds" means an amount of funds or services that shall be provided by an applicant in the Board application to meet the match requirement of Section 53A-17a-169(5)(a) for first year applicants.

C. "Student leadership skills development" means a program to develop students' behaviors and skills vital for learning and career success and that will enhance a school's learning environment.

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

R277-619-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-17a-169(4) which directs the Board to make rules for elementary school participation in this pilot grant program, and by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide criteria, procedures and timelines for the Board to designate schools and grant awards to facilitate elementary school participation in the pilot Student Leadership Skills Development program.

R277-619-3. School Selection Criteria.

A. Elementary Schools that include any combination of grades K-6 shall be eligible for the program.

B. An applicant school shall provide a completed application for its pilot program that shall:

(1) indicate how the program will develop communication skills, teamwork skills; interpersonal skills; initiative and self-motivation; goal setting skills; problem solving skills; and creativity;

(2) estimate the number of students that will be served by the program;

(3) agree that the school will provide all data and information required by the USOE for evaluation and reporting purposes, as requested by the USOE; and

(4) provide additional information requested by the USOE on the application including selection criteria and assurances provided in Section 53A-17a-169(5).

R277-619-4. Required Matching Funds.

The application shall explain how the first year school will provide matching funds to the amount requested by the applicant as required under Section 53A-17a-169(5)(a).

R277-619-5. School Selection and Criteria.

A. The USOE shall provide an application for the Student Leadership Skills Development pilot program before June 15 annually.

B. LEAs shall return completed applications to the USOE before August 15 annually.

C. The USOE shall screen all applications for compliance with all state laws, R277-619 and application requirements.

D. The USOE may seek the participation and advice of an independent evaluating committee in recommending applications for funding. The Board shall make final school selections consistent with the criteria of Section 53A-17a-169 and R277-619.

E. The Board shall determine the final number of schools and amounts per school not to exceed $10,000 per school for first year applicants and $20,000 per school for second year applicants, based on the number and quality of applications.

F. The Board shall select and notify funded applicants before September 1 annually.

G. The USOE may adjust application timelines from year to year as necessary.

H. The Board shall evaluate the program and report on findings consistent with 53A-17a-169(7)(a).

KEY: students, leadership skills
October 9, 2014 Art X, Sec 3
Notice of Continuation July 13, 2018 53A-17a-169(4)
53A-1-401(3)

R277. Education, Administration.
R277-702. Procedures for the Utah High School Completion Diploma.
R277-702-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

(b) Subsection 53E-3-501(1)(b), which directs the Board to adopt rules regarding access to programs, competency levels, and graduation requirements; and

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah constitution and state law.

(2) The purpose of this rule is to describe the standards and procedures required for an individual to obtain a Utah High School Completion Diploma.

R277-702-2. Definitions.

(1) "High school equivalency exam" or "HSE exam" means a Board approved examination whose test modules are aligned with:

(a) current high school core standards; and

(b) adult education college and career readiness standards.

(2) "Out-of-school youth" means an individual 16 to 19 years of age whose high school cohort has not graduated and who is no longer enrolled in a K-12 program of instruction.

(3) "Utah high school completion diploma" means a completion diploma issued by the Board and distributed by a Board-approved contractor, to an individual who has passed all subject modules of the HSE exam at a Utah HSE exam testing center.

R277-702-3. Administrative Procedures and Standards for

Testing and Certification.

(1)(a) The Superintendent shall contract with a third party contractor in accordance with state procurement law to administer HSE exams in the state.

(b) The Superintendent may contract with public non-profit institutions within the state to administer HSE exams and provide related testing services.

(c) The Superintendent shall determine the number and location of the institutions designated as testing centers in a manner that ensures that the test is reasonably accessible to potential applicants.

(d) The Superintendent shall develop requirements for HSE exam testing centers in conjunction with the contractor approved in accordance with Subsection (1)(a).

(2) The Superintendent shall develop minimum scores required for passing an HSE exam in conjunction with a vendor chosen in accordance with Subsection (1)(a).

(3) The Superintendent shall award a diploma to a candidate who receives a passing score on an HSE exam.

R277-702-4. Eligibility for HSE Testing.

(1) Any individual may take a Utah HSE exam regardless of:

(a) race;

(b) color;

(c) national origin;

(d) gender;

(e) disability; or

(f) state of residency.

(2) A candidate for the HSE exam:

(a) shall be at least 16 years of age; and

(b) may not be enrolled in any Utah k-12 school.

(3) A 16-year-old candidate shall submit a completed state of Utah HSE Exam Application for 16-18 Year Old Non-Graduates, which shall include:

(a) verification in a manner approved by the Superintendent that the candidate is not enrolled in a school;

(b) verification that the candidate understands and accepts the consequences and educational choices associated with the candidate's withdrawal from a K-12 program of instruction, including the prohibition from returning to a K-12 program anywhere in Utah upon successful passing of an HSE exam; and

(c) signed acknowledgment from the candidate's parent or guardian specifically stating that the candidate and parent or guardian:

(i) understand and accept the consequences and educational choices associated with the candidate's decision to withdraw from a K-12 program of instruction; and

(ii) authorize the candidate to take an HSE exam; and

(d) verification from a representative of a Utah state-sponsored adult education district program that the candidate demonstrates academic competencies to meet with success in passing the HSE exam.

(4) A 16 year-old candidate may provide a marriage certificate in lieu of the requirement of Subsection (3)(c) if the candidate is married.

(5) A 17 or 18 year-old candidate whose cohort has not graduated shall submit a state of Utah HSE exam Application for 16-18 Year Old Non-Graduates, which shall include:

(a) verification in a manner approved by the Superintendent that the candidate is not enrolled in school; and

(b) the signature of the candidate's parent or guardian authorizing the test.

(6) A candidate may submit a marriage certificate in lieu of the requirement contained in Subsection (5)(b) if the candidate is married.

(7) An out-of-school youth of school age who has not successfully passed all HSE exam modules shall be allowed to return to a k-12 public school prior to the time his class graduates with the understanding and expectation that all necessary requirements for the traditional k-12 diploma shall be completed prior to issuance of a regular high school diploma.

(8) An out-of-school youth of school age who has received a Utah high school completion diploma is not eligible to return to a k-12 public school unless it is required for provision of a free appropriate public education under the Individuals with Disabilities Education Act, 20 U.S.C., Chapter 33.

(9) The Superintendent shall classify an out-of-school youth of school age who has successfully passed all HSE exam modules and received a Utah high school completion diploma as a graduate for k-12 graduation annual yearly progress outcomes.

(10) An individual who is required by an employer or higher education institution to provide academic competency and cannot offer proof of high school completion may, upon approval of the Superintendent, take an HSE exam.

(11) An individual who has previously passed HSE exam modules but seeks higher HSE exam scores for specific post-secondary institution admission may seek permission to retake an HSE exam module from the Superintendent.

R277-702-5. Fees.

(1) The Superintendent, with approval of the Board, shall adopt uniform fees for the Utah high school completion diploma and uniform forms, deadlines, and accounting procedures to administer this program for inclusion with the contract with the contractor identified in accordance with Subsection R277-702-3(1)(a).

(2) An approved testing center may only collect a fee in accordance with the amounts and procedures approved pursuant to Subsection (1).

R277-702-6. Official Transcripts.

(1) The Board shall accept HSE exam scores when an original score is reported by:

(a) a Board-approved HSE exam testing center;

(b) the transcript service of the Defense Activity for Non-Traditional Educational Support;

(c) a Veterans Administration hospital or center; or

(d) a contractor selected by the Superintendent in accordance with Subsection R277-702-3(1)(a) or the contractor's authorized agent.

(2) The Superintendent shall include a candidate's HSE exam result on the candidate's official transcript.

R277-702-7. Adult High School Outcomes.

(1) A local board of education may adopt standards and procedures for awarding up to five units of credit on the basis of test results which may be applied toward an adult education secondary diploma only if the student was enrolled in an adult education program prior to July 1, 2009 and an approved HSE exam was transcripted prior to July 1, 2009.

(2) An individual who took and passed an approved HSE exam prior to January 1, 2002 may enroll in an adult education program now and in the future to obtain an adult education secondary diploma upon completion of graduation requirements as defined in Rule 277-733, but may not apply for a previously issued HSE exam certificate to be converted to a Utah high school completion diploma.

(3) An individual who took and passed an approved HSE exam in the state of Utah between the dates of January 1, 2002 and June 30, 2009 may apply for a Utah high school completion diploma to replace the originally issued HSE exam certificate issued by the Board or they may enroll in an adult education program to complete the necessary requirements for an adult education secondary diploma.

R277-702-8. HSE Exam Security.

(1) The following individuals may have access to the HSE exam:

(a) Board staff approved by the Superintendent;

(b) Authorized test examiners;

(c) A contractor selected pursuant to Subsection R277-702-3(1)(a) and the contractor's agents;

(d) Approved exam candidates during exam administration; or

(e) An individual granted access in writing by the Superintendent.

(2) A test facilitator shall administer an HSE exam in strict accordance with procedures and guidelines specified by the Superintendent and the contractor approved in accordance with Subsection R277-702-3(1)(a).

(3) School staff members may not:

(a) provide a student directly or indirectly with specific questions or answers from any official HSE exam;

(b) allow a student access to any testing material, in any form, prior to test administration; or

(c) knowingly and intentionally do anything that would inappropriately affect the security, validity, or reliability of an exam score of any individual student or group taking an HSE exam.

(4) A licensed educator who intentionally violates this Section R277-702-8 may be subject to disciplinary action under Section 53E-6-604 and R277-515.

KEY: adult education, educational testing, student competency
March 14, 2017 Art X Sec 3
Notice of Continuation: January 17, 2017 53E-3-501(1)(b)
53E-3-401

R277. Education, Administration.
R277-750. Education Programs for Students with Disabilities.
R277-750-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-501(1), which directs the Board to adopt rules regarding services for persons with disabilities;

(c) Title 53E, Chapter 7, Part 2, Education of Children with Disabilities, which requires the Board to adopt rules regarding educational services to students with disabilities; and

(d) Subsection 53E-3-401(4) which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

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

R277-750-2. Incorporation of Special Education Rules Manual by Reference.

(1) This rule incorporates by reference the Special Education Rules manual dated October 2016, which establishes policies and procedures for:

(a) appropriate and timely identification of a student with a disability;

(b) evaluation and classification of a student with a disability by qualified personnel;

(c) standards for services provided to a student with a disability;

(d) provision for multi-district programs for a student with a disability;

(e) provision for delivery of service responsibilities;

(f) certification and qualifications for instructional staff; and

(g) the state's implementation of federal special education programs, including IDEA.

(2) A copy of the manual is located at:

(a) https://www.schools.utah.gov/specialeducation/resources/lawsrulesregulations; and

(b) the Utah State Board of Education.

R277-750-3. Standards and Procedures.

(1) The Board adopts and hereby incorporates by reference the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C., 1400 as the Board's rules for students with disabilities.

(2) The Superintendent and LEAs shall provide services to a student with a disability in accordance with:

(a) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. 794, incorporated by reference in R277-112;

(b) this rule;

(c) the Special Education Rules, August 2016, included in the Special Education Rules manual described in R277-750-2; and

(d) the annual Utah State Federal Application under Part B of the Individuals with Disabilities Education Act as amended in 2004.

KEY: special education
October 11, 2016 Art X Sec 3
Notice of Continuation August 15, 2018 Title 53E, Chapter 7, Part 2
53E-3-501(1)
53E-3-401(4)

R277. Education, Administration.
R277-752. Special Education Intensive Services Fund.
R277-752-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53F-2-309, which requires the Board to make rules establishing a distribution formula to allocate money appropriated to the board for the special education intensive services fund.

(2) The purpose of this rule is to establish:

(a) an application process for the special education intensive services fund; and

(b) a formula to distribute the funds.

R277-752-2. Definitions.

(1) "Highest impacted LEA cost ratio" means the quotient of, for a fiscal year:

(a) an LEA's unreimbursed expenses remaining after allocations are made from the high cost student fund described in R277-752-3; and

(b) an LEA's total state special education revenues from the prior fiscal year.

(2) "Local education agency" or "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(3) "Special education intensive services fund" means funding available to offset the costs of students whose educational program exceeds three times the state average per pupil expenditures.

R277-752-3. Application Process - Distribution Formula.

(1) To receive an annual allocation from the special education intensive services fund, an LEA shall annually submit to the Superintendent an application claiming:

(a) expenses that:

(i) are associated with providing direct special education and related services identified in a student's IEP; and

(ii) exceed three times the state average per pupil expenditures using data from the most recently published State Superintendent's Annual Report; and

(b) any reimbursements received for the expenses described in Subsection (1)(a)(i) from private insurance or Medicaid.

(2) From the special education intensive services fund, the Superintendent shall allocate:

(a) 50% of the appropriation to the high cost student fund to be distributed to LEAs based on the highest cost students with disabilities:

(i) as described in Section 53F-2-309; and

(ii) in accordance with Subsection (3); and

(b) 50% of the appropriation to the highly impacted LEA fund to be distributed to LEAs based on the highest impact to an LEA due to high cost students with disabilities:

(i) as described in Section 53F-2-309; and

(ii) in accordance with Subsection (4).

(3)(a) The Superintendent shall distribute funds to LEAs from the high cost student fund using a step down reimbursement process as described in this Subsection (3).

(b) The first step is to reimburse for the highest cost student equal to the difference between the highest cost student and the second highest cost student.

(c) The second step is to reimburse for the highest cost student and second highest cost student equal to the difference between the second highest cost student and the third highest cost student.

(d) Except as provided in Subsection (3)(e), the Superintendent shall continue the step down reimbursement process described in this subsection until funds are exhausted.

(e) If funding is insufficient to fully reimburse the cost for all students in a step, the Superintendent shall reallocate the remaining funds to the highly impacted LEA fund.

(f) In determining student cost under this Subsection (3), the Superintendent shall sum expenses described in Subsection (1)(a)(i) less:

(i) the state average per pupil expenditures using data from the most recently published State Superintendent's Annual Report; and

(ii) reimbursements from private insurance or Medicaid.

(4)(a) The Superintendent shall distribute funds to LEAs from the highly impacted LEA fund by providing a reimbursement equal to the difference between:

(i) an LEA's unreimbursed expenses remaining after allocations are made from the high cost student fund; and

(ii) the product of:

(A) an LEA's total state special education funding from the prior fiscal year; and

(B) the median of the highest impacted LEA cost ratios.

(b) The Superintendent shall provide a reimbursement described in Subsection (4)(a) starting with the LEA with the highest impacted LEA cost ratio until funds are exhausted.

KEY: special education, intensive services fund
February 7, 2017 **Art X Sec 3**
53E-3-401(4)
53F-2-309

R277. Education, Administration.

R277-753. LEA Reporting Requirements for Section 504 Students.

R277-753-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53F-2-512(2)(a), which directs the Board to make rules for implementation of a reimbursement program for special education funds to address Section 504 accommodations.

(2) The purpose of this rule is to establish reporting requirements for LEAs providing Section 504 accommodations to students.

R277-753-2. Definitions.

(1) "Autism" means a disability of verbal, non-verbal or social interaction that substantially limits one or more major life activities and does not require specialized instruction under special education services.

(2) "Brain injury impairment" or "Concussion impairment" means a short term disability of the brain caused by an external physical force that substantially limits one or more major life activities, and which adversely affects a student's access to the student's education.

(3) "Hearing impairment" means a hearing disability that substantially limits one or more major life activity, which may require assistive technology but does not require specialized instruction under special education services.

(4) "Learning impairment" means a learning disability, which includes, but is not limited to, dyslexia, dysgraphia, and dyscalculia, that substantially limits one or more major life activities, but does not require specialized instruction under special education services.

(5) "Major bodily function impairment" means an impairment to any of the following functions that adversely limit a student's access to the student's education:

(a) immune system function;
(b) normal cell growth;
(c) genitourinary function;
(d) bladder function;
(e) brain function;
(f) circulatory function;
(g) endocrine function;
(h) lymphatic function;
(i) special sensory organ and skin function;
(j) digestive function;
(k) bowel function;
(l) neurological function;
(m) respiratory function;
(n) cardiovascular function;
(o) hemic function;
(p) musculoskeletal function; and
(q) reproductive function.

(6) "Medical impairment" means a disability that is chronic or acute in nature, which may be active or in remission, and which substantially limits one or more major life activities, including, but not limited to:

(a) allergies;
(b) asthma;
(c) attention deficit disorder or attention deficit hyperactivity disorder;
(d) chemical sensitivities;
(e) diabetes;
(f) epilepsy;
(g) a heart condition;

(h) hemophilia;
(i) lead poisoning;
(j) leukemia;
(k) cancer;
(l) arthritis;
(m) nephritis;
(n) rheumatic fever;
(o) sickle cell anemia;
(p) Tourette syndrome;
(q) HIV/AIDS; or
(r) an acquired brain injury adversely affecting a student's access to the student's education, which may result from health problems such as:
(i) an hypoxic event;
(ii) encephalitis;
(iii) meningitis;
(iv) brain tumor; or
(v) stroke.
(7) "Mental health impairment" means a mental disability that is chronic or acute in nature, and which substantially limits one or more major life activities, including, but not limited to:
(a) anxiety;
(b) attention deficit disorder or attention deficit hyperactivity disorder;
(c) depression;
(d) post-traumatic stress disorder; or
(e) emotional or mental illnesses.
(8) "Orthopedic impairment" means a physical disability, which may be on-going or short term in nature, that substantially limits one or more major life activities, and which adversely affects a student's access to the student's education.
(9) "Other impairment" means any other disability not specifically defined in this rule, which substantially limits one or more major life activities.
(10) "Section 504" means section 504 of the Vocational Rehabilitation Act of 1973, 29 U.S.C. 701, et seq., which guarantees certain rights to disabled students.
(11) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows individual detailed student records to be exchanged electronically between public education LEAs and the Board.
(12) "Utah Program Improvement Planning System" or "UPIPS" is a secure website utilized by the Board Special Education Services section to collect compliance and fiscal LEA data regarding students with disabilities, required under state and federal law.

R277-753-3. LEA Section 504 Reporting Requirements.
(1) An LEA shall include a count of students with Section 504 accommodations in its daily UTREx submission.
(2) An LEA shall report financial costs incurred as a result of Section 504 accommodations to the Superintendent through UPIPS by June 30 annually.
(3) An LEA's data submissions under this rule shall be broken down in the following categories:
(a) Autism;
(b) Brain Injury or Concussion Impairment;
(c) Hearing Impairment;
(d) Learning Impairment;
(e) Major Bodily Function Impairment;
(f) Medical Impairment;
(g) Mental Health Impairment;
(h) Orthopedic Impairment; and
(i) Other Impairment.

KEY: reporting, requirements, Section 504
August 7, 2017 **Art X Sec 3**
53E-3-401(4)

R277. Education, Administration.
R277-800. Utah Schools for the Deaf and the Blind.
R277-800-1. 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 53E-8-204 which authorizes the Board to make rules regarding the administration of the Utah Schools for the Deaf and the Blind;
(c) Subsection 53E-8-204(3), which directs the Board to appoint Advisory Council members;
(d) Section 53E-8-402, which directs the Board to establish entrance policies and procedures to be considered, consistent with the IDEA, for student placement recommendations at the USDB;
(e) Section 53E-8-409, which directs the Board to establish the USIMAC and outline collaboration and operating procedures for USIMAC and USDB resources; and
(f) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
(2) The purpose of this rule is to provide standards and procedures for the operation of the USDB and the USDB outreach programs and services.

R277-800-2. Definitions.
(1) "Accessible media producer" means a company or agency that creates fully-accessible, specialized, student-ready formats for curriculum materials, such as:
(a) Braille;
(b) large print;
(c) audio books; or
(d) digital books.
(2) "Advisory Council" means the Advisory Council for the Utah Schools for the Deaf and the Blind appointed by the Board in accordance with Subsection 53E-8-204(3) and Section R277-800-4.
(3)(a) "Assessment" means the process of documenting, usually in measurable terms, knowledge, skills, attitudes and abilities pertaining to the fields of vision and hearing.
(b) An assessment may include the following areas of focus:
(i) a valid, reliable and appropriate assessment given to determine eligibility for placement and services by a team of qualified professionals and a student's parent or guardian;
(ii) a functional assessment accomplished by observation and measurement of daily living skills and functional use of vision or hearing, or both; and
(iii) academic evaluations as part of the Utah Performance Assessment System for Students (U-PASS), including an alternate assessment with appropriate accommodations as indicated on a student's IEP.
(4)(a) "Campus-based program" means a program provided by USDB that offers an alternative to an outreach program for students, ages three to 22, who are blind or visually impaired, deaf or hard of hearing, or deafblind.
(b) Under a campus-based program, services are provided by qualified USDB staff at a USDB site.
(5)(a) "The Chafee Amendment to the Copyright Act" or the "Chafee Amendment" is a federal law, 17 U.S.C. 121, 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.
(b) Authorized entities under the Chafee Amendment include 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.

(6) "Child Find" means activities and strategies designed to locate, evaluate, and identify individuals eligible for services under the IDEA.

(7) "Consultation" means a meeting for discussion or seeking advice.

(8) "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 IDEA.

(9) "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.

(10) "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.

(11) "Educational Resource Center" or "ERC" is a center under the direction of the USDB that:

(a) provides information, technology, and instructional materials to assist children who are deaf, hard of hearing, blind, visually impaired, and deafblind in progressing in the curriculum; and

(b) facilitates access to materials, information, and training for teachers and parents of children who are deaf, hard of hearing, blind, visually impaired, and deafblind.

(12) "Extension classroom" means a classroom provided by an LEA where USDB provides a full-time classroom teacher and related services to students who remain enrolled in the LEA's general education programs.

(13) "Hearing loss" 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.

(14) "National Instructional Materials Access Center" or "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.

(15) "National Instructional Materials Accessibility Standard" or "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.

(16)(a) "Outreach program" is a program provided by the USDB that offers an alternative to a campus-based program for students ages three to 22 who are blind or visually impaired, deaf or hard of hearing, or deafblind.

(b) In an outreach program, 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.

(17)(a) "Related services" means those supportive services that are necessary for the appropriate implementation of an IEP.

(b) Related services may include, but are not limited to:

(i) speech pathology;

(ii) audiology;

(iii) low vision services;

(iv) orientation and mobility;

(v) school counseling;

(vi) transportation;

(vii) school nursing services;

(viii) occupational therapy; or

(ix) physical therapy.

(18) "Section 504 accommodation plan" means a plan required by Section 504 of the Rehabilitation Act of 1973, which is designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(19) "Technical assistance" means assistance to public education employees, licensed educators, parents, and families in significant areas of need by someone who has the expertise necessary to give council and training in designated areas.

(20) "USDB" means the Utah Schools for the Deaf and the Blind.

(21) "Utah State Instructional Materials Access Center" or "USIMAC" means a center that receives NIMAS electronic file sets and produces them in the accessible alternate format required by students with print disabilities.

(22)(a) "Visual impairment," is an impairment in vision that, even with correction, adversely affects a student's educational performance.

(b) "Visual impairment" includes both partial sight and blindness that adversely affect a student's educational performance.

(23) "Weighted pupil unit" or "WPU" means the basic unit used to calculate the amount of state funds for which a school district or charter school is eligible.

R277-800-3. Operation of USDB.

(1) Consistent with Section 53E-8-204, the Board is the governing board of the USDB.

(2) The USDB superintendent, appointed consistent with Subsection 53E-8-204(2), is subject to the direction of the Board and the Superintendent.

(3) The USDB superintendent shall serve subject to the following:

(a) the USDB superintendent's term of office is for two years and until a successor is appointed;

(b) the Board shall set the USDB superintendent's compensation for services;

(c) the USDB superintendent shall have, at a minimum, an annual evaluation, as directed by the Board;

(d) the USDB superintendent qualifications shall be established by the Board; and

(e) the duties of the USDB superintendent shall be established by the Board.

(4) The Superintendent shall support, provide assistance, and work cooperatively with the USDB in providing services to designated Utah students.

(5) The Superintendent shall assign a liaison to provide appropriate supervision to the USDB to ensure compliance with the law.

(6) The Superintendent shall assist the USDB, its superintendent, and associate superintendents in adopting policies and preparing an annual budget that are consistent with the law.

(7) The Board shall approve the annual budget and expenditures of USDB.

(8)(a) 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.

(b) Qualifications of a USDB associate superintendent shall be aligned with the requirements of Section 53E-8-204.

(9)(a) The USDB superintendent and associate superintendents may hire staff and teachers as needed for the USDB.

(b) Educators and related service providers shall be appropriately licensed and credentialed for their specific assignments.

(10) In employment practices and decisions, the USDB and the USDB superintendent shall maintain the accreditation of the USDB school and programs.

(11) The USDB superintendent and associate superintendents shall communicate regularly and effectively with the Board and provide a written report to the Board at least annually in adequate time prior to the November legislative interim meeting, or at such other time as requested by the Board.

(12) 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 who are deaf, hard of hearing, blind, visually impaired, and deafblind; and

(d) a report on student achievement, including student achievement data, that provides:

(i) longitudinal data for both current and previous students served by USDB;

(ii) graduation rates; and

(iii) students exiting USDB and their educational placements after exiting.

(13) USDB shall ensure that each child or 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.

(14) USDB shall provide the Superintendent with a listing of past and current children or 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 and Community Council.

(1) The Board shall establish the Advisory Council for USDB and appoint Advisory Council members as directed in Section 53E-8-204.

(2) The Advisory Council shall have not more than 11 Board-appointed voting members and shall include members as qualified under Section 53E-8-204.

(3)(a) Advisory Council members shall serve two year terms and members may serve no more than three consecutive terms.

(b) Notwithstanding, Subsection (3)(a), advisory Council members serve at the pleasure of the Board.

(4) If an Advisory Council member resigns or is asked to resign, the Board shall appoint another member in a timely manner after seeking nominations.

(5) The Board shall assist the Advisory Council in developing and passing by-laws establishing procedures for:

(a) nominating Advisory Council members;

(b) recommending dismissal of Advisory Council members;

(c) ethical standards for Advisory Council members; and

(d) operation of the Advisory Council.

(6) Advisory Council bylaws may allow for representation on the Advisory Council of constituencies within the USDB community.

(7) The USDB shall establish a community council to operate in a comparable manner to a school community council under Section 53G-7-1202 through 53G-7-1203 and Rule R277-491.

(8) Members of the Advisory Council may serve as school community council members.

(9) The USDB school community council and election process shall be the same as for a district school in Section 53G-7-1202 and R277-491.

(10) 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.

R277-800-5. USDB or Student's District of Residence/Charter School as Designated LEA.

(1) To be eligible to receive free services from the USDB, a student must meet the requirements of Section 53E-8-401.

(2)(a) A student's IEP or Section 504 accommodation plan shall determine a student's placement at the USDB, in a district school or charter school.

(b) USDB shall limit its services for students who are school-age to those on an IEP or Section 504 accommodation plan.

(3) Consistent with Subsection 53E-8-401(3), an IEP team or Section 504 team shall determine the appropriate placement for each blind, deaf or deafblind student consistent with Board Special Education Rules incorporated by reference in Section R277-750-2.

(4) It is the responsibility of the student's district of residence or charter school to conduct Child Find , and to convene the initial IEP or Section 504 team meeting in order to determine a student's placement.

(a) 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.

(b) An LEA shall defer, where appropriate, to the parental preference in the IEP or Section 504 accommodation plan process consistent with Subsection 53E-8-401(3)(c).

(c) Notwithstanding, Subsection (4)(b), in compliance with the IDEA, the final placement decision, as documented on the IEP or Section 504 accommodation plan, shall document a free appropriate public education for the student and shall not be determined solely by parental preference.

(5)(a) If USDB is the designated LEA for a student, USDB has full responsibility for all services defined in the student's IEP or Section 504 accommodation plan.

(b) Notwithstanding USDB's designation as LEA for a student, a representative from the district of residence or charter school remains a required member of the IEP or Section 504 accommodation plan team.

(6) If a 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:

(a) may be designated by the team as a related service provider; and

(b) remains a required member of the student's IEP or 504 accommodation plan team.

(7) A student's IEP or Section 504 accommodation plan shall clearly define what services are to be provided by a related service provider.

(8) The IEP or Section 504 accommodation plan team shall determine the designated LEA for student placement.

(9) If a parent is dissatisfied with a student's placement at USDB, the student's district of residence, or charter school, the parent may access dispute resolution procedures, consistent with Utah State Board of Education Special Education Rules, adopted by the Board in Section R277-750-2

(10) If a student's IEP or Section 504 accommodation plan provides for services to be provided by both the USDB and the student's district of residence, or for the USDB and district of residence to share responsibility for serving a student, a parent may access dispute resolution procedures consistent with Utah State Board of Education Special Education Rules, adopted by the Board in Section R277-750-2.

R277-800-6. Assessment of USDB Students Served in LEAs of Residence.

(1) An appropriate specialist shall assess a student who may be deaf, hard of hearing, blind, visually impaired, or deafblind using statewide assessment results and in compliance with Board rule and state and federal law.

(2) The USDB shall establish an assessment policy and guidelines to implement required assessments, which address:

(a) appropriate, complete, and timely evaluations of students;

(b) procedures for administration of assessments in addition to those required by the law, as determined by IEPs, Section 504 accommodation plans, and individual teachers;

(c) complete and accurate required assessments available to eligible students consistent with state and LEA assessment timelines and availability of materials for non-disabled students;

(d) staff professional development and preparation on appropriate administration of assessments and reporting of assessment results; and

(e) procedures to ensure appropriate interpretation and use of assessments and results for parents and USDB personnel.

R277-800-7. Extension Classrooms.

(1) The USDB and an LEA may negotiate to share the costs for providing more efficient, cost-effective, and convenient services to students who are deaf, blind, or deafblind in extension classrooms in locations other than the USDB campus.

(2) If the USDB and an LEA enter into an agreement in accordance with Subsection (1), the LEA shall provide:

(a) classrooms;

(b) basic instructional materials;

(c) physical education, music, media, school lunch, and other programs and services, consistent with those programs and services provided to other students within the LEA;

(d) administrative support;

(e) basic secretarial services;

(f) special education related services; and

(g) IT support.

(3) If the USDB and an LEA enter into an agreement in accordance with Subsection (1), the USDB shall provide:

(a) classroom instructors, including aides; and

(b) instructional materials specific to the disability of the students.

(4) An agreement pursuant to Subsection (1) may reassign the responsibilities of the USDB and a school district or charter school as negotiated between the LEA and the USDB.

(5) An LEA shall claim the state WPU if the LEA provides all items or services identified in Subsection (2).

R277-800-8. USDB Fiscal Procedures.

(1) The USDB shall keep fiscal, program, and accounting records as required by the Board and shall submit reports required by the Board.

(2) The USDB shall follow state standards for fiscal procedures, auditing, and accounting, consistent with Subsection 53E-8-203(3).

(3) 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 53E-8-203.

(4)(a) 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.

(b) The five percent carryover prohibition does not apply to funds received under Section 53F-2-404 and Section 12 of the Utah Enabling Act.

(5)(a) The Superintendent shall recover federal reimbursement funds (IDEA and Medicaid) quarterly during the year.

(b) The Superintendent shall identify reimbursement amounts in the current year's budget, but in no event later than the subsequent year's budget.

(6)(a) The USDB shall use the revenue from the federal trust land grant designated for the benefit of the blind and the deaf, solely for the benefit of deaf, blind, and deafblind students.

(b) The recommended or designated use of federal trust land funds is subject to review by the Board.

R277-800-9. Utah State Instructional Materials Access Center.

(1) The USIMAC shall 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.

(2) 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.

(3) The Superintendent shall oversee the operations of the USIMAC.

(4) The USDB is the fiscal agent and operates the USIMAC to the extent of funds received annually from the Utah Legislature and the Board.

(5) An LEA may purchase accessible instructional materials using the LEA's 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.

(6) USIMAC shall provide a textbook in an alternate format by the beginning of the school year if requested no later than April 1 of the preceding school year by an LEA.

(7) The USDB ERC shall serve as the repository and distribution center for the USIMAC.

(8) A student qualifies for accessible instructional materials from the USIMAC, including Braille, audio, large print, or digital formats following an LEA determination that the student has a print disability in accordance with:

(a) the Chafee Amendment;

(b) IDEA; or

(c) Section 504 of the Rehabilitation Act.

(2)(a) An LEA may request textbooks for blind, vision impaired or deafblind students served by the USDB or the LEA consistent with a student's IEP or Section 504 accommodation plan.

(b)(i) When an LEA requests a core instructional textbook the USIMAC shall conduct a search for the textbook within existing resources, and if the textbook is available, the USIMAC shall send the textbook to the ERC for distribution to the LEA.

(ii) If a 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.

(iii) If a 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 send the textbook to the ERC for distribution to the LEA.

(iv) If a 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.

(v) If a textbook is not available for purchase, the LEA shall provide a regular print hard copy of the textbook to the USIMAC, which shall then produce the textbook and send it to the ERC for distribution.

(vi) The USIMAC shall produce a textbook in an LEA requested alternate format in accordance with the cost sharing outlined in a technical manual prepared by the Superintendent.

(c) The sharing of costs for purchases described in this R277-800-9 shall be outlined in a technical manual prepared by the Superintendent.

(3)(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 the IDEA and Board Instructional Materials Contract timelines.

(b) If the USIMAC is unable to obtain the NIMAS file set from the NIMAC because the publisher fails to timely provide the NIMAS file set to the NIMAC in accordance with the IDEA and Board Instructional Materials Contract timelines, the USIMAC may:

(i) bill the textbook publisher the difference in the cost of producing the alternate format textbook without benefit of the NIMAS file set; or

(ii) request authorization from the Board to seek damages from the publisher for failure to meet contract provisions.

(c) The Superintendent shall advise publishers of the provisions of this Subsection (3).

(d) The Utah Instructional Materials Commission created under R277-469 may 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.

(4)(a) An LEA may request and access audio books through the USIMAC, as appropriate, or through other sources.

(b) 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
September 21, 2017 **Art X Sec 3**
Notice of Continuation: July 19, 2017 **53E-3-401(4)**
53E-8-204
53E-8-402
53E-8-409

R277. Education, Administration.
R277-911. Secondary Career and Technical Education.
R277-911-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah constitution and state law;

(c) Section 53E-3-507, which allows the Board to establish minimum standards for CTE programs in the public education system; and

(d) Sections 53F-2-311 and 53G-6-708, which direct the Board to distribute specific amounts and percentages for specific CTE programs and facilitate administration of various programs.

(2) This rule establishes standards and procedures for LEAs seeking to qualify for funds administered by the Board for CTE programs in the public education system.

R277-911-2. Definitions.

(1) "Aggregate membership" means the sum of all days in membership during a school year for:

(a) the student;

(b) the program;

(c) the school;

(d) the LEA; or

(e) the state.

(2) "Approved program" means a program annually approved by the Board through the consent calendar process that meets or exceeds the state program standards or outcomes for career and technical education programs.

(3) "Bureau of Apprenticeship and Training" means a branch office for apprenticeship administered by the United States Department of Labor and located in Salt Lake City.

(4)(a) "Career and technical education" or "CTE" means organized educational programs that:

(i) prepare individuals for a wide range of high-skill, high-demand careers;

(ii) provide all students with a seamless education system from public education to post-secondary education, driven by a Plan for College and Career Readiness; and

(iii) provide students competency-based instruction, hands-one experiences, and certified occupational skills, culminating in further education and meaningful employment.

(b) CTE areas of study include:

(i) agriculture;

(ii) business;

(iii) family and consumer sciences;

(iv) health science;

(v) information technology;

(vi) marketing;

(vii) skilled and technical sciences; and

(viii) technology and engineering education.

(5)(a) "CTE pathway" means a planned sequence of courses within a program of study to assure strong academic and technical preparation connecting high school course work to work beyond high school.

(b) A CTE pathway ensures that a student will be prepared to take advantage of the full range of post-secondary options, including:

(i) on-the-job training;

(ii) certification programs; and

(iii) two- and four-year college degrees.

(6)(a) "Course" means an individual CTE class structured by state-approved standards.

(b) An approved course may require one or two periods for up to one year.

(c) Courses may be completed by demonstrated competencies or by course completion.

(7)(a) "Entry-level" means a set of tasks identified and validated by workers and employers in an occupation as those of a beginner in the field.

(b) Entry-level skills are a limited subset of the total set of tasks performed by an experienced worker in the occupation.

(c) Competent performance of entry-level tasks enhances employability and initial productivity.

(8) "Extended year program" means CTE programs no longer than 12 weeks in duration, offered during the summer recess, and supported by extended-year or other CTE funds.

(9) "CTE Maintenance of Effort" or "MOE" means the expenditure plan outlined in Subsection R277-911-4(1).

(10) "Program" means a combination of CTE courses that:

(a) provides the competencies for specific job placement or continued related training; and

(b) is outlined in the Plan for College and Career Readiness using all available and appropriate high school courses.

(11) "Program completion" means the student completion of a sequence of approved courses, work-based learning experiences, or other prescribed learning experiences as determined by the Plan for College and Career Readiness.

(12) "Regional consortium" means the LEAs, applied technology colleges, colleges and universities within the regions that approve CTE programs.

(13) "Registered apprenticeship" means a training program that:

(a) includes on-the-job training in a specific occupation combined with related classroom training; and

(b) has approval of the Bureau of Apprenticeship and Training.

(14) "Related training" means a course or program that is:

(a) directly related to an occupation;

(b) compatible with apprenticeship training;

(c) taught in a classroom; and

(d) approved by the Bureau of Apprenticeship and Training.

(15) "Scope and sequence" means the organization of all CTE courses and related academic courses into programs within the high school curriculum that lead to:

(a) specific skill certification;

(b) job placement;

(c) continued education; or

(d) training.

(16)(a) "Skill certification" means a verification of competent task performance.

(b) Skills certification is provided by an approved state or national program certification process.

(17) "Weighted pupil unit" or "WPU" means the basic unit used to calculate the amount of state funds for which an LEA is eligible.

(18) "Work-based learning" or "WBL" means a continuum of awareness, exploration, preparation, and training activities that combine structured learning and authentic work experiences implemented through industry and education partnerships.

R277-911-3. CTE Program Approval.

(1)(a) The Superintendent shall approve CTE programs based on verified training needs of the area and the competencies necessary to provide occupational opportunities for students.

(b) Programs are supported by a data base, including:

(i) local, regional, state, and federal manpower projections;

(ii) student occupational/interest surveys;

(iii) regional job profile;

(iv) advisory committee information; and

(v) follow-up evaluation and reports.

(2) LEA CTE directors shall meet the requirements specified in R277-911.

(3) Within available resources, instructional materials, including textbooks, reference materials, and media, shall reflect current technology, processes, and information for the CTE programs.

(4)(a) An LEA shall provide CTE guidance, counseling, and Board approved testing for students enrolled in CTE programs.

(b) An LEA shall develop a written plan for placement services with the assistance of local advisory committees, business and industry, and the Department of Workforce Services.

(c) An LEA shall develop a Plan for College and Career Readiness for all students, which shall include:

(i) a student's education occupation plans (grades 7-12), including job placement when appropriate;

(ii) all Board, local board and local charter board graduation requirements;

(iii) evidence of annual parent, student, and school representative involvement;

(iv) attainment of approved workplace skill competencies; and

(v) identification of a CTE post-secondary goal and an approved sequence of academic and CTE courses.

(5)(a) An LEA shall use curricula and instruction that is directly related to business and industry validated competencies.

(b) An LEA shall use a valid skill certification process to verify successful completion of competencies.

(c) An LEA shall provide instruction in proper and safe use of any equipment required for skill certification within the approved program.

(6) An LEA shall provide and safely maintain equipment and facilities, consistent with the validated competencies identified in the instruction standard and applicable state and federal laws.

(7)(a) Counselors and instructional staff shall hold valid Utah teaching licenses with endorsements appropriate for the programs they teach.

(b) Licenses and endorsements required under Subsection (7)(a) may be obtained through an institutional recommendation or through occupational and educational experience verified by the Board's licensure process.

(c) CTE program instructors shall keep technical and professional skills current through business and industry involvements in order to ensure that students are provided accurate state-of-the-art information.

(8) An LEA shall conduct CTE programs consistent with Board policies and state and federal laws and regulations on access that prohibit discrimination on the basis of:

(a) race;

(b) creed;

(c) color;

(d) national origin;

(e) religion;

(f) age;

(g) sex; and

(h) disability.

(9)(a) An LEA shall establish an active advisory council to review all CTE programs annually.

(b) An advisory council may serve several LEAs or a region.

(c) An advisory council reviews:

(i) program offerings;

(ii) quality of programs; and

(iii) equipment needs.

(10) A program advisory committee made up of individuals who are working in the occupational area shall support each state-funded approved CTE program at the LEA or regional level.

(11) LEAs are encouraged to make training available through nationally-chartered CTE student leadership organizations in each area of study.

(12) An LEA, with oversight by local program advisory committee members, shall make an annual evaluation of its CTE programs.

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

(1) To be eligible for state CTE program funds, an LEA shall first expend for CTE programs an amount equivalent to the regular WPU for students in approved CTE programs, grades nine through twelve, based on prior year aggregate membership in funded CTE programs, times the current year WPU value, less the amount for:

(a) college and career awareness;

(b) work-based learning; and

(c) comprehensive counseling and guidance.

(2) An LEA may thereafter expend State CTE program funds only for approved CTE programs, grades nine through twelve.

(3) An LEA that does not meet MOE may be subject to a corrective action plan and potential reduction of funds or penalty in accordance with R277-114.

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

(1)(a) WPUs shall be allocated for the added instructional costs of approved CTE programs operated or contracted by an

LEA.

(b) Programs and courses provided through technical colleges and higher education institutions do not qualify for added cost funds except for specific contractual arrangements approved by the Board.

(2)(a) Computerized or manually produced records for CTE programs shall be kept by:

(i) teacher;

(ii) class; and

(iii) core code.

(b) Records described in Subsection (2)(a) shall show clearly and accurately the entry and exit date of each student and whether a student has been absent from a CTE class ten consecutive days.

(3) Added cost funds shall not be generated:

(a) during bus travel;

(b) until a student starts attending an approved CTE course;

(c) when a student has been absent, without excuse, for the previous 10 days.

(4) Approved CTE programs shall receive funds determined by prior year hours of membership for approved programs.

(5) Allocations under this R277-911-5 are computed using grades nine through twelve aggregate membership in approved programs for the previous year with a growth factor applied to LEAs experiencing growth of one percent or greater in grades nine through twelve except as provided by R277-462 and R277-916.

(6) Added cost funds shall be used to cover the added CTE program instructional costs of LEA programs.

(7) An LEA that does not comply with the requirements of this Subsection may be subject to a corrective action plan and potential reduction of funds or penalty in accordance with R277-114.

R277-911-6. Disbursement of Funds -- Skill Certification.

(1) An LEA that demonstrates approved student skill certification may receive additional compensation.

(2)(a) To be eligible for skill certification compensation, an LEA shall show its student completer has demonstrated mastery of standards, as established by the Board.

(b) An authorized test administrator shall verify student mastery of the skill standards.

(3) The Superintendent may only disburse skill certification compensation if an approved skill certification assessment is developed for the program.

R277-911-7. Disbursement of Funds -- CTE Leadership Organization Funds.

(1) Participating LEAs sponsoring CTE leadership organizations shall be eligible for a portion of funds set aside for these organizations.

(2) Qualifying CTE leadership organizations shall be nationally chartered and include:

(a) SkillsUSA (an association of Skilled and Technical Sciences Education students);

(b) DECA (Distributive Education Clubs of America);

(c) FFA (Future Farmers of America);

(d) HOSA (Health Occupations Students of America);

(e) FBLA (Future Business Leaders of America);

(f) FCCLA (Family, Career and Community Leaders of America); and

(g) TSA (Technology Students Association).

(3) Up to 1% of the state CTE appropriation for LEAs shall be allocated to eligible LEAs based on documented prior year student membership in approved CTE leadership organizations.

(4)(a) A portion of funds allocated to an LEA for CTE leadership organizations shall be used to pay the LEA's portion of statewide administrative and national competition costs.

(b) An LEA shall use the remaining amount available for the LEA's CTE leadership organization expenses.

R277-911-8. Disbursement of Funds -- School District and Charter School WPUs.

(1) The Superintendent shall allocate WPUs for costs of administration of CTE programs as described in this section.

(2)(a) The Superintendent shall distribute Twenty (20) WPUs to a school district for costs associated with the administration of CTE.

(b) To qualify, a school district shall employ a minimum one-half time CTE director.

(3)(a) To encourage multidistrict CTE administrative services, the Superintendent shall distribute 25 WPUs to a school district that consolidates CTE administrative services with one or more other school districts;

(b) To qualify, a participating school district shall employ a full-time CTE director.

(4)(a) The Superintendent shall distribute Twenty-five (25) WPUs to a single charter school acting as fiscal agent, to provide CTE administrative services to a group of at least 10 charter schools offering CTE pathways, grades 9-12.

(b) If more than 10 charter schools offer CTE pathways, the Superintendent shall distribute an additional 5 WPUs for each additional charter school over 10.

(c) To qualify, the charter school acting as fiscal agent must employ a full-time CTE director.

(5)(a) A district or charter school receiving additional WPUs under Subsection (3)(a) or (4)(a) shall annually submit to the Superintendent a Memorandum of Understanding with each partnering district or school, which shall include:

(i) a scope of work to be performed by the full-time CTE director for each LEA or school involved;

(ii) provisions for sharing data under the agreement, including provisions for protecting the privacy of student education records under FERPA;

(iii) maintenance of effort requirements; and

(iv) other information as directed by the Superintendent.

(b) The Superintendent may withhold funds from a district or charter school under Rule R277-114 for failure to submit a memorandum of understanding as required by this rule.

(6)(a) The Superintendent shall distribute 10 WPUs to a small school district consisting of only necessarily existent small high school(s), where multi-district CTE administration is not feasible.

(b) To qualify, a small school district shall assign a CTE director to a minimum of part-time CTE administration.

(7) To qualify for 10, 20 or 25 CTE administrative WPUs as provided in this Subsections (1) through (6), a CTE director shall:

(a) hold or be in the process of completing requirements for a Education Leadership License Area of Concentration described in R277-505;

(b) have an endorsement in at least one career and technical area listed in Rule R277-518; and

(c)(i) have four years of experience as a full-time career and technical educator; or

(ii) complete a prescribed professional development program provided by the Superintendent within a period of two years following board appointment as an LEA CTE director.

(8) In addition to WPUs appropriated under Subsections (1) through (6), the Superintendent shall allocate funds to each approved high school as described in Subsections (9) through (16):

(9) The Superintendent shall distribute 10 WPUs to a high school that:

(a) conducts approved programs in a minimum of two

CTE areas specified in Subsection R277-911-1(4)(b);

(b) conducts a minimum of six different state-approved CTE courses including at least one CTE pathway; and

(c) has at least one approved career and technical student leadership organization.

(10) Consolidated courses in small schools may count as more than one course as approved by the Superintendent.

(11) The Superintendent shall distribute 15 WPUs to a high school that:

(a) conducts approved programs in a minimum of three CTE areas specified in Subsection R277-911-2(4)(b);

(b) conducts a minimum of nine different state-approved CTE courses including at least one CTE pathway; and

(c) has at least one approved CTE student leadership organization.

(12) Consolidated courses in small schools may count as more than one course as approved by the Superintendent.

(13) The Superintendent shall distribute 20 WPUs to a high school that:

(a) conducts approved programs in a minimum of four CTE areas specified in Subsection R277-911-2(4)(b);

(b) conducts a minimum of twelve different state-approved CTE courses including at least two CTE pathways; and

(c) has at least two approved CTE student leadership organization.

(14) Consolidated courses in small schools may count more than one course as approved by the Superintendent.

(15) The Superintendent shall distribute 25 WPUs to a high school that:

(a) conducts approved programs in a minimum of five CTE areas specified in Subsection R277-911-2(4)(b);

(b) conducts a minimum of fifteen different state-approved CTE courses including at least two CTE pathways; and

(c) has at least three approved CTE student leadership organizations.

(16) Consolidated courses in small schools may count more than one course as approved by the Superintendent.

(17)(a) A maximum of one approved alternative high school, as outlined in Rule R277-730, per school district may qualify for funds under Subsection (12).

(b) LEAs sharing an alternative school shall receive a prorated share.

(18) Programs and courses provided through school district technical centers may not receive funding under this section.

R277-911-9. Disbursement of Funds -- School District Technical Centers.

(1)(a) The Superintendent may award a maximum of forty WPUs for each school district operating an approved school district center.

(b) To qualify under the approved school district technical center provision, the school district shall:

(i) provide at least one facility other than an existing high school as a designated school district technical center;

(ii) employ a full-time CTE administrator for the center;

(iii) enroll a minimum of 400 students in the school district technical center;

(iv) prevent unwarranted duplication by the school district technical center of courses offered in existing high schools, applied technology colleges, and higher education institutions;

(v) centralize high-cost programs in the school district technical center;

(vi) conduct approved programs in a minimum of five CTE areas specified in Subsection R277-911-1(4)(b); and

(vii) conduct a minimum of fifteen different state-approved CTE courses.

R277-911-10. Disbursement of Funds -- Summer CTE Agriculture Programs.

(1)(a) To receive state summer CTE agriculture program funds, an LEA shall submit to the Superintendent, an application for approval of the LEA's program.

(b) An LEA shall submit its application prior to the annual due date specified by the Superintendent each year.

(c) The Superintendent shall send notification of approval of an LEA's program within ten calendar days of receiving the application.

(2) A teacher of a summer CTE agriculture program shall:

(a) hold a valid Utah teaching license, with an endorsement in agriculture, as outlined in Subsection R277-911-3(7);

(b) develop a calendar of activities which shall be approved by LEA administration and reviewed by the Superintendent;

(c)(i) work a minimum of eight hours a day in the summer CTE agriculture program;

(ii) An LEA may approve exceptions which shall be reflected in the calendar of activities;

(d) not engage in other employment, including self-employment, which conflicts with the teacher's performance in the summer CTE agriculture program;

(e) develop and file a weekly schedule and a monthly report outlining accomplishments related to the calendar of activities with:

(i) the school principal;

(ii) the LEA CTE director; and

(iii) the Superintendent; and

(f) visit the participating students a minimum of two times during the summer program with a minimum average of four on-site visits to students.

(3) College interns may be approved to conduct summer CTE agriculture programs upon approval by the Superintendent.

(4) Students enrolled in the summer CTE agriculture program shall:

(a) have on file in the LEA office the student's Plan for College and Career Readiness goal related to agriculture;

(b) in conjunction with the student's parent or employer and the teacher, develop an individual plan of activities, including a supervised occupational experience program;

(c) have completed the eighth grade; and

(d) have not have graduated from high school.

(5)(a) The Superintendent shall collect data from the program and staff of each LEA to ensure compliance with approved standards.

(b) An LEA shall submit to the Superintendent a final program report, on forms provided by the Superintendent on the annual due date specified by the Superintendent.

(6)(a) The Superintendent shall allocate Summer CTE agricultural funding to each LEA conducting an approved program for a minimum of 35 students lasting nine weeks.

(b) An LEA may receive funding for no more than nine weeks or 35 students.

(7) An LEA operating a program with fewer than 35 students per teacher or for fewer than nine weeks may only receive a prorated share of the summer CTE agricultural allocation.

R277-911-11. Disbursement of Funds - Comprehensive Counseling and Guidance; College and Career Awareness, and Work-Based Learning Programs.

(1) The Superintendent shall distribute funds to LEAs consistent with Section 53F-2-311.

(2) An LEA shall spend funds distributed for comprehensive guidance consistent with Subsection 53E-2-304(2)(b) and R277-462, which explain the purpose and criteria for student Plans for College and Career Readiness.

(3) An LEA may spend funds allocated under this section

to fund work-based learning programs consistent with Rules R277-915 and R277-916.

(4) An LEA may spend funds allocated under this section to fund College and Career Awareness programs consistent with Rule R277-916.

KEY: career and technical education
August 7, 2017 **Art X Sec 3**
Notice of Continuation June 6, 2017 **53E-3-507**
53F-2-311
53G-6-708

R277. Education, Administration.
R277-914. Career and Technical Student Organizations.
R277-914-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-507(1), which directs the Board to establish minimum standards for career and technical programs in the public education system;

(c) Subsection 53E-3-507(3), which directs the Board to cooperate with federal and state governments to administer programs which promote and maintain career and technical education; and

(d) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) make Career and technical student organizations fiscally accountable to the Board; and

(b) provide procedures and supervision toward that end.

R277-914-2. Definitions.

(1) "Career and technical education" or "CTE" means organized educational programs that:

(a) prepare individuals for a wide range of high-skill, high-demand careers;

(b) provide students with a seamless education system from public education to post-secondary education, driven by a Plan for College and Career Readiness; and

(c) provide students competency-based instruction, hands-on experiences, or certified occupational skills, culminating in further education and meaningful employment.

(2) "CTE areas of study" include:

(a) agriculture;

(b) business;

(c) family and consumer sciences;

(d) health science;

(e) information technology;

(f) marketing;

(g) skilled and technical sciences; and

(h) technology and engineering education.

(3) "Career and technical student organization" or "CTSO" means a designated student organization that:

(a) places emphasis on leadership and skill development;

(b) is integral to the career and technical programs at the secondary and postsecondary levels of instruction; and

(c) has local, state and national affiliation.

(4)(a) "CTSO advisor" means a professional in identified program areas designated by the Superintendent to direct a career and technical student leadership organization statewide.

(b) A CTSO advisor is most commonly a teacher in the program area and is paid a stipend by the Superintendent to administer and advise in a specific program area.

(5) "Funds designated for management of student organizations at the state level" means up to one percent (1%) of the CTE add-on fund allowed to be used for the management and operation of CTSOs at the state and local level as described in Subsection 53F-2-311(2)(d).

R277-914-3. Student Organization Advisory Boards.

(1) Each student organization designated by the Superintendent shall establish a statewide advisory board of not less than three members, one of which must be the Superintendent.

(2) Each program area CTSO shall develop and follow organization by-laws.

(3) Each CTSO advisory board shall have advisory fiscal oversight for the organization.

(4) Each CTSO advisory board shall conduct an annual performance evaluation of the work performed by the respective CTSO advisor.

R277-914-4. Fiscal Oversight of Student Organizations.

(1) A CTSO advisory board shall act consistent with fiscal procedures provided by the Superintendent.

(2) A CTSO advisory board shall submit all required financial records for auditing on a schedule established by the Superintendent.

(3) If requested by the Superintendent or the Board, a CTSO's financial records shall be submitted for auditing whenever there is a change in the CTSO advisor.

(4)(a) The Superintendent shall designate a school district or institution to act as the fiscal agent for a CTSO's fiscal account.

(b) The Superintendent shall work with the designated fiscal agent to provide oversight and accounting procedures for the CTSO fiscal account.

(5) The funds designated for management of student organizations at the state level shall be dispersed by the designated state fiscal agent for CTSOs through separate accounts for salaries, operating expenses and national conference travel.

KEY: secondary education, career and technical education
November 7, 2016 **53E-3-507(1)**
Notice of Continuation September 15, 2016 **53E-3-507(3)**
53E-3-401(4)

R277. Education, Administration.
R277-915. Work-based Learning Programs.
R277-915-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53G-7-902, which allows schools to offer WBL programs in accordance with Board rules.

(2) The purpose of this rule is to provide standards for WBL programs.

R277-915-2. Definitions.

(1) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(2)(a) "Participant" means a student enrolled in a school-sponsored work experience and career exploration program under Section 53G-7-902 involving both classroom instruction and work experience with a cooperating employer, for which the student may or may not receive compensation.

(b) Participant may include a student completing an apprenticeship.

(c) Participant does not include a student on work release.

(3) "School-based enterprise" means a business set up and run by supervised students learning to apply practical skills in the production of goods or services for sale or use by others.

(4) "Work site" or "workplace" means the actual location where employment occurs for a particular occupation, or an environment that simulates all aspects or elements of that employment, including school-based enterprises.

(5) "Work-based learning" or "WBL" means a continuum of awareness, exploration, preparation, and training activities that combine structured learning and authentic work experiences implemented through industry and education partnerships.

R277-915-3. Mandatory LEA Policy.

An LEA that has WBL programs that include assigning students to act as participants at off-campus sites or in on-campus simulations shall establish a policy which includes the following:

(1) training for student participants, student participant supervisors, and cooperating employers regarding health hazards and safety procedures in the workplace;

(2) standards and procedures for approval of off-campus work sites;

(3) transportation options for students to and from the work site;

(4) appropriate supervision by employers at the work site;

(5) adequate insurance coverage provided and identified either by the student, the program, or the LEA;

(6) appropriate supervision and assessment of the student by the LEA;

(7) appropriate involvement and approval by the student's parents in the WBL program;

(8) provision for risk or liability inherent in the WBL program developed in consultation with State Risk Management or the LEA's insurance provider; and

(9) a requirement that any WBL credit awarded maintains the integrity and rigor expected for high school graduation, as determined by the Board.

R277-915-4. Disbursement of Funds.

(1) The Superintendent shall align public elementary, secondary, and postsecondary or adult schools by LEA.

(2) The proportion of total WBL funding allocated for a participating LEA shall remain the same as the previous year unless:

(a) the LEA discontinues the program;

(b) the LEA does not meet program standards; or

(c) LEA proportions are adjusted by the Board.

(3) A participating LEA shall provide an equal match in funds to state appropriated WBL funds.

R277-915-5. Standards.

(1) WBL shall be integrated into all levels of the educational delivery system and shall be coordinated within the LEA and among regions.

(2) To be eligible for WBL funds, an LEA shall:

(a) have the program approved by the LEA board;

(b) employ licensed WBL coordination personnel with salaries and benefits matched by the local recipient of funds;

(c) document that a WBL committee representing all schools within the LEA:

(i) has been created;

(ii) is functioning effectively; and

(iii) regularly addresses WBL issues;

(d) conduct WBL activities utilizing information from:

(i) business and industry;

(ii) administrators;

(iii) teachers;

(iv) counselors;

(v) parents; and

(vi) students;

(e) develop work-based preparation, participation, and assessment activities for students and teachers involved in all WBL LEA activities;

(f) maintain evidence that WBL components have been integrated and coordinated with:

(i) elementary career awareness;

(ii) secondary career exploration;

(iii) integrated core activities;

(iv) College and Career Awareness; and

(v) comprehensive guidance and counseling;

(g) maintain evidence of WBL activities and assurances in each LEA developed in coordination with a student's:

(i) IEP;

(ii) Plan for College and Career Readiness; and

(iii) 504 requirements;

(h) require the inclusion of all student groups within the LEA in career development and preparation;

(i) demonstrate WBL coordination with employers and with other school and community development activities.

(j) verify that sufficient budget for a WBL coordinator, facilities, materials, equipment, and support staff is available;

(k) participate in initial state-sponsored WBL coordinated professional development and in periodic ongoing coordination and professional development activities;

(l) require that the WBL team utilize a database system developed by the LEA for the LEA's specific needs; and

(m) participate in the CTE Program Approval evaluation every three years.

R277-915-6. Consistency with Law and State and LEA Board Rules and Policies.

(1) A WBL experience shall be consistent with the provisions of the Fair Labor Standards Act, 29 U.S.C. Sec. 201, et seq.

(2) WBL programs shall operate consistently with Board rules and LEA polices, including:

(a) student transportation;

(b) credit toward graduation;

(c) attendance; and

(d) fee waivers.

KEY: public schools, work-based learning
February 7, 2017 **Art X Sec 3**
Notice of Continuation December 14, 2016 **53G-7-902**
53E-3-401(4)

R277. Education, Administration.
R277-916. College and Career Awareness.
R277-916-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;

(c) Section 53E-3-507, which allows the Board to establish minimum standards for career and technical education programs in the public education system; and

(d) Section 53F-2-311, which directs the Board to distribute specific funds to LEAs.

(2) The purpose of this rule is to establish standards and procedures for LEAs seeking to qualify for College and Career

Awareness Program funds administered by the Board.

R277-916-2. Definitions.

(1)(a) "College and Career Awareness" means a 7th grade core course comprised of activities encouraging students to explore college and career opportunities.

(b) "College and Career Awareness" is coordinated with the Comprehensive Counseling and Guidance program.

(2) "Weighted Pupil Unit" or "WPU" means the unit of measure that is computed in accordance with Section 53F-2-306, for the purpose of determining the costs of a program on a uniform basis for each LEA.

(3) "Work-Based Learning" or "WBL" means a continuum of awareness, exploration, preparation, and training activities that combine structured learning and authentic work experiences implemented through industry and education partnerships.

R277-916-3. Disbursement of Funds.

(1)(a) An LEA shall utilize College and Career Awareness funds to purchase and maintain needed equipment and supplies for the course, subject to the following:

(i) LEA expenditures shall be reasonable and necessary to sustain the College and Career Awareness program;

(ii) LEA expenditures shall be adequately documented;

(iii) an LEA may not use funds to cover the cost of goods and services for personal use;

(iv) an LEA may not use funds for costs associated with:

(A) entertainment;

(B) amusement;

(C) diversion; and

(D) social activities; and

(v) an LEA may only use funds for costs that will directly achieve program outcomes for students.

(b) Notwithstanding, Subsection (1)(a), an LEA may use up to 15% of available funds for teachers, counselors, and administrators to participate in on-going professional development sponsored by the Board.

(2) An LEA shall meet all requirements of this R277-916 in order to receive College and Career Awareness funding.

(3) College and Career Awareness funds shall be allocated to an LEA for an approved school using a base amount per school.

(4) The Superintendent shall distribute funds remaining after funds are distributed under Subsection (3), based on enrollment in grade 7 to approved schools based on the prior year's October 1 enrollment report for the previous year.

(5) An LEA shall annually complete a funding application with assurances of each school meeting College and Career Awareness standards.

(6) The Superintendent shall annually provide training to personnel from each school receiving funds under this Subsection (3).

(7) The Superintendent shall allocate continued funding to an LEA based on the LEA's success in meeting established standards.

R277-916-4. Standards.

(1) An LEA may qualify for College and Career Awareness funds consistent with the following:

(a) College and Career Awareness program funds may not be used for personnel costs;

(b) a school shall teach 180 days of College and Career Awareness as a stand alone course with distinct credit, incorporating each element set forth in Subsection R277-916-2(1);

(c) College and Career Awareness teachers and counselors shall have appropriate licenses and endorsements;

(d) a school shall utilize the services of a WBL coordinator, where available, to integrate grade level appropriate WBL activities into College and Career Awareness.

(e) if a WBL coordinator is not available, the College and Career Awareness team shall plan and provide WBL activities;

(f) a school shall integrate career development applications into the College and Career Awareness program and use the services of a counselor in the program;

(g) an LEA shall support staff development activities relevant to the core College and Career Awareness content adopted by the Board;

(h) College and Career Awareness personnel in a school shall fully participate in:

(i) evaluating the current program;

(ii) recommending changes or modifications; and

(iii) pilot testing and implementing new activities, materials, and resources; and

(i) College and Career Awareness personnel shall participate in the CTE Program Approval evaluation every three years.

KEY: college and career awareness, public schools

April 10, 2017	**Art X Sec 3**
Notice of Continuation February 14, 2017	**53E-3-401(4)**
	53E-3-507
	53F-2-311

R277. Education, Administration.

R277-920. School Improvement - Implementation of the School Turnaround and Leadership Development Act.

R277-920-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Title 53E, Chapter 5, Part 3, School Turnaround and Leadership Development Act, which requires the Board to make rules to establish:

(i) an appeal process for the denial of a school turnaround plan;

(ii) provisions regarding funding distributed to a low performing school;

(iii) criteria for granting an extension to a low performing school;

(iv) criteria for exiting a school that has demonstrated sufficient improvement;

(v) criteria for approving a teacher recruitment and retention plan;

(vi) implications for a low performing school; and

(vii) eligibility criteria, application procedures, selection criteria, and procedures for awarding incentive pay for the School Leadership Development Program.

(2) The purpose of this rule is to:

(a) enact provisions governing school improvement efforts; and

(b) implement and administer the School Turnaround and Leadership Development Act.

R277-920-2. Definitions.

(1) "Appeal committee" means the committee established by Section R277-920-5.

(2) "Committee" means a school turnaround committee established in accordance with Subsections 53E-5-303(1) or 53E-5-304(4).

(3) "Eligible school" means the same as that term is defined in Section 53E-5-307.

(4) "Low performing school" means a school that is for two consecutive school years in the lowest performing:

(a) 3% of the high schools statewide according to the percentage of possible points earned under the school accountability system; or

(b) 3% of the elementary, middle, and junior high schools statewide according to the percentage of possible points earned under the school accountability system.

(5) "High performing charter school" means the same as that term is defined in Section 53E-5-306.

(6) "Local education board" means a local school board or charter school governing board.

(7) "School improvement grant" means a Title I grant under the Elementary and Secondary Education Act, 20 U.S.C. Sec. 6303(g).

(8) "Schools in critical needs status" means a school that has been identified under Subsection R277-920-3(1).

(9) "School leader" means the same as that term is defined in Section 53E-5-309.

(10) "Title I school" means a school that receives funds under the Elementary and Secondary Education Act of 1965, Title I, 20 U.S.C. Sec. 6301 et seq.

R277-920-3. Superintendent's Identification of Schools for Critical Needs Status -- Readiness Review.

(1) Subject to Subsection (2), on or before September 30, the Superintendent shall identify schools for critical needs status if the school is a:

(a) low performing school;

(b) high school with a four-year adjusted cohort graduation rate of less than or equal to 67% for two consecutive school years;

(c) Title I school with chronically underperforming student groups as described in Section R277-920-11; or

(d) Title I school that:

(i) has not been identified under Subsection (1)(a), (b), or (c); and

(ii) performed in the lowest 5% of Title I schools over the past three years on average according to the percentage of points earned under the school accountability system.

(2) The Superintendent shall make the identification under:

(a) Subsection (1)(b) beginning with the 2018-2019 school accountability results and every two years thereafter;

(b) Subsection (1)(c) beginning with the 2022-2023 school accountability results and every three years thereafter; and

(c) Subsection (1)(d) beginning with the 2021-2022 school accountability results and every three years thereafter.

(3)(a) Except as provided in Subsection (3)(b), schools in critical needs status are required to comply with the provisions of Title 53E, Chapter 5, Part 3, School Turnaround and Leadership Development Act.

(b) Schools that are identified under Subsections (1)(b), (1)(c), and (1)(d) are exempt from the requirement to contract with an independent school turnaround expert described in Section 53E-5-305.

R277-920-4. School Turnaround Plan Submission and Approval Process.

(1) In addition to the requirements described in Subsection 53E-5-303(5), a plan shall include at least the following:

(a) if the school in critical needs status is a district school, a request to the local school board and district superintendent for:

(i) additional resources;

(ii) personnel; or

(iii) exemptions from district policy that may be contributing to the low performance of the district school; and

(b) a plan for management of school personnel, including:

(i) recruitment of an educator or school leader; and

(ii) professional development for an educator or school leader.

(2) A local education board shall include in the plan a strategy for sustaining school improvement efforts after a school exits critical needs status.

(3)(a) A local education board may approve or deny a plan in whole or in part, if the part of the plan the board denies is severable from the part of the plan the board approves.

(b) A local education board shall give a reason for a denial of each part of a plan.

(4) On or before January 15, a local education board of a low performing school shall submit a proposal described in Subsection 53E-5-303(1) or Subsection 53E-5-304(4) to the Superintendent for approval.

(5) A local education board shall submit a plan in accordance with Subsection 53E-5-303(7) or Subsection 53E-5-304(9) to the Board.

(6) In accordance with Subsection 53E-5-305(3), the Board may review and approve or deny a plan in whole or in part, if the part of the plan the Board denies is severable from the part of the plan the Board approves.

R277-920-5. Funding.

(1) The Superintendent shall annually designate an amount of funds available for distribution under this section, taking into consideration:

(a) variability in the number of schools that are identified on an annual basis;

(b) encumbered funds; and

(c) other program obligations.

(2) Subject to availability of funds, on or before January 30 of the school year in which a low performing school is identified, the Superintendent shall distribute at least $240,000 per low performing school to each local education board of a low performing school.

(3) Subject to availability of funds, in addition to the amount distributed under Subsection (2), the Superintendent shall distribute an amount equal to $30,000 for each of the following criteria that a school meets:

(a) the school is located in a county with a county seat that is over 100 miles away from Salt Lake City;

(b) the school is located within San Juan County; or

(c) the school:

(i)(A) has over 75 full time equivalent educators; and

(B) includes grade 12; or

(ii)(A) has over 37 full time equivalent educators; and

(B) does not include grade 12.

(4) The Superintendent shall distribute any funds available for distribution under Subsection (1) after the allocation of funds described in Subsections (2) and (3) to local education boards of low performing schools on a prioritized basis taking need for the funds, as demonstrated by the needs assessment conducted in accordance with Section 53E-5-302, into account.

(5)(a) The local education board shall use the funding distributed under this section to contract with an independent school turnaround expert, including travel costs, in accordance with Sections 53E-5-303 and 53E-5-304.

(b) A local education board shall use funding available after the allocation of funds under Subsection (5)(a) only for interventions identified in a school turnaround plan.

(6) The Superintendent may review uses of funds and contracts with independent school turnaround experts.

R277-920-6. Teacher Recruitment and Retention.

(1) As used in this section, "matching funds" means funds that are not allocated to a school under Section R277-920-5.

(2) In accordance with Section 53E-5-308, a local education board of a low performing school may seek and

receive matching funds from the state to implement strategies for teacher recruitment and retention identified in a plan described in Subsection (3).

(3) To qualify for matching funds under this section, on or before January 15, a local education board of a low performing school shall submit a plan to the Superintendent that:

(a) includes a strategy for teacher recruitment and retention for the school in critical needs status;

(b)(i) except as provided in Subsection (3)(b)(ii), is responsive to the needs assessment conducted in accordance with Section 53E-5-302; or

(ii) if the school was identified as a low performing school based on 2014-2015 school accountability results, includes a root cause analysis of the school's teacher recruitment and retention challenges, including:

(A) a clear definition of the problem to be solved;

(B) hypotheses for the causes of the problem;

(C) strategies to address the root causes of the problem;

(D) current data on teacher retention rates; and

(E) current recruitment and retention strategies;

(c) includes the amount of matching funds the local education board is requesting from the state;

(d) includes assurances that the local education board will allocate matching funds; and

(e) may include a stipend for educators who work non-contract hours to develop or implement strategies identified in a school improvement plan.

(4) The Superintendent shall:

(a) approve a plan that meets the criteria described in Subsection (3); and

(b) on or before March 1, distribute matching funds to a local education agency that has submitted an approved plan in an amount not to exceed:

(i) $1000 per teacher for schools identified based on 2014-2015 school accountability results; or

(ii) $1500 per teacher for schools identified based on 2016-17 school accountability results and each year thereafter.

R277-920-7. Appeal Process for Denial of a School Turnaround Plan.

(1) As used in this section "plan" means a school turnaround plan described in Subsection 53E-5-303(5).

(2) A committee or local education board may appeal the denial of a plan, in whole or in part, by following the procedures and requirements of this section.

(3) An appeal authorized by this rule:

(a) is an informal adjudicative proceeding under Section 63G-4-203; and

(b) shall be resolved by the date specified in Subsection 53E-5-305(6)(b).

(4)(a) A principal, on behalf of a committee, may request that the local education board reconsider the denial of a plan:

(i) by electronically filing the request:

(A) with the chair of the local education board; and

(B) on a form provided on the Board website; and

(ii) within 5 calendar days of the denial.

(b) The reconsideration request may include a modification to the plan if the committee approves the modification.

(c) The local education board shall respond to the request within 10 calendar days by:

(i) refusing to reconsider its action;

(ii) approving a plan, in whole or in part; or

(iii) denying a plan modification.

(d) The principal may appeal the denial of a plan under this Subsection (3):

(i) by electronically filing an appeal with the Superintendent on a form provided on the Board website; and

(ii) within 5 calendar days of the denial.

(e) An appeal filed under this subsection shall be resolved in accordance with Subsections (5) and (6).

(5) A district superintendent, on behalf of a local school board, or a charter school governing board chair, on behalf of a charter school governing board, may appeal the Board's denial of a plan:

(a) by electronically filing an appeal with the Superintendent on a form provided on the Board website; and

(b) within 5 calendar days of the denial.

(6)(a) At least three members of a Board committee, appointed by the Board as the appeal committee, shall review the written appeal.

(b) The appeal committee may ask the principal, district superintendent, local school board chair, or charter school governing board chair to:

(i) provide additional written information; or

(ii) appear personally and provide information.

(c) The appeal committee shall make a written recommendation within 5 business days of receipt of the appeal request to the Board to accept, modify, or reject the plan and give a reason for the recommendation.

(7) The Board may accept or reject the appeal committee's recommendation and the Board's decision is the final administrative action.

R277-920-8. Exit Criteria for a School in Critical Needs Status -- Extensions -- More Rigorous Interventions.

(1)(a) Except as provided in Subsection (1)(b), to exit critical needs status, a school shall demonstrate that the school no longer meets the criteria for which the school was identified:

(i) for the second and third years, consecutively, after which the school was identified for critical needs status; or

(ii) for two consecutive years by the end of the extension period described in Subsection (3).

(b) A school that was identified based on 2014-15 school accountability results is required to improve performance by at least one letter grade, as determined by comparing the school's letter grade for the 2014-15 school year to the school's letter grade for the 2017-18 school year.

(2) In determining whether a school has met the criteria described in Subsection (1), the Superintendent shall apply the indicators, weightings, and threshold scores described in the version of Title 53E, Chapter 5, Part 2, School Accountability System that was in place at the time the school was identified.

(3) If a school does not meet the exit criteria described in Subsection (1)(a), the school may qualify for an extension to continue current school improvement efforts for up to two years if the school:

(a)(i) has cut the difference by 50% between:

(A) the percentage of points earned in the school year in which the school was identified; and

(B) the percentage of points necessary to meet the exit criteria described in Subsection (1)(a); or

(ii) has met the exit criteria described in Subsection (1)(a) for only one year; and

(b) electronically files an extension request with the Superintendent within 15 days of the release of school accountability results, that provides rationale justifying an extension.

(4)(a) The Superintendent shall conduct an in-depth analysis of the alignment of the school's curriculum to the Utah core standards:

(i) in each school that qualifies for an extension under Subsection (3); and

(ii) that is individualized to each teacher.

(b) The Superintendent may require a local education board or school to:

(i) take actions to remedy issues identified in the analysis described in Subsection (4)(a); or

(ii) revise the school turnaround plan.

(5) If a school identified for critical needs status does not meet the exit criteria described in Subsection (1) or qualify for an extension as described in Subsection (3) the following groups shall make a recommendation to the Board on what action the Board should take:

(a) a state review panel, described in Subsection (7);

(b) if the school is a district school, the local school board, with input from the community as described in Subsection (8); and

(c) if the school is a charter school, the charter school authorizer with input from the community as described in Subsection (8).

(6) The groups described in Subsection (5) shall make a recommendation within 90 days of the release of school accountability results on whether the Board should:

(a) require personnel changes, including replacement of school leaders or teachers;

(b) if the school is a district school:

(i) require involuntary transfers of school leaders or teachers;

(ii) require the local school board to change school boundaries;

(iii) temporarily appoint a public or non-profit entity other than the local school board to manage and operate the school; or

(iv) permanently transfer control of a school to a public or non-profit entity other than the local education board;

(c) if the school is a charter school:

(i) require that the charter school governing board be replaced; or

(ii) require that the charter school authorizer close the school; or

(c) if the school is a charter school, require that the charter school authorizer:

(i) replace some or all members of the charter school governing board;

(ii) transfer operation and control of the charter school to:

(A) a high performing charter school; or

(B) the school district in which the charter school is located; or

(iii) close the school; or

(d) take other action.

(7)(a) The Superintendent shall appoint members of the state review panel subject to Subsection (7)(b).

(b) The state review panel shall include at least three members who each have demonstrated expertise in two or more of the following fields:

(i) leadership at the school district or school level;

(ii) standards-based elementary or secondary curriculum instruction and assessment;

(iii) instructional data management and analysis;

(iv) educational program evaluation;

(v) educational program management;

(vi) teacher leadership;

(vii) change management;

(viii) organizational management; or

(ix) school budgeting and finance.

(c) The state review panel shall critically evaluate at least:

(i) whether the local education agency has the capacity to implement the changes necessary to improve school performance;

(ii) whether the school leadership is adequate to implement change to improve school performance;

(iii) whether the school has sufficient authority to implement change;

(iv) whether the plan is being implemented with fidelity;

(v) whether the state and local education board provided sufficient resources to the school to support school improvement efforts, including whether the local school board prioritized school district funding and resources to the school in accordance with Section 53E-5-303;

(vi) the likelihood that performance can be improved within the current management structure and staffing; and

(vii) the necessity that the school remain in operation to serve students.

(8) A local school board and charter school authorizer shall develop recommendations under this section in collaboration with:

(a) parents of students currently attending the school;

(b) teachers, principals, and other school leaders at the school;

(c) stakeholders representing the interests of students with disabilities, English learners, and other vulnerable student populations; and

(d) other community members and community partners.

R277-920-9. School Leadership Development Program.

(1) A school leader may apply to participate in the School Leadership Development Program if the school leader:

(a) is assigned to a school in critical needs status; or

(b) is nominated by the school leader's district superintendent or charter school governing board to participate.

(2) A school leader who meets the requirements of Subsection (1) may apply to participate in the School Leadership Development Program by electronically submitting an application to the Superintendent on a form provided on the Board website by the date specified on the Board website.

(3)(a) The Superintendent shall select a school leader to participate in the School Leadership Development Program based on the following selection criteria:

(i) First priority shall be given to a school leader who is assigned to a low performing school;

(ii) second priority is given to a school leader who is assigned to a school in critical needs status that is not a low performing school; and

(iii) third priority is given to a school leader who is nominated by the school leader's district superintendent or charter school governing board.

(b) Notwithstanding Subsection (3)(a), the Superintendent may give priority to a school leader who has not received prior leadership training before selecting a school leader who has received prior leadership training.

(4)(a) In accordance with Subsection 53E-5-309(4), the Superintendent shall award incentive pay to a school leader within 30 days after the school leader:

(i) completes the School Leadership Development Program; and

(ii) submits a written agreement to the Superintendent to work as described in Subsection 53E-5-309(4).

(b) The Superintendent shall evenly divide the appropriation among the school leaders who meet the requirements of this Subsection (4).

(5) The Superintendent may award incentive pay to a school leader described in Subsection (5) for up to five years.

R277-920-10. School Recognition and Reward Program.

(1) The Superintendent shall distribute school recognition and reward program money to the principal of an eligible school:

(a) in accordance with Section 53E-5-307; and

(b) within 30 days of the Board's official release of school grades for the year the eligible school is eligible for an award of money.

(2) The Superintendent shall notify the principal of an eligible school within 15 days of the Board's official release of school grades:

(a) that the eligible school is eligible for an award of money pursuant to Section 53E-5-307; and

(b) of the amount of the award that the eligible school will receive.

(3) In accordance with Section 53E-5-307, the principal shall distribute the money received under Subsection (1):

(a) to each educator assigned to the school for all of the years the school was identified as a low performing school; and

(b) in a pro-rated manner to each educator assigned to the school for less time than the school was identified as a low performing school.

R277-920-11. Superintendent's Identification of Schools for Targeted Needs Status.

(1) As used in this section, "student groups" means a group of 10 or more students:

(a) who are economically disadvantaged;

(b) with disabilities;

(c) who are English learners;

(d) who are African American;

(e) who are American Indian;

(f) who are Asian;

(g) who are Hispanic;

(h) who are Multiple races;

(i) who are Pacific Islander; or

(j) who are White.

(2)(a) Subject to Subsection (2)(b), the Superintendent shall identify for targeted needs status any school with one or more student groups who:

(i) for two consecutive years, is assigned a percentage of points in the state's accountability system that is equal to or below the percentage of points associated with the lowest rating in the state's accountability system; and

(ii) is not currently identified for critical needs status under Section R277-920-3.

(b) The Superintendent shall make the identification under Subsection (2)(a) beginning with the 2018-2019 school accountability results and every year thereafter.

(3) A school identified under Subsection (2) shall develop and implement a plan to improve performance of the student group that was the subject of the identification under Subsection (2), in accordance with the Elementary and Secondary Education Act of 1965, 20 U.S.C. Sec. 6301 et seq.

(4) To exit targeted needs status, a school shall demonstrate that the school no longer meets the criteria for which the school was identified for two consecutive years within four school years after the month in which the school was identified.

(5) The Superintendent shall identify a school that does not meet the exit criteria described in Subsection (4) as a school with chronically underperforming student groups as described in Section R277-920-3.

KEY: principals, school improvements, school leaders
January 9, 2018 **Art X, Sec 3**
53E-3-401(4)
Title 53E, Chapter 5, Part 3

R277. Education, Administration.
R277-921. Strengthening College and Career Readiness Program.
R277-921-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests the general control and supervision of the public education system in the Board;

(b) Subsection 53E-3-401(4), which authorizes the Board to adopt rules in accordance with its responsibilities; and

(c) Section 53F-5-204, which requires the Board to make rules regarding the program.

(2) The purpose of this rule is to establish:

(a) procedures and criteria for applying for and awarding a grant; and

(b) reporting requirements for a grantee.

R277-921-2. Definitions.

(1) "Certificate" means the certificate described in Subsection 53F-5-204(3)(a) that a school counselor may receive through participation in the program.

(2) "Grant" means payment of a course fee for a course required to earn the certificate.

(3) "Program" means the Strengthening College and Career Readiness Program created in Section 53F-5-204.

(4) "School counselor" means a person who:

(a) holds a Utah School Counselor License;

(b) has a master's degree or higher from an accredited institution;

(c) is an employee of an LEA who provides counseling and information to a student about an educational or career choice;

(d) has received an evaluation as effective or higher through the LEA's evaluation system; and

(e) is recommended to participate in the program by a supervisor.

R277-921-3. Grant Application.

(1) An LEA may apply for a grant on behalf of a school counselor by submitting an application:

(a) provided on USOE's website;

(b) to the Superintendent; and

(c) except as provided in Subsection (2), on or before June 30.

(2) If the annual appropriation for the program exceeds the grant requests, the Superintendent may extend the deadline specified in Subsection (1)(c) by posting a new deadline on USOE's website.

R277-921-4. Procedure and Criteria for Awarding Grant.

(1) If the grant applications exceed the annual appropriation for the program, the Superintendent shall give preference in awarding a grant to an applicant if:

(a) the school where the school counselor works has a state approved Comprehensive Counseling and Guidance Program;

(b) the school where the school counselor works meets the school counselor-to-student ratio of 1:350, according to Rule R277-462; and

(c) the school counselor is licensed as a school counselor according to Rule R277-506.

(2) A school counselor who fails to complete a course that is paid for by a grant shall repay the course fee to the Superintendent.

R277-921-5. Reporting Requirements for Grantee.

After completing the course work necessary to receive the certificate, the school counselor shall submit to the Superintendent:

(1) an action plan to implement the skills developed through earning the certificate to improve students' college and career readiness; and

(2) an application that is provided on USOE's website to add the certificate to the school counselor's license.

KEY: counseling, grant programs, college and career readiness
December 8, 2015 **Art X, Sec 3**
53E-3-401(4)
53F-5-204

R277. Education, Administration.
R277-922. Digital Teaching and Learning Grant Program.
R277-922-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53F-2-510, Digital Teaching and Learning Grant Program, which requires the Board to:

(i) establish a qualifying grant program; and

(ii) adopt rules related to administration of the Digital Teaching and Learning Grant Program.

(2) The purpose of this rule is to:

(a) establish an application and grant review committee and process;

(b) give direction to LEAs participating in the Digital Teaching and Learning Program.

R277-922-2. Definitions.

(1) "Advisory committee" means the Digital Teaching and Learning Advisory Committee:

(a) established by the Board as required in Section 53F-2-510; and

(b) required to perform the duties described in R277-922-5.

(2) "LEA plan" has the same meaning as that term is defined in Section 53F-2-510.

(3) "Master plan" means Utah's Master Plan: Essential Elements for Technology-Powered Learning incorporated by reference in R277-922-3.

(4) "Program" has the same meaning as that term is defined in Section 53F-2-510.

(5) "Participating LEA" means an LEA that:

(a) has an LEA plan approved by the Board; and

(b) receives a grant under the program.

R277-922-3. Incorporation of Utah's Master Plan by Reference.

(1) This rule incorporates by reference Utah's Master Plan: Essential Elements for Technology-Powered Learning, October 9, 2015, which establishes:

(a) the application process for an LEA to receive a grant under the program; and

(b) a more detailed description of the requirements of an LEA plan.

(2) A copy of the Master Plan is located at:

(a) https://www.uen.org/digital-learning/taskforce.shtml; and

(b) the Utah State Board of Education, 250 East 500 South, Salt Lake City, Utah 84111.

R277-922-4. LEA Planning Grants.

(1) An LEA may apply for a planning grant in lieu of preparing an LEA plan and receiving a Digital Teaching and Learning Grant as described in this rule.

(2) A planning grant awarded under Subsection (1) shall be in the amount of $5,000.

(3) In order to qualify for a planning grant, an LEA shall:

(a) send an LEA representative to a pre-grant submission training conducted by the Superintendent; and

(b) complete the readiness assessment required in Section 53F-2-510.

(4)(a) If an LEA receives a planning grant, the LEA shall submit an LEA plan as set forth in Section R277-922-8 for the subsequent school year.

(b) An LEA that fails to submit an LEA plan in the subsequent year shall reimburse funds awarded under Subsection (2) to the program.

R277-922-5. Digital Teaching and Learning Advisory Committee Duties.

(1) The advisory committee shall include the following individuals who will serve as non-voting chairs:

(a) the Deputy Superintendent of Instructional Services or designee; and

(b) the Director of the Utah Education and Telehealth Network or designee.

(2) In addition to the chairs described in Subsection (1), the Board shall appoint five members to the advisory committee as follows:

(a) the Digital Teaching and Learning Coordinator;

(b) one member who represents a school district with expertise in digital teaching and learning;

(c) one member who represents a charter school with expertise in digital teaching and learning; and

(d) two members that have earned a national certification in education technology, that may include a certification from the Certified Education Technology Leader from the Consortium for School Networking (CoSN).

(3) The advisory committee shall:

(a) oversee review of an LEA plan to determine whether the LEA plan meets the criteria described in Section R277-922-8;

(b) make a recommendation to the Superintendent and the Board on whether the Board should approve or deny an LEA plan;

(c) make recommendations to an LEA on how the LEA may improve the LEA's plan; and

(d) perform other duties as directed by:

(i) the Board; or

(ii) the Superintendent.

(4) The advisory committee may select additional LEA plan reviewers to assist the advisory committee with the work described in Subsection (3).

(5) The advisory committee, or the Superintendent on behalf of the advisory committee, shall present the advisory committee's recommendations on whether to approve or deny each LEA plan to the Board for the Board's approval.

R277-922-6. Board Approval or Denial of LEA Plans.

(1) The Board will either approve or deny each LEA plan submitted by the advisory committee.

(2) If the Board denies an LEA's plan, the LEA may amend and re-submit the LEA's plan to the advisory committee until the Board approves the LEA plan.

R277-922-7. Pre-LEA Plan Submission Requirements.

(1) Before an LEA submits an LEA plan to the advisory committee for approval by the Board, an LEA shall:

(a) have an LEA representative participate in a pre-grant submission training conducted by the Superintendent;

(b) require the following individuals to participate in a leadership and change management training conducted by the Superintendent:

(i) a representative group of school leadership from schools participating in the program;

(ii) the school district superintendent or charter school executive director;

(iii) the LEA's technology director; and

(iv) the LEA's curriculum director; and

(c) complete the readiness assessment required in Section 53F-2-510.

(2) A member of an LEA's local school board or charter

school governing board and other staff identified by the LEA may participate in:

(a) a pre-grant submission training conducted by the Superintendent as described in Subsection (1)(a); or

(b) a leadership and change management training conducted by the Superintendent as described in Subsections (1)(b).

R277-922-8. LEA Plan Requirements.

(1) An LEA shall develop an LEA plan in cooperation with educators, paraeducators, and parents,

(2) An LEA plan shall include:

(a) an LEA's results on the readiness assessment required in Section 53F-2-510;

(b) a statement of purpose that describes the learning objectives, goals, measurable outcomes, and metrics of success an LEA will accomplish by implementing the program, including the following outcomes:

(i) a 5% increase on each school's performance on SAGE using a baseline of the school's 2015-16 SAGE proficiency scores by the end of the third year of the LEA's implementation of the program; or

(ii) a school level outcome:

(A) selected by the LEA;

(B) included in the LEA's plan; and

(C) approved by the advisory committee;

(c) long-term, intermediate, and direct outcomes as defined in the Master Plan and identified by an LEA that may include:

(i) student achievement on statewide assessments;

(ii) cost savings and improved efficiency relating to instructional materials, facilities, and maintenance;

(iii) attendance;

(iv) discipline incidents;

(v) parental involvement;

(vi) citizen involvement;

(vii) graduation rates;

(viii) student enrollment in higher education;

(ix) dropout rates;

(x) student technology proficiency for college and career readiness;

(xi) teacher satisfaction and engagement; or

(xii) other school level outcomes approved by the advisory committee or the Board;

(d) an implementation process structured to yield an LEA's school level outcomes;

(e) a plan for infrastructure acquisition;

(f) a process for procurement and distribution of the goods and services an LEA intends to use as part of an LEA's implementation of the program;

(g) a description of necessary high quality digital instructional materials;

(h) a detailed plan for student engagement in personalized learning;

(i) technical support standards for implementation and maintenance of the program that:

(i) include support for hardware and Internet access; and

(ii) remove technical support burdens from the classroom teacher;

(j) proposed security policies, including security audits, student data privacy, and remediation of identified lapses;

(k) an inventory of an LEA's current technology resources, including software, and a description of how an LEA will integrate those resources into the LEA's implementation of the program;

(l) a disclosure by an LEA of the LEA's current technology expenditures;

(m) the LEA's overall financial plan, including use of additional LEA non-grant funds, to be utilized to adequately fund the LEA plan;

(n) a description of how an LEA will:

(i) provide high quality professional learning for educators, administrators, and support staff participating in the program, including ongoing periodic coaching; and

(ii) provide special education students with appropriate software;

(o) a plan for digital citizenship curricula and implementation;

(p) a plan for how an LEA will ensure that schools use software programs with fidelity in accordance with:

(i) the recommended usage requirements of the software provider; and

(ii) the best practices recommended by the software or hardware provider; and

(q) a plan for how an LEA will monitor student and teacher usage of the program technology.

(2)(a) An LEA shall include the LEA's proposed implementation of the program over multiple years in the LEA plan.

(b) An LEA must demonstrate the financial ability to fully fund the LEA plan using both grant and non-grant funds.

(3) An LEA's approved LEA plan is valid for three years, and may be required to be reapproved by the advisory committee and the Board after three years of implementation.

(4) An LEA is not required to implement the program in kindergarten through grade 4.

R277-922-9. Distribution of Grant Money to Participating LEAs.

(1) If an LEA's plan is approved by the Board, the Superintendent shall distribute grant money to the participating LEA as described in this section.

(2)(a) The amount available to distribute to participating charter schools is an amount equal to the product of:

(i) October 1 headcount in the prior year at charter schools statewide, divided by October 1 headcount in the prior year in public schools statewide; and

(ii) the total amount available for distribution under the program.

(b) The Superintendent shall distribute to participating charter schools the amount available for distribution to participating charter schools in proportion to each participating charter school's enrollment as a percentage of the total enrollment in participating charter schools in the prior year.

(c) A new LEA or new charter school satellite campus shall be funded based on the new LEA or new charter school satellite campus's projected October 1 headcount.

(3) The Superintendent shall distribute grant money to the Utah Schools for the Deaf and the Blind in an amount equal to the product of:

(a) October 1 headcount in the prior year at the Utah Schools for the Deaf and the Blind, divided by October 1 headcount in the prior year in public schools statewide; and

(b) the total amount available for distribution under this section.

(4) Of the funds available for distribution under the program after the allocation of funds for the Utah Schools for the Deaf and the Blind and participating charter schools, the Superintendent shall distribute grant money to participating LEAs that are school districts as follows:

(a) the Superintendent shall distribute 10 percent of the total funding available for participating LEAs that are school districts to the participating LEAs as a base amount on an equal basis; and

(b) the Superintendent shall distribute the remaining 90% of the funds to the participating LEAs on a per-student basis, based on the October 1 headcount in the prior year.

(5)(a) If an LEA's plan is not approved during year one of the program, the advisory committee and the Digital Teaching

and Learning Coordinator shall provide additional supports to help the LEA become a qualifying LEA.

(b) The Superintendent shall redistribute the funds an LEA would have been eligible to receive, in accordance with the distribution formulas described in this section, to other qualifying LEAs if the LEA's plan is not approved:

(i) after additional support described in Subsection (5)(a) is given; and

(ii) by no later than December 31 of the school year for which the grant is being awarded.

(6) A non-qualifying LEA may reapply for grant money in subsequent years based on the LEA's plan being approved by the Board.

R277-922-10. Prohibited Uses of Grant Money.

A participating LEA may not use grant money:

(1) to fund nontechnology programs;

(2) to purchase mobile telephones;

(3) to fund voice or data plans for mobile telephones; or

(4) to pay indirect costs charged by the LEA.

R277-922-11. Participating LEA Reporting Requirements.

Beginning with the school year after a participating LEA's first year implementation of an LEA plan, a participating LEA shall annually:

(1) review how the participating LEA:

(a) redirected funds through the participating LEA's implementation of the LEA plan; and

(b) made progress toward implementation; and

(2) on or before October 1, report the potential savings identified in Subsection (1) to the Superintendent.

R277-922-12. Evaluation of LEA Program Implementation.

(1) An evaluation conducted by the independent evaluator described in Section 53F-2-510 shall include a review of:

(a) a participating LEA's implementation of the program in accordance with the participating LEA's LEA plan;

(b) a participating LEA's progress toward meeting the school level outcomes in the participating LEA's LEA plan.

(2) After an evaluation described in Subsection (1), if the Superintendent determines that a participating LEA is not meeting the requirements of the participating LEA's LEA plan the Superintendent:

(a) shall:

(i) provide assistance to the participating LEA; and

(ii) recommend changes to the LEA's LEA plan; or

(b) after at least two findings of failure to meet the requirements of the participating LEA's LEA plan, may recommend that the Board terminate the participating LEA's grant money.

KEY: digital teaching and learning, grant programs
October 11, 2016 **Art X Sec 3**
53E-3-401(4)
53F-2-510

R277. Education, Administration.
R277-923. American Indian and Alaskan Native Education State Plan Pilot Programs.
R277-923-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

(b) Section 53F-5-603, which provides that the Board may make rules related to the pilot programs; and

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide:

(a) criteria for evaluating grant applications; and

(b) procedures for:

(i) a school district to apply to the Board to receive grant money; and

(ii) the review of the use of grant money.

R277-923-2. Definitions.

(1) "American Indian and Alaskan Native concentrated school" has the same meaning as that term is defined in Section 53F-5-601.

(2) "Program site" means the school where an LEA plans to use grant money and implement the LEA's program.

R277-923-3. Grant Application.

(1) An LEA may apply for a grant described in Section 53F-5-603 by submitting an application to the Superintendent on or before the last Friday in May.

(2) The Superintendent shall develop a grant application and make the grant application available to LEAs that meet the eligibility as an American Indian and Alaskan Native concentrated school.

R277-923-4. Procedure and Criteria for Awarding a Grant.

(1) The Superintendent shall award:

(a) one American Indian and Alaskan Native Education State Plan Pilot Program grant to an LEA to serve one or more program sites for the five-year pilot program created in Subsection 53F-5-602(1); and

(b) one grant to an LEA to serve one or more program sites for the four-year pilot program created in Subsection 53F-5-602(2).

(3) The Superintendent shall award a grant described in Subsection (1) to an LEA based on the following criteria:

(a) up to 20 points will be awarded based on the percentage of American Indian and Alaskan Native students enrolled in the program sites;

(b) up to 15 points will be awarded based on the educator recruiting and retention needs of the program sites;

(c) up to 15 points will be awarded based on the strength of the LEA's program design plan;

(d) up to 10 points will be awarded based on the LEA's plan to objectively evaluate the success of the LEA's program design plan; and

(e) up to 10 points will be awarded based on the strength of the LEA's proposed budget and how many educators the LEA plans to serve.

KEY: Native Americans, Alaskan Natives, grant programs, teacher retention
August 7, 2017 **Art X Sec 3**
53F-5-603
53E-3-401(4)

R277. Education, Administration.
R277-924. Partnerships for Student Success Grant Program.
R277-924-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

(b) Section 53F-5-406, which requires the Board to make rules to administer the Partnerships for Student Success Grant Program; and

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide:

(a) criteria for evaluating grant applications; and

(b) procedures for:

(i) an eligible partnership to apply to the Board to receive grant money; and

(ii) the evaluation of an eligible partnership's use of grant money.

R277-924-2. Definitions.

(1) "Eligible partnership" means the same as that term is defined in Section 53F-5-401.

(2) "Eligible school feeder pattern" means the same as that term is defined in Section 53F-5-401.

(3) "Grant program" means the Partnerships for Student Success Grant Program established in Section 53F-5-402.

(4) "Lead applicant" means an LEA or local nonprofit organization designated by an eligible partnership to act as the lead applicant for a grant described in Title 53F, Chapter 5, Part 4, Partnerships for Student Success Grant Program and this Rule.

R277-924-3. Grant Application.

(1) The Superintendent shall:

(a) develop a grant application that allows an eligible partnership, through the lead applicant, to apply to participate in the grant program; and

(b) make the grant application available on the Board's website.

(2) An eligible partnership may apply for a grant described in Section 53F-5-402 by submitting an application to the Superintendent:

(a) on or before September 1, 2016; or

(b) on or before the date published on the Board's website.

(3)(a) An eligible partnership or lead applicant may notify the Superintendent of the eligible partnership's intention to apply for a grant at any time.

(b) If an eligible partnership intends to be considered for a grant for the upcoming school year, the eligible partnership shall submit a letter of intent by the deadline established by the Superintendent and published on the Board's website.

(4) For each year the Superintendent is authorized to solicit grant applications, the Superintendent shall publish a timeline on the Board's website by March 1, including a date for the application release, and due dates for the LEA to submit required materials.

(5) The Superintendent shall evaluate each application using the criteria described in Section R277-924-4 to determine if the applying partnership is an eligible partnership.

(6) The Superintendent shall notify the lead applicant of successful receipt of a grant by July 1.

R277-924-4. Procedure and Criteria for Awarding a Grant.

(1) The Superintendent shall award grants to eligible partnerships based on the amount of funding available for the grant program.

(2) The Superintendent shall award the grant described in Subsection (1) to an eligible partnership based on the following criteria:

(a) the percentage of students who live in families with an income at or below 185% of the federal poverty level enrolled in schools within the eligible school feeder pattern;

(b) the comprehensive needs assessment of the eligible partnership, including the shared goals, outcomes and measurement practices based on the unique community needs and interests;

(c) the proposed program services to be implemented based on the comprehensive needs assessment described in Subsection (2)(b), including how the eligible partnership's plan aligns with:

(i) the five- and ten-year plan to address intergenerational poverty described in Section 35A-9-303; and

(ii) if the eligible partnership has a low performing school within the eligible partnership's school feeder pattern, the school turnaround plans of the low performing schools;

(d) how the eligible partnership will:

(i) improve educational outcomes for low income students through the formation of cross-sector partnerships; and

(ii) improve efforts focused on student success;

(e) the outcome-based measures selected by the eligible partnership, including the eligible partnership's plan to:

(i) objectively assess the success of the eligible partnership's program design plan; and

(ii) make changes to the eligible partnership's plan based on the assessment described in Subsection (2)(e)(i);

(f) the strength of the eligible partnership's commitment to:

(i) the establishment and maintenance of data systems that inform program decisions;

(ii) sharing of information and collaboration with third party evaluators; and

(iii) meeting annual reporting requirements;

(g) the eligible partnership's budget, including:

(i) identifying the estimated cost per student for the program;

(ii) an explanation for each proposed expenditure and how each expenditure aligns with the eligible partnership's proposed program; and

(iii) providing matching funds as required in Section 53F-5-403.

(3) Additional points will be awarded to an eligible partnership that:

(a) includes a low performing school as defined in Section 53E-5-301; or

(b) includes community and parent engagement as a part of the eligible partnership's plan.

(4) The Superintendent shall administer and oversee the evaluation of the program as provided in Section 53F-5-405.

KEY: Partnerships for Student Success, grant programs, community, non-profit organizations
October 11, 2016 **Art X Sec 3**
53F-5-406
53E-3-401(4)

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-37. Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.
R313-37-1. Purpose and Authority.

(1) The rules in R313-37 prescribe requirements for the physical protection program for a licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(7).

(3) The requirements of R313-37 are in addition to, and not in substitution for, the other requirements of these rules.

R313-37-2. Scope.

These requirements provide reasonable assurance of the security of category 1 and category 2 quantities of radioactive material by protecting these materials from theft or diversion. Specific requirements for access to material, and use, transfer, and transportation of material are included.

R313-37-3. Clarifications or Exceptions.

For purposes of R313-37, 10 CFR 37.5, 37.11(c), 37.21 through 37.43(d)(8), 37.45 through 37.103, and Appendix A to 10 CFR 37 (2017), are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following:

(a) In 10 CFR 37.5, exclude definitions for "Act", "Agreement State", "Becquerel", "Byproduct Material", "Commission", "Curie", "Government Agency", "License", "License issuing authority", "Lost or missing licensed material", "Person", "State", and "United States";

(b) In 10 CFR 37.77(a)(1), exclude the wording "Notifications to the NRC must be to the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The notification to the NRC may be made by email to RAMQC_SHIPMENTS@nrc.gov or by fax to 301-816-5151."; and

(c) In 10 CFR 37.81(g), exclude the wording "In addition, the licensee shall provide one copy of the written report addressed to the Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.".

(2) The substitution of the following wording:

(a) "Utah Radiation Control Rule" for references to:

(i) "Commission regulation" in 10 CFR 37.101; and

(ii) "regulation" in 10 CFR 37.103;

(b) "Utah Radiation Control Rules" for reference to:

(i) "regulations and laws" in 10 CFR 37.31(d);

(ii) "Commission requirements" in 10 CFR 37.43(a)(3) and 37.43(c)(1)(ii); and

(iii) "regulations in this part" in 10 CFR 37.103;

(c) "Director" for references to:

(i) "appropriate NRC regional office listed in Section 30.6(a)(2) of this Chapter" in 10 CFR 37.45(b);

(ii) "Commission" in 10 CFR 37.103;

(iii) "NRC" in 10 CFR 37.31(d), 37.43(c)(3)(iii), 37.57(a) (second instance of NRC) and (c), 37.77, and 37.77(a)(1) (first instance) and (3), and 37.81(g);

(iv) "NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 29555-0001" in 10 CFR 37.77(c)(2) and 37.77(d);

(v) "NRC's Director of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 29555-0001" in 10 CFR 37.77(c)(1) (second instance);

(vi) "NRC's Operations Center" in 10 CFR 37.81(a) and (b);

(vii) "NRC's Operations Center (301-816-5100)" in 10 CFR 37.57(a) and (b) and 37.81(a) through (f);

(viii) "NRC regional office listed in section 30.6(a)(2) of this chapter" in 10 CFR 37.41.(a)(3); and

(ix) "NRC regional office specified in section 30.6 of this chapter" in 10 CFR 37.41(a)(3);

(d) "Director, the U.S. Nuclear Regulatory Commission, or an Agreement State" for references to "Commission or an Agreement State" in 10 CFR 37.71 and 37.71(a) and (b);

(e) "U.S. Nuclear Regulatory Commission's Security Orders or the legally binding requirement issued by Agreement States" for references to "Security Orders" in 10 CFR 37.21(a)(3), 37.25(b)(2), and 37.41(a)(3);

(f) "mail, hand delivery, or electronic submission" for references to "an appropriate method listed in section 37.7" in 10 CFR 37.57(c) and 37.81(g); and

(g) "shall, by mail, hand delivery, or electronic submission," for reference to "shall use an appropriate method listed in section 37.7 to" in 10 CFR 37.27(c).

(3) The substitution of the following rule references:

(a) "R313-19-41(4)" for reference to "section 30.41(d) of this chapter." In 10 CFR 37.71;

(b) "R313-19-100 (incorporating 10 CFR 71.97 by reference)" for reference to "section 71.97 of this chapter" in 10 CFR 37.73(b);

(c) "R313-19-100 (incorporating 10 CFR 71.97(b) by reference)" for reference to "section 71.97(b) of this chapter" in 10 CFR 37.73(b); and

(d) "10 CFR 73" for references to "part 73 of this chapter" in 10 CFR 37.21(c)(4), 37.25(b)2), and 37.27(a)(4).

KEY: radioactive materials, security, fingerprinting, transportation

July 13, 2018 19-3-104

Notice of Continuation January 17, 2017 19-6-104

R317. Environmental Quality, Water Quality.

R317-2. Standards of Quality for Waters of the State.

R317-2-1A. Statement of Intent.

Whereas the pollution of the waters of this state constitute a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and whereas such pollution is contrary to the best interests of the state and its policy for the conservation of the water resources of the state, it is hereby declared to be the public policy of this state to conserve the waters of the state and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses; to provide that no waste be discharged into any waters of the state without first being given the degree of treatment necessary to protect the legitimate beneficial uses of such waters; to provide for the prevention, abatement and control of new or existing water pollution; to place first in priority those control measures directed toward elimination of pollution which creates hazards to the public health; to insure due consideration of financial problems imposed on water polluters through pursuit of these objectives; and to cooperate with other agencies of the state, agencies of other states and the federal government in carrying out these objectives.

R317-2-1B. Authority.

These standards are promulgated pursuant to Sections 19-5-104 and 19-5-110.

R317-2-1C. Triennial Review.

The water quality standards shall be reviewed and updated, if necessary, at least once every three years. The Director will seek input through a cooperative process from stakeholders representing state and federal agencies, various interest groups, and the public to develop a preliminary draft of changes. Proposed changes will be presented to the Water Quality Board for information. Informal public meetings may be held to present preliminary proposed changes to the public for comments and suggestions. Final proposed changes will be presented to the Water Quality Board for approval and authorization to initiate formal rulemaking. Public hearings will be held to solicit formal comments from the public. The Director will incorporate appropriate changes and return to the Water Quality Board to petition for formal adoption of the proposed changes following the requirements of the Utah Rulemaking Act, Title 63G, Chapter 3.

R317-2-2. Scope.

These standards shall apply to all waters of the state and

shall be assigned to specific waters through the classification procedures prescribed by Sections 19-5-104(5) and 19-5-110 and R317-2-6.

R317-2-3. Antidegradation Policy.

3.1 Maintenance of Water Quality

Waters whose existing quality is better than the established standards for the designated uses will be maintained at high quality unless it is determined by the Director, after appropriate intergovernmental coordination and public participation in concert with the Utah continuing planning process, allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. However, existing instream water uses shall be maintained and protected. No water quality degradation is allowable which would interfere with or become injurious to existing instream water uses.

In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Federal Clean Water Act.

3.2 Category 1 Waters

Waters which have been determined by the Board to be of exceptional recreational or ecological significance or have been determined to be a State or National resource requiring protection, shall be maintained at existing high quality through designation, by the Board after public hearing, as Category 1 Waters. New point source discharges of wastewater, treated or otherwise, are prohibited in such segments after the effective date of designation. Protection of such segments from pathogens in diffuse, underground sources is covered in R317-5 and R317-7 and the rules for Individual Wastewater Disposal Systems (R317-501 through R317-515). Other diffuse sources (nonpoint sources) of wastes shall be controlled to the extent feasible through implementation of best management practices or regulatory programs.

Discharges may be allowed where pollution will be temporary and limited after consideration of the factors in R317-2-3.5.b.4., and where best management practices will be employed to minimize pollution effects.

Waters of the state designated as Category 1 Waters are listed in R317-2-12.1.

3.3 Category 2 Waters

Category 2 Waters are designated surface water segments which are treated as Category 1 Waters except that a point source discharge may be permitted provided that the discharge does not degrade existing water quality. Discharges may be allowed where pollution will be temporary and limited after consideration of the factors in R317-2-.3.5.b.4., and where best management practices will be employed to minimize pollution effects. Waters of the state designated as Category 2 Waters are listed in R317-2-12.2.

3.4 Category 3 Waters

For all other waters of the state, point source discharges are allowed and degradation may occur, pursuant to the conditions and review procedures outlined in Section 3.5.

3.5 Antidegradation Review (ADR)

An antidegradation review will determine whether the proposed activity complies with the applicable antidegradation requirements for receiving waters that may be affected.

An antidegradation review (ADR) may consist of two parts or levels. A Level I review is conducted to insure that existing uses will be maintained and protected.

Both Level I and Level II reviews will be conducted on a parameter-by-parameter basis. A decision to move to a Level II review for one parameter does not require a Level II review for other parameters. Discussion of parameters of concern is those expected to be affected by the proposed activity.

Antidegradation reviews shall include opportunities for public participation, as described in Section 3.5e.

a. Activities Subject to Antidegradation Review (ADR)

1. For all State waters, antidegradation reviews will be conducted for proposed federally regulated activities, such as those under Clean Water Act Sections 401 (FERC and other Federal actions), 402 (UPDES permits), and 404 (Army Corps of Engineers permits). The Director may conduct an ADR on any projects with the potential for major impact on the quality of waters of the state. The review will determine whether the proposed activity complies with the applicable antidegradation requirements for the particular receiving waters that may be affected.

2. For Category 1 Waters and Category 2 Waters, reviews shall be consistent with the requirement established in Sections 3.2 and 3.3, respectively.

3. For Category 3 Waters, reviews shall be consistent with the requirements established in this section

b. An Anti-degradation Level II review is not required where any of the following conditions apply:

1. Water quality will not be lowered by the proposed activity or for existing permitted facilities, water quality will not be further lowered by the proposed activity, examples include situations where:

(a) the proposed concentration-based effluent limit is less than or equal to the ambient concentration in the receiving water during critical conditions; or

(b) a UPDES permit is being renewed and the proposed effluent concentration and loading limits are equal to or less than the concentration and loading limits in the previous permit; or

(c) a UPDES permit is being renewed and new effluent limits are to be added to the permit, but the new effluent limits are based on maintaining or improving upon effluent concentrations and loads that have been observed, including variability; or

2. Assimilative capacity (based upon concentration) is not available or has previously been allocated, as indicated by water quality monitoring or modeling information. This includes situations where:

(a) the water body is included on the current 303(d) list for the parameter of concern; or

(b) existing water quality for the parameter of concern does not satisfy applicable numeric or narrative water quality criteria; or

(c) discharge limits are established in an approved TMDL that is consistent with the current water quality standards for the receiving water (i.e., where TMDLs are established, and changes in effluent limits that are consistent with the existing load allocation would not trigger an antidegradation review).

Under conditions (a) or (b) the effluent limit in an UPDES permit may be equal to the water quality numeric criterion for the parameter of concern.

3. Water quality impacts will be temporary and related only to sediment or turbidity and fish spawning will not be impaired,

4. The water quality effects of the proposed activity are expected to be temporary and limited. As general guidance, CWA Section 402 general discharge permits, CWA Section 404 general permits, or activities of short duration, will be deemed to have a temporary and limited effect on water quality where there is a reasonable factual basis to support such a conclusion. Factors to be considered in determining whether water quality effects will be temporary and limited may include the following:

(a) Length of time during which water quality will be lowered.

(b) Percent change in ambient concentrations of pollutants of concern

(c) Pollutants affected

(d) Likelihood for long-term water quality benefits to the

segment (e.g., dredging of contaminated sediments)

(e) Potential for any residual long-term influences on existing uses.

(f) Impairment of the fish spawning, survival and development of aquatic fauna excluding fish removal efforts.

c. Anti-degradation Review Process

For all activities requiring a Level II review, the Division will notify affected agencies and the public with regards to the requested proposed activity and discussions with stakeholders may be held. In the case of Section 402 discharge permits, if it is determined that a discharge will be allowed, the Director will develop any needed UPDES permits for public notice following the normal permit issuance process.

The ADR will cover the following requirements or determinations:

1. Will all Statutory and regulatory requirements be met?

The Director will review to determine that there will be achieved all statutory and regulatory requirements for all new and existing point sources and all required cost-effective and reasonable best management practices for nonpoint source control in the area of the discharge. If point sources exist in the area that have not achieved all statutory and regulatory requirements, the Director will consider whether schedules of compliance or other plans have been established when evaluating whether compliance has been assured. Generally, the "area of the discharge" will be determined based on the parameters of concern associated with the proposed activity and the portion of the receiving water that would be affected.

2. Are there any reasonable less-degrading alternatives?

There will be an evaluation of whether there are any reasonable non-degrading or less degrading alternatives for the proposed activity. This question will be addressed by the Division based on information provided by the project proponent. Control alternatives for a proposed activity will be evaluated in an effort to avoid or minimize degradation of the receiving water. Alternatives to be considered, evaluated, and implemented to the extent feasible, could include pollutant trading, water conservation, water recycling and reuse, land application, total containment, etc.

For proposed UPDES permitted discharges, the following list of alternatives should be considered, evaluated and implemented to the extent feasible:

(a) innovative or alternative treatment options

(b) more effective treatment options or higher treatment levels

(c) connection to other wastewater treatment facilities

(d) process changes or product or raw material substitution

(e) seasonal or controlled discharge options to minimize discharging during critical water quality periods

(f) pollutant trading

(g) water conservation

(h) water recycle and reuse

(i) alternative discharge locations or alternative receiving waters

(j) land application

(k) total containment

(l) improved operation and maintenance of existing treatment systems

(m) other appropriate alternatives

An option more costly than the cheapest alternative may have to be implemented if a substantial benefit to the stream can be realized. Alternatives would generally be considered feasible where costs are no more than 20% higher than the cost of the discharging alternative, and (for POTWs) where the projected per connection service fees are not greater than 1.4% of MAGHI (median adjusted gross household income), the current affordability criterion now being used by the Water Quality Board in the wastewater revolving loan program. Alternatives within these cost ranges should be carefully considered by the discharger. Where State financing is appropriate, a financial assistance package may be influenced by this evaluation, i.e., a less polluting alternative may receive a more favorable funding arrangement in order to make it a more financially attractive alternative.

It must also be recognized in relationship to evaluating options that would avoid or reduce discharges to the stream, that in some situations it may be more beneficial to leave the water in the stream for instream flow purposes than to remove the discharge to the stream.

3. Does the proposed activity have economic and social importance?

Although it is recognized that any activity resulting in a discharge to surface waters will have positive and negative aspects, information must be submitted by the applicant that any discharge or increased discharge will be of economic or social importance in the area.

The factors addressed in such a demonstration may include, but are not limited to, the following:

(a) employment (i.e., increasing, maintaining, or avoiding a reduction in employment);

(b) increased production;

(c) improved community tax base;

(d) housing;

(e) correction of an environmental or public health problem; and

(f) other information that may be necessary to determine the social and economic importance of the proposed surface water discharge.

4. The applicant may submit a proposal to mitigate any adverse environmental effects of the proposed activity (e.g., instream habitat improvement, bank stabilization). Such mitigation plans should describe the proposed mitigation measures and the costs of such mitigation. Mitigation plans will not have any effect on effluent limits or conditions included in a permit (except possibly where a previously completed mitigation project has resulted in an improvement in background water quality that affects a water quality-based limit). Such mitigation plans will be developed and implemented by the applicant as a means to further minimize the environmental effects of the proposed activity and to increase its socio-economic importance. An effective mitigation plan may, in some cases, allow the Director to authorize proposed activities that would otherwise not be authorized.

5. Will water quality standards be violated by the discharge?

Proposed activities that will affect the quality of waters of the state will be allowed only where the proposed activity will not violate water quality standards.

6. Will existing uses be maintained and protected?

Proposed activities can only be allowed if "existing uses" will be maintained and protected. No UPDES permit will be allowed which will permit numeric water quality standards to be exceeded in a receiving water outside the mixing zone. In the case of nonpoint pollution sources, the non-regulatory Section 319 program now in place will address these sources through application of best management practices to ensure that numeric water quality standards are not exceeded.

7. If a situation is found where there is an existing use which is a higher use (i.e., more stringent protection requirements) than that current designated use, the Director will apply the water quality standards and anti-degradation policy to protect the existing use. Narrative criteria may be used as a basis to protect existing uses for parameters where numeric criteria have not been adopted. Procedures to change the stream use designation to recognize the existing use as the designated use would be initiated.

d. Special Procedures for Drinking Water Sources

Depending upon the locations of the discharge and its

proximity to downstream drinking water diversions, additional treatment or more stringent effluent limits or additional monitoring, beyond that which may otherwise be required to meet minimum technology standards or in stream water quality standards, may be required by the Director in order to adequately protect public health and the environment. Such additional treatment may include additional disinfection, suspended solids removal to make the disinfection process more effective, removal of any specific contaminants for which drinking water maximum contaminant levels (MCLs) exists, and/or nutrient removal to reduce the organic content of raw water used as a source for domestic water systems.

Additional monitoring may include analyses for viruses, Giardia, Cryptosporidium, other pathogenic organisms, and/or any contaminant for which drinking water MCLs exist. Depending on the results of such monitoring, more stringent treatment may then be required.

The additional treatment/effluent limits/monitoring which may be required will be determined by the Director after consultation with the Division of Drinking Water and the downstream drinking water users.

e. Public Notice

The public will be provided notice and an opportunity to comment on the conclusions of all completed antidegradation reviews. When possible, public notice on the antidegradation review conclusions will be combined with the public notice on the proposed permitting or certifying action. In the case of UPDES permits, public notice will be provided through the normal permitting process, as all draft permits are public noticed for 30 days, and public comment solicited, before being issued as a final permit. The Statement of Basis for the draft UPDES permit will contain information on how the ADR was addressed including results of the Level I and Level II reviews. In the case of Section 404 permits from the Corps of Engineers, the Division of Water Quality will develop any needed 401 Certifications and the public notice may be published in conjunction with the US Corps of Engineers public notice procedures. Other permits requiring a Level II review will receive a separate public notice according to the normal State public notice procedures. The public will be provided notice and an opportunity to comment whenever substantive changes are made to the implementation procedures referenced in Subsection R317-2-3.5.f.

f. Implementation Procedures

The Director shall establish reasonable protocols and guidelines (1) for completing technical, social, and economic need demonstrations, (2) for review and determination of adequacy of Level II ADRs and (3) for determination of additional treatment requirements. Protocols and guidelines will consider federal guidance and will include input from local governments, the regulated community, and the general public. The Director will inform the Water Quality Board of any protocols or guidelines that are developed.

R317-2-4. Colorado River Salinity Standards.

In addition to quality protection afforded by these rules to waters of the Colorado River and its tributaries, such waters shall be protected also by requirements of "Proposed Water Quality Standards for Salinity including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System, June 1975" and a supplement dated August 26, 1975, entitled "Supplement, including Modifications to Proposed Water Quality Standards for Salinity including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System, June 1975", as approved by the seven Colorado River Basin States and the U.S. Environmental Protection Agency, as updated by the 1978 Revision and the 1981, 1984, 1987, 1990, 1993, 1996, 1999, 2002, 2005, 2008, and 2011 reviews of the above documents.

R317-2-5. Mixing Zones.

A mixing zone is a limited portion of a body of water, contiguous to a discharge, where dilution is in progress but has not yet resulted in concentrations which will meet certain standards for all pollutants. At no time, however, shall concentrations within the mixing zone be allowed which are acutely lethal as determined by bioassay or other approved procedure. Mixing zones may be delineated for the purpose of guiding sample collection procedures and to determine permitted effluent limits. The size of the chronic mixing zone in rivers and streams shall not to exceed 2500 feet and the size of an acute mixing zone shall not exceed 50% of stream width nor have a residency time of greater than 15 minutes. Streams with a flow equal to or less than twice the flow of a point source discharge may be considered to be totally mixed. The size of the chronic mixing zone in lakes and reservoirs shall not exceed 200 feet and the size of an acute mixing zone shall not exceed 35 feet. Domestic wastewater effluents discharged to mixing zones shall meet effluent requirements specified in R317-1-3.

5.1 Individual Mixing Zones. Individual mixing zones may be further limited or disallowed in consideration of the following factors in the area affected by the discharge:

a. Bioaccumulation in fish tissues or wildlife,

b. Biologically important areas such as fish spawning/nursery areas or segments with occurrences of federally listed threatened or endangered species,

c. Potential human exposure to pollutants resulting from drinking water or recreational activities,

d. Attraction of aquatic life to the effluent plume, where toxicity to the aquatic life is occurring.

e. Toxicity of the substance discharged,

f. Zone of passage for migrating fish or other species (including access to tributaries), or

g. Accumulative effects of multiple discharges and mixing zones.

R317-2-6. Use Designations.

The Board as required by Section 19-5-110, shall group the waters of the state into classes so as to protect against controllable pollution the beneficial uses designated within each class as set forth below. Surface waters of the state are hereby classified as shown in R317-2-13.

6.1 Class 1 -- Protected for use as a raw water source for domestic water systems.

a. Class 1A -- Reserved.

b. Class 1B -- Reserved.

c. Class 1C -- Protected for domestic purposes with prior treatment by treatment processes as required by the Utah Division of Drinking Water

6.2 Class 2 -- Protected for recreational use and aesthetics.

a. Class 2A -- Protected for frequent primary contact recreation where there is a high likelihood of ingestion of water or a high degree of bodily contact with the water. Examples include, but are not limited to, swimming, rafting, kayaking, diving, and water skiing.

b. Class 2B -- Protected for infrequent primary contact recreation. Also protected for secondary contact recreation where there is a low likelihood of ingestion of water or a low degree of bodily contact with the water. Examples include, but are not limited to, wading, hunting, and fishing.

6.3 Class 3 -- Protected for use by aquatic wildlife.

a. Class 3A -- Protected for cold water species of game fish and other cold water aquatic life, including the necessary aquatic organisms in their food chain.

b. Class 3B -- Protected for warm water species of game fish and other warm water aquatic life, including the necessary aquatic organisms in their food chain.

c. Class 3C -- Protected for nongame fish and other aquatic life, including the necessary aquatic organisms in their

food chain.

d. Class 3D -- Protected for waterfowl, shore birds and other water-oriented wildlife not included in Classes 3A, 3B, or 3C, including the necessary aquatic organisms in their food chain.

e. Class 3E -- Severely habitat-limited waters. Narrative standards will be applied to protect these waters for aquatic wildlife.

6.4 Class 4 -- Protected for agricultural uses including irrigation of crops and stock watering.

6.5 Class 5 -- The Great Salt Lake.

a. Class 5A Gilbert Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation south of the Union Pacific Causeway, excluding all of the Farmington Bay south of the Antelope Island Causeway and salt evaporation ponds.

Beneficial Uses -- Protected for frequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

b. Class 5B Gunnison Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation north of the Union Pacific Causeway and west of the Promontory Mountains, excluding salt evaporation ponds.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

c. Class 5C Bear River Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation north of the Union Pacific Causeway and east of the Promontory Mountains, excluding salt evaporation ponds.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

d. Class 5D Farmington Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation east of Antelope Island and south of the Antelope Island Causeway, excluding salt evaporation ponds.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

e. Class 5E Transitional Waters along the Shoreline of the Great Salt Lake Geographical Boundary -- All waters below approximately 4,208-foot elevation to the current lake elevation of the open water of the Great Salt Lake receiving their source water from naturally occurring springs and streams, impounded wetlands, or facilities requiring a UPDES permit. The geographical areas of these transitional waters change corresponding to the fluctuation of open water elevation.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

R317-2-7. Water Quality Standards.

7.1 Application of Standards

a. The numeric criteria listed in R317-2-14 shall apply to each of the classes assigned to waters of the State as specified in R317-2-6. It shall be unlawful and a violation of these rules for any person to discharge or place any wastes or other substances in such manner as may interfere with designated uses protected by assigned classes or to cause any of the applicable standards to be violated, except as provided in R317-1-3.1.

b. At a minimum, assessment of the beneficial use support for waters of the state will be conducted biennially and available for a 30-day period of public comment and review. Monitoring locations and target indicators of water quality standards shall be prioritized and published yearly. For water quality assessment purposes, up to 10 percent of the representative samples may exceed the minimum or maximum criteria for dissolved oxygen, pH, E. coli, total dissolved solids, and temperature, including situations where such criteria have been adopted on a site-specific basis.

c. Site-specific standards may be adopted by rulemaking where biomonitoring data, bioassays, or other scientific analyses indicate that the statewide criterion is over or under protective of the designated uses or where natural or un-alterable conditions or other factors as defined in 40 CFR 131.10(g) prevent the attainment of the statewide criteria as prescribed in Subsections R317-2-7.2, and R317-2-7.3, and Section R317-2-14.

7.2 Narrative Standards

It shall be unlawful, and a violation of these rules, for any person to discharge or place any waste or other substance in such a way as will be or may become offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures; or determined by biological assessments in Subsection R317-2-7.3.

7.3 Biological Water Quality Assessment and Criteria

Waters of the State shall be free from human-induced stressors which will degrade the beneficial uses as prescribed by the biological assessment processes and biological criteria set forth below:

a. Quantitative biological assessments may be used to assess whether the purposes and designated uses identified in R317-2-6 are supported.

b. The results of the quantitative biological assessments may be used for purposes of water quality assessment, including, but not limited to, those assessments required by 303(d) and 305(b) of the federal Clean Water Act (33 U.S.C. 1313(d) and 1315(b)).

c. Quantitative biological assessments shall use documented methods that have been subject to technical review and produce consistent, objective and repeatable results that account for methodological uncertainty and natural environmental variability.

d. If biological assessments reveal a biologically degraded water body, specific pollutants responsible for the degradation will not be formally published (i.e., Biennial Integrated Report, TMDL) until a thorough evaluation of potential causes, including nonchemical stressors (e.g., habitat degradation or hydrological modification or criteria described in 40 CFR 131.10 (g)(1 - 6) as defined by the Use Attainability Analysis process), has been conducted.

R317-2-8. Protection of Downstream Uses.

All actions to control waste discharges under these rules shall be modified as necessary to protect downstream designated uses.

R317-2-9. Intermittent Waters.

Failure of a stream to meet water quality standards when stream flow is either unusually high or less than the 7-day, 10-year minimum flow shall not be cause for action against persons discharging wastes which meet both the requirements of R317-1 and the requirements of applicable permits.

R317-2-10. Laboratory and Field Analyses.

10.1 Laboratory Analyses

All laboratory examinations of samples collected to

determine compliance with these regulations shall be performed in accordance with standard procedures as approved by the Director by the Utah Office of State Health Laboratory or by a laboratory certified by the Utah Department of Health.

10.2 Field Analyses

All field analyses to determine compliance with these rules shall be conducted in accordance with standard procedures specified by the Utah Division of Water Quality.

R317-2-11. Public Participation.

Public notices and public hearings will be held for the consideration, adoption, or amendment of the classifications of waters and standards of purity and quality. Public notices shall be published at least twice in a newspaper of general circulation in the area affected at least 30 days prior to any public hearing. The notice will be posted on a State public notice website at least 45 days before any hearing and a notice will be mailed at least 30 days before any hearing to the chief executive of each political subdivision and other potentially affected persons.

R317-2-12. Category 1 and Category 2 Waters.

12.1 Category 1 Waters.

In addition to assigned use classes, the following surface waters of the State are hereby designated as Category 1 Waters:

a. All surface waters geographically located within the outer boundaries of U.S. National Forests whether on public or private lands with the following exceptions:

1. Category 2 Waters as listed in R317-2-12.2.

2. Weber River, a tributary to the Great Salt Lake, in the Weber River Drainage from Uintah to Mountain Green.

b. Other surface waters, which may include segments within U.S. National Forests as follows:

1. Colorado River Drainage

Calf Creek and tributaries, from confluence with Escalante River to headwaters.

Sand Creek and tributaries, from confluence with Escalante River to headwaters.

Mamie Creek and tributaries, from confluence with Escalante River to headwaters.

Deer Creek and tributaries, from confluence with Boulder Creek to headwaters (Garfield County).

Indian Creek and tributaries, through Newspaper Rock State Park to headwaters.

2. Green River Drainage

Price River (Lower Fish Creek from confluence with White River to Scofield Dam.

Range Creek and tributaries, from confluence with Green River to headwaters.

Strawberry River and tributaries, from confluence with Red Creek to headwaters.

Ashley Creek and tributaries, from Steinaker diversion to headwaters.

Jones Hole Creek and tributaries, from confluence with Green River to headwaters.

Green River, from state line to Flaming Gorge Dam.

Tollivers Creek, from confluence with Green River to headwaters.

Allen Creek, from confluence with Green River to headwaters.

3. Virgin River Drainage

North Fork Virgin River and tributaries, from confluence with East Fork Virgin River to headwaters.

East Fork Virgin River and tributaries from confluence with North Fork Virgin River to headwaters.

4. Kanab Creek Drainage

Kanab Creek and tributaries, from irrigation diversion at confluence with Reservoir Canyon to headwaters.

5. Bear River Drainage

Swan Creek and tributaries, from Bear Lake to headwaters.

North Eden Creek, from Upper North Eden Reservoir to headwaters.

Big Creek and tributaries, from Big Ditch diversion to headwaters.

Woodruff Creek and tributaries, from Woodruff diversion to headwaters.

6. Weber River Drainage

Burch Creek and tributaries, from Harrison Boulevard in Ogden to headwaters.

Hardscrabble Creek and tributaries, from confluence with East Canyon Creek to headwaters.

Chalk Creek and tributaries, from Main Street in Coalville to headwaters.

Weber River and tributaries, from Utah State Route 32 near Oakley to headwaters.

7. Jordan River Drainage

City Creek and tributaries, from City Creek Water Treatment Plant to headwaters (Salt Lake County).

Emigration Creek and tributaries, from Hogle Zoo to headwaters (Salt Lake County).

Red Butte Creek and tributaries, from Foothill Boulevard in Salt Lake City to headwaters.

Parley's Creek and tributaries, from 13th East in Salt Lake City to headwaters.

Mill Creek and tributaries, from Wasatch Boulevard in Salt Lake City to headwaters.

Big Cottonwood Creek and tributaries, from Wasatch Boulevard in Salt Lake City to headwaters.

Little Willow Creek and tributaries, from diversion to headwaters (Salt Lake County.)

Bell Canyon Creek and tributaries, from Lower Bells Canyon Reservoir to headwaters (Salt Lake County).

South Fork of Dry Creek and tributaries, from Draper Irrigation Company diversion to headwaters (Salt Lake County).

8. Provo River Drainage

Upper Falls drainage above Provo City diversion (Utah County).

Bridal Veil Falls drainage above Provo City diversion (Utah County).

Lost Creek and tributaries, above Provo City diversion (Utah County).

9. Sevier River Drainage

Chicken Creek and tributaries, from diversion at canyon mouth to headwaters.

Pigeon Creek and tributaries, from diversion to headwaters.

East Fork of Sevier River and tributaries, from Kingston diversion to headwaters.

Parowan Creek and tributaries, from Parowan City to headwaters.

Summit Creek and tributaries, from Summit City to headwaters.

Braffits Creek and tributaries, from canyon mouth to headwaters.

Right Hand Creek and tributaries, from confluence with Coal Creek to headwaters.

10. Raft River Drainage

Clear Creek and tributaries, from state line to headwaters (Box Elder County).

Birch Creek (Box Elder County), from state line to headwaters.

Cotton Thomas Creek from confluence with South Junction Creek to headwaters.

11. Western Great Salt Lake Drainage

All streams on the south slope of the Raft River Mountains above 7000' mean sea level.

Donner Creek (Box Elder County), from irrigation diversion to Utah-Nevada state line.

Bettridge Creek (Box Elder County), from irrigation diversion to Utah-Nevada state line.

Clover Creek, from diversion to headwaters.

All surface waters on public land on the Deep Creek Mountains.

12. Farmington Bay Drainage

Holmes Creek and tributaries, from Highway US-89 to headwaters (Davis County).

Shepard Creek and tributaries, from Haight Bench diversion to headwaters (Davis County).

Farmington Creek and tributaries, from Haight Bench Canal diversion to headwaters (Davis County).

Steed Creek and tributaries, from Highway US-89 to headwaters (Davis County).

12.2 Category 2 Waters.

In addition to assigned use classes, the following surface waters of the State are hereby designated as Category 2 Waters:

a. Green River Drainage

Deer Creek, a tributary of Huntington Creek, from the forest boundary to 4800 feet upstream.

Electric Lake.

R317-2-13. Classification of Waters of the State (see R317-2-6).

a. Colorado River Drainage

13.1 Upper Colorado River Basin

TABLE

Paria River and tributaries, from state line to headwaters		2B	3C	4
All tributaries to Lake Powell except as listed below:		2B	3B	4
Tributaries to Escalante River from confluence with Boulder Creek to headwaters, including Boulder Creek		2B	3A	4
Dirty Devil River and tributaries, from Lake Powell to Fremont River		2B	3C	4
Deer Creek and tributaries, from confluence with Boulder Creek to headwaters		2B	3A	4
Freemont River and tributaries from confluence with Muddy Creek to Capitol Reef National Park, except as listed below:	1C	2B	3C	4
Pleasant Creek and tributaries, from confluence with Fremont River to East boundary of Capitol Reef National Park		2B	3C	4
Pleasant Creek and tributaries, from East boundary of Capitol Reef National Park to headwaters	1C	2B	3A	
Fremont River and tributaries, through Capitol Reef National Park to headwaters	1C	2A	3A	4
Muddy Creek and tributaries, from Confluence with Fremont River to Highway U-10 crossing, except as listed below		2B	3C	4
Muddy Creek from confluence with Fremont River to confluence with Ivie Creek		2B	3C	4*
Muddy Creek and tributaries from the confluence with Ivie Creek to U-10		2B	3C	4*
Ivie Creek and its tributaries from the confluence with Muddy Creek to the confluence with Quitchupah Creek		2B	3C	4*
Ivie Creek and its tributaries from the confluence with Quitchapah Creek to U-10, except as listed below:		2B	3C	4*
Quitchupah Creek from the confluence with Ivie Creek to U-10		2B	3C	4*
Quitchupah Creek and tributaries, from Highway U-10 crossing to headwaters		2B	3A	4
Ivie Creek and tributaries, from Highway U-10 to headwaters		2B	3A	4
Muddy Creek and tributaries, from Highway U-10 crossing to headwaters	1C	2B	3A	4
San Juan River and tributaries from Lake Powell to state line except as listed below:	1C	2A	3B	4
Johnson Creek and tributaries, from confluence with Recapture Creek to headwaters	1C	2B	3A	4
Verdure Creek and tributaries, from Highway US-191 crossing to headwaters		2B	3A	4
North Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C	2B	3A	4
South Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C	2B	3A	4
Spring Creek and tributaries, from confluence with Vega Creek to headwaters		2B	3A	4
Montezuma Creek and tributaries, from U.S. Highway 191 to headwaters	1C	2B	3A	4
Colorado River and tributaries, from Lake Powell to state line except as listed below:	1C	2A	3B	4
Indian Creek and tributaries, through Newspaper Rock State Park to headwaters	1C	2B	3A	4
Kane Canyon Creek and tributaries, from confluence with Colorado River to headwaters		2B	3C	4
Mill Creek and tributaries, from confluence with Colorado River to headwaters	1C	2A	3A	4
Castle Creek from confluence with the Colorado River to Seventh Day Adventist Diversion	1C	2A	3B	4*
Onion Creek from the confluence with Colorado River to road crossing above Stinking Springs	1C	2A	3B	4*
Dolores River and tributaries, from confluence with Colorado River to state line		2B	3C	4
Roc Creek and tributaries, from confluence with Dolores River to headwaters		2B	3A	4
LaSal Creek and tributaries from state line to headwaters		2B	3A	4
Lion Canyon Creek and tributaries, from state line to headwaters		2B	3A	4
Little Dolores River and tributaries, from confluence with Colorado River to state line		2B	3C	4
Bitter Creek and tributaries,				

from confluence with Colorado River to headwaters		2B	3C		4

(*) Site-specific criteria are associated with this use.

b. Green River Drainage

TABLE

Green River and tributaries, from confluence with Colorado River to state line, except as listed below:	1C	2A	3B		4
Thompson Creek and tributaries from Interstate 70 to headwaters		2B	3C		4
San Rafael River and tributaries from confluence with Green River to confluence with Ferron Creek, except as listed below:		2B	3C		
San Rafael River from the confluence with the Green River to Buckhorn Crossing		2B	3C		4*
San Rafael River from Buckhorn Crossing to the confluence with Huntington Creek and Cottonwood Creek		2B	3C		4*
Ferron Creek and tributaries, from confluence with San Rafael River to Millsite Reservoir, except as listed below:		2B	3C		4
Ferron Creek from the confluence with San Rafael River to Highway 10		2B	3C		4*
Ferron Creek and tributaries, from Millsite Reservoir to headwaters	1C	2B	3A		4
Huntington Creek and tributaries, from confluence with Cottonwood Creek to Highway U-10 crossing		2B	3C		4*
Huntington Creek and tributaries from Highway U-10 crossing to headwaters	1C	2B	3A		4
Cottonwood Creek and tributaries from confluence with Huntington Creek to Highway U-57 crossing, except as listed below:		2B	3C		4
Cottonwood Creek from the confluence with Huntington Creek to U-57		2B	3C		4*
Rock Canyon Creek from the confluence with Cottonwood Creek to headwaters		2B	3C		4*
Cottonwood Creek and tributaries from Highway U-57 crossing to headwaters	1C	2B	3A		4
Cottonwood Canal, Emery County	1C	2B		3E	4
Price River and tributaries, from confluence with Green River to Carbon Canal Diversion at Price City Golf Course, except as listed below		2B	3C		4
Price River and tributaries from confluence with Green River to confluence with Soldier Creek		2B	3C		4*
Price River and tributaries from the confluence with Soldier Creek to Carbon Canal Diversion		2B	3C		4*
Grassy Trail Creek and tributaries, from Grassy Trail Creek Reservoir to headwaters	1C	2B	3A		4
Price River and tributaries, from Carbon Canal Diversion at Price City Golf Course to Price City Water Treatment Plant intake		2B	3A		4
Price River and tributaries, from Price City Water Treatment Plant intake to headwaters	1C	2B	3A		4
Range Creek and tributaries, from confluence with Green River to Range Creek Ranch		2B	3A		4
Range Creek and tributaries, from Range Creek Ranch to headwaters	1C	2B	3A		4
Rock Creek and tributaries, from confluence with Green River to headwaters		2B	3A		4
Nine Mile Creek and tributaries, from confluence with Green River to headwaters		2B	3A		4
Pariette Draw and tributaries, from confluence with Green River to headwaters		2B	3B	3D	4
Willow Creek and tributaries (Uintah County), from confluence with Green River to headwaters		2B	3A		4
White River and tributaries, from confluence with Green River to state line, except as listed below:		2B	3B		4
Bitter Creek and tributaries from White River to headwaters		2B	3A		4
Duchesne River and tributaries, from confluence with Green River to Myton Water Treatment Plant intake, except as listed below		2B	3B		4
Uinta River and tributaries from confluence with Duchesne River to U.S. Highway 40 crossing		2B	3B		4
Uinta River and tributaries, from U.S. Highway 40 crossing		2B	3A		4
Power House Canal from confluence with Uinta River to headwaters		2B	3A		4
Whiterocks River and Canal, from Tridell Water Treatment Plant to headwaters	1C	2B	3A		4
Duchesne River and tributaries, from Myton Water Treatment Plant intake to headwaters	1C	2B	3A		4
Lake Fork River and tributaries, from confluence with Duchesne River to headwaters	1C	2B	3A		4
Lake Fork Canal from Dry Gulch Canal Diversion to Moon Lake	1C	2B		3E	4
Dry Gulch Canal, from Myton Water Treatment Plant to Lake Fork Canal	1C	2B		3E	4
Ashley Creek and tributaries, from confluence with Green River to Steinaker diversion		2B	3B		4
Ashley Creek and tributaries, from Steinaker diversion to headwaters	1C	2B	3A		4
Big Brush Creek and tributaries from confluence with Green River to Tyzack (Red Fleet) Dam		2B	3B		4
Big Brush Creek and tributaries, from Tyzack (Red Fleet) Dam to headwaters	1C	2B	3A		4
Jones Hole Creek and tributaries from confluence with Green River					

to headwaters		2B	3A	
Diamond Gulch Creek and tributaries, from confluence with Green River to headwaters		2B	3A	4
Pot Creek and tributaries, from Crouse Reservoir to headwaters		2B	3A	4
Green River and tributaries, from Utah-Colorado state line to Flaming Gorge Dam, except as listed below:	2A	3A		4
Sears Creek and tributaries, Daggett County		2B	3A	
Tolivers Creek and tributaries, Daggett County		2B	3A	
Red Creek and tributaries, from confluence with Green River to state line		2B	3C	4
Jackson Creek and tributaries, Daggett County		2B	3A	
Davenport Creek and tributaries, Daggett County		2B	3A	
Goslin Creek and tributaries, Daggett County		2B	3A	
Gorge Creek and tributaries, Daggett County		2B	3A	
Beaver Creek and tributaries, Daggett County		2B	3A	
O-Wi-Yu-Kuts Creek and tributaries, Daggett County		2B	3A	
Tributaries to Flaming Gorge Reservoir, except as listed below		2B	3A	4
Birch Spring Draw and tributaries, from Flaming Gorge Reservoir to headwaters		2B	3C	4
Spring Creek and tributaries, from Flaming Gorge Reservoir to headwaters		2B	3A	
All tributaries of Flaming Gorge Reservoir from Utah-Wyoming state line to headwaters		2B	3A	4

(*) Site-specific criteria are associated with this use.

13.2 Lower Colorado River Basin

a. Virgin River Drainage

TABLE

Beaver Dam Wash and tributaries, from Motoqua to headwaters		2B	3B	4
Virgin River and tributaries, from state line to Quail Creek diversion, except as listed below:		2B	3B	4
Virgin River from the Utah-Arizona border to Pah Tempe Springs		2B	3B	4*
Virgin River from the Utah-Arizona border to Pah Tempe Springs		2B	3B	4*
Santa Clara River from confluence with Virgin River to Gunlock Reservoir	1C	2B	3B	4
Santa Clara River and tributaries, from Gunlock Reservoir to headwaters		2B	3A	4
Leeds Creek from confluence with Quail Creek to headwaters		2B	3A	4
Quail Creek from Quail Creek Reservoir to headwaters	1C	2B	3A	4
Ash Creek and tributaries, from confluence with Virgin River to Ash Creek Reservoir		2B	3A	4
Ash Creek and tributaries, from Ash Creek Reservoir to headwaters		2B	3A	4
Virgin River and tributaries, from the Quail Creek diversion to headwaters, except as listed below:	1C	2B	3C	4
North Creek, from the confluence with Virgin River to headwaters	1C	2B	3C	4*
North Fork Virgin River and tributaries	1C	2A	3A	4
Kolob Creek, from confluence with Virgin River to headwaters		2B	3A	4
East Fork Virgin River, from town of Glendale to headwaters		2B	3A	4

(*) Site-specific criteria are associated with this use.

b. Kanab Creek Drainage

TABLE

Kanab Creek and tributaries, from state line to irrigation diversion at confluence with Reservoir Canyon		2B	3C	4
Kanab Creek and tributaries, from irrigation diversion at confluence with Reservoir Canyon to headwaters		2B	3A	4
Johnson Wash and tributaries, from state line to confluence with Skutumpah Canyon		2B	3C	4
Johnson Wash and tributaries, from confluence with Skutumpah Canyon to headwaters		2B	3A	4

13.3 Bear River Basin

a. Bear River Drainage

TABLE

Bear River and tributaries, from Great Salt Lake to Utah-Idaho border, except as listed below:		2B	3B	3D 4
Perry Canyon Creek from U.S. Forest boundary to headwaters		2B	3A	4
Box Elder Creek from confluence with Black Slough to Brigham City Reservoir (Mayor's Pond)		2B	3C	4
Box Elder Creek, from Brigham City Reservoir (Mayor's Pond) to headwaters		2B	3A	4
Salt Creek from confluence with Bear River to Crystal Hot Springs		2B	3B	3D
Malad River and tributaries, from confluence with Bear River to state line		2B	3C	
Little Bear River and tributaries, from Cutler Reservoir to headwaters, except as listed below:		2B	3A	3D 4
South Fork Spring Creek from confluence with Pelican Pond Slough Stream to U.S. Highway 89		2B	3A	3D 4*
Logan River and tributaries, from Cutler Reservoir to headwaters		2B	3A	3D 4
Blacksmith Fork and tributaries, from confluence with Logan River to headwaters		2B	3A	4

Newton Creek and tributaries, from Cutler Reservoir to Newton Reservoir		2B	3A	4
Clarkston Creek and tributaries, from Newton Reservoir to headwaters		2B	3A	4
Birch Creek and tributaries, from confluence with Clarkston Creek to headwaters		2B	3A	4
Summit Creek and tributaries, from confluence with Bear River to headwaters		2B	3A	4
Cub River and tributaries, from confluence with Bear River to state line, except as listed below:		2B	3B	4
High Creek and tributaries from confluence with Cub River to headwaters		2B	3A	4
All tributaries to Bear Lake from Bear Lake to headwaters, except as listed below		2B	3A	4
Swan Springs tributary to Swan Creek	1C	2B	3A	
Bear River and tributaries in Rich County		2B	3A	4
Bear River and tributaries, from Utah-Wyoming state line to headwaters (Summit County)		2B	3A	4
Mill Creek and tributaries, from state line to headwaters (Summit County)		2B	3A	4

(*) Site-specific criteria are associated with this use.

13.4 Weber River Basin
a. Weber River Drainage

TABLE

Willard Creek, from Willard Bay Reservoir to headwaters		2B	3A	4
Weber River, from Great Salt Lake to Slaterville diversion, except as listed below:		2B	3C 3D	4
Four Mile Creek from Interstate 15 to headwaters		2B	3A	4
Weber River and tributaries, from Slaterville diversion to Stoddard diversion, except as listed below		2B	3A	4
Ogden River and tributaries, from confluence with Weber River to Pineview Dam, except as listed below:	2A	3A		4
Wheeler Creek from confluence with Ogden River to headwaters	1C	2B	3A	4
All tributaries to Pineview Reservoir	1C	2B	3A	4
Strongs Canyon Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Burch Creek and tributaries, from Harrison Boulevard in Ogden to Headwaters	1C	2B	3A	
Spring Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Weber River and tributaries, from Stoddard diversion to headwaters	1C	2B	3A	4

13.5 Utah Lake-Jordan River Basin
a. Jordan River Drainage

TABLE

Jordan River, from Farmington Bay to North Temple Street, Salt Lake City		2B	3B*	3D	4
State Canal, from Farmington Bay to confluence with the Jordan River		2B	3B*	3D	4
Jordan River, from North Temple Street in Salt Lake City to confluence with Little Cottonwood Creek		2B	3B*		4
Surplus Canal from Great Salt Lake to the diversion from the Jordan River		2B	3B*	3D	4
Jordan River from confluence with Little Cottonwood Creek to Narrows Diversion		2B	3A		4
Jordan River, from Narrows Diversion to Utah Lake	1C	2B	3B		4
City Creek, from Memory Park in Salt Lake City to City Creek Water Treatment Plant		2B	3A		
City Creek, from City Creek Water Treatment Plant to headwaters	1C	2B	3A		
Red Butte Creek and tributaries, from Liberty Park pond inlet to Red Butte Reservoir		2B	3A		4
Red Butte Creek and tributaries, from Red Butte Reservoir to headwaters	1C	2B	3A		
Emigration Creek and tributaries, from 1100 East in Salt Lake City to headwaters		2B	3A		4
Parleys Creek and tributaries, from 1300 East in Salt Lake City to Mountain Dell Reservoir	1C	2B	3A		
Parleys Creek and tributaries, from Mountain Dell Reservoir to headwaters	1C	2B	3A		
Mill Creek (Salt Lake County) from confluence with Jordan River to Interstate 15		2B		3C	4
Mill Creek (Salt Lake County) and tributaries, from Interstate 15 to headwaters		2B	3A		4
Big Cottonwood Creek and tributaries, from confluence with Jordan River to Big Cottonwood Water Treatment Plant		2B	3A		4
Big Cottonwood Creek and tributaries from Big Cottonwood Water Treatment Plant to headwaters	1C	2B	3A		
Deaf Smith Canyon Creek and tributaries	1C	2B	3A		4
Little Cottonwood Creek and tributaries, from confluence with Jordan River to Metropolitan Water Treatment Plant		2B	3A		4
Little Cottonwood Creek and tributaries, from Metropolitan Water Treatment Plant to headwaters	1C	2B	3A		
Bells Canyon Creek and tributaries, from Lower Bells Canyon Reservoir to headwaters	1C	2B	3A		
Little Willow Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A		
Big Willow Creek and tributaries, from Draper Irrigation Company					

diversion to headwaters	1C	2B	3A	
South Fork of Dry Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A	
All permanent streams on east slope of Oquirrh Mountains (Coon, Barneys, Bingham, Butterfield, and Rose Creeks)		2B	3D	4
Kersey Creek from confluence of C-7 Ditch to headwaters		2B	3D	

(*) Site-specific criteria are associated with this use.

b. Provo River Drainage

TABLE

Provo River and tributaries, from Utah Lake to Murdock Diversion		2B	3A	4
Provo River and tributaries, from Murdock Diversion to headwaters, except as listed below:	1C	2B	3A	4
Upper Falls drainage above Provo City diversion	1C	2B	3A	
Bridal Veil Falls drainage above Provo City diversion	1C	2B	3A	
Lost Creek and tributaries above Provo City diversion	1C	2B	3A	

c. Utah Lake Drainage

TABLE

Dry Creek and tributaries (above Alpine), from U.S. National Forest boundary to headwaters		2B	3A	4
American Fork Creek and tributaries, from diversion at mouth of American Fork Canyon to headwaters		2B	3A	4
Spring Creek and tributaries, from Utah Lake near Lehi to headwaters		2B	3A	4
Lindon Hollow Creek and tributaries, from Utah Lake to headwaters		2B	3B	4
Grove Creek from Murdock Diversion to headwaters	1C	2B	3A	
Battle Creek from Murdock Diversion to Headwaters	1C	2B	3A	
Rock Canyon Creek and tributaries (East of Provo), from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Mill Race (except from Interstate 15 to the Provo City WWTP discharge) and tributaries, from Utah Lake to headwaters		2B	3B	4
Mill Race from Interstate 15 to the Provo City wastewater treatment plant discharge		2B	3B	4
Spring Creek and tributaries, from Utah Lake (Provo Bay) to 50 feet upstream from the east boundary of the Industrial Parkway Road Right-of-way		2B	3B	4
Tributary to Spring Creek (Utah County) which receives the Springville City WWTP effluent from confluence with Spring Creek to headwaters		2B	3D	4
Spring Creek and tributaries from 50 feet upstream from the east boundary of the Industrial Parkway Road right-of-way to the headwaters		2B	3A	4
Ironton Canal from Utah Lake (Provo Bay) to the east boundary of the Denver and Rio Grande Western Railroad right-of-way		2B	3C	4
Ironton Canal from the east boundary of the Denver and Rio Grande Western Railroad right-of-way to the point of diversion from Spring Creek		2B	3A	4
Hobble Creek and tributaries, from Utah Lake to headwaters		2B	3A	4
Dry Creek and tributaries, from Utah Lake (Provo Bay) to U.S. Highway 89		2B	3E	4
Dry Creek and tributaries, from U.S. Highway 89 to headwaters		2B	3A	4
Spanish Fork River and tributaries, from Utah Lake to diversion at Moark Junction		2B	3B 3D	4
Spanish Fork River and tributaries, from diversion at Moark Junction to headwaters		2B	3A	4
Benjamin Slough and tributaries, from Utah Lake to headwaters, except as listed below		2B	3B	4
Beer Creek (Utah County) from 4850 West (in NE1/4NE1/4 sec. 36, T.8.S., R.1.E.) to headwaters		2B	3C	4
Salt Creek from Nephi diversion to headwaters		2B	3A	4
Currant Creek from mouth of Goshen Canyon to Mona Reservoir		2B	3A	4
Currant Creek from Mona Reservoir to headwaters		2B	3A	4
Peteetneet Creek and tributaries, from irrigation diversion above Maple Dell to headwaters		2B	3A	4
Summit Creek and tributaries (above Santaquin), from U.S. National Forest boundary to headwaters		2B	3A	4
All other permanent streams entering Utah Lake		2B	3B	4

13.6 Sevier River Basin

a. Sevier River Drainage

TABLE

Sevier River and tributaries, from Sevier Lake to Gunnison Bend Reservoir to U.S. National Forest boundary, except as listed below:		2B	3C	4
Sevier River from Gunnison Bend Reservoir to Clear Lake		2B	3C	4*
Beaver River and tributaries, from Minersville City to headwaters		2B	3A	4
Little Creek and tributaries, from irrigation diversion to headwaters		2B	3A	4
Pinto Creek and tributaries, from Newcastle Reservoir to headwaters		2B	3A	4
Coal Creek and tributaries		2B	3A	4
Summit Creek and tributaries		2B	3A	4
Parowan Creek and tributaries		2B	3A	4
Tributaries to Sevier River from Sevier Lake to Gunnison Bend Reservoir from U.S. National Forest boundary to headwaters, including:		2B	3A	4
Pioneer Creek and tributaries, Millard County		2B	3A	4

Chalk Creek and tributaries, Millard County		2B	3A	4
Meadow Creek and tributaries, Millard County		2B	3A	4
Corn Creek and tributaries, Millard County		2B	3A	4
Sevier River and tributaries, below U.S. National Forest boundary from Gunnison Bend Reservoir to Annabella Diversion, except as listed below		2B	3B	4
Sevier River between Gunnison Bend Reservoir and DMAD Reservoir		2B	3B	4*
Oak Creek and tributaries Millard County		2B	3A	4
Round Valley Creek and tributaries, Millard County		2B	3A	4
Judd Creek and tributaries, Juab County		2B	3A	4
Meadow Creek and tributaries, Juab County		2B	3A	4
Cherry Creek and tributaries, Juab County		2B	3A	4
Tanner Creek and tributaries, Juab County		2B	3E	4
Baker Hot Springs, Juab County		2B	3D	4
Chicken Creek and tributaries, Juab County		2B	3A	4
San Pitch River and tributaries, from confluence with Sevier River to Highway U-132 crossing, except as listed below:		2B	3C 3D	4
San Pitch River from below Gunnison Reservoir to the Sevier River		2B	3C 3D	4*
Twelve Mile Creek (South Creek) and tributaries, from U.S. National Forest boundary to headwaters		2B	3A	4
Six Mile Creek and tributaries, Sanpete County		2B	3A	4
Manti Creek (South Creek) and tributaries, from U.S. National Forest boundary to headwaters		2B	3A	4
Ephraim Creek (Cottonwood Creek) and tributaries, from U.S. National Forest to headwaters		2B	3A	4
Oak Creek and tributaries, from U.S. National Forest boundary near Spring City to headwaters		2B	3A	4
Fountain Green Creek and tributaries, from U.S. National Forest boundary to headwaters		2B	3A	4
San Pitch River and tributaries, from Highway U-132 crossing to headwaters		2B	3A	4
Lost Creek from the confluence with Sevier River to U.S. National Forest boundary		2B	3C 3D	4*
Brine Creek-Petersen Creek from the confluence with the Sevier River to Highway U-119 Crossing		2B	3C 3D	4*
Tributaries to Sevier River from Gunnison Bend Reservoir to Annabella diversion from U.S. National Forest boundary to headwaters		2B	3A	4
Sevier River and tributaries, from Annabella diversion to headwaters		2B	3A	4
Monroe Creek and tributaries, from diversion to headwaters		2B	3A	4
Little Creek and tributaries, from irrigation diversion to headwaters		2B	3A	4
Pinto Creek and tributaries, from Newcastle Reservoir to headwaters		2B	3A	4
Coal Creek and tributaries		2B	3A	4
Summit Creek and tributaries		2B	3A	4
Parowan Creek and tributaries		2B	3A	4
Duck Creek and tributaries	1C	2B	3A	4

(*) Site-specific criteria are associated with this use.

13.7 Great Salt Lake Basin

a. Western Great Salt Lake Drainage

TABLE

Grouse Creek and tributaries, Box Elder County		2B	3A	4
Muddy Creek and tributaries, Box Elder County		2B	3A	4
Dove Creek and tributaries, Box Elder County		2B	3A	4
Pine Creek and tributaries, Box Elder County		2B	3A	4
Rock Creek and tributaries, Box Elder County		2B	3A	4
Fisher Creek and tributaries, Box Elder County		2B	3A	4
Dunn Creek and tributaries, Box Elder County		2B	3A	4
Indian Creek and tributaries, Box Elder County		2B	3A	4
Tenmile Creek and tributaries, Box Elder County		2B	3A	4
Curlew (Deep) Creek, Box Elder County		2B	3A	4
Blue Creek and tributaries, Box Elder County, from Bear River Bay, Great Salt Lake to Blue Creek Reservoir		2B	3D	4*
Blue Creek and tributaries from Blue Creek Reservoir to headwaters		2B	3B	4*
All perennial streams on the east slope of the Pilot Mountain Range	1C	2B	3A	4
Donner Creek and tributaries, from irrigation diverion to Utah-Nevada state line		2B	3A	4
Bettridge Creek and tributaries, from irrigation diverion to Utah-Nevada state line		2B	3A	4
North Willow Creek and tributaries, Tooele County		2B	3A	4
South Willow Creek and tributaries, Tooele County		2B	3A	4
Hickman Creek and tributaries, Tooele County		2B	3A	4
Barlow Creek and tributaries, Tooele County		2B	3A	4
Clover Creek and tributaries, Tooele County		2B	3A	4

Faust Creek and tributaries, Tooele County		2B	3A	4
Vernon Creek and tributaries, Tooele County		2B	3A	4
Ophir Creek and tributaries, Tooele County		2B	3A	4
Soldier Creek and tributaries, from the Drinking Water Treamtent Facility to headwaters, Tooele County	1C	2B	3A	4
Settlement Canyon Creek and tributaries, Tooele County		2B	3A	4
Middle Canyon Creek and tributaries, Tooele County		2B	3A	4
Tank Wash and tributaries, Tooele County		2B	3A	4
Basin Creek and tributaries, Juab and Tooele Counties		2B	3A	4
Thomas Creek and tributaries, Juab County		2B	3A	4
Indian Farm Creek and tributaries, Juab County		2B	3A	4
Cottonwood Creek and tributaries, Juab County		2B	3A	4
Red Cedar Creek and tributaries, Juab County		2B	3A	4
Granite Creek and tributaries, Juab County		2B	3A	4
Trout Creek and tributaries, Juab County		2B	3A	4
Birch Creek and tributaries, Juab County		2B	3A	4
Deep Creek and tributaries, from Rock Spring Creek to headwaters, Juab and Tooele Counties		2B	3A	4
Cold Spring, Juab County		2B	3C 3D	
Cane Spring, Juab County		2B	3C 3D	
Lake Creek, from Garrison (Pruess) Reservoir to Nevada state line		2B	3A	4
Snake Creek and tributaries, Millard County		2B	3B	4
Salt Marsh Spring Complex, Millard County		2B	3A	
Twin Springs, Millard County		2B	3B	
Tule Spring, Millard County		2B	3C 3D	
Coyote Spring Complex, Millard County		2B	3C 3D	
Hamblin Valley Wash and tributaries, from Nevada state line to headwaters (Beaver and Iron Counties)		2B	3D	4
Indian Creek and tributaries, Beaver County, from Indian Creek Reservoir to headwaters		2B	3A	4
Shoal Creek and tributaries, Iron County		2B	3A	4

(*) Site-specific criteria are associated with this use.

b. Farmington Bay Drainage

TABLE

Corbett Creek and tributaries, from Highway to headwaters		2B	3A	4
Kays Creek and tributaries, from Farmington Bay to U.S. National Forest boundary		2B	3B	4
North Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters		2B	3A	4
Middle Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
South Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Snow Creek and tributaries		2B	3C	4
Holmes Creek and tributaries, from Farmington Bay to U.S. National Forest boundary		2B	3B	4
Holmes Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Baer Creek and tributaries, from Farmington Bay to Interstate 15		2B	3B	4
Baer Creek and tributaries, from Interstate 15 to U.S. Highway 89		2B	3B	4
Baer Creek and tributaries, from U.S. Highway 89 to headwaters	1C	2B	3A	4
Shepard Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Farmington Creek and tributaries, from Farmington Bay Waterfowl Management Area to U.S. National Forest boundary		2B	3B	4
Farmington Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Rudd Creek and tributaries, from Davis aqueduct to headwaters		2B	3A	4
Steed Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Davis Creek and tributaries, from U.S. Highway 89 to headwaters		2B	3A	4
Lone Pine Creek and tributaries, from U.S. Highway 89 to headwaters		2B	3A	4
Ricks Creek and tributaries, from Highway Interstate 15 to headwaters	1C	2B	3A	4
Barnard Creek and tributaries, from U.S. Highway 89 to headwaters		2B	3A	4
Parrish Creek and tributaries, from Davis Aqueduct to headwaters		2B	3A	4
Deuel Creek and tributaries, (Centerville Canyon) from Davis Aqueduct to headwaters		2B	3A	4
Stone Creek and tributaries, from Farmington Bay Waterfowl Management Area to U.S. National Forest Boundary		2B	3A	4
Stone Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Barton Creek and tributaries, from U.S. National Forest boundary to headwaters		2B	3A	4
Mill Creek (Davis County) and tributaries, from confluence with State Canal to U.S. National Forest boundary		2B	3B	4

Mill Creek (Davis County) and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
North Canyon Creek and tributaries from U.S. National Forest boundary to headwaters		2B	3A		4
Howard Slough		2B		3C	4
Hooper Slough		2B		3C	4
Willard Slough		2B		3C	4
Willard Creek to Headwaters	1C	2B	3A		4
Chicken Creek to Headwaters	1C	2B	3A		4
Cold Water Creek to Headwaters	1C	2B	3A		4
One House Creek to Headwaters	1C	2B	3A		4
Garner Creek to Headwaters	1C	2B	3A		4

13.8 Snake River Basin

a. Raft River Drainage (Box Elder County)

TABLE

Raft River and tributaries		2B	3A		4
Clear Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A		4
Onemile Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A		4
George Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A		4
Johnson Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A		4
Birch Creek and tributaries, from state line to headwaters		2B	3A		4
Pole Creek and tributaries, from state line to headwaters		2B	3A		4
Goose Creek and tributaries		2B	3A		4
Hardesty Creek and tributaries, from state line to headwaters		2B	3A		4
Meadow Creek and tributaries, from state line to headwaters		2B	3A		4

13.9 All irrigation canals and ditches statewide, except as otherwise designated: 2B, 3E, 4

13.10 All drainage canals and ditches statewide, except as otherwise designated: 2B, 3E

13.11 National Wildlife Refuges and State Waterfowl Management Areas, and other Areas Associated with the Great Salt Lake

TABLE

Bear River National Wildlife Refuge, Box Elder County	2B	3B	3D	
Bear River Bay				
Open Water below approximately 4,208 ft.				5C
Transitional Waters approximately 4,208 ft. to Open Water				5E
Open Water above approximately 4,208 ft.	2B	3B	3D	
Browns Park Waterfowl Management Area, Daggett County	2B	3A	3D	
Clear Lake Waterfowl Management Area, Millard County	2B		3C	3D
Desert Lake Waterfowl Management Area, Emery County	2B		3C	3D
Farmington Bay WaterfowlManagement Area, Davis and Salt Lake Counties	2B		3C	3D
Farmington Bay				
Open Water below approximately 4,208 ft.				5D
Transitional Waters approximately 4,208 ft. to Open Water				5E
Open Water above approximately 4,208 ft.	2B	3B	3D	
Fish Springs National Wildlife Refuge, Juab County	2B		3C	3D
Harold Crane Waterfowl Management Area, Box Elder County	2B		3C	3D
Gilbert Bay				
Open Water below approximately 4,208 ft.				5A
Transitional Waters approximately 4,208 ft. to Open Water				5E
Open Water above approximately 4,208 ft.	2B	3B	3D	
Gunnison Bay				
Open Water below approximately 4,208 ft.				5B
Transitional Waters approximately 4,208 ft. to Open Water				5E
Open Water above approximately 4,208 ft.	2B	3B	3D	
Howard Slough Waterfowl Management Area, Weber County	2B		3C	3D
Locomotive Springs Waterfowl Management Area, Box Elder County	2B	3B	3D	
Ogden Bay Waterfowl Management Area, Weber County	2B		3C	3D
Ouray National Wildlife Refuge, Uintah County	2B	3B	3D	
Powell Slough Waterfowl Management Area, Utah County	2B		3C	3D
Public Shooting Grounds Waterfowl Management Area, Box Elder County	2B		3C	3D
Salt Creek Waterfowl Management Area, Box Elder County	2B		3C	3D
Stewart Lake Waterfowl Management Area, Uintah County	2B	3B	3D	
Timpie Springs Waterfowl Management Area, Tooele County	2B	3B	3D	

13.12 Lakes and Reservoirs. All lakes and any reservoirs greater than 10 acres not listed in 13.12 are assigned by default to the classification of the stream with which they are associated.

a. Beaver County

TABLE

Anderson Meadow Reservoir	2B	3A			4
Manderfield Reservoir	2B	3A			4
LaBaron Reservoir	2B	3A			4
Kents Lake	2B	3A			4
Minersville Reservoir	2B	3A		3D	4
Puffer Lake	2B	3A			
Three Creeks Reservoir	2B	3A			4

b. Box Elder County

TABLE

Cutler Reservoir (including portion in Cache County)	2B	3B	3D	4
Etna Reservoir	2B	3A		4
Lynn Reservoir	2B	3A		4
Mantua Reservoir	2B	3A		4
Willard Bay Reservoir	1C 2A	3B	3D	4

c. Cache County

TABLE

Hyrum Reservoir	2A	3A		4
Newton Reservoir	2B	3A		4
Porcupine Reservoir	2B	3A		4
Pelican Pond	2B	3B		4
Tony Grove Lake	2B	3A		4

d. Carbon County

TABLE

Grassy Trail Creek Reservoir	1C	2B	3A	4
Olsen Pond	2B	3B		4
Scofield Reservoir	1C	2B	3A	4

e. Daggett County

TABLE

Browne Reservoir	2B	3A		4
Daggett Lake	2B	3A		4
Flaming Gorge Reservoir (Utah portion)	1C 2A	3A		4
Long Park Reservoir	1C	2B	3A	4
Sheep Creek Reservoir	2B	3A		4
Spirit Lake	2B	3A		4
Upper Potter Lake	2B	3A		4

f. Davis County

TABLE

Farmington Ponds	2B	3A		4
Kaysville Highway Ponds	2B	3A		4
Holmes Creek Reservoir	2B	3B		4

g. Duchesne County

TABLE

Allred Lake	2B	3A		4
Atwine Lake	2B	3A		4
Atwood Lake	2B	3A		4
Betsy Lake	2B	3A		4
Big Sandwash Reservoir	1C	2B	3A	4
Bluebell Lake	2B	3A		4
Brown Duck Reservoir	2B	3A		4
Butterfly Lake	2B	3A		4
Cedarview Reservoir	2B	3A		4
Chain Lake #1	2B	3A		4
Chepeta Lake	2B	3A		4
Clements Reservoir	2B	3A		4
Cleveland Lake	2B	3A		4
Cliff Lake	2B	3A		4
Continent Lake	2B	3A		4
Crater Lake	2B	3A		4
Crescent Lake	2B	3A		4
Daynes Lake	2B	3A		4
Dean Lake	2B	3A		4
Doll Lake	2B	3A		4
Drift Lake	2B	3A		4
Elbow Lake	2B	3A		4
Farmers Lake	2B	3A		4
Fern Lake	2B	3A		4
Fish Hatchery Lake	2B	3A		4
Five Point Reservoir	2B	3A		4
Fox Lake Reservoir	2B	3A		4
Governors Lake	2B	3A		4
Granddaddy Lake	2B	3A		4
Hoover Lake	2B	3A		4
Island Lake	2B	3A		4
Jean Lake	2B	3A		4
Jordan Lake	2B	3A		4
Kidney Lake	2B	3A		4
Kidney Lake West	2B	3A		4
Lily Lake	2B	3A		4
Midview Reservoir (Lake Boreham)	2B	3B		4
Milk Reservoir	2B	3A		4
Mirror Lake	2B	3A		4
Mohawk Lake	2B	3A		4
Moon Lake	1C 2A	3A		4
North Star Lake	2B	3A		4
Palisade Lake	2B	3A		4
Pine Island Lake	2B	3A		4
Pinto Lake	2B	3A		4
Pole Creek Lake	2B	3A		4
Potters Lake	2B	3A		4
Powell Lake	2B	3A		4
Pyramid Lake	2A	3A		4
Queant Lake	2B	3A		4
Rainbow Lake	2B	3A		4
Red Creek Reservoir	2B	3A		4
Rudolph Lake	2B	3A		4
Scout Lake	2A	3A		4
Spider Lake	2B	3A		4

Spirit Lake		2B	3A	4
Starvation Reservoir	1C 2A		3A	4
Superior Lake		2B	3A	4
Swasey Hole Reservoir		2B	3A	4
Taylor Lake		2B	3A	4
Thompson Lake		2B	3A	4
Timothy Reservoir #1		2B	3A	4
Timothy Reservoir #6		2B	3A	4
Timothy Reservoir #7		2B	3A	4
Twin Pots Reservoir	1C	2B	3A	4
Upper Stillwater Reservoir	1C	2B	3A	4
X - 24 Lake		2B	3A	4

h. Emery County

TABLE

Cleveland Reservoir		2B	3A	4
Electric Lake		2B	3A	4
Huntington Reservoir		2B	3A	4
Huntington North Reservoir	2A		3B	4
Joes Valley Reservoir	2A		3A	4
Millsite Reservoir	1C 2A		3A	4

i. Garfield County

TABLE

Barney Lake		2B	3A	4
Cyclone Lake		2B	3A	4
Deer Lake		2B	3A	4
Jacobs Valley Reservoir		2B	3C 3D	4
Lower Bowns Reservoir		2B	3A	4
North Creek Reservoir		2B	3A	4
Panguitch Lake		2B	3A	4
Pine Lake		2B	3A	4
Oak Creek Reservoir (Upper Bowns)		2B	3A	4
Pleasant Lake		2B	3A	4
Posey Lake		2B	3A	4
Purple Lake		2B	3A	4
Raft Lake		2B	3A	4
Row Lake #3		2B	3A	4
Row Lake #7		2B	3A	4
Spectacle Reservoir		2B	3A	4
Tropic Reservoir		2B	3A	4
West Deer Lake		2B	3A	4
Wide Hollow Reservoir		2B	3A	4

j. Iron County

TABLE

Newcastle Reservoir		2B	3A	4
Red Creek Reservoir		2B	3A	4
Yankee Meadow Reservoir		2B	3A	4

k. Juab County

TABLE

Chicken Creek Reservoir		2B	3C 3D	4
Mona Reservoir		2B	3B	4
Sevier Bridge (Yuba) Reservoir	2A		3B	4

l. Kane County

TABLE

Navajo Lake		2B	3A	4

m. Millard County

TABLE

DMAD Reservoir		2B	3B	4
Fools Creek Reservoir		2B	3C 3D	4
Garrison Reservoir (Pruess Lake)		2B	3B	4
Gunnison Bend Reservoir		2B	3B	4

n. Morgan County

TABLE

East Canyon Reservoir	1C 2A		3A	4
Lost Creek Reservoir	1C	2B	3A	4

o. Piute County

TABLE

Barney Reservoir		2B	3A	4
Lower Boxcreek Reservoir		2B	3A	4
Manning Meadow Reservoir		2B	3A	4
Otter Creek Reservoir		2B	3A	4
Piute Reservoir		2B	3A	4
Upper Boxcreek Reservoir		2B	3A	4

p. Rich County

TABLE

Bear Lake (Utah portion)	2A		3A	4
Birch Creek Reservoir		2B	3A	4
Little Creek Reservoir		2B	3A	4
Woodruff Creek Reservoir		2B	3A	4

q. Salt Lake County

TABLE

Decker Lake		2B	3B	3D	4
Lake Mary	1C	2B	3A		
Little Dell Reservoir	1C	2B	3A		
Mountain Dell Reservoir	1C	2B	3A		

r. San Juan County

TABLE

Blanding Reservoir #4	1C	2B	3A	4
Dark Canyon Lake	1C	2B	3A	4

Kens Lake		2B	3A*	4
Lake Powell (Utah portion)	1C	2A	3B	4
Lloyds Lake	1C	2B	3A	4
Monticello Lake		2B	3A	4
Recapture Reservoir		2B	3A	4

(*) Site-specific criteria are associated with this use.

s. Sanpete County

TABLE

Duck Fork Reservoir		2B	3A	4
Fairview Lakes	1C	2B	3A	4
Ferron Reservoir		2B	3A	4
Lower Gooseberry Reservoir	1C	2B	3A	4
Gunnison Reservoir		2B	3C	4
Island Lake		2B	3A	4
Miller Flat Reservoir		2B	3A	4
Ninemile Reservoir		2B	3A	4
Palisade Reservoir		2A	3A	4
Rolfson Reservoir		2B	3C	4
Twin Lakes		2B	3A	4
Willow Lake		2B	3A	4

t. Sevier County

TABLE

Annabella Reservoir		2B	3A	4
Big Lake		2B	3A	4
Farnsworth Lake		2B	3A	4
Fish Lake		2B	3A	4
Forsythe Reservoir		2B	3A	4
Johnson Valley Reservoir		2B	3A	4
Koosharem Reservoir		2B	3A	4
Lost Creek Reservoir		2B	3A	4
Redmond Lake		2B	3B	4
Rex Reservoir		2B	3A	4
Salina Reservoir		2B	3A	4
Sheep Valley Reservoir		2B	3A	4

u. Summit County

TABLE

Abes Lake		2B	3A	4
Alexander Lake		2B	3A	4
Amethyst Lake		2B	3A	4
Beaver Lake		2B	3A	4
Beaver Meadow Reservoir		2B	3A	4
Big Elk Reservoir		2B	3A	4
Blanchard Lake		2B	3A	4
Bridger Lake		2B	3A	4
China Lake		2B	3A	4
Cliff Lake		2B	3A	4
Clyde Lake		2B	3A	4
Coffin Lake		2B	3A	4
Cuberant Lake		2B	3A	4
East Red Castle Lake		2B	3A	4
Echo Reservoir	1C	2A	3A	4
Fish Lake		2B	3A	4
Fish Reservoir		2B	3A	4
Haystack Reservoir #1		2B	3A	4
Henrys Fork Reservoir		2B	3A	4
Hoop Lake		2B	3A	4
Island Lake		2B	3A	4
Island Reservoir		2B	3A	4
Jesson Lake		2B	3A	4
Kamas Lake		2B	3A	4
Lily Lake		2B	3A	4
Lost Reservoir		2B	3A	4
Lower Red Castle Lake		2B	3A	4
Lyman Lake		2A	3A	4
Marsh Lake		2B	3A	4
Marshall Lake		2B	3A	4
McPheters Lake		2B	3A	4
Meadow Reservoir		2B	3A	4
Meeks Cabin Reservoir		2B	3A	4
Notch Mountain Reservoir		2B	3A	4
Red Castle Lake		2B	3A	4
Rockport Reservoir	1C	2A	3A	4
Ryder Lake		2B	3A	4
Sand Reservoir		2B	3A	4
Scow Lake		2B	3A	4
Smith Moorehouse Reservoir	1C	2B	3A	4
Star Lake		2B	3A	4
Stateline Reservoir		2B	3A	4
Tamarack Lake		2B	3A	4
Trial Lake	1C	2B	3A	4
Upper Lyman Lake		2B	3A	4
Upper Red Castle		2B	3A	4
Wall Lake Reservoir		2B	3A	4
Washington Reservoir		2B	3A	4
Whitney Reservoir		2B	3A	4

v. Tooele County

TABLE

Blue Lake		2B	3B	4
Clear Lake		2B	3B	4

Grantsville Reservoir		2B	3A	4
Horseshoe Lake		2B	3B	4
Kanaka Lake		2B	3B	4
Rush Lake		2B	3B	
Settlement Canyon Reservoir		2B	3A	4
Stansbury Lake		2B	3B	4
Vernon Reservoir		2B	3A	4

w. Uintah County

TABLE

Ashley Twin Lakes (Ashley Creek)	1C	2B	3A	4
Bottle Hollow Reservoir		2B	3A	4
Brough Reservoir		2B	3A	4
Calder Reservoir		2B	3A	4
Crouse Reservoir		2B	3A	4
East Park Reservoir		2B	3A	4
Fish Lake		2B	3A	4
Goose Lake #2		2B	3A	4
Matt Warner Reservoir		2B	3A	4
Oaks Park Reservoir		2B	3A	4
Paradise Park Reservoir		2B	3A	4
Pelican Lake		2B	3B	4
Red Fleet Reservoir	1C 2A		3A	4
Steinaker Reservoir	1C 2A		3A	4
Towave Reservoir		2B	3A	4
Weaver Reservoir		2B	3A	4
Whiterocks Lake		2B	3A	4
Workman Lake		2B	3A	4

x. Utah County

TABLE

Big East Lake		2B	3A		4
Salem Pond	2A		3A		4
Silver Flat Lake Reservoir		2B	3A		4
Tibble Fork Resevoir		2B	3A		4
Utah Lake	2A		3B	3D	4

y. Wasatch County

TABLE

Currant Creek Reservoir	1C	2B	3A	4
Deer Creek Reservoir	1C 2A		3A	4
Jordanelle Reservoir	1C 2A		3A	4
Mill Hollow Reservoir		2B	3A	4
Strawberry Reservoir	1C	2B	3A	4

z. Washington County

TABLE

Baker Dam Reservoir		2B	3A	4
Gunlock Reservoir	1C 2A		3B	4
Ivins Reservoir		2B	3B	4
Kolob Reservoir		2B	3A	4
Lower Enterprise Reservoir		2B	3A	4
Quail Creek Reservoir	1C 2A		3B	4
Sand Hollow Reservoir	1C 2A		3B	4
Upper Enterprise Reservoir		2B	3A	4

aa. Wayne County

TABLE

Blind Lake		2B	3A	4
Cook Lake		2B	3A	4
Donkey Reservoir		2B	3A	4
Fish Creek Reservoir		2B	3A	4
Mill Meadow Reservoir		2B	3A	4
Raft Lake		2B	3A	4

bb. Weber County

TABLE

Causey Reservoir		2B	3A	4
Pineview Reservoir	1C 2A		3A	4

13.13 Unclassified Waters

All waters not specifically classified are presumptively classified: 2B, 3D

R317-2-14. Numeric Criteria.

TABLE 2.14.1
NUMERIC CRITERIA FOR DOMESTIC, RECREATION, AND AGRICULTURAL USES

Parameter	Domestic Source 1C(1)	Recreation and Aesthetics 2A	2B	Agri-culture 4
BACTERIOLOGICAL (30-DAY GEOMETRIC MEAN) (NO.)/100 ML) (7)				
E. coli	206	126	206	
MAXIMUM (NO.)/100 ML) (7)				
E. coli	668	409	668	
PHYSICAL				
pH (RANGE)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0
Turbidity Increase (NTU)		10	10	
METALS (DISSOLVED, MAXIMUM MG/L) (2)				
Arsenic	0.01			0.1
Barium	1.0			
Beryllium	<0.004			
Cadmium	0.01			0.01
Chromium	0.05			0.10
Copper				0.2
Lead	0.015			0.1
Mercury	0.002			
Selenium	0.05			0.05
Silver	0.05			
INORGANICS (MAXIMUM MG/L)				
Bromate	0.01			
Boron				0.75
Chlorite	<1.0			
Fluoride	4.0			
Nitrates as N	10			
Total Dissolved Solids (4)				1200
RADIOLOGICAL				

(MAXIMUM pCi/L)			
Gross Alpha	15		15
Gross Beta	4 mrem/yr	Radium 226, 228	
(Combined)	5		
Strontium 90	8		
Tritium	20000		
Uranium	30		
ORGANICS			
(MAXIMUM UG/L)			
2,4-D 94-75-7	70		
2,4,5-TP 93-72-1	10		
Alachlor 15972-60-8	2		
Atrazine 1912-24-9	3		
Carbofuran 1563-66-2	40		
Dalapon 75-99-0	200		
Di(2ethylhexl)adipate 103-23-1	400		
Dibromochloropropane 96-12-8	0.2		
Dinoseb 88-85-7	7		
Diquat 85-00-7	20		
Endothall 145-73-3	100		
Ethylene Dibromide 106-93-4	0.05		
POLLUTION INDICATORS (5)			
BOD (MG/L)	5	5	5
Nitrate as N (MG/L)	4	4	
Total Phosphorus as P (MG/L)(6)	0.05	0.05	

FOOTNOTES:

(1) See also numeric criteria for water and organism in Table 2.14.6.

(2) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by approved laboratory methods for the required detection levels.

(3) Reserved

(4) SITE SPECIFIC STANDARDS FOR TOTAL DISSOLVED SOLIDS (TDS)

Blue Creek and tributaries, Box Elder County, from Bear River Bay, Great Salt Lake to Blue Creek Reservoir:
March through October daily maximum 4,900 mg/l and an average of 3,800 mg/l; November through February daily maximum 6,300 mg/l and an average of 4,700 mg/l. Assessments will be based on TDS concentrations measured at the location of STORET 4960740.

Blue Creek Reservoir and tributaries, Box Elder County, daily maximum 2,100 mg/l;

Castle Creek from confluence with the Colorado River to Seventh Day Adventist Diversion: 1,800 mg/l;

Cottonwood Creek from the confluence with Huntington Creek to Highway U-57: 3,500 mg/l;

Ferron Creek from the confluence with San Rafael River to Highway U-10: 3,500 mg/l;

Huntington Creek and tributaries from the confluence with Cottonwood Creek to Highway U-10: 4,800 mg/l;

Ivie Creek and its tributaries from the confluence with Muddy Creek to the confluence with Quitchupah Creek: 3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use;

Ivie Creek and its tributaries from the confluence withQuitchupah Creek to Highway U-10: 2,600 mg/l;

Lost Creek from the confluence with Sevier River to U.S. National Forest boundary: 4,600 mg/l;

Muddy Creek and tributaries from the confluence with Ivie Creek to Highway U-10: 2,600 mg/l;

Muddy Creek from confluence with Fremont River to confluence with Ivie Creek: 5,800 mg/l;

North Creek from the confluence with Virgin River to headwaters: 2,035 mg/l;

Onion Creek from the confluence with Colorado River to road crossing above Stinking Springs: 3000 mg/l;

Brine Creek-Petersen Creek, from the confluence with the Sevier River to Highway U-119 Crossing: 9,700 mg/l;

Price River and tributaries from confluence with Green River to confluence with Soldier Creek: 3,000 mg/l;

Price River and tributaries from the confluence with Soldier Creek to Carbon Canal Diversion: 1,700 mg/l;

Quitchupah Creek and tributaries from the confluence with Ivie Creek
to Highway U-10: 3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use;

Rock Canyon Creek from the confluence with Cottonwood Creek to headwaters: 3,500 mg/l;

San Pitch River from below Gunnison Reservoir to the Sevier River: 2,400 mg/l;

San Rafael River from the confluence with the Green River to Buckhorn Crossing: 4,100 mg/l;

San Rafael River from the Buckhorn Crossing to the confluence with Huntington Creek and Cottonwood Creek: 3,500 mg/l;

Sevier River between Gunnison Bend Reservoir and DMAD Reservoir: 1,725 mg/l;

Sevier River from Gunnison Bend Reservoir to Crafts Lake: 3,370 mg/l;

South Fork Spring Creek from confluence with Pelican Pond
Slough Stream to U.S. Highway 89 1,450 mg/l (Apr.-Sept.)
1,950 mg/l (Oct.-March)

Virgin River from the Utah/Arizona border to Pah Tempe Springs: 2,360 mg/l

(5) Investigations should be conducted to develop more information where these pollution indicator levels are exceeded.

(6) Total Phosphorus as P (mg/l) indicator for lakes and reservoirs shall be 0.025.

(7) Where the criteria are exceeded and there is a reasonable basis for concluding that the indicator bacteria E. coli are primarily from natural sources (wildlife), e.g., in National Wildlife Refuges and State Waterfowl Management Areas, the criteria may be considered attained provided the density attributable to non-wildlife sources is less than the criteria. Exceedences of E. coli from nonhuman nonpoint sources will generally be addressed through appropriate Federal, State, and local nonpoint source programs.

Measurement of E. coli using the "Quanti-Tray 2000" procedure is approved as a field analysis. Other EPA approved methods may also be used.

For water quality assessment purposes, up to 10% of representative samples may exceed the 668 per 100 ml criterion (for 1C and 2B waters) and 409 per 100 ml (for 2A waters). For small datasets, where exceedences of these criteria are observed, follow-up ambient monitoring should be conducted to better characterize water quality.

TABLE 2.14.2
NUMERIC CRITERIA FOR AQUATIC WILDLIFE(8)

Parameter	Aquatic Wildlife				
	3A	3B	3C	3D	5
PHYSICAL					
Total Dissolved Gases	(1)	(1)			
Minimum Dissolved Oxygen (MG/L) (2)(2a)					
30 Day Average	6.5	5.5	5.0	5.0	
7 Day Average	9.5/5.0	6.0/4.0			
Minimum	8.0/4.0	5.0/3.0	3.0	3.0	
Max. Temperature(C)(3)	20	27	27		
Max. Temperature Change (C)(3)	2	4	4		
pH (Range)(2a)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0	

Turbidity Increase (NTU)	10	10	15	15
METALS (4) (DISSOLVED, UG/L)(5)				
Aluminum				
4 Day Average (6)	87	87	87	87
1 Hour Average	750	750	750	750
Arsenic (Trivalent)				
4 Day Average	150	150	150	150
1 Hour Average	340	340	340	340
Cadmium (7)				
4 Day Average	0.72	0.72	0.72	0.72
1 Hour Average	1.8	1.8	1.8	1.8
Chromium (Hexavalent)				
4 Day Average	11	11	11	11
1 Hour Average	16	16	16	16
Chromium (Trivalent) (7)				
4 Day Average	74	74	74	74
1 Hour Average	570	570	570	570
Copper (7)				
4 Day Average	9	9	9	9
1 Hour Average	13	13	13	13
Cyanide (Free)				
4 Day Average	5.2	5.2	5.2	
1 Hour Average	22	22	22	22
Iron (Maximum)	1000	1000	1000	1000
Lead (7)				
4 Day Average	2.5	2.5	2.5	2.5
1 Hour Average	65	65	65	65
Mercury				
4 Day Average	0.012	0.012	0.012	0.012
Nickel (7)				
4 Day Average	52	52	52	52
1 Hour Average	468	468	468	468
Selenium				
4 Day Average	4.6	4.6	4.6	4.6
1 Hour Average	18.4	18.4	18.4	18.4
Selenium (14) Gilbert Bay (Class 5A) Great Salt Lake Geometric Mean over Nesting Season (mg/kg dry wt)				12.5
Silver				
1 Hour Average (7)	3.2	3.2	3.2	3.2
Tributyltin				
4 Day Average	0.072	0.072	0.072	0.072
1 Hour Average	0.46	0.46	0.46	0.46
Zinc (7)				
4 Day Average	120	120	120	120
1 Hour Average	120	120	120	120
INORGANICS (MG/L) (4)				
Total Ammonia as N (9)				
30 Day Average	(9a)	(9a)	(9a)	(9a)
1 Hour Average	(9b)	(9b)	(9b)	(9b)
Chlorine (Total Residual)				
4 Day Average	0.011	0.011	0.011	0.011
1 Hour Average	0.019	0.019	0.019	0.019
Hydrogen Sulfide (Undissociated, Max. UG/L)	2.0	2.0	2.0	2.0
Phenol(Maximum)	0.01	0.01	0.01	0.01
RADIOLOGICAL (MAXIMUM pCi/L)				
ORGANICS (UG/L) (4)				
Acrolein				
4 Day Average	3.0	3.0	3.0	3.0
1 Hour Average	3.0	3.0	3.0	3.0
Aldrin				
1 Hour Average	1.5	1.5	1.5	1.5
Carbaryl				
4 Day Average	2.1	2.1	2.1	2.1
1 Hour Average	2.1	2.1	2.1	2.1
Chlordane				
4 Day Average	0.0043	0.0043	0.0043	0.0043
1 Hour Average	1.2	1.2	1.2	1.2
Chlorpyrifos				
4 Day Average	0.041	0.041	0.041	0.041
1 Hour Average	0.083	0.083	0.083	0.083
4,4' -DDT				
4 Day Average	0.0010	0.0010	0.0010	0.0010
1 Hour Average	0.55	0.55	0.55	0.55
Diazinon				
4 Day Average	0.17	0.17	0.17	0.17
1 Hour Average	0.17	0.17	0.17	0.17
Dieldrin				
4 Day Average	0.056	0.056	0.056	0.056
1 Hour Average	0.24	0.24	0.24	0.24
Alpha-Endosulfan				
4 Day Average	0.056	0.056	0.056	0.056
1 Hour Average	0.11	0.11	0.11	0.11
beta-Endosulfan				
4 Day Average	0.056	0.056	0.056	0.056
1 Day Average	0.11	0.11	0.11	0.11
Endrin				
4 Day Average	0.036	0.036	0.036	0.036
1 Hour Average	0.086	0.086	0.086	0.086
Heptachlor				
4 Day Average	0.0038	0.0038	0.0038	0.0038
1 Hour Average	0.26	0.26	0.26	0.26
Heptachlor epoxide				
4 Day Average	0.0038	0.0038	0.0038	0.0038
1 Hour Average	0.26	0.26	0.26	0.26
Hexachlorocyclohexane (Lindane)				
4 Day Average	0.08	0.08	0.08	0.08
1 Hour Average	1.0	1.0	1.0	1.0
Methoxychlor (Maximum)	0.03	0.03	0.03	0.03
Mirex (Maximum)	0.001	0.001	0.001	0.001
Nonylphenol				
4 Day Average	6.6	6.6	6.6	6.6
1 Hour Average	28.0	28.0	28.0	28.0
Parathion				
4 Day Average	0.013	0.013	0.013	0.013
1 Hour Average	0.066	0.066	0.066	0.066
PCBs				
4 Day Average	0.014	0.014	0.014	0.014
Pentachlorophenol (11)				
4 Day Average	15	15	15	15
1 Hour Average	19	19	19	19
Toxaphene				
4 Day Average	0.0002	0.0002	0.0002	0.0002
1 Hour Average	0.73	0.73	0.73	0.73
POLLUTION INDICATORS (10)				
Gross Alpha (pCi/L)	15	15	15	15
Gross Beta (pCi/L)	50	50	50	50
BOD (MG/L)	5	5	5	5
Nitrate as N (MG/L)	4	4	4	
Total Phosphorus as P(MG/L) (12)	0.05	0.05		

FOOTNOTES:

(1) Not to exceed 110% of saturation.

(2) These limits are not applicable to lower water levels in deep impoundments. First number in column is for when early life stages are present, second number is for when all

other life stages present.

(2a) These criteria are not applicable to Great Salt Lake impounded wetlands. Surface water in these wetlands shall be protected from changes in pH and dissolved oxygen that create significant adverse impacts to the existing beneficial uses. To ensure protection of uses, the Director shall develop reasonable protocols and guidelines that quantify the physical, chemical, and biological integrity of these waters. These protocols and guidelines will include input from local governments, the regulated community, and the general public. The Director will inform the Water Quality Board of any protocols or guidelines that are developed.

(3) Site Specific Standards for Temperature
Kens Lake: From June 1st - September 20th, 27 degrees C.

(4) Where criteria are listed as 4-day average and 1-hour average concentrations, these concentrations should not be exceeded more often than once every three years on the average.

(5) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by EPA approved laboratory methods for the required detection levels.

(6) The criterion for aluminum will be implemented as follows:

Where the pH is equal to or greater than 7.0 and the hardness is equal to or greater than 50 ppm as CaCO3 in the receiving water after mixing, the 87 ug/l chronic criterion (expressed as total recoverable) will not apply, and aluminum will be regulated based on compliance with the 750 ug/l acute aluminum criterion (expressed as total recoverable).

(7) Hardness dependent criteria. 100 mg/l used. Conversion factors for ratio of total recoverable metals to dissolved metals must also be applied. In waters with a hardness greater than 400 mg/l as CaCO3, calculations will assume a hardness of 400 mg/l as CaCO3. See Table 2.14.3 for complete equations for hardness and conversion factors.

(8) See also numeric criteria for organism only in Table 2.14.6.

(9) The following equations are used to calculate Ammonia criteria concentrations:

(9a) The thirty-day average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average, the chronic criterion calculated using the following equations.

Fish Early Life Stages are Present:

mg/l as N (Chronic) = $((0.0577/(1+10^{7.688-pH})) + (2.487/(1+10^{pH-7.688}))) * MIN (2.85, 1.45*10^{0.028*(25-T)})$ Fish Early Life Stages are Absent:

mg/l as N (Chronic) = $((0.0577/(1+10^{7.688-pH})) + (2.487/(1+10^{pH-7.688}))) * 1.45*10^{0.028*(25-MAX(T,7))})$

(9b) The one-hour average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average the acute criterion calculated using the following equations.

Class 3A:

mg/l as N (Acute) = $(0.275/(1+10^{7.204-pH})) + (39.0/1+10^{pH-7.204}))$

Class 3B, 3C, 3D:

mg/l as N (Acute) = $0.411/(1+10^{7.204-pH})) + (58.4/(1+10^{pH-7.204}))$

In addition, the highest four-day average within the 30-day period should not exceed 2.5 times the chronic criterion. The "Fish Early Life Stages are Present" 30-day average total ammonia criterion will be applied by default unless it is determined by the Director, on a site-specific basis, that it is appropriate to apply the "Fish Early Life Stages are Absent" 30-day average criterion for all or some portion of the year. At a minimum, the "Fish Early Life Stages are Present" criterion will apply from the beginning of spawning through the end of the early life stages. Early life stages include the pre-hatch embryonic stage, the post-hatch free embryo or yolk-sac fry stage, and the larval stage for the species of fish expected to occur at the site. The Director will consult with the Division of Wildlife Resources in making such determinations. The Division will maintain information regarding the waterbodies and time periods where application of the "Early Life Stages are Absent" criterion is determined to be appropriate.

(10) Investigation should be conducted to develop more information where these levels are exceeded.

(11) pH dependent criteria. pH 7.8 used in table. See Table 2.14.4 for equation.

(12) Total Phosphorus as P (mg/l) as a pollution indicator for lakes and reservoirs shall be 0.025.

(13) Reserved

(14) The selenium water quality standard of 12.5 (mg/kg dry weight) for Gilbert Bay is a tissue based standard using the complete egg/embryo of aquatic dependent birds using Gilbert Bay based upon a minimum of five samples over the nesting season. Assessment procedures are incorporated as a part of this standard as follows:
Egg Concentration Triggers: DWQ Responses

Below 5.0 mg/kg: Routine monitoring with sufficient intensity to determine if selenium concentrations within the Great Salt Lake ecosystem are increasing.

5.0 mg/kg: Increased monitoring to address data gaps, loadings, and areas of uncertainty identified from initial Great Salt Lake selenium studies.

6.4 mg/kg: Initiation of a Level II Antidegradation review by the State for all discharge permit renewals or new discharge permits to Great Salt Lake. The Level II Antidegradation review may include an analysis of loading reductions.

9.8 mg/kg: Initiation of preliminary TMDL studies to evaluate selenium loading sources.

12.5 mg/kg and above: Declare impairment. Formalize and implement TMDL.
Antidegradation
Level II Review procedures associated with this standard are referenced at R317-2-3.5.C.

TABLE
1-HOUR AVERAGE (ACUTE) CONCENTRATION OF TOTAL AMMONIA AS N (MG/L)

pH	Class 3A	Class 3B, 3C, 3D
6.5	32.6	48.8
6.6	31.3	46.8
6.7	29.8	44.6
6.8	28.1	42.0
6.9	26.2	39.1
7.0	24.1	36.1
7.1	22.0	32.8
7.2	19.7	29.5
7.3	17.5	26.2
7.4	15.4	23.0
7.5	13.3	19.9
7.6	11.4	17.0
7.7	9.65	14.4
7.8	8.11	12.1
7.9	6.77	10.1
8.0	5.62	8.40
8.1	4.64	6.95
8.2	3.83	5.72
8.3	3.15	4.71
8.4	2.59	3.88
8.5	2.14	3.20
8.6	1.77	2.65
8.7	1.47	2.20
8.8	1.23	1.84
8.9	1.04	1.56
9.0	0.89	1.32

TABLE
30-DAY AVERAGE (CHRONIC) CONCENTRATION OF TOTAL AMMONIA AS N (MG/l)

Fish Early Life Stages Present
Temperature, C

pH	0	14	16	18	20	22	24	26	28	30
6.5	6.67	6.67	6.06	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.6	6.57	6.57	5.97	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.7	6.44	6.44	5.86	5.15	4.52	3.98	3.50	3.07	2.70	2.37
6.8	6.29	6.29	5.72	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.9	6.12	6.12	5.56	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.0	5.91	5.91	5.37	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.1	5.67	5.67	5.15	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.2	5.39	5.39	4.90	4.31	3.78	3.33	2.92	2.57	2.26	1.99
7.3	5.08	5.08	4.61	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.4	4.73	4.73	4.30	3.78	3.32	2.92	2.57	2.26	1.98	1.74
7.5	4.36	4.36	3.97	3.49	3.06	2.69	2.37	2.08	1.83	1.61
7.6	3.98	3.98	3.61	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.7	3.58	3.58	3.25	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.8	3.18	3.18	2.89	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.9	2.80	2.80	2.54	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.0	2.43	2.43	2.21	1.94	1.71	1.50	1.32	1.16	1.02	0.90
8.1	2.10	2.10	1.91	1.68	1.47	1.29	1.14	1.00	0.88	0.77
8.2	1.79	1.79	1.63	1.43	1.26	1.11	0.97	0.86	0.75	0.66
8.3	1.52	1.52	1.39	1.22	1.07	0.94	0.83	0.73	0.64	0.56
8.4	1.29	1.29	1.17	1.03	0.91	0.80	0.70	0.62	0.54	0.48
8.5	1.09	1.09	0.99	0.87	0.76	0.67	0.59	0.52	0.46	0.40
8.6	0.92	0.92	0.84	0.73	0.65	0.57	0.50	0.44	0.39	0.34

8.7	0.78	0.78	0.71	0.62	0.55	0.48	0.42	0.37	0.33	0.29
8.8	0.66	0.66	0.60	0.53	0.46	0.41	0.36	0.32	0.28	0.24
8.9	0.56	0.56	0.51	0.45	0.40	0.35	0.31	0.27	0.24	0.21
9.0	0.49	0.49	0.44	0.39	0.34	0.30	0.26	0.23	0.20	0.18

TABLE
30-DAY AVERAGE (CHRONIC) CONCENTRATION OF
TOTAL AMMONIA AS N (MG/l)

Fish Early Life Stages Absent
Temperature, C

pH	0-7	8	9	10	11	12	13	14	16
6.5	10.8	10.1	9.51	8.92	8.36	7.84	7.36	6.89	6.06
6.6	10.7	9.99	9.37	8.79	8.24	7.72	7.24	6.79	5.97
6.7	10.5	9.81	9.20	8.62	8.08	7.58	7.11	6.66	5.86
6.8	10.2	9.58	8.98	8.42	7.90	7.40	6.94	6.51	5.72
6.9	9.93	9.31	8.73	8.19	7.68	7.20	6.75	6.33	5.56
7.0	9.60	9.00	8.43	7.91	7.41	6.95	6.52	6.11	5.37
7.1	9.20	8.63	8.09	7.58	7.11	6.67	6.25	5.86	5.15
7.2	8.75	8.20	7.69	7.21	6.76	6.34	5.94	5.57	4.90
7.3	8.24	7.73	7.25	6.79	6.37	5.97	5.60	5.25	4.61
7.4	7.69	7.21	6.76	6.33	5.94	5.57	5.22	4.89	4.30
7.5	7.09	6.64	6.23	5.84	5.48	5.13	4.81	4.51	3.97
7.6	6.46	6.05	5.67	5.32	4.99	4.68	4.38	4.11	3.61
7.7	5.81	5.45	5.11	4.79	4.49	4.21	3.95	3.70	3.25
7.8	5.17	4.84	4.54	4.26	3.99	3.74	3.51	3.29	2.89
7.9	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89	2.54
8.0	3.95	3.70	3.47	3.26	3.05	2.86	2.68	2.52	2.21
8.1	3.41	3.19	2.99	2.81	2.63	2.47	2.31	2.17	1.91
8.2	2.91	2.73	2.56	2.40	2.25	2.11	1.98	1.85	1.63
8.3	2.47	2.32	2.18	2.04	1.91	1.79	1.68	1.58	1.39
8.4	2.09	1.96	1.84	1.73	1.62	1.52	1.42	1.33	1.17
8.5	1.77	1.66	1.55	1.46	1.37	1.28	1.20	1.13	0.990
8.6	1.49	1.40	1.31	1.23	1.15	1.08	1.01	0.951	0.836
8.7	1.26	1.18	1.11	1.04	0.976	0.915	0.858	0.805	0.707
8.8	1.07	1.01	0.944	0.885	0.829	0.778	0.729	0.684	0.601
8.9	0.917	0.860	0.806	0.758	0.709	0.664	0.623	0.584	0.513
9.0	0.790	0.740	0.694	0.651	0.610	0.572	0.536	0.503	0.442

pH	18	20	22	24	26	28	30
6.5	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.6	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.7	5.15	4.52	3.98	3.50	3.07	2.70	2.37
6.8	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.9	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.0	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.1	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.2	4.41	3.78	3.33	2.92	2.57	2.26	1.99
7.3	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.4	3.78	3.32	2.92	2.57	2.26	1.98	1.74
7.5	3.49	3.06	2.69	2.37	2.08	1.83	1.61
7.6	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.7	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.8	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.9	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.0	1.94	1.71	1.50	1.32	1.16	1.02	0.897
8.1	1.68	1.47	1.29	1.14	1.00	0.879	0.733
8.2	1.43	1.26	1.11	1.073	0.855	0.752	0.661
8.3	1.22	1.07	0.941	0.827	0.727	0.639	0.562
8.4	1.03	0.906	0.796	0.700	0.615	0.541	0.475
8.5	0.870	0.765	0.672	0.591	0.520	0.457	0.401
8.6	0.735	0.646	0.568	0.499	0.439	0.396	0.339
8.7	0.622	0.547	0.480	0.422	0.371	0.326	0.287
8.8	0.528	0.464	0.408	0.359	0.315	0.277	0.244
8.9	0.451	0.397	0.349	0.306	0.269	0.237	0.208
9.0	0.389	0.342	0.300	0.264	0.232	0.204	0.179

TABLE 2.14.3a
EQUATIONS TO CONVERT TOTAL RECOVERABLE METALS STANDARD
WITH HARDNESS (1) DEPENDENCE TO DISSOLVED METALS STANDARD
BY APPLICATION OF A CONVERSION FACTOR (CF).

Parameter	4-Day Average (Chronic) Concentration (UG/L)
CADMIUM	$CF * e^{(0.7977*\ln(\text{hardness})-.909)}$ CF = 1.101672 - ln(hardness) (0.041838)
CHROMIUM III	$CF * e^{(0.8190(\ln(\text{hardness})) + 0.6848}$ CF = 0.860
COPPER	$CF * e^{(0.8545(\ln(\text{hardness})) -1.702)}$ CF = 0.960
LEAD	$CF * e^{(1.273(\ln(\text{hardness}))-4.705)}$ CF = 1.46203 - ln(hardness)(0.145712)
NICKEL	$CF * e^{(0.8460(\ln(\text{hardness}))+0.0584)}$ CF = 0.997
SILVER	N/A
ZINC	$Cf * e^{(0.8473(\ln(\text{hardness}))+0.884)}$ CF = 0.986

TABLE 2.14.3b
EQUATIONS TO CONVERT TOTAL RECOVERABLE METALS STANDARD
WITH HARDNESS (1) DEPENDENCE TO DISSOLVED METALS STANDARD
BY APPLICATION OF A CONVERSION FACTOR (CF).

Parameter	1-Hour Average (Acute) Concentration (UG/L)
CADMIUM	$CF * e^{(0.9789*\ln(\text{hardness})-3.866)}$ CF = 1.136672 - ln(hardness)(0.041838)
CHROMIUM (III)	$CF * e^{(0.8190(\ln(\text{hardness})) +3.7256)}$ CF = 0.316
COPPER	$CF * e^{(0.9422(\ln(\text{hardness}))- 1.700)}$ CF = 0.960
LEAD	$CF * e^{(1.273(\ln(\text{hardness}))-1.460)}$ CF = 1.46203 - ln(hardness)(0.145712)
NICKEL	$CF * e^{(0.8460(\ln(\text{hardness})) +2.255)}$ CF= 0.998
SILVER	$CF * e^{(1.72(\ln(\text{hardness}))- 6.59)}$ CF = 0.85
ZINC	$CF * e^{(0.8473(\ln(\text{hardness})) +0.884)}$ CF = 0.978

FOOTNOTE:
(1) Hardness as mg/l $CaCO_3$.

TABLE 2.14.4
EQUATIONS FOR PENTACHLOROPHENOL
(pH DEPENDENT)

4-Day Average (Chronic) Concentration (UG/L)	1-Hour Average (Acute) Concentration (UG/L)
$e^{(1.005(pH))-5.134}$	$e^{(1.005(pH))-4.869}$

TABLE 2.14.5
SITE SPECIFIC CRITERIA FOR
DISSOLVED OXYGEN FOR JORDAN RIVER,
SURPLUS CANAL, AND STATE CANAL
(SEE SECTION 2.13)

DISSOLVED OXYGEN:	
May-July	
7-day average	5.5 mg/l
30-day average	5.5 mg/l
Instantaneous minimum	4.5 mg/l
August-April	
30-day average	5.5 mg/l
Instantaneous minimum	4.0 mg/l

TABLE 2.14.6
LIST OF HUMAN HEALTH CRITERIA (CONSUMPTION)

Chemical Parameter and CAS #	Water and Organism (ug/L)	Organism Only (ug/L)
	Class 1C	Class 3A,3B,3C,3D
Antimony 7440-36-0	5.6	640
Arsenic 7440-38-2	A	A
Beryllium 7440-41-7	C	C
Chromium III 16065-83-1	C	C
Chromium VI 18540-29-9	C	C
Copper 7440-50-8	1,300	
Mercury 7439-97-6	A	A
Nickel 7440-02-0	610	4,600
Selenium 7782-49-2	170	4,200
Thallium 7440-28-0	0.24	0.47
Zinc 7440-66-6	7,400	26,000
Free Cyanide 57-12-5	140	140

Asbestos 1332-21-4	7 million Fibers/L	
2,3,7,8-TCDD Dioxin 1746-01-6	5.0 E -9 B	5.1 E-9 B
Acrolein 107-02-8	3.0	400
Acrylonitrile 107-13-1	0.061	7.0
Atrazine 1912-24-9	3.0	
Benzene 71-43-2	2.1 B	51 B
Bromoform 75-25-2	7.0 B	120 B
Carbon Tetrachloride 56-23-5	0.4 B	5
BChlorobenzene 57-12-5	100 MCL	1,600
Chlorodibromomethane 124-48-1	0.40 B	13 B
Chloroform 67-66-3	5.7 B	470 B
Dalapon 75-99-0	200	
Dichlorobromomethane 75-27-4	0.55 B	17 B
1,2-Dichloroethane 107-06-2	9.9 B	650 B
1,1-Dichloroethylene 75-35-4	300 MCL	20,000
Dichloroethylene (cis-1,2) 156-59-2	70	
Diquat 231-36-7	20	
1,2-Dichloropropane 78-87-5	0.90 B	31 B
1,3-Dichloropropene 542-75-6	0.27	12
Ethylbenzene 100-41-4	68	130
Glyphosate 1071-83-6	700	
Methyl Bromide 74-83-9	47100	10,000
Methylene Chloride 75-09-2	20 B	1,000 B
1,1,2,2-Tetrachloroethane 79-34-5	0.2 B	3 B
Tetrachloroethylene 127-18-4	10 B	29 B
Toluene 108-88-3	57	520
1,2 -Trans-Dichloroethylene 156-60-5	100 MCL	4,000
1,1,1-Trichloroethane 71-55-6	10,000 MCL	200,000
1,1,2-Trichloroethane 79-00-5	0.55 B	8.9 B
Trichloroethylene 79-01-6	0.6 B	7 B
Vinyl Chloride 75-01-4	0.022	1.6
Xylenes 1330-20-7	10,000	
2-Chlorophenol 95-57-8	30	800
2,4-Dichlorophenol 120-83-2	10	60
2,4-Dimethylphenol 105-67-9	100	3,000
2-Methyl-4,6-Dinitrophenol 534-52-1	2	30
2,4-Dinitrophenol 51-28-5	10	300
3-Methyl-4-Chlorophenol 59-50-7	500	2,000
Pentachlorophenol 87-86-5	0.03 B	0.04 B
Phenol 108-95-2	4,000	300,000
2,4,5-Trichlorophenol 95-95-4	300	600
2,4,6-Trichlorophenol 88-06-2	1.5 B	2.8 B
Acenaphthene 83-32-9	70	90
Anthracene 120-12-7	300	400
Benzidine 92-87-5	0.00014 B	0.011 B
BenzoaAnthracene 56-55-3	0.0012 B	0.0013 B
BenzoaPyrene 50-32-8	0.00012 B	0.00013 B
BenzobFluoranthene 205-99-2	0.0012 B	0.018 B
BenzokFluoranthene 207-08-9	0.012 B	0.013 B
Bis2-Chloro1methylether 542-88-1	0.00015	0.017
Bis2-Chloro1methylethylether 108-60-1	200 B	4000
Bis2-ChloroethylEther 111-44-40	0.030 B	2.2 B
Bis2-Chloro1methylether 542-88-1	0.00015	0.017
Bis2-Chloro1methylethylether 108-60-1	200 B	4000
Bis2-Chloroisopropy1Ether 39638-32-9	1,400	65,000
Bis2-EthylhexylPhthalate 117-81-7	0.32 B	0.037 B
Butylbenzyl Phthalate 85-68-7	0.1	0.1
2-Chloronaphthalene 91-58-7	800	1,000
Chrysene 218-01-9	0.0038 B	0.018 B
Dibenzoa,hAnthracene 53-70-3	0.0038 B	0.018 B
1,2-Dichlorobenzene 95-50-1	1,000	3,000
1,3-Dichlorobenzene 541-73-1	7	10
1,4-Dichlorobenzene 106-46-7	300	900
3,3-Dichlorobenzidine 91-94-1	0.04 B	0.15 B
Diethyl Phthalate 64-66-2	600	600
Dimethyl Phthalate 131-11-3	2,000	2,000
Di-n-Butyl Phthalate 84-74-2	20	30
2,4-Dinitrotoluene 121-14-2	0.49 B	1.7 B
Dinitrophenols 25550-58-7	10	1,000
1,2-Diphenylhydrazine 122-66-7	0.036 B	0.20 B
Fluoranthene 206-44-0	20	20
Fluorene 86-73-7	50	70
Hexachlorobenzene 118-74-1	0.000079 B	0.000079 B
Hexachlorobutadiene 87-68-3	0.01 B	0.01 B
Hexachloroethane 67-72-1	1.4 B	3.3 B
Hexachlorocyclopentadiene 77-47-4	4	4
Ideno 1,2,3-cdPyrene 193-39-5	0.0012 B	0.0013 B
Isophorone 78-59-1	34 B	1,800 B
Nitrobenzene 98-95-3	10	600
N-Nitrosodiethylamine 55-18-5	0.0008 B	1.24 B
N-Nitrosodimethylamine 62-75-9	0.00069 B	3.0 B
N-Nitrosodi-n-Propylamine 621-64-7	0.005 B	0.51 B
N-Nitrosodiphenylamine 86-30-6	3.3 B	6.0 B
N-Nitrosoyrrolidine 930-55-2	0.016 B	34 B
Pentachlorobenzene 608-93-5	0.1	0.1
Pyrene 129-00-0	20	30
1,2,4-Trichlorobenzene 120-82-1	0.07 MCL	0.076
Aldrin 309-00-2	0.00000077 B	0.00000077 B
alpha-BHC 319-84-6	0.00036 B	0.000050 B
beta-BHC 319-85-7	0.008 B	0.014 B
gamma-BHC (Lindane) 58-89-9	4.2 MCL	4.4
Hexachlorocyclohexane (HCH) Technical 608-73-1	0.0066	0.010
Chlordane 57-74-9	0.00030 B	0.00032 B
4,4-DDT 50-29-3	0.000032 B	0.000030 B
4,4-DDE 72-55-9	0.000018 B	0.000018 B
4,4-DDD 72-54-8	0.00012 B	0.00012 B
Dieldrin 60-57-1	0.0000012 B	0.0000012 B
alpha-Endosulfan 959-98-8	20	30
beta-Endosulfan 33213-65-9	20	40
Endosulfan Sulfate 1031-07-8	20	40
Endrin 72-20-8	0.03	0.0600.03
Endrin Aldehyde 7421-93-4	1	1
Heptachlor 76-44-8	0.0000059 B	0.0000059 B
Heptachlor Epoxide 1024-57-3	0.000032 B	0.000032 B
Methoxychlor 72-43-5	0.02 MCL	0.02
Polychlorinated Biphenyls (PCBs) 1336-36-3	0.000064 B,D	0.000064 B,D
Toxaphene 8001-35-2	0.0007 B	0.00071 B

Footnotes:

A. See Table 2.14.2

B. Based on carcinogenicity of 10-6 risk.

C. EPA has not calculated a human criterion for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the State's existing narrative criteria for toxics

D. This standard applies to total PCBs.

KEY: water pollution, water quality standards
July 2, 2018 **19-5**
Notice of Continuation September 26, 2017 **[WPCA, 33 USC 1251,]1311-1317, 1329**

R357. Governor, Economic Development.
R357-5. Motion Picture Incentive.
R357-5-1. Authority.

(1) Subsection 63N-8-104(1) requires the office to make rules establishing the standards that a motion picture company and digital media company must meet to qualify for a motion picture incentive and the criteria for determining the amount of the motion picture incentive.

R357-5-2. Definitions.

(1) The definitions below are in addition to or serve to clarify the definitions found in Utah Code Section 63N-8-102.

(2) "Community Film Incentive Program" means a production where a motion picture company has a maximum budget of under $500,000.

(3) "Dollars Left in the State" means in addition to 63N-8 does NOT include:

(a) Salary for any individual earning more than 500,000

(b) Marketing and distributions expenditures

(c) 50% of shipping or airfare charges with one destination point within Utah and all shipping or airfare outside of Utah

(d) any value beyond the depreciated amount for capital expenditures, rentals, and any purchases made where the item is used for only a portion of its useful life

(e) any per diem value beyond 100 percent of the current federal rate for the area

(4) "Deferred Payment" means, tax credits in amounts over $2,000,000 paid in installments over a specified number of years but not to exceed three years.

(5) "Independent Utah CPA" means, a Certified Public Accountant (CPA) holding an active license in the state of Utah that is independent of the production and production activities.

(6) "Motion Pictures" means, but is not limited to, narrative or documentary films or high definition digital production, and originally intended for commercial distribution to motion picture theaters, directly to the home video and/or DVD markets, cable television, broadcast television or video on demand.

(a) The term "Motion Picture" does not include:

(i) News;

(ii) Commercials;

(iii) Live Broadcasts;

(iv) Digital Media Products;

(v) Live Sporting events;

(vi) Live Coverage of other theatrical or entertainment events;

(vii) Programs that solicit funds; or

(viii) Reality television.

(7) "Rural Utah" means all counties outside of Davis County, Salt Lake County, Utah County, and Weber County.

(8) "Significant Percentage of cast and crew from Utah" means

(a) For productions that have less than $500,000 dollars left in state: that at least 85% of the cast and crew are Utah residents excluding extras and five principal cast.

(b) For productions that have more than $500,000 dollars left in state: that at least 75% of the cast and crew are Utah residents excluding extras and five principal cast.

(9) "State-approved production" means a production that is:

(a) approved by the office and ratified by the Governor's Office of Economic Development Board; and

(b) all or a portion of the production is produced in the state.

(10) "Total budget for the product" means the total budget for Dollars left in state of pre-production, production and post-production.

(11) "Treatment" means: A written description of the production.

(12) "UFC" means: the Utah Film Commission, a sub-entity of the Utah Governor's Office of Economic Development.

(13) "Utah Resident" means a person who files a Utah State Tax Return as a resident of Utah.

R357-5-3. Motion Picture Incentive Applications: Procedures and Minimum Requirements for a Motion Picture Company.

(1) A motion picture company's application may be approved for a motion picture incentive award only if all of the following requirements are met in addition to those listed throughout 63N-8:

(a) The motion picture company is making all or a portion of a motion picture in the state of Utah;

(b) The motion picture is a state approved production;

(c) The motion picture company guarantees UFC access to production's behind the scenes footage, interviews and still photography or allow the office to produce its own;

(d) The motion picture company guarantees the production will display the Utah logo as outlined in the incentive agreement and provide a screen shot of the logo as it appears in the credits.

(e) The motion picture company has obtained financing for 100% of the anticipated Dollars left in state for the project, and the applicant provides proof of financing in a form specified in the application documents.

(f) The motion picture company must retain financing as set forth in subsection (e) for the life of the contract with the State.

(g) The motion picture company intends to report at least $500,000 dollars left in state if applying for a film incentive pursuant to R357-5-5(1) or a maximum of under $500,000 if applying for an incentive pursuant to R357-5-5(2);

(h) If a production has initiated principal photography prior to the Office's receipt of a completed application or will not commence principal photography for more than 90 days from date of application, the application for incentive may be denied.

(2) The motion picture incentive application shall not be construed as a property right and neither the Office nor the Board is required to approve an application.

(3) In order to receive state approval for an incentive application, a production must, in the State's sole discretion, reflect positively on the image of state of Utah.

(a) In determining whether or not a production reflects positively on the image of the state of Utah, the Office and Board may take into consideration:

(i) Whether and to what extent the motion picture promotes Utah as a tourist destination;

(ii) the overall strength and viability of the script of the production;

(iii) the industry reputation of the production or motion picture company;

(iv) the record of the motion picture company in matters of safety and responsible filmmaking; and

(v) the existence of any legal action or the likelihood of any legal action in relation to either the production or the motion picture company;

(vi) general standards of decency and respect for the diverse beliefs and values of Utahns; and

(vii) any other factors related to the production or the motion picture company that may reasonably affect the image of the state of Utah.

(4) The Office and Board may consider the relative merit of applications, and the need to reserve its allocations for future applications.

(a) Factors that contribute to the relative merit will be weighted by a point system available on the Utah Film Commission's website and include, but are not limited to:

(i) Number of anticipated jobs in Utah;

(ii) Number of production days in Utah;

(iii) Length of employment for Utah cast and crew;

(iv) Local cast and crew wages;

(v) Other economic development that the film contributes in the State of Utah;

(b) Applications shall be made in the form prescribed by the Office, including required attachments or additional information.

(i) Incomplete applications will not be considered received until the application is deemed complete by the UFC.

(ii) A script is required as part of the application.

(1) A treatment may only be submitted where a script for a project type is not possible for example, because the project is a documentary. The Utah Film Commission will determine in its sole discretion if a treatment can be substituted for a script.

(5) A production company may file more than one application if it has more than one production in the state, but a separate application must be filed for each production.

(6) Applications will be subject to submission deadlines, which will be posted on the Utah Film Commission Website and are available in other formats upon request.

(a) If the applicant fails to submit a completed application prior to the submission deadline, the application may be considered with the next round of submissions.

(7) Submitting an application does not guarantee approval of a film incentive.

(a) All film incentives are subject to and contingent upon the amount of available funding and/or tax credit allocation available in the Motion Picture Restricted account;

(b) Lack of state approval shall not be construed as prohibiting a production or prohibiting a motion picture company from filming in Utah.

R357-5-4. Motion Picture Incentive Applications: Award for a Motion Picture Production.

(1) Upon receipt of a completed application, the Office will align each project into incentive categories as set forth in R357-5-5.

R357-5-5. Film Categories and Conditions.

(1) Utah Motion Picture Incentive Program

(a) The Utah Motion Picture Incentive Program will have an incentive cap of 20% the dollars left in state, unless a higher cap is awarded pursuant to subsection (c).

(b) Incentives will only be awarded if the motion picture company meets criteria listed in statute, R357-5-3

(c) An additional cap of up to 5% may be granted if the motion picture company:

(i) Motion picture company has at least $1,000,000 in qualified dollars left in state, and

(ii) 75% of cast and crew are Utah residents excluding extras and five principal cast members, or

(iii) 75% of production days occur in rural Utah

(2) Community Film Incentive Program

(a) The Community Film Incentive Program will provide a maximum of a 20% post performance cash rebate or tax incentive for dollars left in state by a community film production.

(b) Community Film Incentive Program incentives will only be awarded if the motion picture company meets criteria listed in statute, R357-5-3, has a maximum budget of under $500,000, and meets the criteria found on the Utah Film Commission Website.

(c) Applications for the Community Film Incentive Program will be reviewed monthly.

(d) Awards will be made to motion picture companies based upon the criteria outlined in the Community Film Incentive Program application provided by UFC.

(3) For applications made under either (1) or (2), the motion picture company must provide all information and documentation to show measureable outcomes as outlined in the application for any incentive listed in R357-5-5.

R357-5-6. Funding -- Post-Performance Compliance.

(1) A motion picture company may qualify for issuance of either a Post-Performance Refundable Tax Credit or Post-Performance Cash award based on the method outlined in their contract if all of the following requirements are met in addition to those listed throughout 63N-8:

(a) The motion picture company must follow the Agreed-Upon Procedures, which will be posted on the Utah Film Commission Website.

(i) If the motion picture company has residency requirements, the motion picture company will be responsible for providing sufficient documentation to the CPA for residency verification, this includes:

(A) A copy of a Utah driver's license; or

(B) A copy of government issued identification (from any state or foreign government or student ID/Report card), and (2) documentation showing residency, covering at least 183 days, matching the name, or parent or guardian, on the submitted government ID.

(b) The motion picture company must submit a completed final application to the Governor's Office of Economic Development's Compliance team, in the form prescribed by the Office, including required attachments or additional information.

(2) A CPA when conducting a review of a motion picture company's expenses and contract requirements, the CPA must follow the Agreed-Upon Procedures, which will be posted on the Utah Film Commission Website.

(3) The CPA must retain work papers related to performing these Agreed-Upon Procedures for at least two years. The Governor's Office of Economic Development, at its own discretion, shall have the right to review the CPA's work to ensure consistency among the various CPAs, to find areas for improvement to the Agreed-Upon Procedures, and as an internal control.

R357-5-7. Funding -- Post-Performance Refundable Tax Credit.

(1) Post-performance refundable tax credits are nontransferable and can only be issued to the state-approved motion picture that submits the motion picture incentive application and is approved by the office with advice from the Board.

(2) Post-performance refundable tax credits in amounts over $2,000,000 may be paid in deferred payments over multiple years as authorized by the office within the approved board motion for the tax credit.

(a) All deferred payments for tax credits over $2,000,000 are subject to available tax credit allocation as authorized by the legislature.

(b) Each annual installment of the deferred payment amount shall be outlined in the tax credit agreement.

(c) A deferred payment plan cannot exceed three years.

R357-5-8. Funding -- Post-Performance Cash.

(1) Post-performance cash can only be issued to the state-approved motion picture company who submits the motion picture incentive application and is approved by the office with advice from the Board.

R357-5-9. Request for Incentive Amendment.

(1) A motion picture company may request an incentive amendment only under the conditions prescribed by the Office.

(2) Amendments will be reviewed and approved by the UFC on a case by case basis with a written explanation for the approval or denial provided to the applicant.

KEY: economic development, motion picture, digital media, new state revenue
July 9, 2018 63N-8-104
Notice of Continuation June 9, 2016

R380. Health, Administration.
R380-40. Local Health Department Minimum Performance Standards.
R380-40-1. Authority.

This rule is promulgated as required by Section 26A-1-106(1)(c). The minimum performance standards apply to all local health department services, regardless of funding sources.

R380-40-2. Definitions.

(1) "Department" means the Utah Department of Health.

(2) "District" means the area and population served by a local health department.

(3) "Evidence-based services" are based on evidence-based practices. Evidence-based practices include interventions, programs, strategies, policies, procedures, processes or activities

that have been chosen based on evidence that they improve health outcomes. Evidence-based practices indicate a continuum of practices and can include emerging, promising and best practices.

(4) "Minimum performance standards" means the minimum duties performed by local health departments for public health administration, personal and population health, environmental health, and emergency preparedness in addition to the powers and duties listed in Section 26A-1-114 and is equivalent to the phrase "minimum performance standards" in Section 26A-1-106(1)(c).

(5) "primary care specialty" means pediatrics, internal medicine, family medicine, or obstetrics and gynecology.

R380-40-3. Compliance.

The local health department and the department shall monitor compliance with minimum performance standards.

R380-40-4. Corrective Action.

(1) Except as provided in Subsection (3), if the department has cause to believe that a local health department is out of compliance with minimum performance standards the department shall provide a preliminary assessment to the local health officer that identifies the suspected areas of noncompliance. The local health officer shall respond to each of the areas identified in the preliminary assessment within 30 days of receipt.

(2) After review of the local health officer's response, if the department determines that the local health department is out of compliance with the minimum performance standards and has not provided a satisfactory response, the department shall notify the local board of health and the local health officer in writing of its findings and establish a specific time frame for the correction of each area of noncompliance.

(3) The department shall notify the local board of health and the local health officer if the department has cause to believe that noncompliance with minimum performance standards represents an imminent danger to the safety or health of the people of the State or the district.

(4) The local board of health shall submit a written corrective action plan that is satisfactory to the department. At a minimum, the corrective action plan must include the following: date of report, areas of noncompliance, corrective actions, responsible individual, and dates of plan implementation and completion.

R380-40-5. Local Health Officers.

(1)(a) A local health officer who is a physician shall:

(i) be a graduate of a regularly chartered and legally constituted school of medicine or osteopathy;

(ii) be licensed to practice medicine in the state of Utah; and

(iii) be board certified in preventive medicine or in a primary care specialty.

(b) A local health officer who is not a physician shall:

(i) have successfully completed a master's degree in public health, nursing or other health discipline related to public health, public administration, or business administration from an accredited school; and

(ii) have at least five years of professional full-time experience in the practice of public health, of which at least three years were in a senior administrative capacity.

(c) If the local health officer is not a physician, the local health department shall contract with or employ a physician that is:

(i) residing in Utah and licensed to practice medicine in the state;

(ii) competent and experienced in a primary care specialty medical care field;

(iii) board certified in preventive medicine or in a primary care specialty;

(iv) able to supervise and oversee clinical services delivered within the local health department, including the approval of all clinical protocols, standing orders, and prescriptions issued within the public health system as described in Section 58-17b-620; and

(v) able to review policies and procedures addressing human disease outbreaks of public health importance including emergency procedures authorized under 58-1-307(6), (7), and (8).

(d) The Executive Director may grant an exception to the requirements for a local health officer who was in the position before February 1, 2016.

(2) The local health officer shall promote and protect the health and wellness of the people within the district to include the following activities;

(a) function as the executive and administrative officer;

(b) report to and receive policy direction from the local board of health;

(c) coordinate public health services in the district;

(d) direct programs assigned by statute to the local health department, including administering and enforcing state and local health laws, regulations and standards;

(e) direct the investigation and control of diseases and conditions affecting public health;

(f) be responsible for hiring, terminating, supervising, and evaluating all local health department employees;

(g) oversee proposed budget preparation;

(h) present the budget to the board of health for review and approval;

(i) develop and propose policies for board consideration;

(j) implement policies of the local board of health;

(k) advise the department with regard to policy development as those policies impact the mission, purpose, and capacity of the local health department;

(l) ensure that available data on health status and health problems of the district are reviewed regularly including

(i) a report to the board of health at least annually, and

(ii) an assessment that includes community input at least every five years;

(m) ensure that information about health and health hazards is disseminated as appropriate to protect the health of people in the district; and

(n) perform other duties as assigned by the local board of health.

(3) The local health officer shall ensure that an ongoing planning process is initiated and maintained that includes mission statement; community needs assessments; problem statements; goals, outcomes, and process objectives or implementation activities; evaluation; public involvement; and use of available data sources.

(4) The local health officer shall ensure that fiscal management procedures are developed, implemented and maintained in accordance with federal, state, and local government requirements.

(5) Consistent with federal and state laws and local ordinances and policies, the local health officer shall ensure:

(a) that employees are recruited, hired, terminated, classified, trained, and compensated in accordance with relevant merit principles, federal civil rights requirements, and laws of general applicability, and that their qualifications are commensurate with job responsibilities;

(b) the orientation of all new employees to the local health department and its personnel policies;

(c) the maintenance of a personnel system that includes an accurate, current, and complete personnel record for each local health department employee;

(d) the verification of all current licensure and certification

requirements;

(e) continued education and training for all employees commensurate with job responsibilities;

(f) that each employee receives an annual performance evaluation, based upon a job description and written performance expectations for each employee.

(6) A local health officer or designee who is a physician or osteopath licensed to practice medicine in Utah shall supervise and be accountable for medical practice conducted by local health department employees. If the local health officer is not a physician or osteopath licensed in Utah, he shall appoint a medical director licensed to practice medicine or osteopathy in Utah to supervise and be accountable for medical practice conducted by local health department employees.

R380-40-6. Local Health Department Administration.

(1) Local health departments shall exercise the powers and duties as outlined in Section 26A-1-114.

(2) In addition to the duties outlined in 26A-1-109 and 26A-1-110, the local board of health shall:

(a) establish local health department policies;

(b) adopt an annual budget;

(c) monitor revenue and expenditures;

(d) oversee compliance with minimum performance standards;

(e) provide for planning as defined in R380-40-5(3);

(f) periodically, but at least annually, evaluate the performance of the local health officer; and

(g) report at least annually to the county governing body or bodies of the district served by the local health department regarding health issues and the health status of residents of the district.

(3) Each local health department shall have an annual financial audit. The local board of health shall appoint an independent auditor or the audit may be conducted as part of the county audit and, in any event, the local board of health shall accept the audit or accept responsibility for findings in the audit that apply to the local health department.

(4) Each local health department shall employ a registered nurse with education, experience, and Utah licensure consistent with the position requirements to supervise, evaluate, and be accountable for nursing practice conducted by local health department nurses in order to provide quality public health nursing service.

(5) Each local health department shall employ a certified health education specialist or other qualified person with education, experience, or a combination of education and experience resulting in comparable expertise to direct health education and promotion activities.

(6) Each local health department shall employ an environmental health scientist registered in Utah with education and experience consistent with the position requirements to supervise, evaluate, and be accountable for environmental health activities in order to protect and promote public health and safety and protect the environment.

(7) Each local health department shall employ an individual with training and experience in epidemiology to conduct and oversee epidemiology activities conducted by the local health department.

(8) Programs provided by local health departments shall be developed, directed, and organized in response to community needs; delivered and controlled in accordance with approved budget; and evaluated for effectiveness and impact.

(9) Each local health department shall provide all public health services in compliance with federal, state, and local laws, regulations, rules, policies and procedures; and accepted standards of public health, medical and nursing practice.

(10) If a county withdraws from a multi-district local health department in accordance with Section 26A-1-122, the withdrawing county must demonstrate to the department that it can meet the minimum performance standards set out in this rule through the use of county and local funding sources in order to enter into a contract with the department for allocation state funds pursuant to Section 26A-1-115 and R380-50. Specifically, the county shall demonstrate to the department it:

(a) has the revenue within the county budget at the time the local health department begins operation to:

(i) employ the following full time employees:

(A) a health officer who meets the qualifications in R380-40-5;

(B) a registered nurse who meets the qualifications in subsection (4);

(c) an environmental health scientist who meets the qualifications in subsection (6); and

(D) a business manager who has experience in budget preparation and tracking, accounts receivable, accounts payable, purchasing, and if not provided to the new local health department by a county, human resources, including recruitment, hiring, and termination within a merit system.

(ii) assure the requirement for physician oversight in R380-40-5(1)(c) can be met;

(iii) employ the following additional staff on either a part-time or full-time basis:

(A) a health education on specialist who meets the qualifications in subsection (5);

(B) an individual with epidemiology experience who meets the qualifications in subsection (7);

(b) assure business operations support to include a minimum budget/finance and human resources;

(c) provide, equip, and maintain suitable offices, facilities, and infrastructure as required in Section 26A-1-115(2);

(d) has the commitment and ability to continue funding the health department with revenue from county and local funding sources at an amount not less than the amount needed for (a) above;

(e) has adopted a county ordinance to create and maintain a local board of health and health department charged with the responsibilities and duties outlined in Section 26A-1-101 through 26A-1-127;

(f) has a commitment from the county attorney to serve as the legal advisor to the health department as derived in 26A-1-120;

(g) has a commitment from emergency response entities to work with the local health department as outlined in R380-40-9(1)(a), (b), (c), (d), and (e); and

(h) has the availability of laboratory services as outlined in R380-40-10.

R380-40-7. Local Health Department Personal and Population Health Services.

(1) Each local health department shall provide health education and health promotion services to include: conducting community health assessments, identifying leading causes of disease, death, disability and poor health; and implementing evidence-based services to address the identified priorities.

(2) Each local health department shall provide evidence-based communicable disease prevention and control services to include: reporting, surveillance, assessment, epidemiological investigation, and appropriate control measures as defined in State disease plans for reportable communicable diseases and other communicable diseases of public health concern.

(3) Each local health department shall ensure health services by assessing the availability of health-related services and health providers in local communities; identifying gaps and barriers in services; convening or participating with community partners to improve community health systems; and providing services identified as priorities by the local assessment and planning process if approved by the local board of health.

(4) Each local health department shall provide epidemiology services including surveillance for reportable conditions, tracking occurrence of conditions affecting the health of communities, and obtaining or preparing epidemiologic data to guide prioritization of problems, and development and evaluation of prevention and control programs.

(5) Each local health department designated as a local registrar of vital statistics shall ensure the registration of appropriate certificates for all live births, deaths, and fetal deaths that occur in the registration area, as required by Utah Code Annotated Section 26-2.

(6) Each local health department shall provide evidence-based services as guided by local community assessment and planning to include:

(a) maternal and child health services,

(b) injury control services; and

(c) chronic disease control services.

R380-40-8. Local Health Department Environmental Health Programs.

(1) Each local health department shall ensure that there is a program including the maintenance of an inventory of regulated entities or complaints for:

(a) food safety consistent with R392-100, R392-101, R392-103, R392-104, and R392-110; and;

(b) schools consistent with R392-200;

(c) recreation camps consistent with R392-300;

(d) recreational vehicle parks consistent with R392-301;

(e) public pools consistent with R392-302 and R392-303;

(f) temporary mass gatherings consistent with R392-400;

(g) roadway rest stops consistent with R392-401;

(h) mobile home parks consistent with R392-402;

(i) labor camps consistent with R392-501;

(j) hotels, motels and resorts consistent with R392-502;

(k) indoor clean air consistent with Section 26-38 and R392-510;

(l) illegal drug operations decontamination consistent with R392-600;

(m) indoor tanning beds consistent with R392-700; and

(n) investigation of complaints about public health hazards, including vector control, to include inspections including corrective actions and an information system that documents the process of receiving, investigating and the final disposition of complaints.

(2) Each local health department shall develop, implement, and maintain environmental health programs to meet the special or unique needs of its community as determined by local or state needs assessment and the local board of health.

R380-40-9. Local Health Department Public Health Emergency Preparedness.

(1) Each local health department shall conduct public health emergency preparedness efforts.

(a) conduct, or coordinate with emergency management agencies in the district to conduct, a community public health, medical, mental, and behavioral health hazard and risk assessment that considers populations with special needs to influence prioritization of public health emergency preparedness efforts;

(b) establish partnerships with volunteers, emergency response agencies, and other community organizations involved in emergency response;

(c) establish Memorandums of Agreement with response partners for assistance in emergency response;

(d) identify public health roles and responsibilities in local emergency response;

(e) function as the lead agency for Emergency Support Function #8---Public Health and Medical Services;

(f) maintain an all-hazards public health emergency operations plan that shall include priorities from hazard and risk assessment in R380-40-9(1)(a); hazard-specific response information for an infectious disease outbreak; and protocols or guidelines for dispensing of medical countermeasures, public health emergency messaging, non-pharmaceutical interventions, mass fatality response and requesting additional resources;

(g) maintain a continuity of operations plan that shall include employee notification, lines of authority and succession, and prioritized local health department functions;

(h) annually test public health preparedness through an emergency response drill or exercise;

(i) ensure access to and annually test emergency response communications equipment and systems that will be used in public health emergency response;

(j) the local health officer and at least one other employee shall complete FEMA ICS-100, ICS-200, ICS-300, ICS-400, IS-700, and IS-800 courses.

R380-40-10. General Performance Standards for Local Health Department Laboratory Services.

Each local health department shall ensure the availability of laboratory capacity to support public health programs by maintaining an on-site laboratory, through agreements with the Utah Public Health Laboratory, or by agreements or contracts with private laboratories to conduct needed tests in a timely manner.

KEY: local health departments, performance standards
July 3, 2018 26A-1-106(1)(c)
Notice of Continuation March 6, 2015

R380. Health, Administration.
R380-50. Local Health Department Funding Allocation Formula.
R380-50-1. Authority and Purpose.

(1) This rule is being promulgated under the authority of Section 26A-1-116, which directs the Utah Department of Health to establish by rule a formula for allocating funds by contract to local health departments.

(2) This rule specifies the formula for allocating state-appropriated funds to local health departments by contract.

R380-50-2. Definitions.

(1) "Multi-county Factor" means funds allocated to local health departments to encourage them to form and maintain multi-county health departments.

(2) "Funds" means the State General Block Funds Maternal and Child Health Block grant funds, Preventive Block grant funds, immunization funds, bioterrorism/emergency preparedness and response funds, and tobacco funds, allocated by the Legislature to the Utah Department of Health for distribution to all participating local health departments by contract.

(3) "Local Health Department" means a local health department established under Section 26A-1-102(5).

(4) "Multi-county Health Department" means a local health department that is comprised of two or more contiguous counties as defined in Section 26A-1-102(7).

(5) "Participating local health department" means a local health department that accepts funds by contract from the Department.

(6) "Total State Population" means the population figures by county as provided by the State Office of Planning and Budget.

R380-50-3. Allocation Procedures.

(1) The amount of funds to be allocated between the

department and local health departments shall be determined by the Governance Committee as described in Section 26-1-4(3).

(2) By a three-fourths vote of its members, the Utah Association of Local Health Officers may, in cooperation with and subject to the approval of the Department of Health, allocate a portion of the funds as necessary to support public health programs within every participating local health department and are available to all eligible residents of the state. The Department finds that population is not the sole relevant factor in determining need.

(3) The Department adopts the following formula pursuant to Section 26A-1-116 for reallocating to local health departments any increases or decreases in funds.

(a) Minimum share. Thirty-two percent of the funds is divided into equal shares for each participating local health department.

(b) Population Factor: Fifty percent of the funds are divided among the local health departments based on the percentage of the total state population living within the geographical boundaries of the local health department according to the most current estimate from the Governor's Office of Management and Budget. At a minimum this factor will be evaluated after the official Census of the Population is released and four years after the official census is released.

(c) Multi-county Factor: Eighteen percent of the funds are divided among multi-county health departments as follows:

(i) the multi-county factor is made up of two equal parts:

(aa) Number of counties: half of the multi-county dollar amount, divided by the total number of counties that make up all the multi-county health departments. The number is multiplied by the number of counties in each multi-county health department.

(bb) Population: each multi-county health department's population (based upon population figures provided by the Governor's Office of Management and Budget), divided by the total population of all the counties that make up all the multicounty health departments. The number (percent) is multiplied by half of the multi-county dollar amount.

(d) The department may, after consulting with the Governance Committee, alter the formula to address documented need established by valid and accepted data in one or more local health department jurisdictions.

(i) At no time can a local health department receive more than ten times the per capita amount calculated under this formula than any other local health department.

(e) The Governance Committee may include future funds in the funding formula in cases where the total program funding exceeds $500,000.

R380-50-4. Exceptions.

(1) If one or more counties of a multi-county health department withdraw from the multi-county health department pursuant to Section 26A-1-122(2), the funds allocated to the original multi-county health department under the formula specified in Section 26A-1-116, will be reallocated among the counties that made up that original multi-county health department. Funds allocated to other local health departments will not be considered for reallocation unless the entire formula is reconsidered.

(2) The Department shall assist in this effort to assure an appropriate reallocation of funds.

(3) The funding formula will be reconsidered at an appropriate time that assures the integrity of the statewide public health system with no additional interruption to statewide public health efforts.

KEY: health, funding formula, local governments
July 3, 2018 26A-1-116
Notice of Continuation November 2, 2017 26A-1-122(A)

R384. Health, Disease Control and Prevention, Health Promotion.

R384-324. Tobacco Retailer Permit Process.

R384-324-1. Authority and Purpose.

(1) This rule is authorized by Section 26-1-5 and Subsections 26-1-30(4) and 26-62-202(6).

(2) This rule establishes the process by which local health departments issue, suspend and revoke a tobacco retail permit.

R384-324-2. Definitions.

As used in this rule:

(1) "Community location" means the same as the term is defined in Section 17-50-333 and in Section 10-8-41.6.

(2) "Department" means the Utah Department of Health, created in Section 26-1-4.

(3) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco specialty business.

(4) "Local health department" means the same as the term is defined in Section 26A-1-102.

(5) "Plan review" means the process by which the local health department will verify the accuracy of the information provided by retail tobacco specialty businesses through the permit application process.

(6) "Proprietor" means the owner of a retail establishment, or any other place of business which sells, markets, or distributes tobacco products.

(7) "Public retail floor space" means the total floor square feet of the business where a customer can see, retrieve, or purchase any item that is offered for sale by the general tobacco retailer, including all areas behind the purchase counter, and including appurtenant areas used for storage.

(8) "Retail tobacco specialty business" means a commercial establishment in which:

(a) The sale of tobacco products accounts for more than 35% of the total quarterly gross receipts for the establishment;

(b) 20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products;

(c) 20% or more of the total shelf space is allocated to the offer, display, or storage of tobacco products; or

(d) The retail space features a self-service display for tobacco products.

(9) "Self-service display" means the same as that term defined in Section 76-10-105.1.

(10) "Shelf space" means the total cubic feet (length x depth x height) of shelf space contained within the retail space that is used for the offer, display, or storage of items that are offered for sale by the tobacco retailer. The shelf height is measured from the top of the tallest item on the top of the shelf. The shelf length is measured from the end of the longest item at the end of the shelf. Empty shelf space is not included in the total shelf space calculation.

(11) "Tobacco product" means the same as that term defined In Section 59-14-102.

(a) Tobacco paraphernalia, as that term is defined in Section 76-10-104.1.

(12) "Tobacco retailer" means a proprietor that is required to obtain a tax commission license and a local health department permit for the sale of tobacco.

(13) "Tobacco retail permit" means the permit issued by the local health department to general tobacco retailers and retail tobacco specialty businesses for the sale, marketing or distribution of tobacco products.

R384-324-3. Permit Process.

This permitting process is separate from and in addition to the requirement to have and maintain a valid tobacco license with the Utah State Tax Commission.

(1) Beginning July 1, 2018, a tobacco retailer shall hold a valid tobacco retail permit issued by the local health department with jurisdiction over the physical location where the tobacco retailer operates.

(a) A tobacco retailer that holds a tax commission license that was valid on July 1, 2018:

(i) May operate without a permit under this chapter until December 31, 2018; and

(ii) Shall obtain a permit from a local health department under this chapter before January 1, 2019.

(iii) Shall maintain a valid tax commission license.

(2) To receive a tobacco retail permit, an applicant shall:

(a) Submit an application provided by the local health department with jurisdiction over the physical location where the tobacco retailer operates or will operate;

(b) Pay all applicable fees.

(3) To submit an application for a tobacco retail permit, an applicant shall:

(a) Complete all required sections of the application and submit either online or a hard copy to the local health department.

(i) Provide information for each individual listed as a proprietor.

(1) If the proprietor is a corporation, corporate information suffices.

(a) A local individual to contact concerning the application and business must be included under business information on the application.

(ii) Provide information concerning the business, including business name, street address, mailing address, and telephone number.

(iii) Provide a copy of a valid tax commission license.

(iv) The individual completing the application must certify that the proposed retail tobacco location meets the requirements as defined in the application for a:

(1) General tobacco retailer; or

(2) Retail tobacco specialty business.

(v) Applications for a retail tobacco specialty business must include a map that demonstrates that the business is not located within:

(1) 1,000 feet of a community location; and,

(2) 600 feet of another retail tobacco specialty business; and,

(3) 600 feet of property used or zoned for agricultural or residential use.

(a) For purposes of subsection a.v., the proximity requirements shall be measured in a straight line from the nearest entrance of the retail tobacco specialty business to the nearest property boundary of the location identified as the business address, without regard for intervening structures or zoning districts.

(vi) Application for a retail tobacco specialty business must include a $250.00 plan review fee.

(1) Proprietor is responsible to notify the local health department if there is a change in their business operation requiring a change in their business license between tobacco retail specialty business and general tobacco retailer.

(2) If the information described in Subsection 26-62-202(3) changes, a tobacco retailer:

(a) may not renew the permit; and

(b) shall apply for a new permit no later than 15 days after the information in Subsection 26-62-202(3) changes.

(vii) Notwithstanding subsection a.v., a tobacco specialty business that received a business license from a municipality under Section 10-8-41.6, or from a county under Section 17-50-333, before December 31, 2015, is exempt from the proximity requirements.

(viii) A tobacco specialty business that received a business license from a municipality under Section 10-8-41.6, or from a county under Section 17-50-333, on or after December 31, 2015, may continue to operate until December 31, 2018 so long as the business maintains a current and valid business license and tobacco tax license.

(ix) A tobacco specialty business that received a business license from a municipality under Section 10-8-41.6, or from a county under Section 17-50-333, on or after December 31, 2015, that desires to continue to sell tobacco products on December 31, 2018, and beyond;

(1) Must complete the application described in this section and demonstrate that the location:

(a) Meets the proximity requirements for a tobacco specialty business in subsection a.v; or,

(b) Has a business model and business layout that meets the requirements for a general tobacco retailer.

(4) Local health departments will have 30 days to issue the permit beginning on the date the local health department receives the application and payment.

(a) Local health department will provide online or hard copy receipt of payment and application submission to the proprietor at the time the local health department receives the application and payment.

(i) The receipt provided by the local health department to the proprietor will serve as a temporary operating permit, which will be valid for 30 days.

(5) General tobacco retailers and retailer tobacco specialty businesses that hold a valid tax commission license may begin applying for a local health department tobacco permit on November 1, 2018.

(a) Permit length and terms

(i) A general tobacco retailer permit is valid for two years.

(ii) A retail tobacco specialty business permit is valid for one year.

(iii) A tobacco retailer may apply for a renewal of a permit no earlier than 30 days before the day on which the permit expires.

(iv) A tobacco retailer that fails to renew a permit before the permit expires may apply to reinstate the permit by submitting to the local health department:

(1) An application for either a general tobacco retailer or a retail tobacco specialty business as outlined above;

(2) The fee for the reinstatement of a permit; and

(3) A signed affidavit affirming that the tobacco retailer has not violated the prohibitions in Subsection 26-62-201(1)(b).

(a) Until an expired permit is reinstated, a tobacco retailer with an expired permit may not:

(i) Place tobacco in public view;

(ii) Display any advertisement related to tobacco products that promotes the sale, distribution, or use of those products; or

(iii) Sell, offer for sale, or offer to exchange for any form of consideration, tobacco or tobacco products.

(iv) The permit is non-transferrable.

R384-324-4. Permit Violations.

(1) A proprietor is in violation of the permit issued under this rule if the proprietor violates:

(a) any provision of Title 26,Chapter 62;

(b) any provision of licensing laws under Section 10-8-41.6 or Section 17-50-333;

(c) any provision of Title 76, Chapter 10, Part 1;

(d) any provision of Title 76,Chapter 10, Part 16;

(e) any regulation restricting the sale and distribution of cigarettes and smokeless tobacco issued by the United States Food and Drug Administration under 21 C.F.R. Part 1140; or

(f) any other provision of state law or local ordinance regarding the sale, marketing, or distribution of tobacco products.

R384-324-5. Enforcement.

In enforcing or seeking penalties of any violation as set forth in this rule or Section 26-62-301, the Department and local health departments shall comply with the enforcement provisions found in Title 26, Chapter 62, Part 3.

KEY: tobacco, permits, tobacco retailers
July 9, 2018 **26-1-5**
26-1-30(4)
26-62-202(6)

R392. Health, Disease Control and Prevention, Environmental Services.
R392-103. Food Handler Training and Certificate.
R392-103-1. Purpose.

(1) This rule requires adherence to uniform statewide standards for training and testing food handlers, issuing food handler certificates and permits, and paying and receiving fees.

(2) The Centers for Disease Control and Prevention has identified five risk factors associated with foodborne illness outbreaks. Four of the five risk factors result from improper handling of food by food handlers or poor personal hygiene of food handlers.

(3) Proper application of the required training principles will empower food handlers to prevent and safeguard against foodborne illnesses. Testing of food handlers confirms that the food handler gained an understanding of correct food protection principles. A food handler permit that is recognized statewide provides a tool for local health officers to verify that food handlers have received state approved training and testing.

(4) State and local monitoring of the food handler training, certificate, and permitting process is critical to promoting and protecting public health. Coordination between this process, the routine inspection of regulated facilities, and the investigation of foodborne illness outbreaks is necessary to respond quickly and effectively to identified and suspected risks to public health.

R392-103-2. Authority.

This rule is authorized by Section 26-15-5 and Section 26-1-30.

R392-103-3. Definitions.

(1) "Certificate" means the documentation of food handler training completion indicating passing of a Department approved exam.

(2) "Cross Contact" means the unintentional transfer of an allergen from a food or food-contact surface containing an allergen to a food or food-contact surface that does not contain the allergen.

(3) "Cross Contamination" means the process by which microorganisms are unintentionally transferred with harmful effect to food or food contact surfaces from other food, food contact surfaces, food handlers, or equipment.

(4) "Department" means the Utah Department of Health.

(5) "Double Handwash" means to wash hands in a handwashing sink immediately after using the toilet room or changing a diaper and then washing the hands again after entering the food preparation or food service area, but before handling food.

(6) "Food Handler" means a person who works with unpackaged food, food equipment or utensils, or food-contact surfaces for a food establishment or food truck as defined in R392-100 or R392-102 respectively.

(7) "Food Handler Applicant" or "applicant" means a person who is seeking or receiving training from an approved food handler training provider, or a person who holds a certificate and has made application with a Local Health Officer to obtain a food handler permit.

(8) "Food Handler Permit" or "permit" means a permit issued by a local health department to allow a person to work as a food handler.

(9) "Food Service Establishment" has the same meaning as provided in Section 26-15a-102(3).

(10) "Independent Instructional Design and Testing Expert" means a person who has received training and has a graduate degree from an accredited university with a certification in psychometrics and expertise in Instructional Design.

(11) "Local Health Department" has the same meaning as provided in Section 26A-1-102(5).

(12) "Local Health Officer" means the director of the jurisdictional local health department as defined in Section 26A, Chapter 1, or designated representative.

(13) "Person in Charge" means the person present at a food service establishment or temporary food service event who is responsible for its operation at the time of inspection by the local health officer.

(14) "Training Provider" means an entity that provides a food handler training program and exam approved by the Utah Department of Health.

R392-103-4. Food Handler Permit Issuing Procedure, Reciprocity, and Renewal.

(1) Except when Subsections R392-103-4(15) and (16) apply, a person may not work as a food handler for a food service establishment or temporary event unless the person:

(a) obtains a certificate within 14 days after the day on which the person begins employment as a food handler; and

(b) obtains a food handler permit within 30 days after the day on which the person begins employment as a food handler.

(2) A food handler shall obtain a food handler permit no later than 7 days after the expiration of the food handler's existing permit.

(3) Replacement of lost permits shall only be issued by the local health department having jurisdiction.

(a) A local health department may charge a fee for replacement of a lost or misplaced permit.

(4) A training provider shall promptly issue a certificate to any food handler applicant who receives the training provider's Department approved training and passes a Department approved exam.

(5)(a) Using a data template approved by the Department, a training provider shall transmit via email the information described in Subsection R392-103-7(10)(a) to the local health department having jurisdiction within seven days of a certificate's issuance.

(b) This data transmission shall serve as notification to the local health department that an applicant has completed an approved course and exam.

(i) A training provider shall provide all information required by the Department-approved data template.

(ii) No provider or local health department may require changes to the data template or require additional information unless approved by the Department.

(6) To prevent fraud, the training provider shall number each issued certificate using a unique numbering system.

(7) The certificate shall contain the following information:

(a) Name of the person to whom the certificate is issued;

(b) Date of issuance; and

(c) Name of the issuing training provider.

(8) Upon issuance, the certificate shall be valid for 30 days. A local health officer shall accept the certificate as proof that the food handler applicant completed Department approved training and testing.

(9) A local health officer shall issue a food handler permit when:

(a) an applicant provides to the local health department a

valid certificate of an approved food handler training program; or

(b) the local health department has received notification of an applicant receiving training and passing an approved exam by the training provider as required in Subsection R392-103-4(5); and

(c) The local health department has received a food handler permit fee.

(i) The food handler permit fee shall be no more than $15 and shall be uniform statewide.

(10) The front of an issued food handler permit shall contain the following information:

(a) Title that reads, "Utah Food Handler Permit";

(b) Name of the food handler;

(c) Permit expiration date;

(d) Identification number that includes the training provider's 2-letter unique identifier followed by up to 8 alphanumeric characters;

(e) Name of local health department issuing the permit;

(f) The phrase, "This Permit is Not a Legal Form of Identification" stated at the bottom of the permit; and

(g) Utah State seal.

(11) The back of an issued food handler permit shall contain the following statements:

(a) "Permit must be presented upon request by the local health officer"; and

(b) "Permit may be revoked for cause".

(12) A local health officer shall accept any food handler permit issued under authority of this rule until the date of expiration, revocation, or suspension of the food handler permit.

(13) Except for temporary food service events, the person in charge of a food establishment shall provide, upon request of the local health officer, a copy of a food handler permit for each food handler working in the food establishment. For temporary events, the person in charge is not required to maintain copies of food handler permits, but at least one present person must be able to show that person's current food handler permit to the local health officer.

(14) Food handler permits shall be valid statewide for 3 years from the date of issuance. Food handler permits may be renewed every 3 years by completing an approved food handler training course, passing an exam administered by an approved food handler training provider, and receiving a food handler permit from a local health officer.

(15) The local health officer shall accept a food handler permit issued to a back country outfitter by the United States Department of the Interior, or by a public health authority in Arizona, Colorado, Idaho, Nevada, or Wyoming. This applies only to food handling done at a back country food establishment and meeting the exemption requirements of Section 26-15a-105(1)(i).

(16) A person who has met the requirements of Rule R392-101 to become certified as a food safety manager shall be exempt from the requirement to obtain a food handler permit under this section.

R392-103-5. Suspension or Revocation of Food Handler Permits.

(1) A local health officer may revoke or suspend a food handler permit if:

(a) A food handler is ill with a disease that may be transmitted through the handling of food;

(b) The local health officer documents in two or more inspections within two years that the same food handler has at least twice failed to apply the same training objective listed in Subsection R392-103-6(2); or

(c) A food handler shows willful disregard for food safety or food protection in a manner that has the potential to endanger public health.

(2) The local health officer may confiscate any food handler permit that the local health officer cannot authenticate or that has been revoked or suspended.

(3) A food handler may reapply to a local health department for reinstatement of a revoked or suspended food handler permit by requesting a hearing with the local health officer and demonstrating to the local health officer's satisfaction that the food handler permit may be reinstated.

R392-103-6. Food Handler Training Requirements.

(1) A person or entity shall receive approval from the Department before offering training to food handlers in the state. An approved food handler training program shall:

(a) include at least 75 minutes of training time offered either in an internet-based course, a trainer-led course, or a combination of both;

(b) contain basic training information regarding the Centers for Disease Control top 5 risk factors associated with foodborne illness; and

(c) only contain information that is consistent with the FDA national model food code standard incorporated by reference in R392-100.

(2) A training provider shall ensure that the food handler training program contains each of the following specific training objectives:

(a) Food Protection - Limiting Harmful Pathogens

(i) Define potentially hazardous foods (foods that require time or temperature controls for safety, TCS).

(ii) Provide a comprehensive list of foodborne pathogen sources.

(iii) Discuss ideal conditions for bacterial growth in food.

(iv) List the temperature danger zone.

(v) List proper hot and cold holding temperatures of food which requires time or temperature control for safety.

(vi) List the appropriate temperatures for refrigerators and hot holding equipment.

(vii) Describe the approved procedures for thawing frozen foods.

(viii) Describe the approved methods for cooling food.

(ix) Describe approved and unapproved food sources.

(x) Describe the correct procedures for date marking and discarding food.

(xi) Identify the conditions in which time can be used as a public health control without temperature control.

(b) Food Protection - Destroying Harmful Pathogens and Preventing Food Contamination

(i) List the required final cook temperatures for foods.

(ii) Describe the procedure and list the final temperature for reheating leftovers for hot hoolding.

(iii) Describe the relationship between cooking time and temperature in killing microorganisms.

(iv) Define cross contamination.

(v) List the possible sources of cross contamination when handling food.

(vi) Discuss how a food handler might contaminate food.

(vii) Identify steps to prevent cross contamination.

(viii) Stress the importance of eliminating bare-hand contact with ready-to-eat food.

(ix) Describe how, when, and where to use utensils or gloves.

(x) Define and give examples of the major food allergens.

(xi) Describe the range of symptoms, including the types of mild reactions to anaphylactic shock or death, that an individual having an allergic reaction may experience after exposure to a food allergen.

(xii) Identify steps to prevent cross-contact of food allergens, and stress that cooking does not remove an allergen from food.

(c) Equipment, Utensils, and Linens

(i) Explain the difference between cleaning and sanitizing, and describe the correct procedures for each.

(ii) Identify when surfaces should be cleaned and sanitized.

(iii) Identify the commonly-used chemicals approved for sanitizing food-contact surfaces.

(iv) Describe how to test chemical concentration of sanitizing solutions used on food-contact surfaces, and stress its importance.

(v) Describe the 3-compartment sink method of cleaning, rinsing, and sanitizing utensils and how to correctly dry dishes.

(vi) Describe the correct procedure for cleaning and sanitizing utensils and equipment when using a warewashing machine.

(vii) Describe the correct procedures for storing cleaned dishes and utensils, laundered linens, and single-service and single-use articles.

(viii) Describe the procedures for safe chemical storage and use.

(ix) Describe the correct procedures for handling, storage, and removal of solid waste.

(d) Employee Health and Hygiene

(i) List the reportable foodborne illness diagnoses as well as reportable symptoms, past illnesses, and history of exposure that a food handler must report to the person in charge.

(ii) Describe the personal hygiene practices a food handler must follow to prevent food contamination.

(iii) Describe the proper hand washing procedure and when a double hand wash is required.

(iv) Describe how hands become contaminated and when and where hand washing should occur.

(v) List approved jewelry, clothing, and hair restraints.

(vi) Describe the correct procedures to prevent a foodborne illness from a cut, burn, or other wound.

(vii) Describe the conditions in which an employee may eat, drink, or use any form of tobacco as well as the precautions to take after these activities.

(viii) Define a foodborne illness.

(ix) List the population groups that are the most vulnerable to foodborne illness.

(3) Each time a food handler permit is renewed, the food handler must take a training course from an approved food handler training provider before the food handler may take a food handler exam.

(4) A person may instruct an approved food handler training program only when the person is registered with a local health department as an instructor.

(5) Prior to registration, each instructor of a trainer-led food handler course shall demonstrate to the local health department that the instructor has received food protection management training equivalent to the requirements of R392-101-3, as determined by the local health officer or the Department.

(6) Prior to training program approval, a representative of an internet-based food handler course shall demonstrate to the Department that the representative has received food protection management training equivalent to the requirements of R392-101-3, as determined by the Department.

(7) A training provider shall maintain a list of past and current instructors registered with a local health department denoting the dates the instructor taught food handler courses. A training provider shall provide the instructor list to the Department upon request. Online training providers shall maintain a list or database of courses taught online according to course version and training date.

(8) A training provider shall maintain a system to verify a certificate upon request of the Department, the local health department, or the food establishment where the food handler is employed.

(9) A training provider may charge a reasonable fee. A training provider may collect both the training fee and food handler permit fee at the same time from the applicant when the applicant initially pays for the training course.

(10) If a person or entity is not approved by the department to provide an approved food handler training program, the person or entity may not represent, in connection with the person's or entity's name of business, including in advertising, that the person or entity is a provider of an approved food handler training program or otherwise represent that a program offered by the person or entity will qualify a person to work as a food handler.

R392-103-7. Exam Requirements.

(1) A training provider shall use the bank of food handler exam questions issued by the Department and obtained through application to the Department, or a Department approved set of questions as described in R392-103-7(2). Exams shall contain 40 multiple choice questions with 10 randomly selected questions from each content section listed in Subsection R392-103-6(2)(a) through (d). A training provider shall routinely rotate exam questions from the exam question bank, and randomize the order of exam questions as well as the answer order of the multiple-choice questions.

(2) If a training provider elects not to use the Department issued questions, the training provider may request approval of a different bank of exam questions. For approval, the training provider shall pay to the Department a fee to review the exam questions. The fee shall reflect actual costs, but shall not exceed $500. The training provider shall also submit to the Department the proposed bank of at least 200 exam questions organized by the required content sections and covering the learning objectives listed in this rule with at least 25 questions from each content section. In addition, the training provider shall contract, at their own expense, with a Department approved independent instructional design and testing expert to evaluate the proposed bank of exam questions. The independent instructional design and testing expert shall analyze a training provider's bank of exam questions to determine if the exam questions effectively measure the applicant's knowledge of the learning objectives outlined in this rule and meet the appropriate testing standards for question structure. To be approved, the independent instructional design and testing expert must provide the Department with a positive recommendation based on the expert's analysis. The Department must approve any change in the provider offered bank of exam questions before implementation. Exam approval is good for three years, after which a provider shall reapply for exam approval.

(3) If the Department finds that a question inadequately tests comprehension of the learning objectives, the Department may invalidate the question and may require the training provider to revise or remove the exam question. A training provider shall update any invalidated exam questions no more than 30 days after receiving written notice from the Department.

(4) In order to pass the required exam, a food handler applicant shall correctly answer at least 75% of the exam questions.

(5) A training provider may offer a written, oral, or online food handler exam. As circumstances dictate, a training provider may offer an oral exam individually to a food handler applicant having language or reading comprehension difficulties or other mental or physical limitations that may interfere with the applicant's ability to complete a written or an online exam.

(6) A training provider shall implement procedures to prevent cheating on exams. A training provider shall ensure that exam questions are protected from:

(a) Unauthorized access;

(b) Copy or alteration; and

(c) Access to food handler applicants outside of

established exam time.

(7) A training provider shall inform a food handler applicant, at the beginning of the course, that:

(a) food handler permits are valid for 3 years statewide; and

(b) lost or misplaced permits may be reissued by the applicant's local health department for a fee.

(8) A training provider shall inform a food handler applicant, at the beginning of the course, that the food handler applicant is strictly prohibited from engaging in any of the following practices:

(a) Downloading exams onto a flash drive or other portable electronic device;

(b) Distributing the exam in any way to another person;

(c) Taking notes during the exam;

(d) Using a cell phone or other recording device; or,

(e) Conversing with any other person or receiving aid to answer questions during the exam process.

(9) A training provider shall invalidate the certificates of any food handler applicant involved in the violation of any of the exam security requirements listed in Subsection R392-103-7(8). A food handler applicant involved in violation of the exam security requirements shall receive a certificate from a training provider only after the food handler applicant has successfully completed an additional training course and a proctored exam.

(10)(a) A training provider shall maintain records for at least three years of each food handler applicant's:

(i) Name;

(ii) Mailing address;

(iii) Email address;

(iv) Primary phone number;

(v) Date of birth;

(vi) Date of exam;

(vii) Exam score;

(viii) Certificate expiration date; and

(ix) Name of instructor.

(b) A training provider shall provide this record to the local health department receiving application from the food handler applicant within seven days as required in Subsection R392-103-4(5).

(11) A training provider shall implement procedures to prevent the duplication of certificates such as the use of a void pantograph, invisible watermarks, copy-evident or security paper, or the use of electronic copy protection features.

(12) A training provider shall proctor any exam offered in person either in written form or on a computer located at the training facility.

(13) A training provider shall require a food handler applicant to provide a signature attesting that the applicant has complied with exam requirements.

(14) A training provider shall offer a course and exam evaluation to food handler applicants.

(15) An internet-based training provider shall implement procedures to reasonably inhibit fraudulent attempts to circumvent the food handler training and exam requirements in this rule such as a person taking an exam in place of another person. A training provider shall implement procedures to reasonably ensure a food handler applicant taking an approved course and exam is focused on training materials and actively engaged throughout the training period.

(16) An internet-based training provider offering an exam over the internet shall meet the following additional protocols:

(a) The training provider shall log the start and end time of each online exam.

(b) The training provider shall monitor any repeat attempts to pass an online exam, and shall require a food handler applicant to retake a food handler training course after three failed attempts to pass the exam.

(c) The training provider shall track the Internet Protocol (IP) address or similar electronic location identifier of a food handler applicant who begins an online exam.

(d) The training provider shall require a food handler applicant to provide an electronic signature before taking an online exam to attest that the applicant will comply with exam requirements.

(e) The training provider shall require a food handler applicant to provide all applicant information required by this rule and shall electronically link the information to the exam before the exam may be offered.

(f) The training provider shall present a minimum of four pre-exam questions at the end of each learning section. The food handler applicant shall correctly answer 75% of the pre-exam questions before being allowed to proceed to the next section. The training provider shall ensure that the food handler applicant completes all pre-exam questions before proceeding to the online exam.

(g) The Department and local health officers will evaluate exam protocols during the training program approval process. The Department may audit the training program at any time to determine that the existing protocols are preventing fraudulent activities.

(17) An internet-based training provider shall maintain all documentation of fraud prevention measures required in Subsection R392-103-7(16)(a) through (e) for 3 years, and may be required to submit copies of this documentation to the Department in response to any of the following events:

(a) Upon initial application submittal to the Department for food handler training program approval;

(b) When applying to the Department for training program revalidation as required in R392-103-8(5);

(c) During an audit by the Department; or

(d) At the written request of the Department.

(18) An internet-based training provider shall provide technical support to users by way of the internet, phone, or other method in case technical difficulties occur.

(19) An internet-based training provider shall monitor exam protocols and perform a self-review at least monthly to assess that the system is working and to ensure that each exam meets exam protocols before issuing a certificate.

R392-103-8. Training Provider Approval and Auditing.

(1) A food handler training provider that has been approved by the Department before the effective date of this rule may continue to provide food handler training and testing as previously approved until three years from the effective date of this rule, at which time full compliance with this rule is required.

(2) To be considered for approval after the effective date of this rule, a prospective training provider shall submit to the Department:

(a) a completed application;

(b) a written summary describing how the training program meets each training objective listed in Subsection R392-103-6(2);

(c) a copy of the course curriculum, including slides, handouts, talking points, script, videos, brochures, or any additional information used during the course, or full access to the online course; and

(d) a copy of the exam questions, if applicable, as described in Subsection R392-103-7(2).

(3) As part of the approval process, the Department shall provide prospective training providers with either a hard copy or electronic copy of this rule. Training providers shall sign an affidavit provided by the Department stating that the training provider will comply with the requirements of this rule and abide by confidentiality agreements when using Department provided exam questions.

(4) During the initial approval process and any subsequent audits, a training provider shall grant access to the Department to audit or authenticate any documents used in the food handler training as well as the identity of instructors and training providers.

(5) A training provider shall submit an application to the Department for training program revalidation every 3 years from the date of initial approval by the Department. The training provider shall follow the requirements of Subsection R392-103-8(2) to apply for revalidation.

(6) In order to determine and verify compliance with this rule, the Department may conduct an audit of the training provider's program. The Department may conduct audits routinely, randomly, or in response to a complaint. A training provider shall allow the Department unrestricted access to the following:

(a) Course training and testing materials; and,

(b) Online training sites; and,

(c) Classroom training sessions.

(7)(a) If the Department finds that a training provider is non-compliant during an audit, the Department shall revoke the registration and remove the training provider from the list of approved food handler training providers in Utah. The training provider shall then immediately cease and desist training and issuing certificates until the Department has verified that the issues of non-compliance have been corrected.

(b) The Department shall notify the local health departments when a training provider has been removed from or added to the list of approved food handler training providers in Utah.

(c) The local health officer shall refuse to accept certificates issued by a training provider as described in Subsection R392-103-8(7)(a) from the date the training provider was found to be in non-compliance until the violation is corrected and the Department has again issued written approval and placed the training provider on the list of approved food handler training providers in Utah.

(8) A training provider shall comply with the Americans with Disability Act (ADA) access requirements regardless of the size of the training operation.

KEY: food handler training, food handler certificates, food handler permits, food handler exams
October 25, 2017 26-1-30(4)
Notice of Continuation July 12, 2018 26-15-5
26A-1-114(1)(h)

R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.
R398-20. Early Intervention.
R398-20-1. Authority and Purpose.

This rule implements the parent cost participation fee for the Baby Watch Early Intervention program under Part C of the Individuals with Disabilities Education Act(IDEA). This fee was mandated by the Utah State Legislature in the 2003 General Session, and modified in the 2013 General Session.

R398-20-2. Definitions.

(1) "Department" means the Utah Department of Health.

(2) "Provider" means a local direct service provider with whom the Department contracts to provide Part C services.

R398-20-3. Fees.

(1) The parent or legal guardian of an eligible child shall pay a monthly cost participation fee if their child is enrolled in the early intervention program and receives fee eligible services. The monthly fee is applicable for any month in which at least one billable service is:

(a) provided; or

(b) scheduled and not canceled within required time frames.

(2) Fees shall be charged based on a sliding fee schedule established by the Department. The sliding fee schedule shall begin at 185% of the most recently published federal poverty guidelines.

(3) The maximum fee on the sliding fee schedule shall be $200 per month.

(4) The family cost participation fee shall not be charged if the child or the child's family receives benefits under any of the following programs:

(a) Medicaid;

(b) Temporary Assistance to Needy Families;

(c) Family Employment Plan - Cash Assistance;

(d) Women Infants and Young Children;

(e) Early Head Start;

(f) Primary Care Network; or

(g) Children's Health Insurance Program.

R398-20-4. Income Reporting and Fee Determination.

(1) Each child's parent or legal guardian shall annually report the family income using the Department's Family Fee Determination Form to determine the monthly family fee.

(2) Upon request, the parent or legal guardian must provide a copy of the most recent federal income tax filing to the Department and its early intervention providers to verify family income as reported by the child's parent or legal guardian. If the federal income tax filing is unavailable, the parent or legal guardian may submit the prior three months' check stubs to extrapolate annual income.

(3) Completion of the Family Fee Determination Form is voluntary. If a child's parent or legal guardian chooses not to complete the Family Fee Determination Form, the family must pay the maximum level on the fee schedule.

R398-20-5. Hardship, Extenuating Circumstances.

(1) An eligible child shall not be denied service because of a family's inability to pay. The provider may waive all or part of the fee if there are extenuating family circumstances that affect a family's ability to pay, such as long-term hospitalization of a family member, casualty loss, moving expense, or other unusual expenses.

(2) If a family is able to pay, but chooses not to pay, the Department may instruct the local early intervention program to withhold fee eligible services.

R398-20-6. Services Not Subject to Fees.

(1) In accordance with Federal IDEA regulation, providers may not charge a fee for the following IDEA activities and services:

(a) implementation of child find, such as child developmental screening, or public awareness activities;

(b) evaluation and assessment;

(c) service coordination;

(d) activities to assist a child and the family to receive the authorized services;

(e) activities related to the development, review and evaluation of the Individualized Family Service Plan;

(f) activities related to child and family rights, including the administrative complaint process and mediation; or

(g) specialized services related to sensory loss provided through the Utah Schools for the Deaf and the Blind Parent Infant Programs, or Deaf Blind services.

KEY: early intervention, education, disabilities
January 28, 2014 26-10-2
Notice of Continuation July 2, 2018

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-9. Federally Qualified Health Centers and Rural Health Clinics.
R414-9-1. Introduction.

Federally qualified health centers and rural health clinics provide a scope of services for Medicaid recipients in accordance with the Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

KEY: Medicaid, facility, reimbursement
July 11, 2014 26-1-5
Notice of Continuation July 27, 2018 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-42. Telemedicine.
R414-42-1. Introduction and Authority.

This rule outlines eligibility, access requirements, coverage, limitations, and reimbursement for telemedicine. This rule is authorized by Section 26-18-13.

R414-42-2. Definitions.

(1) "Telemedicine" is two-way, real-time interactive communication between the member and the physician or authorized provider at the distant site. This electronic communication uses interactive telecommunications equipment that includes, at a minimum, audio and video equipment.

(2) "Authorized provider" means a provider in compliance with requirements as specified in Section I: General Information of the Utah Medicaid Provider Manual, Chapter 3, Provider Participation and Requirements.

(3) "Distant site" is the location of the provider when delivering the service via the telecommunications system.

(4) "Originating site" is the location of the Medicaid member at the time the service is furnished via a telecommunications system.

(5) "Telepsychiatric consultation" means a consultation between a physician and a board-certified psychiatrist that utilizes:

(a) the health records of the patient, provided from the patient or the referring physician; and

(b) a written, evidence-based patient questionnaire.

R414-42-3. Covered Services.

Covered services may be delivered by means of telemedicine, as clinically appropriate. Services include consultation services, evaluation and management services, mental health services, substance use disorder services, and telepsychiatric consultations.

R414-42-4. Limitations.

(1) Telemedicine encounters must comply with privacy and security measures set forth under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Pub. L. No. 111-5, 123 Stat. 226, 467, as amended, to ensure that all patient communications and records, including recordings of telemedicine encounters, are secure and remain confidential. The provider is responsible to ensure the encounter is HIPAA compliant. Security measures for transmission may include password protection, encryption, and other reliable authentication techniques.

(2) Compliance with the Utah Health Information Network (UHIN) standards for telehealth must be maintained. These standards provide a uniform standard of billing for claims and encounters delivered via telehealth.

(3) The originating site receives no reimbursement for the use of telemedicine.

R414-42-5. Reimbursement of Services.

The Department pays the lesser of the amount billed or the rate on the fee schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay patients.

KEY: Medicaid
July 1, 2018 26-18-13
Notice of Continuation July 2, 2018

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-510. Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program.
R414-510-1. Introduction and Authority.

(1) This rule implements the Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID) Transition Program. Program participation is voluntary and allows an individual to transition from an ICF/ID to the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions.

(2) This rule is authorized by Section 26-18-3. Waiver services are optional and provided in accordance with 42 CFR 440.225.

R414-510-2. Definitions.

(1) "Division of Services for People with Disabilities (DSPD)" means the entity within the Department of Human Services that has responsibility to plan and deliver an appropriate array of services and supports to persons with disabilities in accordance with Section 62a-5-102.

(2) "Guardian" means an individual, who is legally authorized to make decisions on an individual's behalf.

(3) "Interested individual" means an individual who meets eligibility requirements and expresses interest, either directly or through a guardian, in participating in the Transition Program.

(4) "Length of stay" means the length of time an individual has continuously resided in ICFs in the state of Utah. The Department considers a continuous stay to include a stay in which an individual has a temporary break in stay of no more than 31 days due to inpatient hospitalization, admission to a nursing facility, or a temporary leave of absence.

(5) "Representative" means an individual, who is not a guardian, and does not have decision-making authority, but is identified as an individual who assists a potential Transition Program participant.

(6) "State staff" means employees of the Division of Medicaid and Health Financing or the Division of Services for People with Disabilities.

(7) "Transition Program" means the Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program.

(8) "Waiver" means the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions (CSW).

R414-510-3. Eligibility Requirements for the Transition Program.

Waiver services are potentially available to an individual who:

(1) receives ICF/ID benefits under the Medicaid State Plan;

(2) has been diagnosed with an intellectual disability or a related condition;

(3) meets ICF/ID level of care criteria defined in Section R414-502-8;

(4) meets state funding eligibility criteria for the Division of Services for People with Disabilities (DSPD) found in Subsection 62A-5-102(4); and

(5) has at least a 12-month length of stay in any Medicaid-certified, privately-owned ICF/ID located in Utah.

R414-510-4. Transition Program Access.

(1) Each fiscal year, the Utah Department of Health (Department) shall determine if there are sufficient funds available to initiate the Transition Program and identify the amount of funds available for the Transition Program.

(2) Based on the funds available for the Transition Program, the Department shall enroll individuals into the CSW through the Transition Program until available funds are exhausted.

(3) If the Department has initiated the Transition Program in a given year, the Department shall make direct contact with potentially eligible ICF/ID residents by phone or in person to determine interest in participating in the Transition Program.

(4) If the Department has initiated the Transition Program in a given year, the Department shall publicize the availability of the Transition Program in the following manner:

(a) The Department shall provide a letter to each potentially eligible ICF/ID resident (or to the guardian or other identified representative, if the individual has a guardian or other identified representative). The letter shall, at a minimum:

(i) describe the purpose and operation of the Transition Program, including the availability of funding;

(ii) identify the enrollment method to be used for the Transition Program in the given year;

(iii) state that Transition Program participation is voluntary; and

(iv) provide the phone number and other contact information for state staff who are available to answer questions about the Transition Program.

(b) The Department shall notify the administrator of each privately-owned ICF/ID.

(c) The Department shall post information about the Transition Program on the Utah Medicaid website and the DSPD website.

(5) To introduce and provide general education about the Transition Program in a given year, state staff shall hold at least one meeting at each private ICF/ID. The Department will send notice of the meeting via letter to each eligible ICF/ID resident (or to the guardian or other identified representative, if the individual has a guardian or other identified representative). The Department shall notify the administrator of each privately-owned ICF/ID of the date and time of the meeting. The meeting shall provide detailed education about the Transition Program to allow the individual or their guardian, the freedom to make an informed choice regarding the setting for receiving services. Meeting elements shall include:

(a) a description of the purpose of the Transition Program;

(b) a provision of materials and detailed information regarding how individuals' needs can be met in home and community based services or in the ICF/ID where the individual currently resides;

(c) a description of how the Transition Program operates with available funds;

(d) a description of how residents or guardians can express interest in participating in the Transition Program;

(e) a time period for questions and answers;

(f) the opportunity for state staff to schedule more detailed individual meetings with interested individuals, and their guardians or representatives; and

(g) the phone number and other contact information for state staff who are available to answer questions about the Transition Program.

(6) At the time of the meeting, individuals or their guardians may inform state staff of their choice regarding participation in the Transition Program.

(7) For individuals who express a choice at this time, state staff will document the choice in writing.

(8) Using a method described below in Subsection R414-510-4(8)(a) or (b), the Department will place the name of each potentially interested individual on both a weighted-score list and a random list.

(a) On the weighted-score list, the Department will rank each individual, from highest to lowest score. Scores shall be based on:

(i) the number of times the person has applied to participate in the Transition Program since Fiscal Year 2013;

(ii) whether the applicant has applied for home and community based services and is currently on the DSPD waiting list; and

(iii) length of consecutive stay in an ICF/ID in the state of Utah.

(A) If there are multiple individuals on the weighted-score list with the same score, the Department will rank individuals based on greatest length of stay.

(b) On the random list, the Department ranks each interested individual based on a computerized random selection.

(c) At least 70 percent of the individuals selected to participate in the Transition Program in a given year will be selected based on their ranking in the weighted-score list.

(9) Except for individuals who have made their preferences known as per Subsection R414-510-4(6) and (7), state staff will contact individuals on the two lists to provide detailed education about the Transition Program in order to allow the individual or their guardian the freedom to make an informed choice regarding the setting to receive services. The contact will also be used to determine if additional education is needed or wanted.

(a) For individuals without guardians, state staff will contact the individual and will provide Transition Program education. Upon completion of the education process, state staff will ask the individual to express their preference regarding whether they want to participate in the Transition Program. State staff will document and act upon the individual's decision.

(b) For individuals with guardians, state staff will contact the guardian and will rely on the decision rendered by the guardian regarding whether they want additional Transition Program education.

(i) If more in-depth, individualized training is requested by the guardian, state staff will schedule the training, and will document the guardian's choice regarding an individual's participation in the Transition Program.

(ii) If additional, training is not requested, state staff will document and act upon the guardian's decision.

(10) For individuals who express a desire to participate in the Transition Program, state staff will:

(a) work with the individual or their guardian, if the individual has a guardian, to schedule a meeting to conduct a service needs assessment and develop the individual's support plan and a timeline for anticipated transition;

(b) inform the ICF/ID administration of the individual's intent to transition, including information about the likely transition timeline;

(c) facilitate collaboration between the ICF/ID and home and community-based services providers to assist the individual in a safe and orderly transition.

(11) If an individual is selected for the Transition Program

and has a spouse who also resides in a Utah ICF/ID and who meets the eligibility criteria in Section R414-510-3, the Department shall include the spouse in the Transition Program.

(12) Based on available funding, the Department shall continue to select eligible individuals through the aforementioned process until the Department exhausts the amount of funds committed to the Transition Program.

R414-510-5. Service Coverage.

Services and limitations of the Transition Program may be found in the Waiver State Implementation Plan.

R414-510-6. Reimbursement Methodology.

The Department of Human Services (DHS) contracts with the Department to set rates for waiver-covered services. The DHS rate-setting process is designed to comply with the requirements of Subsection 1915(c) of the Social Security Act and other applicable Medicaid rules. Medicaid requires that rates for services not exceed customary charges.

KEY: Medicaid
July 27, 2018 26-1-5
Notice of Continuation: October 12, 2016 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-61. Home and Community-Based Services Waivers.
R414-61-1. Introduction and Authority.

(1) This rule establishes authority for the Department of Health to administer all Section 1915(c) waivers.

(2) The rule is authorized by Section 26-18-3 and Section 1915(c) of the Social Security Act.

R414-61-2. Incorporation by Reference.

The Department incorporates by reference the following home and community-based services waivers:

(1) Waiver for Technology Dependent/Medically Fragile Individuals, effective July 1, 2018;

(2) Waiver for Individuals Age 65 or Older, effective July 1, 2015;

(3) Waiver for Individuals with Acquired Brain Injuries, effective July 1, 2014;

(4) Waiver for Individuals with Physical Disabilities, effective July 1, 2016;

(5) Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions, effective July 1, 2015;

(6) New Choices Waiver, effective July 1, 2015;

(7) Medicaid Autism Waiver, effective October 1, 2015; and

(8) Medically Complex Children's Waiver, effective October 1, 2015.

These documents are available for public inspection during business hours at the Utah Department of Health, Division of Medicaid and Health Financing, located at 288 North 1460 West, Salt Lake City, UT, 84114-3102.

KEY: Medicaid
July 27, 2018 26-18-3
Notice of Continuation October 30, 2014

R495. Human Services, Administration.
R495-879. Parental Support for Children in Care.
R495-879-1. Authority and Purpose.

(1) The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111.

(2) The purpose of this rule is to provide information to parents relating to the establishment and enforcement of child support when a child is placed in an out-of-home program.

R495-879-2. Child Support Liability.

The Office of Recovery Services will establish and enforce child support obligations against parents whose children are in out-of-home placement programs administered by the Department of Human Services or Department of Health. The department shall consider fees for outpatient and day services separate from child support payments. Establishment and enforcement of child support shall be pursuant to the Uniform Civil Liability for Support Act, Title 78B, Chapter 12; Child Support Services Act, 62A-11-301 et seq.; Support and expenses of child in custody of an individual or institution, 78A-6-1106.

R495-879-3. Support Guidelines.

Child support obligations shall be calculated in accordance with Child Support Guidelines, Sections 78B-12-201, 78B-12-203 through 78B-12-216, 78B-12-219, 78B-12-301, 78B-12-302.

R495-879-4. Establishing an Order.

ORS may modify and establish child support orders through the Child Support Services Act, 62A-11-301 et seq.; Administrative Procedures Act, Section 63G-4-102 et seq.; Jurisdiction - Determination of Custody questions by Juvenile Court, Subsection 78A-6-104; and in accordance with R527-200.

R495-879-5. Good Cause Deferral and Waiver Request.

(1) If collections interfere with family re-unification, a division may, using the Good Cause-Deferral/Waiver (form 602), request a deferral or waiver of arrears payments once a support order has been established. The request may be applied to current support when an undue hardship is created by an unpreventable loss of income to the present family. A loss of income may include non payment of child support from the other parent for the children at home, loss of employment, or loss of monthly pension or annuity payments. The request shall be initiated by the responsible case worker and forwarded to his or her supervisor, regional director, division director/superintendent, or designee for approval.

(2) After a support order has been established, the Good Cause Deferral and Waiver request may be denied or approved by the referring agency at any stage in the process. Once the waiver has been approved at all levels in the referring agency, the division director (or designee) shall send the waiver to the ORS director (or designee) for review and decision. If the requesting agency disagrees with the ORS director's (or designee's) decision, the request may be referred to the Executive Director of the Department of Human Services for a final decision. The requesting agency will notify the family of the final decision. The request shall not be approved when it proposes actions that are contrary to state or federal law.

R495-879-6. In-Kind Support.

(1) ORS may accept in-kind support after the support amount has been established, based on the parent's service to the program in which the child is placed. The service provided by a parent must be approved by the director of the division or the superintendent of the institution responsible for the child's care. The approval should be based on a monetary savings or an enhancement to a program. If geographical distances prohibit direct service, then the division director or superintendent may approve support services for in-kind support that do not directly

offset costs to the agency, but support the overall mission of the agency. For example, a parent with a child receiving services at the Utah State Hospital (USH) may provide services to a local mental health center with the approval of the USH superintendent.

(2) A memorandum of understanding shall be signed by the division/institution and the parent specifying the type, length, and dollar value of service. Verification of the service hours worked must be provided by the division/institution to ORS (using Form 603) within 10 days after the end of the month in which the service was performed. The verification shall include the dates the service was performed, the number of hours worked, and the total credit amount earned. The in-kind service allowed shall be applied prospectively up to the current support ordered amount. Unless approved by the director of the Department, in-kind support approved by one division/institution shall not be used to reduce child support owed to another division/institution. In-kind support shall not be approved when it proposes actions that are contrary to state or federal law.

R495-879-7. Extended Visitation During The Year.

A rebate shall be granted to a parent for support paid when a child's overnight visits equal 25% or more of the service period. The rebate will only be provided when the service period lasts six months or more. The rebate will be proportionate to the number of days at home compared to the number of days in care. One continuous 24-hour period equals one day.

R495-879-8. Child Support and Adoption Assistance.

ORS will establish and enforce child support obligations for parents who are currently receiving adoption assistance or who have received adoption assistance from this state or any other state or jurisdiction, for children who are in the custody of the state, in accordance with Sections 78A-6-1106, 78B-12-106, R495-879-2 and R495-883-3. If an order for support does not currently exist, the department will establish a monthly child support obligation prospectively on existing cases. When establishing a child support obligation, ORS will not include the adoption assistance amount paid to the family in determining the family's income, pursuant to Section 78B-12-207.

KEY: child support, custody of children
February 7, 2011 62A-1-111(16)
Notice of Continuation July 17, 2018 62A-4a-114
62A-5-109(1)
62A-11-302
62A-15-607
63G-4-102
78A-6-104
78A-6-1106
78B-12-106
78B-12-201
78B-12-203 through
78B-12-216
78B-12-219
78B-12-301
78B-12-302

R495. Human Services, Administration.
R495-885. Employee Background Screenings.
R495-885-1. Authority and Purpose.

(1) This Rule is authorized by Sections 62A-1-118 and 62A-2-120.

(2) This Rule clarifies the standards for Department of Human Services' employee and volunteer background screening.

(3) This Rule is created to hold DHS employees and volunteers to high standards of conduct, protect children and vulnerable adults, and promote public trust.

(4) This rule does not apply to Department of Human Services Employees and Volunteers whose clearances are performed and maintained by the Department of Health for the Utah State Hospital and the Utah State Developmental Center.

R495-885-2. Definitions.

(1) "BCI" means the Bureau of Criminal Identification, and is the designated state agency of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, responsible to maintain criminal records in the State of Utah.

(2) "Child" is defined in Section 62A-2-101.

(3) "Department" or "DHS" means the Department of Human Services.

(4) "Direct Access" is defined in Section 62A-2-101.

(5) "Director" means the Director of each DHS Office or Division, and includes the Director's designee.

(6) "Directly Supervised" is defined in 62A-2-101.

(7) "Employee" means a prospective employee who has received a job offer from DHS or a current employee of DHS, and includes paid interns.

(8) "Executive Director" means the Executive Director of DHS or the Deputy Director designated by the Executive Director.

(9) "FBI Rap Back" is defined in Section 53-10-108.

(10) "Fingerprints" means an individual's fingerprints as copied electronically through a live-scan fingerprinting device or on two ten-print fingerprint cards.

(11) "Volunteer" means an individual who donates services without pay or other compensation, except expenses actually and reasonably incurred and pre-approved by the supervising agency, and includes unpaid interns.

(12) "Vulnerable Adult" is defined in Section 62A-2-101.

R495-885-3. Employees and Volunteers with Direct Access.

(1) The Department finds that a criminal history or identification as a perpetrator of abuse or neglect is directly relevant to an individual's employment or volunteer activities within DHS.

(2) All Department employees and volunteers who may have direct access and who are not directly supervised at all times must have an annual background screening clearance in accordance with Sections 62A-1-118 and 62A-2-120, which shall include retention of fingerprints by BCI for FBI Rap Back.

(3) Department employees and volunteers who may have direct access and are not directly supervised at all times shall:

(a) submit a background screening application to their respective Division or Office on a form created by the Department; and

(b) submit fingerprints to the Department via a DHS-operated live-scan machine or

two ten-print fingerprint cards produced by a law enforcement agency, an agency approved by the BCI, or another entity pre-approved by the Department; or

(c) not be required to submit fingerprints to DHS if they have submitted fingerprints for retention to:

(i) BCI for an Office or Division clearance, and the Office or Division ensures that the minimum standards set forth in Section 62A-2-120 are enforced; or

(ii) to the Department of Health for employees and volunteers of the Utah State Developmental Center per code; or

(iii) to the Office of Licensing as an individual associated with a license as long as the fingerprints are retained by BCI for FBI Rap Back.

(4) The DHS Office of Licensing shall access information to perform the background checks described in Sections 62A-1-

118 and 62A-2-120:

(a) the DHS Office of Licensing will not duplicate fingerprint-based criminal background checks on Department employees or volunteers who have a current fingerprint-based criminal background clearance pursuant to R495-885-3(3);

(b) the fingerprints submitted by DHS employees who are required to obtain a background screening pursuant to Section 62A-2-120 as an individual associated with a licensee shall be utilized to perform the screening required by this R495-885.

(5) Screening results shall be reviewed in accordance with both the standards outlined by Section 62A-2-120 and this R495-885.

(6) Except as described in R495-885-5, Department employees and volunteers who would automatically be denied a background screening approval as described in Section 62A-2-120(5)(a) are not eligible for work with the Department.

(7) Except as described in R495-885-5, Department employees and volunteers who have any offense or finding described in Section 62A-2-120(6)(a) are not eligible for work with the Department.

R495-885-4. Employees and Volunteers with No Direct Access.

(1) The Department finds that a criminal history is directly relevant to an individual's employment activities within DHS.

(2) The Department is not authorized to perform the checks described in Sections 62A-1-118 and 62A-2-120 for employees with no direct access.

(3) Each Division and Office will identify which of their positions includes no potential for direct access that is not directly supervised.

(4) Each employee who does not potentially have direct access shall submit an "Authorization and Waiver for Criminal History Check" form to a Department of Human Resources Management, DHS Field Office authorizing DHRM to perform name-based background checks.

(5) Except as described in R495-885-5, Department employees who would automatically be denied a background screening approval based upon the offenses described in Section 62A-2-120(5)(a) are not eligible for work with the Department.

(6) Except as described in R495-885-5, Department employees who have any offense described in Section 62A-2-120(6)(a) are not eligible for work with the Department.

(7) Volunteers who do not have a background screening clearance pursuant to R495-885-3 will be directly supervised.

R495-885-5. Background Screening Review.

(1) The Office of Licensing or the Department of Human Resources Management, DHS Field Office shall notify the Director of the employment eligibility status of each prospective employee, employee, and volunteer.

(2) The Director shall review the background screening results of each prospective employee, employee, and volunteer when there are any offenses present as outlined in 62A-2-120.

(3) Review process for prospective or probationary employees and volunteers:

(a) Following a review of the background screening results for a prospective or probationary employee or volunteer, the Director may deny or terminate the employment of the prospective or probationary employee or refuse acceptance of the volunteer; or

(b) the Director may request further review of the background screening results by the Comprehensive Review Committee established under 62A-2-120. Review of background screening results for prospective or probationary employees or volunteers by the Comprehensive Review Committee is strictly related to the employment or volunteer eligibility of that person with DHS and is not related to the licensure of that individual by DHS, nor does it entitle any party to any of the rights granted to an applicant for licensure as defined in 62A-2-120.

(i) the Director shall notify the prospective or probationary employee that further review by the Comprehensive Review Committee has been requested.

(ii) the review for prospective employees and volunteers by the Comprehensive Review Committee shall follow the criteria outlined in 62A-2-120 and R501-14 as it relates to the process for review, the items or methods of consideration and the process and criteria used in making determinations.

(iii) Following the review, the Comprehensive Review Committee shall make one of the following findings:

(A) A determination to deny the background screening which will result in the Director denying or terminating the employment of the prospective or probationary employee or refuse the acceptance of the volunteer; or

(B) A determination of employment eligibility or to permit acceptance of the volunteer.

(iv) the determination of the Comprehensive Review Committee to deny the background screening will result in the Director denying or terminating the employment of the prospective or probationary employee or refuse acceptance of the volunteer and is final.

(v) Upon receiving the Comprehensive Review Committee determination of employment eligibility or to accept a volunteer A Director, in their sole discretion may;

(A) approve the employment or continued employment of the prospective or probationary employee or approve the acceptance of the volunteer; or

(B) deny or terminate the employment of the prospective or probationary employee or refuse the acceptance of the volunteer.

(vi) the determinations of the Director and the DHS Employee and Volunteer Comprehensive Review Committee are final, and a prospective or probationary employee or volunteer has no right to appeal.

(4) Review process for non-probationary employees:

(a) the following background screening findings shall be submitted to the Director:

(i) automatic denial offenses outlined in 62A-2-120(5)(a);

(ii) all other circumstances outlined in 62A-2-120(6)(a); and

(iii) any MIS supported or substantiated findings;

(b) the Director may consult with the Office of Licensing and shall consult with the Executive Director to evaluate whether the non-probationary employee may present a risk of harm to a child or vulnerable adult, or does not meet DHS high standards of conduct or promote public trust; the Director, Executive Director and Office of Licensing, if consulted, shall consider the factors and information outlined in 62A-2-120(6)(b).

(c) the Executive Director may, in his/her sole discretion, approve the non-probationary employee for continued employment, including defining permissible and impermissible DHS-wide work-related activities, or consult the Department of Human Resource Management regarding termination of employment. The determination of the Executive Director is final.

R495-885-6. Division/Office Responsibilities.

(1) The Department shall notify the DHS Office of Licensing within five months of the termination of each employee for whom fingerprints have been retained under Section 62A-2-120 to enable the Office of Licensing to notify BCI and ensure the destruction of fingerprints.

(2) Each Division and Office shall ensure that an employee or volunteer who previously was screened based upon having no direct access shall, prior to having any direct access, be screened and approved in accordance with R495-885.

R495-885-7. Compliance.

The Department will set an implementation schedule to be in compliance with this rule no later than October 31, 2018.

KEY: background, employees, human services, screenings
July 18, 2018 62A-1-118
62A-2-120

R590. Insurance, Administration.
R590-186. Bail Bond Surety Business.
R590-186-1. Purpose.

This rule establishes uniform criteria and procedures for the initial and renewal licensing, of a bail bond surety company, and sets standards of conduct for those in the bail bond surety business in the State of Utah.

R590-186-2. Authority.

This rule is promulgated pursuant to:

(1) Section 31A-35-104 which requires the commissioner to adopt by rule specific licensure, and certification guidelines and standards of conduct for the bail bond business;

(2) Subsection 31A-35-301(1) which authorizes the commissioner to adopt rules necessary to administer Chapter 35 of Title 31A;

(3) Subsection 31A-35-401(1)(c) which allows the commissioner to adopt rules governing the granting of licenses for bail bond surety companies;

(4) Subsection 31A-35-401(2) which allows the commissioner to require by rule additional information from bail bond applicants applying for licensure;

(5) Subsection 31A-35-406(1)(b) which allows the commissioner to establish by rule the annual renewal date for the renewal of a license as a bail bond surety company.

R590-186-3. Scope and Applicability.

This rule applies to any person engaged in the bail bond surety business.

R590-186-4. Initial Company License.

(1) Persons desiring to become licensed as bail bond surety companies shall file with the Bail Bond Surety Oversight Board (Board) a bail bond company application which can be obtained from the Insurance Department.

(2) The applicant shall pay the annual license fee set forth in R590-102, Insurance Department Fee Payment Deadlines, and provide at least one of the following:

(a) If the applicant relies on a letter of credit as the basis for issuing a bail bond, the applicant shall provide an irrevocable letter of credit with a minimum face value of $300,000 assigned to the State of Utah from an entity qualified by state or federal regulators to do business as a financial institution in the state of Utah.

(b) If the applicant relies on the ownership of real or personal property located in Utah as the basis for issuing bail bonds, the applicant shall provide a financial statement reviewed by a certified public accountant as of the end of the most current fiscal year. The financial statement must show a net worth of at least $300,000, including a minimum of $100,000 in liquid assets. The applicant shall also provide a copy of the applicant's federal income tax returns for the prior two years and, for each parcel of real property owned by the applicant and included in the applicant's net worth calculation, a preliminary title report dated not more than one month prior to the date of the application and an appraisal dated not more than two years prior to the date of the application.

(c) If the applicant relies on their status as the agent of a bail bond surety insurer as the basis for issuing bail bonds, the applicant shall provide a Qualifying Power of Attorney issued by the bail bond surety insurer.

(3) Applications approved by the Board will be forwarded to the insurance commissioner for the issuance of a license.

(4) Applications disapproved by the Board may be appealed to the insurance commissioner within 15 days of mailing the notice of disapproval.

(5) When a bail bond surety pledges the assets of a letter of credit under 31A-35-404(1), the letter of credit must:

(a) be drawn on a Utah depository institution;

(b) be assigned to the state and its political subdivisions to guarantee the payment of a bail bond forfeiture; and

(c) be drawn upon by the holder of the judgment of a bail bond forfeiture, which remains unpaid 60 days following the suspension of the bail bond surety licensed under 31A-35-504.

R590-186-5. Company License Renewal.

A licensed bail bond surety company shall renew its license on or before July 15 of each year by meeting the following requirements:

(1) file with the insurance commissioner a renewal application, pay the required renewal licensing fee set forth in R590-102, Insurance Department Fee Payment Deadlines, and provide the additional information described in this section.

(2) If the applicant relies on the ownership of real or personal property as the financial basis for issuing bail bonds the applicant must include the following with the renewal:

(a) a statement that no material changes have occurred negatively affecting the property's title, including any liens or encumbrances that have occurred since the last license renewal;

(b) a financial statement reviewed by a certified public accountant as of the end of the most current fiscal year showing a net worth of at least $300,000, at least $100,000 of which must consist of liquid assets and a copy of the applicant's federal income tax return for the prior year; and

(c) the following items are required as indicated:

(i) renewal in 2002, 2008, and 2014: a preliminary title report dated not more than one month prior to the date of the renewal application for each parcel of real property owned by the applicant and included in the applicant's net worth calculation; or

(ii) renewal in 2005, 2011, and 2017: a preliminary title report and a current appraisal dated not more than one month prior to the date of the renewal application for each parcel of real property owned by the applicant and included in the applicant's net worth calculation.

(3) Renewal applicants who were licensed as a bail bond surety company prior to December 31, 1999, may opt to apply under the lower limits in effect at that date.

(a) For renewal applicants relying on a letter of credit as the financial basis for issuing bail bonds, the amount is reduced to $250,000.

(b) For renewal applicants relying on real or personal property as the basis for issuing bail bonds, the amount is reduced to a net worth of at least $250,000, at least $50,000 of which must consist of liquid assets.

(c) Renewal applicants opting for lower limits are limited to the 5 to 1 ratio of outstanding bond obligations as shown in R590-186-9.

(4) When using a letter of credit at renewal the bail bond surety must follow R590-186-4(5).

R590-186-6. Agent License and Renewal.

(1) Bail bond surety companies and insurers are required to issue bail bonds only through licensed bail bond agents that have been contracted with and appointed by the insurer or designated by the bail bond surety company for whom they are issuing bail bonds.

(2) All persons doing business as bail bond agents must be

licensed in accordance with Chapter 23 of Title 31A and applicable department rules regarding individual agent licensing. Bail bond agent licenses are individual limited line licenses. These licenses are issued for a two year period and require no licensing examination or continuing education.

(3) Individual bail bond agent licenses must be renewed at the end of the two year licensing period in accordance with Chapter 23 of Title 31A and applicable department rules regarding individual agent licensing renewal.

R590-186-7. Unprofessional Conduct.

Persons in the bail bond surety business may not engage in unprofessional conduct. For purposes of this rule, unprofessional conduct means the violation of any applicable insurance law, rule, or valid order of the commissioner, or the commission of any of the following acts by bail bond sureties, by bail bond surety agents or by bail bond enforcement agents working for bail bond sureties:

(1) having a license as a surety revoked in this or any other state;

(2) being involved in any transaction which shows unfitness to act in a fiduciary capacity or a failure to maintain the standards of fairness and honesty required of a trustee or other fiduciary;

(3) willfully misstating or negligently reporting any material fact in the initial or renewal application or procuring a misstatement in the documents supporting the initial or renewal application;

(4) being the subject of any outstanding civil judgment which would reduce the surety's net worth below the minimum required for licensure;

(5) being convicted of any felony or of any misdemeanor that involves the misappropriation of money or property, dishonesty or perjury;

(6) failing to report any collateral taken as security on any bond to the principal, indemnitor, or depositor of such collateral;

(7) failing to preserve, or to retain separately, or both, any collateral taken as security on any bond;

(8) failing to return collateral taken as security on any bond to the depositor of such collateral, or the depositor's designee, within ten business days of having been notified of the exoneration of the bond and upon payment of all fees owed to the bail bond agent, whichever is later;

(9) failing to advise the insurance commissioner of any change that has reduced the surety's net worth below the minimum required for licensure;

(10) using a relationship with any person employed by a jail facility or incarcerated in a jail facility to obtain referrals;

(11) offering consideration or gratuities to jail personnel or peace officers or inmates under any circumstances which would permit the inference that said consideration was offered to induce bonding referrals or recommendations;

(12) failing to deliver to the incarcerated person, or the person arranging bail on behalf of the incarcerated person, prior to the time the incarcerated person is released from jail, a one page disclosure form which at a minimum includes:

(a) the amount of the bail;

(b) the amount of the surety's fee, including bail bond premium, preparation fees, and credit transaction fees;

(c) the additional collateral, if any, that will be held by the surety;

(d) the incarcerated person's obligations to the surety and the court;

(e) the conditions upon which the bond may be revoked;

(f) any additional charges or interest that may accrue;

(g) any co-signors or indemnitors that will be required; and

(h) the conditions under which the bond may be exonerated and the collateral returned.

(13) using an unlicensed bail bond agent or unlicensed bail bond enforcement agent;

(14) using a bail bond agent not contracted and appointed by the bail bond surety company;

(15) charging excessive or unauthorized premiums, excessive fees or other unauthorized charges;

(16) requiring unreasonable collateral security;

(17) failing to provide an itemized statement of all expenses deducted from collateral, if any;

(18) requiring as a condition of his executing a bail bond that the principal agree to engage the services of a specified attorney;

(19) preparing or issuing fraudulent or forged bonds or power of attorney;

(20) signing, executing, or issuing bonds by an unlicensed person;

(21) executing bond without countersignature by a licensed agent at time of issue;

(22) failing to account for and to pay any premiums held by the licensee in a fiduciary capacity to the bail bond surety company, bail bond surety insurer or other person who is entitled to receive them;

(23) knowingly violating, advising, encouraging, or assisting the violation of any statute, court order, or injunction in the course of a business regulated under this chapter;

(24) conviction of felony involving illegally using, carrying, or possessing a dangerous weapon;

(25) conviction of any act of personal violence or force against any person or conviction of threatening to commit any act of personal violence or force against any person, including but not limited to violent felonies as defined under Utah Code Annotated Section 76-3-203.5;

(26) soliciting sexual favors as a condition of obtaining, maintaining, or exonerating bail bond, regardless of the identity of the person who performs the favors;

(27) acting as an unlicensed bail bond enforcement agent;

(28) failing to comply with the provisions of the Utah statutes and rules regulating the bail bond surety business or order of the insurance commissioner, including outstanding judgments; and

(29) using deceptive or intimidating practices in which to gain bail bond business.

R590-186-8. Investigating Unprofessional Conduct.

The Board or the commissioner shall investigate allegations of unprofessional conduct on the part of any bail bond surety, bail bond surety agent, or bail bond producer. Complaints alleging unprofessional conduct shall be submitted in writing to the Department of Insurance.

(1) Investigations shall be completed in the following manner:

(a) Upon receipt of a complaint of unprofessional conduct, the commissioner shall provide a copy of the complaint to the person against whom the complaint was made, and, if warranted, to the person's surety. The commissioner may edit the copy of the complaint mailed under this subsection as may be necessary to protect the identity or interests of the person making the complaint if the complainant so requests.

(b) The subject of the complaint shall provide to the commissioner a written response to the complaint within 15 days of the date the complaint was mailed to respondent.

(c) At the next meeting of the Board, the commissioner shall present the complaint and the action undertaken by the Department to receive comment from the Board.

(d) After the investigation is completed, the commissioner shall present the findings and recommended disposition to the Board. The Board may concur with the commissioner's recommended disposition, recommend a different disposition, or request additional investigation.

(i) Disclosures made to the Board under Sections (c) and (d)shall be treated as confidential. Board members may not disclose or act upon any confidential information obtained pursuant to investigations conducted under this Section.

(ii) If the Board requests additional investigation, the commissioner shall reasonably conduct additional investigation in compliance with the policies and procedures of the Department.

(a) The commissioner shall present findings to the Board at the next scheduled board meeting, or at a meeting no sooner than 30 days after the Board's request, at the discretion of the Board.

(b) Upon hearing the results of any additional investigation by the commissioner, the Board shall provide to the commissioner its recommendation within 30 days.

R590-186-9. Bonding Limits.

(1) An insurance bondsman may not maintain outstanding bail bond obligations in excess of the amount allowed by the insurance company.

(2) A letter of credit bondsman and/or a property bondsman may not maintain outstanding bail bond obligations in excess of the amounts provided in the table below:

TABLE

Financial Requirements	Ratio of Outstanding Bond Obligations to Letter of Credit or Net Worth and Liquidity Amounts
$250,000 line of credit or net worth/$50,000 liquidity)	licensed 0 to 36 months: 5 to 1 licensed over 36 months: 5 to 1
300,000 or more line of credit limit or net worth/ at least $100,000 liquidity	licensed 0 to 36 months: 5 to 1 licensed over 36 months: 10 to 1

(3) The commissioner may reduce the bonding limit of a letter of credit or a property bail bond company who has qualified for the 10 to 1 ratio if that bail bond company's line of credit limit or net worth or liquidity limit falls below the limits stated in Subsection(2) above.

R590-186-10. Publication of Licensed Bail Bond Surety Companies.

On or before September 1 of each year, the Board shall publish a list of bail bond surety companies licensed to do business in the State of Utah.

R590-186-11. Definition.

In reference to subsection 31A-35-701(5) "members of their immediate families" shall be defined as: spouse, children, stepchildren, children-in-law, mother, father, brother, sister, mother-in-law, father-in-law, sister-in-law, brother-in-law, step-mother, step-father, step-brother, step-sister, half-brother, and half-sister.

R590-186-12. Penalties.

Violations of this rule are punishable pursuant to Section 31A-2-308.

R590-186-13. Enforcement Date.

The commissioner will begin enforcing the revised provision of this rule 45 days from the rule's effective date. Non-revised provisions are enforceable as of the effective date.

R590-186-14. 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
March 26, 2014 31A-35-104
Notice of Continuation July 10, 2018 31A-35-301
31A-35-401
31A-35-406

R590. Insurance, Administration.
R590-238. Captive Insurance Companies.
R590-238-1. Authority.

This rule is promulgated pursuant to the general rulemaking authority granted the insurance commissioner by Subsection 31A-2-201(3)(a) and the specific authority granted by Section 31A-37-106.

R590-238-2. Purpose and Scope.

The purpose of this rule is to set forth the financial, reporting, record-keeping, and other requirements which the commissioner deems necessary for the regulation of captive insurance companies, under the Captive Insurance Companies Act (the Act), Chapter 37, Title 31A. This rule applies to all captive insurance companies licensed under the Act.

R590-238-3. Definitions.

(1) The definitions in Sections 31A-1-301 and 31A-37-102 apply to this rule.

(2) "Company" means a captive insurance company as defined in Section 31A-1-301.

(3) "Work Papers" or "working papers" include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and the accountant's employees in the conduct of their audit of the company.

(4) "Captive Insurance Manager" means a person that:

(a) is on the Utah Approved Captive Management Firms list;

(b) pursuant to a written contract with a captive insurance company, provides and coordinates services including but not limited to:

(i) accounting;

(ii) statutory filings;

(iii) signed annual statements; and

(iv) coordination of related services;

(c) acts as an intermediary that facilitates and assists the captive in meeting its statutory requirements under Title 31A.

R590-238-4. Annual Reporting Requirements.

(1) A captive insurance company authorized in this state shall file an annual report of its financial condition with the commissioner as required by Section 31A-37-501. The report shall be verified by oath of one of its executive officers and the captive manager and shall be prepared using generally accepted accounting principles ("GAAP"). The annual report shall be filed electronically consistent with directions from the commissioner.

(2) A captive insurance company shall observe the requirements of Section 31A-4-113 when it files an annual report of its financial condition. In addition, an industrial insured group shall observe the requirements of Section 31A-4-113.5 when it files an annual report.

(3) All captive insurance companies are to use the "Captive Insurance Company Annual Statement Form" except Risk Retention Group (RRG) insurers and special purpose financial captives which shall use the NAIC's Annual and

Quarterly Statements.

(4) The Captive Insurance Company Annual Statement shall include a statement of a qualified Actuary titled "Statement of Actuarial Opinion," setting forth his or her opinion relating to loss and loss adjustment expense reserves.

R590-238-5. Risk Limitation.

(1) The commissioner may limit the net amount of risk a captive insurance company retains for a single risk after considering the impact of the retention on the captive insurance company's capital and surplus.

(2) The commissioner may also prescribe and demand additional capital and surplus of any captive insurance company if he determines that the captive insurance company is not adequately capitalized for the type, volume and nature of the risk that is being covered by the captive insurance company.

R590-238-6. Annual Audit.

(1) All companies shall have an annual audit by an independent certified public accountant, approved by the commissioner, and shall file such audited financial report with the commissioner on or before June 30 for the preceding year. Financial statements furnished under this section shall be prepared in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants ("AICPA").

(2) The annual audit report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the commissioner.

(3) The annual audit shall consist of the following:

(a) Opinion of Independent Certified Public Accountant

(i) Financial statements furnished pursuant to this section shall be examined by independent certified public accountants in accordance with generally accepted auditing standards as determined by the AICPA.

(ii) The opinion of the independent certified public accountant shall cover all years presented.

(iii) The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures and shall be dated.

(b) Report of Evaluation of Internal Controls

(i) This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to, controls as the system of authorization and approval and the separation of duties.

(ii) The review shall be conducted in accordance with generally accepted auditing standards and the report shall be filed with the commissioner.

(c) Accountant's Letter

The accountant shall furnish the company, for inclusion in the filing of the audited annual report, a letter stating:

(i) that he is independent with respect to the company and conforms to the standards of his profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and pronouncements of the Financial Accounting Standards Board;

(ii) the general background and experience of the staff engaged in the audit, including their experience in auditing captive or other insurance companies;

(iii) that the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this rule.

(iv) that the accountant consents to the requirements of R590-238-10;

(v) that the accountant consents and agrees to make the work papers as defined in R590-238-3(3) available for review by the commissioner, his designee or his appointed agent; and

(vi) that the accountant is properly licensed by an appropriate state licensing authority.

(d) Financial Statements

(i) The financial statements required shall be as follows:

(A) balance sheet;

(B) statement of gain or loss from operations;

(C) statement of changes in financial position;

(D) statement of cash flow;

(E) statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus); and

(F) notes to financial statements.

(ii) The notes to financial statements shall be those required by GAAP and shall include:

(A) a reconciliation of differences, if any, between the audited financial report and the statement or form filed with the commissioner;

(B) a summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive; and

(C) a narrative explanation of all material transactions with the company. For purposes of this provision, no transaction shall be deemed material unless it involves 3% or more of a company's admitted assets as of the December 31 next preceding.

(e) Certification of Loss Reserves and Loss Expense Reserves of the company's opining actuary

(i) The annual audit shall include an actuarial opinion as to the reasonableness of the company's loss reserves and loss expense reserves, unless waived by the commissioner.

(ii) The individual who certifies as to the reasonableness of reserves shall be approved by the Commissioner and shall be a Fellow or Associate of the Casualty Actuarial Society and a member in good standing of the American Academy of Actuaries, for property and casualty companies or a Fellow or Associate of the Society of Actuaries and a member in good standing of the American Academy of Actuaries for life and health companies.

(4) Certification under Subsection R590-238-6(3)(e) shall be in such form as the commissioner deems appropriate.

R590-238-7. Designation of Independent Certified Public Accountant.

(1) A certified public accountant that is retained to conduct the independent annual audit may only be appointed from the list of approved certified public accounting firms or individual certified public accountants maintained by the commissioner.

(2) A company that terminates the appointment of an independent certified public accountant retained to conduct the annual audit required in this rule shall report the name and address of the certified public accountant in writing to the commissioner within ninety days after the appointment is terminated and shall within the same period report the name and address of the certified public accountant that is subsequently retained.

R590-238-8. Notification of Adverse Financial Condition.

A company shall require its certified public accountant to immediately notify an officer and all members of the board of directors of the company in writing of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the commissioner. The company shall furnish such notification to the commissioner within five working days of receipt thereof.

R590-238-9. Additional Deposit Requirement.

(1) Whenever the commissioner deems that the financial condition of a company warrants additional security, the commissioner may require the company to deposit, in trust for

the company, cash, securities approved by the commissioner, or an irrevocable letter of credit issued by a bank chartered by the State of Utah or a member bank of the Federal Reserve System with the commissioner.

(2) The commissioner shall return the deposit or letter of credit of a company if the company ceases to do any business only after being satisfied that all obligations of the company have been discharged.

(3) A company may receive interest or dividends from the deposit or exchange the deposits for others of equal value with the approval of the commissioner.

R590-238-10. Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.

(1) Each company shall require its independent certified public accountant to make all work papers prepared in the conduct of the audit of the company available for review by the commissioner or his appointed agent. The company shall require that the accountant retain the audit work papers for a period of not less than seven years after the period reported upon.

(2) The review by the commissioner shall be considered an official investigation by the commissioner and all working papers obtained during the course of such investigation shall be confidential business papers and shall be classified as business confidential protected records. The company shall require that the independent certified public accountant provide photocopies of any of the working papers that the department considers relevant. The department may retain any photocopies of working papers.

R590-238-11. Documentation Required to be Held in Utah by Licensed Captives.

(1) All companies licensed by the commissioner as a captive insurance company, shall maintain and make ready for inspection and examination by the commissioner, or the commissioner's agent, any and all documents pertaining to the formation, operation, management, finances, insurance, and reinsurance of each company.

(2) Original documents may be kept in the offices of the company's captive manager, the company's parent, or the company itself. Accurate and complete copies shall be held in an office located in Utah that is designated by the company and approved by the commissioner.

R590-238-12. Reinsurance.

(1) Any company authorized to do business in this state may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:

(a) No credit shall be allowed for reinsurance where the reinsurance contract does not result in the transfer of the risk or liability to the reinsurer.

(b) No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer.

(2) Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions and conditions governing such reinsurance.

(3) The commissioner, in his discretion, may require that complete copies of all reinsurance treaties and contracts be filed and approved by him.

R590-238-13. Service Providers.

No person shall act, in or from this state, as a captive insurance manager, broker, agent, or salesman, or reinsurance intermediary for captive business without the authorization of the commissioner. Application for such authorization must be on a form prescribed by the commissioner.

R590-238-14. Directors.

(1) Every company shall report any change in its executive officers or directors to the commissioner within thirty days after a change is made, including, in its report, a biographical affidavit of any new executive officer or director.

(2) No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company. Such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity.

(3) Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the company.

R590-238-15. Conflict of Interest.

(1) Each company licensed in Utah is required to adopt a conflict of interest statement for officers, directors and key employees. The statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert him from his duty to further the interests of the company he represents but this shall not preclude a person from being a director or officer in more than one insurance company.

(2) Each officer, director, and key employee shall file a yearly disclosure with the board of directors.

R590-238-16. Acquisition of Control of or Merger with Domestic Company.

The acquisition of control of or merger of a domestic captive insurance company shall be regulated pursuant to Section 31A-16-103, notwithstanding the Commissioner may waive or modify the requirements for public notice and hearing when the Commissioner concludes the public hearing is not necessary due to limited public interest in the change of control.

R590-238-17. Suspension or Revocation.

(1) The commissioner may by order suspend or revoke the license of a company or place the same on probation on the following grounds:

(a) the company has not commenced business according to its plan of operation within two years of being licensed;

(b) the company has ceased to carry on insurance business in or from within Utah;

(c) at the request of the company; or

(d) any reason provided in Section 31A-37-505.

(2) Before the commissioner takes any action set forth under R590-238-17(1) the commissioner shall give the company notice in writing of the grounds on which the commissioner proposes to act, and shall afford the company a hearing as to such proposed action in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act.

R590-238-18. Change of Information in Initial Application.

(1) Any material change in a company's business plan that was filed with the commissioner at the time of initial application and any subsequent amendment of the plan requires prior approval of the commissioner.

(2) Any change in any other information filed with the initial application must be filed with the commissioner within sixty days after the change, but does not require prior approval.

(3) The company shall immediately notify the commissioner upon making changes in board members or officers of the company.

R590-238-19. Application and Forms.

(1) Any person that wants to form a captive insurance company shall make application to the commissioner for authority to conduct a captive insurance company using the form, "Application to Form a Captive Insurance Company."

(2) One complete copy of the application including forms, attachments, exhibits and all other papers and documents filed as a part thereof, shall be filed electronically with the commissioner through the department's captive website, https://insurance.utah.gov/captive. Accompanying payments may be filed by personal delivery or mail addressed to: Office of the Commissioner, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114-6901, Attention: Captive Insurance Administrator, or call and pay by credit card.

(3) The application shall be signed in the manner prescribed in the application. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the application.

(4) A company must include with its application, a feasibility study demonstrating the feasibility of the business plan of the company. The department may test the feasibility of the study by examining the company's corporate records, including: charter; bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and other factors as the commissioner deems necessary.

R590-238-20. Fee Schedule. Initial Application. Renewal.

(1) An applicant for a certificate of authority under the captive insurance code shall pay a nonrefundable fee established in the department's fee rule, R590-102-8 for examining, investigating, and processing its initial application for license to the commissioner at the time the application is filed.

(2) In addition, each company that is licensed by the commissioner shall pay a license fee, without proration, for the initial year of registration and a renewal fee for each succeeding year in the amount established in the department's fee rule, R590-102-8.

(3) Each company shall pay an annual nonrefundable e-commerce (internet technology services) fee each year in the amount established in the department's fee rule, R590-102-18(1)(b) to the commissioner.

(4) Each captive insurance company shall pay a nonrefundable fee in the amount established in the department's fee rule, R590-102 for photocopies of documents to the commissioner.

R590-238-21. Authorized Forms.

(1) The following forms are to be used for any applicant applying for a certificate of authority for a new captive insurance company and may be obtained from the department's captive administrator at (801) 538-3800:

(a) "Application to Form A Captive Insurance Company;"

(b) "Biographical Affidavit For Captive Insurance Company;"

(c) "Utah Insurance Department Captive Insurance Company Reinsurance Exhibit;"

(e) "Utah Approved Irrevocable Letter of Credit;"

(f) "Statement if Economic Benefit to the State of Utah;" and

(g) "Appointment Of The Insurance Commissioner For The State Of Utah As Attorney To Accept Service of Process."

(2) The following forms are to be used when applying to become an Approved captive insurance company provider and are available on the department's captive website:

(a) "Application for Placement on Approved Captive Insurer Management Firm List;"

(b) "Application To Certify Loss And Expense For Captive Insurance Companies Captive Actuary Application;" and

(c) "Application For Authorization As An Independent Certified Public Accountant for Captive Insurance Companies."

(3) All captive insurance companies, except those noted in R590-238-4(2), are to use the "Captive Insurance Company Annual Statement Form."

(4) A company shall file a "Statement of Economic Benefit to the State of Utah" form with its initial application and for each of the 12 months ending December 31, of each applicable year.

(5) The forms indicated in Sections (2), (3), and (4) are available on the department's captive website, https://insurance.utah.gov/captive.

R590-238-22. 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 this rule and its application to other persons and circumstances are not affected.

KEY: captive insurance
September 25, 2015 31A-2-201
Notice of Continuation May 2, 2017 31A-37-106

R592. Insurance, Title and Escrow Commission.
R592-7. Title Insurance Continuing Education.
R592-7-1. Authority.

This rule is promulgated pursuant to Subsection 31A-2-404(2)(a)(iii), which directs the Title and Escrow Commission to make rules for the administration of the provisions related to continuing education courses related to a title licensee.

R592-7-2. Purpose and Scope.

(1) The purposes of this rule are to:

(a) adopt continuing education requirements for the approval of a continuing education course under 31A-2-404(2)(a)(iii);

(b) delegate authority from the Commission to the commissioner to approve a continuing education course related to a title licensee; and

(c) exempt a title licensee from the provisions of R590-142-4(2)(c).

(2) This rule applies to:

(a) a title licensee;

(b) an unlicensed individual authorized to do business as a title licensee; and

(d) a continuing education course related to title insurance.

(3) This rule does not apply to an individual who is considered to have met the continuing education requirements pursuant to Subsection 31A-23a-202(3)(b)(iii)(C).

R592-7-3. Definitions.

The following definitions shall apply for the purpose of this rule.

(1) "Commission" means the Title and Escrow Commission as created under Subsection 31A-2-403(1)(a).

(2) "Continuing education course" means a continuing education course related to title insurance.

(3) "Title licensee" has the same meaning as found in Subsection 31A-2-402(6).

R592-7-4. Continuing Education Course and Approval.

(1) The Commission hereby delegates to the commissioner the authority to approve a continuing education course under Subsection 31A-2-404(2)(e).

(2) The commissioner shall rely on the requirements of R590-142, Continuing Education Rule, for the consideration of

a request for a continuing education course approval.

(3) When the commissioner approves a continuing education course, the course:

(a) is deemed approved by the Commission and has concurrence of the commissioner under Subsection 31A-2-404(2)(e) and this Subsection (1); and

(b) will be added to the Department's approved course list.

(4) The commissioner shall provide a report to the Commission on a quarterly basis listing new continuing education courses approved pursuant to this section.

(5) If the commissioner disapproves a continuing education course, the commissioner shall:

(a) remove the course from the Department's approved course list; and

(b) notify the course provider of the disapproved course.

R592-7-5. Course Submission.

A continuing education provider shall submit to the commissioner a request for approval of a continuing education course in accordance with Section 31A-23a-202 and R590-142.

R592-7-6. Licensee Course Requirements.

(1) The continuing education credit hours required for the renewal of a title insurance producer license pursuant to Subsections 31A-23a-202(3)(b)(iii)(A) and (B), may only be fulfilled through an approved course that is:

(a) related to title insurance, escrow, real estate, or ethics; and

(b) categorized by the commissioner as:

(i) title;

(ii) title ethics; or

(iii) ethics.

(2)(a) The restrictions set forth in R590-142-4(2)(c) shall not apply to a title licensee.

(b) A title licensee may obtain all required credit hours through one or more insurers.

R592-7-7. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R592-7-8. Enforcement Date.

The commissioner will begin enforcing this rule upon the rule's effective date.

R592-7-9. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: title insurance continuing education

July 30, 2018	**31A-2-308**
Notice of Continuation June 13, 2014	**31A-2-402**
	31A-2-404
	31A-23a-202

R592. Insurance, Title and Escrow Commission.

R592-10. Title Insurance Regulation Assessment for Agency Title Insurance Producers and Title Insurers.

R592-10-1. Authority.

This rule is promulgated by the Title and Escrow Commission (Commission) pursuant to Subsections:

(1) 31A-2-404(2)(d) which requires the Commission to determine by rule the assessment required by 31A-23a-415; and

(2) 31A-23a-415(2)(d) which requires the Commission to establish the amount of costs and expenses that will be covered by the assessment.

R592-10-2. Purpose and Scope.

(1) The purposes of this rule are to:

(a) establish the categories of costs and expenses incurred by the department in administering, investigating and enforcing the provisions of Title 31A, Chapter 23a, Parts IV and V related to the marketing of title insurance and the audits of agency title insurance producers;

(b) require the reporting by an agency title insurance producer and a title insurer of the mailing address and physical location of each office in each county where the agency title insurance producer or title insurer maintains an office;

(c) establish a calculation method for the calculation of the number of agency title insurance producer or title insurer offices; and

(d) determine the premium year used in calculating the assessment of title insurers.

(2) This rule applies to all title insurers and agency title insurance producers.

R592-10-3. Definitions.

(1) For the purpose of the rule the Commission adopts the definitions as set forth in Sections 31A-1-301, 31A-2-402, and the following:

(a) "Office" means each physical location of an agency title insurance producer or a title insurer in a county. Office includes any physical location that is open and available to the public.

R592-10-4. Costs and Expenses.

The amount of costs and expenses that will be covered by the assessment imposed by 31A-23a-415 for any fiscal year in which an assessment exists:

(1) will be for a Market Conduct Examiner I as determined by the department's budget as approved by the Utah State Legislature, including any approved salary increases or increases in benefits; and

(2) will include the following expenses:

(a) salary and state paid benefits;

(b) travel expenses, including daily vehicle expenses;

(c) computer hardware and software expenses;

(d) e-commerce expenses;

(e) wireless communications expenses; and

(f) training expenses.

R592-10-5. Office Report.

(1) An agency title insurance producer and a title insurer shall submit a completed Office Report Form not later than 30 days after the date a change described below occurs in a county where the agency title insurance producer or title insurer maintains an office:

(a) the opening or closing of an office;

(b) a change of address of an office; or

(c) a change in the manager of an office.

(2) An Office Report Form shall be submitted electronically via email to licensing.uid@utah.gov.

(3) The department's Office Report Form, which is available on the department's website, shall be used to report changes in offices.

(a) An actual copy of the form may be used or may be adapted to a particular word processing system.

(b) If adapted, the content, size, font, and format must be similar.

R592-10-6. Calculation Method for the Calculation of the Number of Agency Title Insurance Producer Offices.

(1) All offices reported in accordance with Section R592-10-5 will be included in the calculation of the title insurance assessment.

(2) An annual assessment calculation for an agency title insurance producer or title insurer that is calculated using incorrect numbers of offices because the number of offices was incorrectly reported will not be recalculated.

(3) An agency title insurance producer or title insurer found to have improperly reported their offices may be subject to penalties in accordance with Section R592-10-9.

R592-10-7. Premium Year for Title Insurer Assessment.

(1) The title insurance assessment shall be calculated using direct premiums written during the preceding calendar year.

(2) The direct premiums written shall be taken from the insurer's annual statements for that year.

R592-10-8. Assessment Payment.

(1) An annual assessment shall be paid by the due date on the invoice.

(2) Payments shall be made in accordance with R590-102, Insurance Department Fee Payment Rule.

R592-10-9. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

R592-10-10. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R592-10-11. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity will 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: title insurance
May 19, 2009 31A-2-201
Notice of Continuation July 10, 2018 31A-23a-415

R602. Labor Commission, Adjudication.
R602-4. Procedures for Termination of Temporary Total Disability Compensation Pursuant to Reemployment Under Section 34A-2-410.5.
R602-4-1. Purpose, Authority and Scope.

Section 34A-2-410.5 allows an employer or its insurance carrier ("employer" hereafter) to request Labor Commission permission to reduce or terminate an employee's temporary disability compensation. Under authority of section 34A-2-410.5(7), the Commission establishes these rules to govern the adjudication of such requests. This rule supersedes the provisions of R602-2, R602-3, and R602-5 as to any actions brought pursuant to section 34A-2-410.5.

R602-4-2. Commission Permission Required.

An employer shall not terminate or reduce an employee's temporary disability compensation pursuant to section 34A-2-410.5 prior to issuance of a final order by the Commission ordering the reduction or termination.

R602-4-3. Mediation.

Prior to filing a request to terminate or reduce temporary disability compensation pursuant to section 34A-2-410.5, the parties are encouraged to request assistance from the Mediation Unit of the Commission's Industrial Accidents Division.

R602-4-4. Pleadings and Discovery.

A. Definitions.

1. "Application" means an Application for Hearing for Termination or Reduction of Compensation (Adjudication Form 402), all supporting documents, proof of service and Notice of Request for Termination or Reduction of Compensation (Adjudication Form 404) which together constitute the request for agency action regarding termination or reduction of benefits pursuant to Section 34A-2-410.5.

2. "Supporting medical documentation" means any medical provider's report or treatment note that addresses the employee's medical condition or functional restrictions.

3. "Supporting documents" means supporting medical documentation. Persons with Knowledge List (Adjudication Form 403), any documents related to reasons for the requested termination or reduction, and any documents describing the employee's work duties.

4. "Proof of Service" means any of the following: 1) the employee's signed and dated acceptance of service of the Application and all supporting documents; 2) a certificate of service of the Application and all supporting documents signed by the employer or insurer's counsel and accompanied by a return receipt signed by the employee; or 3) a return of service showing personal service of the Application and all supporting documents on the employee according to Utah Rule of Civil Procedure 4(d)(1).

5. "Persons with Knowledge List" (Adjudication Form 403) means a party's list of all persons who have material knowledge regarding the reasons for the request to terminate or reduce compensation. The list must specify the full name of the person, a summary of the knowledge possessed by the person, and a statement whether the party will produce the person as a witness at hearing.

6. "Notice of Request for Termination or Reduction of Compensation" means Adjudication Form 404.

7. "Petitioner" means the employer who has filed an Application for Hearing.

8. "Respondent" means the employee against whom the Application for Hearing was filed.

B. Application for Hearing.

1. An employer may request Commission approval to terminate or reduce an employee's temporary disability compensation under section 34A-2-410.5 by filing an Application with the Commission' Adjudication Division.

2. An Application is not deemed filed with the Division until the employer submits a completed Application with all required documentation.

C. Discovery.

1. At least 15 days prior to a hearing on an Application, each party shall mail or otherwise serve on the opposing party a list of all witnesses that party will produce at the hearing. Because it is presumed that the employee will appear at the hearing, the employee is not required to list himself or herself on the list. The employer will also mail to or otherwise serve on the employee a copy of all exhibits the employer intends to submit at the hearing.

2. Testimony of witnesses and exhibits not disclosed as required by this Rule shall not be admitted into evidence at the hearing. A party's failure to subpoena or otherwise produce an individual previously identified by that party as an intended witness may give rise to an inference that the individual's testimony would have been adverse to the party failing to produce the witness.

3. Other than disclosures required by this rule and voluntary exchanges of information, the parties may not engage in any other discovery procedures.

4. Subpoenas may be used only to compel attendance of witnesses at hearing, and not for obtaining documents or compelling attendance at depositions. All subpoenas shall be signed by an administrative law judge.

D. Defaults and Motions.

1. Defaults in proceedings under Section 34A-2-410.5 shall only be issued at the time of hearing based on nonattendance of a party at the hearing.

2. Motions will only be considered at the time of hearing.

E. Hearings.

1. Scheduling and Notice.

A hearing will be held within 30 days after an Application is filed with the Commission's Adjudication Division. The Division will send notice of hearings to the addresses of the employer and employee set forth on the Application. A party must immediately notify the Division of any change or correction of the addresses listed on the Application. The Division will also mail notice to the address of any party's attorney as disclosed on the Application or by an Appearance of counsel filed with the Division. Notice by the Division to a party's attorney is considered notice to the party itself.

2. Hearings.

Each hearing pursuant to section 34A-2-410.5 shall be conducted by an administrative law judge as a formal evidentiary hearing. The evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted thereafter. After hearing, the administrative law judge shall issue a decision within 45 days from the date the Application was filed.

F. Motions for Review.

Commission review of an administrative law judge's decision is subject to the provisions of section 63G-4-301, section 34A-1-1-303, and R602-2-1(M).

KEY: workers' compensation, administrative procedures, hearings, settlements
June 22, 2011 34A-1-104(1) et seq.
Notice of Continuation August 1, 2018 34A-2-410.5

R602. Labor Commission, Adjudication.

R602-5. Procedures for Resolving Disputes Regarding "Cooperation" and "Diligent Pursuit" Under Subsection 34A-2-413(6)(e)(iii) and Subsection 34A-2-413(9) Consistent with Utah Administrative Code Subsection R612-200-7(D)(4).

R602-5-1. Purpose, Authority and Scope.

Section 34A-2-413(6)(e)(iii) states an administrative law judge shall make a final decision of permanent total disability based on an employer's failure to diligently pursue an approved reemployment plan. Section 34A-2-413(9) states that an administrative law judge shall dismiss a claim for benefits based on an employee's failure to fully cooperate with an approved reemployment plan. Under authority of section 34A-1-104, the Commission establishes these rules to govern hearings under this section. The provisions of R602-5 pertaining to applications for hearing pursuant to Section 34A-2-413(6)(e)(iii) and Section 34A-2-413(9) supersede the Administrative Rules contained in R602-2, R602-3, and R602-4 as to any actions brought pursuant to Section 34A-2-413(6)(e)(iii) and Section 34A-2-413(9).

R602-5-2. Mediation in Section 34A-2-413(6)(e)(iii) Cases.

Prior to filing an application for a final determination of permanent total disability based on an employer's failure to diligently pursue the reemployment plan pursuant to Section 34A-2-413(6)(e)(iii) the parties are encouraged to request assistance from the Mediation Unit of the Commission's Industrial Accidents Division.

R602-5-3. Pleadings and Discovery in Section 34A-2-413(6)(e)(iii) Cases.

A. Definitions.

1. "Application for Hearing" means the Application for Hearing for Final Determination of Permanent Total Disability form (Adjudication Form 502), all supporting documents, and proof of service which together constitute the request for agency action for final determination of permanent total disability based on an employer's failure to diligently pursue the reemployment plan pursuant to Section 34A-2-413(6)(e)(iii).

2. "Supporting medical documentation" means any medical report or treatment note completed by a medical provider or physician that references, describes or otherwise sets forth the employee's medical or functional capacities, restrictions and/or abilities.

3. "Supporting documents" means supporting medical documentation, Persons with Knowledge List (Adjudication Form 403), an outline of the specific instances of lack of diligence as required by R612-200-7(D)(4) and all documents in any way related to reasons identified for the requested final determination of permanent total disability whether tending to prove or disprove the same.

4. "Proof of Service" means any of the following: 1) the respondent(s)'s signed and dated acceptance of service of the Application and all supporting documents; 2) a certificate of service of the Application and all supporting documents signed by the employee and accompanied by a return receipt signed by the respondent(s); or 3) a return of service showing personal service of the Application and all supporting documents on the respondent(s) according to Utah Rule of Civil Procedure 4(d)(1).

5. "Persons with Knowledge List" (Adjudication Form 403) means a party's list of all persons who have material knowledge regarding the employer's alleged failure to diligently pursue the reemployment plan pursuant to Section 34A-2-413(6)(e)(iii). The list must specify the full name of the person, a summary of the knowledge possessed by the person, and a statement whether the employee will produce the person as a witness at hearing.

6. "Petitioner" means the petitioner in the original case determining permanent total disability.

7. "Respondent" means the respondent(s) in the original case determining permanent total disability.

B. Application for Hearing.

1. Whenever a final determination of permanent total disability is requested by petitioner pursuant to Section 34A-2-413(6)(e)(iii), the burden rests with the petitioner to initiate agency action by filing a Application for Hearing with the Division.

2. An Application for Hearing is not deemed filed pursuant to Section 34A-2-413(6)(e)(iii) until the petitioner files with the Division a completed Application for Hearing (Adjudication Form 502) together with all supporting documents and proof of service.

C. Discovery.

1. At least 15 days prior to a hearing on an Application, each party shall mail or otherwise serve on the opposing party a list of all witnesses that party will produce at the hearing. Because it is presumed that the employee will appear at the hearing, the employee is not required to list himself or herself on the list. The respondent will also mail to or otherwise serve on the employee a copy of all exhibits the respondent intends to submit at the hearing.

2. Testimony of the witnesses and exhibits not disclosed as required by this Rule shall not be admitted into evidence at the hearing. A party's failure to subpoena or otherwise produce an individual previously identified by that party as an intended

witness may give rise to an inference that the individual's testimony would have been adverse to the party failing to produce the witness.

3. Other than disclosures required by this rule and voluntary exchanges of information, the parties may not engage in any other discovery procedures.

4. Subpoenas may be used only to compel attendance of witnesses at hearing, and not for obtaining documents or compelling attendance at depositions. All subpoenas shall be signed by an administrative law judge.

D. Defaults and Motions.

Defaults in proceedings under Section 34A-2-413(6)(e)(iii) and as set forth in R612-200-7(D)(4) shall only be ordered at the time of hearing based on nonattendance of a party at the hearing. Motions will only be considered at the time of hearing.

R602-5-4. Hearings in Section 34A-2-413(6)(e)(iii) Cases.

A. Scheduling and Notice.

A hearing on an Application for Hearing filed pursuant to Section 34A-2-413(6)(e)(iii) and as set forth in R612-200-7(D)(4) will be set within 30 days of the date the Application for Hearing is filed with the Division. The Division will send notice of hearings by regular mail to the addresses of the parties as set forth on the Application. A party must immediately notify the Division of any change or correction of the addresses listed on the Application. The Division will also mail notice to the address of any party's attorney as disclosed on the Application or by an Appearance of Counsel filed with the Division. Notice by the Division to a party's attorney is considered notice to the party itself.

B. Hearings.

Each hearing pursuant to Section 34A-2-413(6)(e)(iii) and as set forth in R612-200-7(D)(4) shall be conducted by an administrative law judge as a formal evidentiary hearing. The evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted thereafter. After hearing, the administrative law judge shall issue a decision within 45 days from the date the Application was filed.

R602-5-5. Mediation in Section 34A-2-413(9) Cases.

Prior to filing an application for hearing for dismissal of claim for benefits pursuant to Section 34A-2-413(9) the parties are encouraged to request assistance from the Mediation Unit of the Commission's Industrial Accidents Division.

R602-5-6. Pleadings and Discovery in Section 34A-2-413(9) Cases.

A. Definitions.

1. "Application for Hearing" means the Application for Hearing for Termination or Reduction of Compensation form (Adjudication form 602), with all supporting documents and proof of service which together constitute the request for agency action regarding termination or reduction of benefits pursuant to Section 34A-2-413(9).

2. "Supporting medical documentation" means any medical report or treatment note completed by a medical provider or physician that references, describes or otherwise sets forth the employee's medical or functional capacities, restrictions and/or abilities.

3. "Support documents" means supporting medical documentation, Persons with Knowledge List (Adjudication Form 403), an outline of the specific instances of non-cooperation as required by R612-200-7(D)(4) and all documents in any way related to reasons identified for the requested termination whether tending to prove or disprove the same and all documents describing the employee's work duties during his or her employment with respondent employer.

4. "Proof of Service" means any of the following: 1) the employee's signed and dated acceptance of service of the Application and all supporting documents; 2) a certificate of service of the Application and all supporting documents signed by the respondent's counsel and accompanied by a return receipt signed by the employee; or 3) a return of service showing personal service of the Application and all supporting documents on the employee according to Utah Rule of Civil Procedure 4(d)(1).

5. "Persons with Knowledge List" (Adjudication Form 403) means a list of any person who may have knowledge of the events and/or circumstances relating to the reasons for the request to terminate or reduce compensation whether tending to prove or disprove the reason(s) set forth in the Application for Hearing. The Persons with Knowledge list must specify the full name, address and phone number of the person if know, a short statement of the knowledge believed possessed by the person and a statement as to whether or not the respondent will actually produce the person with knowledge as a witness at the evidentiary hearing.

6. "Petitioner" means the petitioner in the original case determining permanent total disability.

7. "Respondent" means the respondent(s) in the original case determining permanent total disability.

B. Application for Hearing.

1. Respondent may request a dismissal of claim for permanent total disability compensation pursuant to Section 34A-2-413(9) by filing an Application with the Commission's Adjudication Division.

2. An Application is not deemed filed with the Division until the respondent submits a completed Application with all required documents.

C. Discovery.

1. At least 15 days prior to a hearing on an Application , each party shall mail or otherwise serve on the opposing party a list of all witnesses that party will produce at the hearing. Because it is presumed that the employee will appear at the hearing, the employee is not required to list himself or herself on the list. The employee will also mail to or otherwise serve on the employer a copy of all exhibits the employee intends to submit at the hearing.

2. Testimony of witnesses and exhibits not disclosed as required by this Rule shall not be admitted into evidence at the hearing. A party's failure to subpoena or otherwise produce an individual previously identified by that party as an intended witness may give rise to an inference that the individual's testimony would have been adverse to the party failing to produce the witness.

3. Other than disclosures required by this rule and voluntary exchanges of information, the parties may not engage in any other discovery procedures.

4. Subpoenas may be used only to compel attendance of witnesses at hearing, and not for obtaining documents or compelling attendance at depositions. All subpoenas shall be signed by an administrative law judge.

D. Defaults and Motions.

Defaults shall only be issued at the time of hearing based on nonattendance of a party. Motions will only be considered at the time of hearing.

R602-5-7. Hearings in Section 34A-2-413(9) Cases.

A. Scheduling and Notice.

A hearing will be held within 30 days after an Application is filed with the Commission's Adjudication Division. The Division will send notice of hearing by regular mail to the addresses of parties as set forth on the Application. A party must immediately notify the Division of any change or correction of the addresses listed on the Application. The Division will also mail notice to the address of any party's attorney as disclosed on the Application or by an Appearance of

Counsel filed with the Division. Notice by the Division to a party's attorney is considered notice to the party itself.

B. Hearings.

Each hearing pursuant to Section 34A-2-413(9) shall be conducted by an administrative law judge as a formal evidentiary hearing. The evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted thereafter. After hearing, the administrative law judge shall issue a decision within 45 days from the date the Application was filed.

R602-5-8. Motions for Review.

Commission review of an administrative law judge's decision is subject to the provisions of section 63G-4-301, section 34A-1-303, and R602-2.1(M).

KEY: workers' compensation, administrative procedures, hearings
December 8, 2008 34A-1-104(1) et seq.
Notice of Continuation August 1, 2018 34A-2-413(6)(e)(iii)
34A-2-413(9)

R602. Labor Commission, Adjudication.
R602-6. Procedures Applicable for Approval of Settlement Agreements in Workers' Compensation.
R602-6-1. Statutory Authority.

Section 34A-2-420 requires the Commission to review all agreements for the settlement or commutation of claims for workers' compensation or occupational disease benefits and grants the Commission discretion to approve such agreements. The Commission's authority under Section 34A-2-420 applies to all claims arising under the Utah Workers' Compensation Act or Occupational Disease Act, regardless of the date of accident or occupational disease. This rule sets forth the requirements for Commission approval of such agreements.

R602-6-2. Applicability of Rule.

This Rule applies to settlements of all claims under the Workers' Compensation Act.

R602-6-3. General Considerations.

Settlement agreements may be appropriate in claims of disputed validity or when the parties' interests are served by payment of benefits in a manner different than otherwise prescribed by the workers' compensation laws. However, settlement agreements must also fulfill the underlying purposes of the workers' compensation laws. Once approved by the Commission, settlement agreements are permanently binding on the parties. The Commission will not approve any proposed settlement that is manifestly unjust.

R602-6-4. Procedure.

A. Parties interested in a present or potential workers' compensation claim, whether or not an application for hearing has been filed, may submit their settlement agreement to the Commission for review and approval. The Commission may delegate its authority to review and approve such agreements.

B. Each settlement agreement shall be in writing, executed by each party and such party's attorney, if any, and shall include a proposed order for Commission approval of the agreement.

C. Each settlement agreement shall set forth the nature of the claim being settled and what claims are in dispute, if any.

D. Each settlement agreement shall contain a statement that each party understands that the agreement is permanent, binding and constitutes full and final settlement of any right the claimant may otherwise have to future benefits, including medical benefits. The Commission may establish an approved form for complying with the foregoing disclosure requirement.

E. Attorney's fees shall be allowed as provided by Rule R602-2-4. Each settlement agreement shall describe the amount to be paid to claimant's counsel as attorney's fees and costs, the manner in which such amounts are computed and the method of payment thereof.

F. The settlement agreement may provide for payment of benefits through insurance contract or by other third parties if the Commission determines: a) such payment provisions are secure, and b) such payment provisions do not relieve the parties of their underlying liability for payments required by the agreement.

G. Upon receipt of a proposed settlement agreement meeting the requirements of this rule, the Commission shall review such proposed agreement.

H. As needed, the Commission may contact the parties and others to obtain further information about the proposed settlement.

I. If the Commission determines that a proposed settlement agreement conforms with this rule, the Commission shall approve such agreement and notify the parties in writing.

J. If the Commission determines that a proposed settlement agreement does not comply with this rule, the Commission shall notify the parties in writing of its reasons for rejecting the proposed agreement.

K. The Commission shall retain a record of its action on all settlement agreements submitted to it for approval.

KEY: workers' compensation, administrative procedures, hearings, settlements
December 8, 2008 34A-2-420
Notice of Continuation August 1, 2018

R652. Natural Resources; Forestry, Fire and State Lands.
R652-123. Wildland Fire Suppression Cost Recovery Procedure.
R652-123-100. Authority and Purpose.

This rule establishes a procedure for recovery of the Division's costs for suppressing wildland fire as provided in Section 65A-3-4.

R652-123-200. Procedure to Collect for Wildland Fire Suppression Costs.

(1) The Division shall track the costs it incurs to suppress all wildland fires, including those suspected to be ignited by human activity.

(2) All fires suspected to be human-caused should be investigated as thoroughly as possible.

(3) If an investigation reasonably shows that a person or persons started a fire by acting in a negligent, reckless or intentional manner, the person(s) deemed responsible may be sent an invoice and a request for payment by the Division to pursue wildfire cost recovery.

(4) If cost recovery is pursued, the person(s) deemed responsible shall be contacted by certified mail/return receipt and be given Notice of Intent to Collect. The notice shall also include an invitation to meet with staff within 30 days and present any new evidence or to dispute the case.

(5) At the end of the 30 days after the notice is received, a Demand for Payment Letter and invoice may be sent by the Division stating that the Division demands payment for the costs as authorized by the Utah Code, Section 65A-3-4.

(6) If payment is not received by the Division within 90 days of the date of the invoice, the Division may pursue payment by one of the following means:

(a) collection of a delinquent account in accordance with Sections 63A-3-301 through 63A-3-310, Accounts Receivable

Collection; or,

(b) by tendering the account to a collection agency for immediate collection.

7. In cases where undue financial hardship would be caused by full payment of an invoice, the responsible party may negotiate with the Division to make alternate arrangements, including installment payments to satisfy the debt.

R652-123-300. Eligible Recovery Costs.

(1) The State Office or the appropriate Area Office may seek recovery of all costs associated with a wildfire caused by negligent, reckless or willful acts, including suppression, rehabilitation, and damage to state property.

R652-123-400. Appeals and/or Settlements.

1. The Division's intent is to secure full recovery from the person(s) deemed responsible based on the actual cost of wildfire suppression including all indirect costs associated with or resulting from the wildfire. Indirect costs may include investigations, scene security, managing firefighter well-being etc.

2. The Division may at its discretion accept settlement based on the responsible person's ability to pay or any other factor the Division deems relevant.

3. Settlements shall conform to the requirements of the State Settlement Agreements Act, Sections 63G-10-101 through 503.

4. The Division may submit to the Attorney General any claim for recovery, which is in dispute, requesting legal action be taken to recover the State's costs and settle such claims based on the laws of liability or as directed by the courts.

KEY: cost recovery, collections, wildland fires, wildfires
July 23, 2018 65A-3-4

R657. Natural Resources, Wildlife Resources.
R657-5. Taking Big Game.
R657-5-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking big game.

R657-5-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless moose" means a moose with antlers shorter than its ears.

(d) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(e) "Buck deer" means a deer with antlers longer than five inches.

(f) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(g) "Bull elk" means an elk with antlers longer than five inches.

(h) "Bull moose" means a moose with antlers longer than its ears.

(i) "Cow bison" means a female bison.

(j) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(k) "Draw-lock" means a mechanical device used to hold and support the draw weight of a conventional or compound bow at any increment of draw until released by the archer using a trigger mechanism and safety attached to the device.

(l) "Drone" means an autonomously controlled, aerial vehicle of any size or configuration that is capable of controlled flight without a human pilot aboard.

(m) "Ewe" means a female bighorn sheep or any bighorn sheep younger than one year of age.

(n) "Hunter's choice" means either sex may be taken.

(o) "Limited entry hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as limited entry and does not include general or once-in-a-lifetime hunts.

(p) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits, wildlife expo permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(q) "Once-in-a-lifetime hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(r) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, wildlife expo permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(s) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep older than one year of age.

(t) "Spike bull" means a bull elk which has at least one antler beam with no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

R657-5-3. License, Permit, and Tag Requirements.

(1) A person may engage in hunting protected wildlife or in the sale, trade, or barter of protected wildlife or its parts in accordance with Section 23-19-1 and the rules or guidebooks of the Wildlife Board.

(2) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing big game.

(3) A person must possess or obtain a Utah hunting or combination license to apply for or obtain any big game hunting permit.

R657-5-4. Age Requirements and Restrictions.

(1)(a) A person 12 years of age or older may apply for or obtain a permit to hunt big game.

(b) A person 11 years of age may apply for a permit to hunt big game, provided that person's 12th birthday falls within the calendar year for which the permit is issued and that person does not use the permit to hunt big game before their 12th birthday.

(2)(a) A person at least 12 years of age and under 16 years of age must be accompanied by his parent or legal guardian, or other responsible person 21 years of age or older and approved by his parent or guardian, while hunting big game with any weapon.

(b) As used in this section, "accompanied" means at a distance within which visual and verbal communication are maintained for the purposes of advising and assisting.

R657-5-5. Duplicate License and Permit.

(1) Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person

may obtain a duplicate from a division office or online license agent, for ten dollars or half of the price of the original license, permit, or certificate of registration, whichever is less.

(2) The division may waive the fee for a duplicate unexpired license, permit, tag or certificate of registration provided the person did not receive the original license, permit, tag or certificate of registration.

R657-5-6. Hunting Hours.

Big game may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

R657-5-7. Prohibited Weapons.

(1) A person may not use any weapon or device to take big game other than those expressly permitted in this rule.

(2) A person may not use:

(a) a firearm capable of being fired fully automatic;

(b) any light enhancement device or aiming device that casts a visible beam of light; or

(c) a firearm equipped with a computerized targeting system that marks a target, calculates a firing solution and automatically discharges the firearm at a point calculated most likely to hit the acquired target.

(3) Nothing in this Section shall be construed as prohibiting laser range finding devices or illuminated sight pins for archery equipment.

R657-5-8. Rifles, Shotguns, and Crossbows.

(1) A rifle used to hunt big game must fire centerfire cartridges and expanding bullets.

(2) A shotgun used to hunt big game must be 20 gauge or larger, firing only 00 or larger buckshot or slug ammunition.

(3)(a) A crossbow used to hunt big game must have a minimum draw weight of 125 pounds and a positive mechanical safety mechanism.

(b) A crossbow arrow or bolt used to hunt big game must be at least 16 inches long and have:

(i) fixed broadheads that are at least 7/8 inch wide at the widest point; or

(ii) expandable, mechanical broadheads that are at least 7/8 inch wide at the widest point when the broadhead is in the open position.

(c) Unless otherwise authorized by the division through a certificate of registration, it is unlawful for any person to:

(i) hunt big game with a crossbow during a big game archery hunt;

(ii) carry a cocked crossbow containing an arrow or a bolt while in or on any motorized vehicle on a public highway or other public right-of-way; or

(iii) hunt any protected wildlife with a crossbow utilizing a bolt that has any chemical, explosive or electronic device attached.

(4) A crossbow used to hunt big game may have a fixed or variable magnifying scope only during an any weapon hunt.

R657-5-9. Handguns.

(1) A handgun may be used to take deer and pronghorn, provided the handgun:

(a) is a minimum of .24 caliber;

(b) fires a centerfire cartridge with an expanding bullet; and

(c) develops 500 foot-pounds of energy at the muzzle.

(2) A handgun may be used to take elk, moose, bison, bighorn sheep, and Rocky Mountain goat, provided the handgun;

(a) is a minimum of .24 caliber;

(b) fires a centerfire cartridge with an expanding bullet; and

(c) develops 500 foot-pounds of energy at 100 yards.

R657-5-10. Muzzleloaders.

(1) A muzzleloader may be used during any big game hunt, except an archery hunt, provided the muzzleloader:

(a) can be loaded only from the muzzle;

(b) has open sights, peep sights, or a variable or fixed power scope, including a magnifying scope;

(c) has a single barrel;

(d) has a minimum barrel length of 18 inches;

(e) is capable of being fired only once without reloading;

(f) powder and bullet, or powder, sabot and bullet are not bonded together as one unit for loading;

(g) is loaded with black powder or black powder substitute, which must not contain smokeless powder.

(2)(a) A lead or expanding bullet or projectile of at least 40 caliber must be used to hunt big game.

(b) A bullet 130 grains or heavier, or a sabot 170 grains or heavier, must be used for taking deer and pronghorn.

(c) A 210 grain or heavier bullet must be used for taking elk, moose, bison, bighorn sheep, and Rocky Mountain goat, except sabot bullets used for taking these species must be a minimum of 240 grains.

(3)(a) A person who has obtained a muzzleloader permit for a big game hunt may:

(i) use only muzzleloader equipment authorized in this Subsections (1) and (2) to take the species authorized in the permit; and

(ii) not possess or be in control of a rifle or shotgun while in the field during the muzzleloader hunt.

(b) "Field" for purposes of this section, means a location where the permitted species of wildlife is likely to be found, but does not include a hunter's established campsite or the interior of a fully enclosed automobile or truck.

(c) The provisions of Subsection (a) do not apply to:

(i) a person lawfully hunting upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the muzzleloader hunt;

(iii) livestock owners protecting their livestock; or

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

(4) A person who has obtained an any weapon permit for a big game hunt may use muzzleloader equipment authorized in this Section to take the species authorized in the permit.

R657-5-11. Archery Equipment.

(1) Archery equipment may be used during any big game hunt, except a muzzleloader hunt, provided:

(a) the minimum bow pull is 30 pounds at the draw or the peak, whichever comes first;

(b) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;

(c) expanding arrowheads cannot pass through a 7/8 inch ring when expanded, and

(d) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock.

(2) The following equipment or devices may not be used to take big game:

(a) a crossbow, except as provided in Subsection (5) and Rule R657-12;

(b) arrows with chemically treated or explosive arrowheads;

(c) a mechanical device for holding the bow at any increment of draw, except as provided in Subsection (5) and Rule R657-12;

(d) a release aid that is not hand held or that supports the draw weight of the bow, except as provided in Subsection (5) and Rule R657-12; or

(e) a bow with a magnifying aiming device.

(3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4)(a) A person who has obtained an archery permit for a big game hunt may:

(i) only use archery equipment authorized in Subsections (1) and (2) to take the species authorized in the permit; and

(ii) not possess or be in control of a crossbow, draw-lock, rifle, shotgun or muzzleloader while in the field during an archery hunt.

(b) "Field" for purposes of this section, means a location where the permitted species of wildlife is likely to be found, but does not include a hunter's established campsite or the interior of a fully enclosed automobile or truck.

(c) The provisions of Subsection (a) do not apply to:

(i) a person lawfully hunting upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the archery hunt, provided the person is in compliance with the regulations of that hunt and possesses only the weapons authorized for that hunt;

(iii) livestock owners protecting their livestock;

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife; or

(v) a person possessing a crossbow or draw-lock under a certificate of registration issued pursuant to R657-12.

(5) A person who has obtained an any weapon permit for a big game hunt may use archery equipment authorized in this Section to take the species authorized in the permit, including a crossbow or draw-lock.

(6)(a) A person hunting an archery-only season on a once-in-a-lifetime hunt may:

(i) only use archery equipment authorized in Subsections (1) and (2) to take the species authorized in the permit; and

(ii) not possess or be in control of a crossbow, draw-lock, rifle, shotgun or muzzleloader while in the field during the archery-only season.

(b) "Field" for purposes of this section, means a location where the permitted species of wildlife is likely to be found, but does not include a hunter's established campsite or the interior of a fully enclosed automobile or truck.

R657-5-12. Areas With Special Restrictions.

(1)(a) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-614-4.

(b) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(c) Hunting with shotguns or archery equipment is prohibited within one-quarter mile of the areas provided in Subsection (b).

(2) Hunting is closed within the boundaries of all national parks unless otherwise provided by the governing agency.

(3) Hunters obtaining a Utah license, permit or tag to take big game are not authorized to hunt on tribal trust lands. Hunters must obtain tribal authorization to hunt on tribal trust lands.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

(5) In Salt Lake County, a person may:

(a) only use archery equipment to take buck deer and bull elk south of I-80 and east of I-15;

(b) only use archery equipment to take big game in Emigration Township; and

(c) not hunt big game within one-half mile of Silver Lake in Big Cottonwood Canyon.

(6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.

(7) Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, are closed to big game hunting. This restriction does not apply to the lawful harvest of domesticated elk as defined and allowed pursuant to Rule R58-20.

(8) State waterfowl management areas are closed to taking big game, except as otherwise provided in the guidebook of the Wildlife Board for taking big game.

(9) Hunters are restricted to using archery equipment, muzzleloaders or shotguns on the Scott M. Matheson Wetland Preserve.

(10) A person may not discharge a firearm, except a shotgun or muzzleloader, from, upon, or across the Green River located near Jensen, Utah from the Highway 40 bridge upstream to the Dinosaur National Monument boundary.

R657-5-13. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight, or other artificial light to:

(i) take protected wildlife; or

(ii) locate protected wildlife while in possession of a rifle, shotgun, archery equipment, crossbow, or muzzleloader.

(b) the use of a spotlight or other artificial light in a field, woodland, or forest where protected wildlife are generally found is probable cause of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of headlights, illuminated sight pins on a bow, or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-5-14. Use of Vehicle or Aircraft.

(1)(a) A person may not use an airplane, drone, or any other airborne vehicle or device, or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles, except a vessel as provided in Subsection (c), to take protected wildlife.

(b) A person may not take protected wildlife being chased, harmed, harassed, rallied, herded, flushed, pursued or moved by any vehicle, device, or conveyance listed in Subsection (a).

(c) Big game may be taken from a vessel provided:

(i) the motor of a motorboat has been completely shut off;

(ii) the sails of a sailboat have been furled; and

(iii) the vessel's progress caused by the motor or sail has ceased.

(2)(a) A person may not use any type of aircraft, drone, or other airborne vehicle or device from 48 hours before any big game hunt begins through 48 hours after any big game hunting season ends to:

(i) transport a hunter or hunting equipment into a hunting area;

(ii) transport a big game carcass; or

(iii) locate, or attempt to observe or locate any protected wildlife.

(b) Flying slowly at low altitudes, hovering, circling or repeatedly flying over a forest, marsh, field, woodland or rangeland where protected wildlife is likely to be found may be used as evidence of violations of Subsections (1) and (2).

(3) The provisions of this section do not apply to the operation of an aircraft, drone, or other airborne vehicle or device in a usual manner, or landings and departures from improved airstrips, where there is no attempt or intent to locate protected wildlife.

R657-5-15. Party Hunting and Use of Dogs.

(1) A person may not take big game for another person, except as provided in Section 23-19-1 and Rule R657-12.

(2) A person may not use the aid of a dog to take, chase, harm or harass big game. The use of one blood-trailing dog controlled by leash during lawful hunting hours within 72 hours of shooting a big game animal is allowed to track wounded animals and aid in recovery.

R657-5-16. Big Game Contests.

A person may not enter or hold a big game contest that:

(1) is based on big game or its parts; and

(2) offers cash or prizes totaling more than $500.

R657-5-17. Tagging.

(1) The carcass of any species of big game must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue big game after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The tag must remain with the largest portion of the meat until the animal is entirely consumed.

R657-5-18. Transporting Big Game Within Utah.

(1) A person may transport big game within Utah only as follows:

(a) the head or sex organs must remain attached to the largest portion of the carcass;

(b) the antlers attached to the skull plate must be transported with the carcass of an elk taken in a spike bull unit; and

(c) the person who harvested the big game animal must accompany the carcass and must possess a valid permit corresponding to the tag attached to the carcass, except as provided in Subsection (2).

(2) A person who did not take the big game animal may transport it only after obtaining a shipping permit or disposal receipt from the division or a donation slip as provided in Section 23-20-9.

R657-5-19. Exporting Big Game From Utah.

(1) A person may export big game or its parts from Utah only if:

(a) the person who harvested the big game animal accompanies it and possesses a valid permit corresponding to the tag which must be attached to the largest portion of the carcass; or

(b) the person exporting the big game animal or its parts, if it is not the person who harvested the animal, has obtained a shipping permit from the division.

R657-5-20. Purchasing or Selling Big Game or its Parts.

(1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any big game or its parts as follows:

(a) Antlers, heads and horns of legally taken big game may be purchased or sold only on the dates published in the guidebook of the Wildlife Board for taking big game;

(b) Untanned hides of legally taken big game may be purchased or sold only on the dates published in the guidebook of the Wildlife Board for taking big game;

(c) Inedible byproducts, excluding hides, antlers and horns of legally possessed big game as provided in Subsection 23-20-3, may be purchased or sold at any time;

(d) tanned hides of legally taken big game may be purchased or sold at any time; and

(e) shed antlers and horns may be purchased or sold at any time.

(2)(a) Protected wildlife that is obtained by the division by any means may be sold or donated at any time by the division or its agent.

(b) A person may purchase or receive protected wildlife from the division, which is sold or donated in accordance with Subsection (2)(a), at any time.

(3) A person selling or purchasing antlers, heads, horns or untanned hides shall keep transaction records stating:

(a) the name and address of the person who harvested the animal;

(b) the transaction date; and

(c) the permit number of the person who harvested the animal.

(4) Subsection (3) does not apply to scouting programs or other charitable organizations using untanned hides.

R657-5-21. Possession of Antlers and Horns.

(1) A person may possess antlers or horns or parts of antlers or horns only from:

(a) lawfully harvested big game;

(b) antlers or horns lawfully obtained as provided in Section R657-5-20; or

(c) shed antlers or shed horns.

(2)(a) A person may gather shed antlers or shed horns or parts of shed antlers or shed horns at any time. An authorization is required to gather shed antlers or shed horns or parts of shed antlers or shed horns during the shed antler and shed horn season published in the guidebook of the Wildlife Board for taking big game.

(b) A person must complete a wildlife harassment and habitat destruction prevention course annually to obtain the required authorization to gather shed antlers during the antler gathering season.

(3) "Shed antler" means an antler which:

(a) has been dropped naturally from a big game animal as part of its annual life cycle; and

(b) has a rounded base commonly known as the antler button or burr attached which signifies a natural life cycle process.

(4) "Shed horn" means the sheath from the horn of a pronghorn that has been dropped naturally as part of its annual life cycle. No other big game species shed their horns naturally.

R657-5-22. Poaching-Reported Reward Permits.

(1) Big Game poaching-reported reward permits are issued pursuant to rule R657-51 Poaching-Reported Reward Permits.

R657-5-23. General Archery Buck Deer Hunt.

(1) The dates of the general archery buck deer hunt are provided in the guidebook of the Wildlife Board for taking big game.

(2) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer may use archery equipment prescribed in R657-5-11 to take:

(a) one buck deer within the general hunt area specified on the permit for the time specified in the guidebook of the Wildlife Board for taking big game; or

(b) a deer of hunter's choice within extended archery areas as provided in the guidebook of the Wildlife Board for taking big game.

(c) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(d) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within premium limited entry deer or limited entry deer areas, except as provided by the Wildlife Board in the guidebooks for big game.

(3)(a) A person who obtains a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may hunt within extended archery areas during the extended archery area seasons as provided in the guidebook of the Wildlife Board for taking big game and as provided in Subsection (b).

(b)(i) A person must complete the Archery Ethics Course annually to hunt any extended archery areas during the extended archery season.

(ii) A person must possess an Archery Ethics Course Certificate of Completion while hunting.

(4) A person who has obtained a general archery buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer and extended archery areas.

(5) If a person 17 years of age or younger obtains a general archery buck deer permit, that person may only hunt during the general archery deer season and the extended archery season as provided Section R657-5-23(3).

R657-5-24. General Any Weapon Buck Deer Hunt.

(1) The dates for the general any weapon buck deer hunts are provided in the guidebook of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general any weapon buck permit may use any legal weapon to take one buck deer within the hunt area and season dates specified on the permit as published in the guidebook of the Wildlife Board for taking big game.

(b) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except as provided by the Wildlife Board in the guidebooks for big game.

(3) A person who has obtained a general any weapon buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer, as provided in R657-5-27; and

(b) any person 17 years of age or younger on July 31 of the current year, may hunt the general archery, extended archery, general any weapon and general muzzleloader buck deer seasons applicable to the unit specified on the general any weapon buck deer permit, using the appropriate equipment as provided in Sections R657-5-7 through R657-5-11, respectively.

R657-5-25. General Muzzleloader Buck Deer Hunt.

(1) The dates for the general muzzleloader buck deer hunt are provided in the guidebook of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general muzzleloader buck permit may use a muzzleloader, as prescribed in R657-5-10, to take one buck deer within the general hunt area specified on the permit as published in the guidebook of the Wildlife Board for taking big game.

(b) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within any deer Cooperative Wildlife Management unit.

(c) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within premium limited entry deer or limited entry deer areas, except as provided by the Wildlife Board in the guidebooks for big game.

(3)(a) A person who has obtained a general muzzleloader buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer, as provided in R657-5-27.

(b) If a person 17 years of age or younger purchases a general muzzleloader buck deer permit, that person may only hunt during the general muzzleloader deer season.

R657-5-26. Premium Limited Entry and Limited Entry Buck Deer Hunts.

(1)(a) To hunt in a premium limited entry or limited entry buck deer area, hunters must obtain the respective limited entry buck permit. Limited entry areas are not open to general archery buck deer, general any weapon buck deer, or general muzzleloader buck deer hunting, except as specified in the guidebook of the Wildlife Board for taking big game.

(b)(i) The Wildlife Board may establish in guidebook a limited entry buck deer hunt on a general season buck deer unit.

(ii) The season dates for a limited entry hunt under this Subsection will not overlap the season dates for the underlying general season hunt on the unit.

(iii) A landowner association under R657-43 is not eligible to receive limited entry permits that occur on general season units.

(2) A limited entry buck deer permit allows a person using the prescribed legal weapon, to take one buck deer within the area and season specified on the permit, excluding deer cooperative wildlife management units located within the limited entry unit.

(3)(a) A person who has obtained a premium limited entry, limited entry, management, or cooperative wildlife management unit buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck deer.

(b) Limited entry and cooperative wildlife management unit buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, management, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

(4) A person who has obtained a premium limited entry or limited entry buck permit may not:

(a) obtain any other deer permit, except an antlerless deer permit as provided in R657-5-27 and the guidebooks of the Wildlife Board; or

(b) hunt during any other deer hunt, except unsuccessful archery hunters may hunt within extended archery areas as provided in Subsection (7).

(5)(a) The Wildlife Board may establish a multi-season hunting opportunity in the big game guidebooks for selected premium limited entry and limited entry buck deer hunts.

(b) A person that obtains a premium limited entry or limited entry buck deer permit with a multi-season opportunity may hunt during any of the following limited entry buck deer seasons established in the guidebooks of the Wildlife Board for the unit specified on the premium limited entry or limited entry buck deer permit:

(i) archery season, using only archery equipment prescribed in R657-5-11 for taking deer;

(ii) muzzleloader season, using only muzzleloader equipment prescribed in R657-5-10 for taking deer; and

(iii) any weapon season, using any legal weapon prescribed in R657-5 for taking deer.

(c) A landowner association under R657-43 is not eligible to receive a multi-season hunting opportunity for premium

limited entry or limited entry units.

(6) A premium limited entry or limited entry buck deer permit, including a permit with a multi-season opportunity, is valid only within the boundaries of the unit designated on the permit, excluding:

(a) areas closed to hunting;

(b) deer cooperative wildlife management units; and

(c) Indian tribal trust lands.

(7) A person who possesses an archery buck deer permit for a premium limited entry or limited entry unit, including a permit with a multi-season opportunity, may hunt buck deer within any extended archery area during the established extended archery season for that area, provided the person:

(a) did not take a buck deer during the premium limited entry or limited entry hunt;

(b) uses the prescribed archery equipment for the extended archery area;

(c) completes the annual Archery Ethics Course required to hunt extended archery areas during the extended archery season; and

(d) possesses on their person while hunting:

(i) the multi-season limited entry or limited entry buck deer permit; and

(ii) the Archery Ethics Course Certificate of Completion.

R657-5-27. Antlerless Deer Hunts.

(1)(a) To hunt antlerless deer, a hunter must obtain an antlerless deer permit.

(b) A person may obtain only one antlerless deer permit or a two-doe antlerless deer permit through the division's antlerless big game drawing.

(2)(a) An antlerless deer permit allows a person to take one antlerless deer using the weapon type, within the area, and during season dates specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A two-doe antlerless deer permit allows a person to take two antlerless deer using the weapon type, within the area, and during the season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(c) A person may not hunt antlerless deer on any deer cooperative wildlife management unit unless that person obtains an antlerless deer permit for that specific cooperative wildlife management unit.

(3) A person who has obtained an antlerless deer permit may not hunt during any other antlerless deer hunt or obtain any other antlerless deer permits, except as provided in R657-44-3.

(4)(a) A person who obtains an antlerless deer permit and any of the permits listed in Subsection (b) may use the antlerless deer permit during the established season for the antlerless deer permit and during the established season for the applicable permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used, if hunting antlerless deer during an archery season or hunt; and

(iii) the appropriate muzzleloader hunt equipment is used, if hunting antlerless deer during a muzzleloader season or hunt.

(b)(i) General buck deer for archery, muzzleloader, any weapon, or dedicated hunter;

(ii) General bull elk for archery, muzzleloader, any weapon, or multi-season;

(iii) Premium limited entry buck deer for archery, muzzleloader, any weapon, or multi-season;

(iv) Limited entry buck deer for archery, muzzleloader, any weapon, or multi-season;

(v) Limited entry bull elk for archery, muzzleloader, any weapon, or multi-season; or

(vi) Antlerless elk.

(c) A person that possess an unfilled antlerless deer permit and harvests an animal under authority of a permit listed in Subsection (b), may continue hunting antlerless deer as prescribed in Subsections (a) and (b) during the remaining portions of the Subsection (b) permit season.

R657-5-28. General Archery Elk Hunt.

(1) The dates of the general archery elk hunt are provided in the guidebooks of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general archery elk permit may use archery equipment to take:

(i) an antlerless elk or a bull elk on a general any bull elk unit, excluding elk cooperative wildlife management units;

(ii) an antlerless elk or a spike bull elk on a general spike bull elk unit, excluding elk cooperative wildlife management units;

(iii) an antlerless elk or a bull elk on extended archery areas as provided in the guidebook of the Wildlife Board for taking big game.

(3)(a) A person who obtains a general archery elk permit may hunt within the extended archery areas during the extended archery area seasons as provided in the guidebook of the Wildlife Board for taking big game and as provided in Subsection (b).

(b)(i) A person must complete the Archery Ethics Course annually to hunt the extended archery areas during the extended archery season.

(ii) A person must possess an Archery Ethics Course Certificate of Completion on their person while hunting.

(4) A person who has obtained an archery elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-33(3) and by the guidebooks of the Wildlife Board for taking big game.

R657-5-29. General Season Bull Elk Hunt.

(1) The dates and areas for the general season bull elk hunts are provided in the guidebooks of the Wildlife Board for taking big game, except the following areas are closed to general any weapon bull elk hunting:

(a) Salt Lake County south of I-80 and east of I-15; and

(b) elk cooperative wildlife management units.

(2)(a) A person may purchase either a spike bull elk permit or an any bull elk permit.

(b) A person who has obtained a general season spike bull elk permit may take a spike bull elk on a general season spike bull elk unit. Any bull elk units are closed to spike bull elk permittees.

(c) A person who has obtained a general season any bull elk permit may take any bull elk, including a spike bull elk, on a general season any bull elk unit. Spike bull elk units are closed to any bull elk permittees.

(3) A person who has obtained a general season bull elk permit may use any legal weapon to take a spike bull elk or any bull elk, as specified on the permit.

(4) A person who has obtained a general season bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-33(3).

(5) The Wildlife Board may establish multi-season hunting opportunities in the big game guidebooks for general season spike and bull elk hunts consistent with the following parameters:

(a) an individual with a multi-season spike elk permit may use:

(i) archery equipment as prescribed in R657-5-11 to take an antlerless elk or spike bull elk on a general season spike unit during the archery season;

(ii) archery equipment as prescribed in R657-5-11 to take an antlerless elk or any bull elk on a general season any bull unit during the archery season;

(iii) muzzleloader equipment as prescribed in R657-5-10

to take spike bull elk on general season spike units during the muzzleloader season; or

(iv) any legal weapon as prescribed in R657-5 to take a spike bull elk on a general season spike unit during the any legal weapon season.

(b) An individual with a multi-season any bull elk permit may use:

(i) archery equipment as prescribed in R657-5-11 to take an antlerless elk or spike elk on a general season spike unit during the archery season;

(ii) archery equipment as prescribed in R657-5-11 to take an antlerless elk or any bull elk on a general season any bull unit during the archery season;

(iii) muzzleloader equipment as prescribed in R657-5-10 to take any bull elk on general season any bull units during the muzzleloader season; or

(iv) any legal weapon as prescribed in R657-5 to take any bull elk on a general season any bull unit during the any legal weapon season.

(c) An individual who obtains a multi-season bull elk permit may hunt within the extended archery areas during the extended archery area seasons described in the guidebook of the Wildlife Board for taking big game, provided that individual:

(i) completes the Archery Ethics Course prior to going afield; and

(ii) possesses the Archery Ethics Course Certificate of Completion on their person while hunting.

R657-5-30. General Muzzleloader Bull Elk Hunt.

(1) The dates and areas for general muzzleloader bull elk hunts are provided in the guidebooks of the Wildlife Board for taking big game, except the following areas are closed to general muzzleloader bull elk hunting:

(a) Salt Lake County south of I-80 and east of I-15; and

(b) elk cooperative wildlife management units.

(2)(a) General muzzleloader bull elk hunters may purchase either a spike bull elk permit or an any bull elk permit.

(b) A person who has obtained a general muzzleloader spike bull elk permit may use a muzzleloader, prescribed in R657-5-10, to take a spike bull elk on an any general spike bull elk unit. Any bull units are closed to spike bull muzzleloader permittees.

(c) A person who has obtained a general muzzleloader any bull elk permit may use a muzzleloader, as prescribed in R657-5-10, to take any bull elk on an any bull elk unit. Spike bull units are closed to any bull muzzleloader permittees.

(3) On selected units identified in the guidebook of the Wildlife Board for taking big game, a person who has obtained a general muzzleloader bull elk permit may use muzzleloader equipment to take either an antlerless elk or a bull elk.

(4) A person who has obtained a general muzzleloader bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-33(3).

R657-5-31. Youth General Any Bull Elk Hunt.

(1)(a) For purposes of this section "youth" means any person 17 years of age or younger on July 31 of the current year.

(b) A youth may apply for or obtain a youth any bull elk permit.

(c) A qualified person may obtain a youth any bull elk permit only once during their life.

(2) The youth any bull elk hunting season and areas are published in the guidebook of the Wildlife Board for taking big game.

(3)(a) A youth who has obtained a youth general any bull elk permit may take any bull elk, including antlerless elk, on a general any bull elk unit. Spike bull elk units are closed to youth general any bull elk permittees.

(b) A youth who has obtained a youth general any bull elk permit may use any legal weapon to take any bull elk or antlerless elk as specified on the permit.

(4) A youth who has obtained a youth general any bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-33(3).

(5) Preference points shall not be awarded or utilized when applying for or obtaining a youth general any bull elk permit.

R657-5-32. Limited Entry Bull Elk Hunts.

(1) To hunt in a limited entry bull elk area, a hunter must obtain a limited entry bull elk permit for the area.

(2)(a) A limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and season specified on the permit, except as provided in Subsection (5) and excluding elk cooperative wildlife management units located within a limited entry unit. Spike bull elk restrictions do not apply to limited entry elk permittees.

(3)(a) The Wildlife Board may establish a multi-season hunting opportunity in the big game guidebooks for selected limited entry bull elk units.

(b) A person that obtains a limited entry bull elk permit with a multi-season opportunity may hunt during any of the following limited entry bull elk seasons established in the guidebooks of the Wildlife Board for the unit specified on the limited entry bull elk permit:

(i) archery season, using only archery equipment prescribed in R657-5-11 for taking elk;

(ii) muzzleloader season, using only muzzleloader equipment prescribed in R657-5-10 for taking elk; and

(iii) any weapon season, using any legal weapon prescribed in R657-5 for taking elk.

(c) A landowner association under R657-43 is not eligible to receive a multi-season hunting opportunity for limited entry units.

(4) A limited entry bull elk permit, including a permit with a multi-season opportunity, is valid only within the boundaries of the unit designated on the permit, excluding:

(a) areas closed to hunting;

(b) elk cooperative wildlife management units; and

(c) Indian tribal trust lands.

(5) A person who possesses any limited entry archery bull elk permit, including a permit with a multi-season opportunity, may hunt bull elk within any extended archery area during the established extended archery season for that area, provided the person:

(a) did not take a bull elk during the limited entry hunt;

(b) uses the prescribed archery equipment for the extended archery area;

(c) completes the annual Archery Ethics Course required to hunt extended archery areas during the extended archery season; and

(d) possesses on their person while hunting:

(i) the limited entry bull elk permit; and

(ii) the Archery Ethics Course Certificate of Completion.

(6) "Prescribed legal weapon" means for purposes of this subsection:

(a) archery equipment, as defined in R657-5-11, when hunting the archery season, excluding a crossbow or draw-lock;

(b) muzzleloader equipment, as defined in R657-5-10, when hunting the muzzleloader season; and

(c) any legal weapon, including a muzzleloader and crossbow with a fixed or variable magnifying scope or draw-lock when hunting during the any weapon season.

(7)(a) A person who has obtained a limited entry or cooperative wildlife management unit bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or

unsuccessful in harvesting a bull elk.

(b) Limited entry and cooperative wildlife management unit bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

(8) A person who has obtained a limited entry bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsections (5) and R657-5-33(3).

R657-5-33. Antlerless Elk Hunts.

(1) To hunt antlerless elk, a hunter must obtain an antlerless elk permit.

(2)(a) An antlerless elk permit allows a person to take one antlerless elk using the weapon type, within the area, and during season dates specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A person may not hunt antlerless elk on an elk cooperative wildlife management unit unless that person obtains an antlerless elk permit for that specific cooperative wildlife management unit.

(3)(a) A person may obtain three elk permits each year, in combination as follows:

(i) a maximum of one bull elk permit;

(ii) a maximum of one antlerless elk permit issued through the division's antlerless big game drawing; and

(iii) a maximum of two antlerless elk permits acquired over the counter or on-line after the antlerless big game drawing is finalized, including antlerless elk:

(A) control permits, as described in Subsection (5);

(B) depredation permits, as described in R657-44-8;

(C) mitigation permit vouchers, as defined in R657-44-2(2); and

(D) private lands only permits, as described in Subsection (6).

(b) Antlerless elk mitigation permits obtained by a landowner or lessee under R657-44-3 do not count towards the annual three elk permit limitation prescribed in this subsection.

(i) "Mitigation permit" has the same meaning as defined in R657-44-2(2).

(c) For the purposes of obtaining multiple elk permits, a hunter's choice elk permit is considered a bull elk permit.

(4)(a) A person who obtains an antlerless elk permit and any of the permits listed in Subsection (b) may use the antlerless elk permit during the established season for the antlerless elk permit and during the established season for the applicable permits listed in Subsection (b), provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used, if hunting antlerless elk during an archery season or hunt; and

(iii) the appropriate muzzleloader hunt equipment is used, if hunting antlerless elk during a muzzleloader season or hunt.

(b)(i) General buck deer for archery, muzzleloader, any legal weapon, or dedicated hunter;

(ii) General bull elk for archery, muzzleloader, any legal weapon, or multi-season;

(iii) Premium limited entry buck deer for archery, muzzleloader, any weapon, or multi-season;

(iv) Limited entry buck deer for archery, muzzleloader, any legal weapon, or multi-season;

(v) Limited entry bull elk for archery, muzzleloader or any legal weapon, or multi-season.

(vi) Antlerless deer or elk, excluding antlerless elk control permits.

(c) A person that possess an unfilled antlerless elk permit and harvests an animal under authority of a permit listed in Subsection (b), may continue hunting antlerless elk as prescribed in Subsections (a) and (b) during the remaining portions of the Subsection (b) permit season.

(5)(a) To obtain an antlerless elk control permit, a person must first obtain a big game buck, bull, or a once-in-a-lifetime permit.

(b) An antlerless elk control permit allows a person to take one antlerless elk using the same weapon type, during the same season dates, and within areas of overlap between the boundary of the buck, bull, or once-in-a-lifetime permit and the boundary of the antlerless elk control permit, as provided in the Antlerless guidebook by the Wildlife Board.

(c) Antlerless elk control permits are sold over the counter or online after the division's antlerless big game drawing is finalized.

(d) A person that possess an unfilled antlerless elk control permit and harvests an animal under the buck, bull, or once-in-a-lifetime permit referenced in Subsection (b), may continue hunting antlerless elk as prescribed in Subsection (b) during the remaining portions of the buck, bull, or once-in-a-lifetime permit season.

(6)(a) A private lands only permit allows a person to take one antlerless elk on private land within a prescribed unit using any weapon during the season dates and area provided in the Big Game guidebook by the Wildlife Board.

(b) No boundary extension or buffer zones on public land will be applied to private lands only permits.

(c) Private lands only permits are sold over the counter or online after the division's antlerless big game drawing is finalized.

(d) "Private lands" means, for purposes of this subsection, any land owned in fee by an individual or legal entity, excluding:

(i) land owned by the state or federal government;

(ii) land owned by a county or municipality;

(iii) land owned by an Indian tribe;

(iv) land enrolled in a Cooperative Wildlife Management Unit under R657-37; and

(v) land where public access for big game hunting has been secured.

R657-5-34. Buck Pronghorn Hunts.

(1) To hunt buck pronghorn, a hunter must obtain a buck pronghorn permit.

(2) A person who has obtained a buck pronghorn permit may not obtain any other pronghorn permit or hunt during any other pronghorn hunt.

(3)(a) A person who has obtained a limited entry or cooperative wildlife management unit buck pronghorn permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck pronghorn.

(b) Limited entry and cooperative wildlife management unit buck pronghorn permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

(4) A buck pronghorn permit allows a person to take one buck pronghorn within the area, during the season, and using the weapon type specified on the permit, except on a pronghorn

cooperative wildlife management unit located within a limited entry unit.

R657-5-35. Doe Pronghorn Hunts.

(1)(a) To hunt doe pronghorn, a hunter must obtain a doe pronghorn permit.

(b) A person may obtain only one doe pronghorn permit or a two-doe pronghorn permit through the division's antlerless big game drawing.

(2)(a) A doe pronghorn permit allows a person to take one doe pronghorn using the weapon type, within the area, and during the season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A two-doe pronghorn permit allows a person to take two doe pronghorn using the weapon type, within the area, and during the season dates specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(c) A person may not hunt doe pronghorn on any pronghorn cooperative wildlife management unit unless that person obtains an antlerless pronghorn permit for that specific cooperative wildlife management unit.

(3) A person who has obtained a doe pronghorn permit may not hunt pronghorn during any other pronghorn hunt or obtain any other pronghorn permit.

R657-5-36. Antlerless Moose Hunts.

(1) To hunt antlerless moose, a hunter must obtain an antlerless moose permit.

(2)(a) An antlerless moose permit allows a person to take one antlerless moose using any legal weapon within the area and season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A person may not hunt antlerless moose on a moose cooperative wildlife management unit unless that person obtains an antlerless moose permit for that specific cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless moose permit may not hunt moose during any other moose hunt or obtain any other moose permit for that hunt year.

R657-5-37. Bull Moose Hunts.

(1) To hunt bull moose, a hunter must obtain a bull moose permit.

(2) A person who has obtained a bull moose permit may not obtain any other moose permit or hunt during any other moose hunt.

(3) A bull moose permit allows a person to take one bull moose within the area, during the seasons, and using the weapon type prescribed by the Wildlife Board, excluding any moose cooperative wildlife management unit located within a limited entry unit.

(4)(a) A person who has obtained a bull moose permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull moose.

(b) Bull moose permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

R657-5-38. Bison Hunts.

(1) To hunt bison, a hunter must obtain a bison permit.

(2) A person who has obtained a bison permit may not obtain any other bison permit or hunt during any other bison hunt.

(3) A hunter's choice bison permit allows a person to take a bison of either sex within the area, during the seasons, and using the weapon type prescribed by the Wildlife Board.

(4)(a) An orientation course is required for bison hunters who draw an Antelope Island bison permit. Hunters shall be notified of the orientation date, time and location.

(b) The Antelope Island hunt is administered by the Division of Parks and Recreation.

(5) A cow bison permit allows a person to take one cow bison within the area, during the seasons, and using the weapon types as specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(6) An orientation course is required for bison hunters who draw cow bison permits. Hunters will be notified of the orientation date, time and location.

(7)(a) A person who has obtained a bison permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bison.

(b) Bison permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

R657-5-39. Desert Bighorn and Rocky Mountain Bighorn Sheep Ram Hunts.

(1) To hunt a ram desert bighorn sheep or a ram Rocky Mountain bighorn sheep, a hunter must obtain the respective permit.

(2) A person who has obtained a ram desert bighorn sheep or a ram Rocky Mountain bighorn sheep permit may not obtain any other desert bighorn sheep or Rocky Mountain bighorn sheep permit or hunt during any other desert bighorn sheep or Rocky Mountain bighorn sheep hunt.

(3) Ram desert bighorn sheep and ram Rocky Mountain bighorn sheep permits are considered separate once-in-a-lifetime hunting opportunities.

(4)(a) A ram desert bighorn sheep permit allows a person to take one desert bighorn ram within the area, during the seasons, and using the weapon type prescribed by the Wildlife Board.

(b) A ram Rocky Mountain sheep permit allows a person to take one Rocky Mountain bighorn ram within the area, during the seasons, and using the weapon type prescribed by the Wildlife Board.

(5)Successful hunters must deliver the horns of the bighorn sheep to a division office within 72 hours of leaving the hunting area. A numbered seal will be permanently affixed to the horn indicating legal harvest.

(6)(a) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a desert bighorn sheep or Rocky Mountain bighorn sheep.

(b) Desert bighorn sheep or Rocky Mountain bighorn sheep permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following

year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

R657-5-39.5. Desert Bighorn and Rocky Mountain Bighorn Ewe Hunts.

(1) To hunt a ewe desert bighorn sheep or a ewe Rocky Mountain bighorn sheep, a hunter must obtain the respective ewe permit.

(2)(a) A ewe permit allows a person to take one ewe using any legal weapon within the area and season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(3) A person who has obtained a ewe permit may not hunt desert bighorn or Rocky Mountain bighorn sheep during any other sheep hunt or obtain any other sheep permit during that hunt year.

(4) Ewe desert bighorn sheep and ewe Rocky Mountain bighorn sheep permits are considered separate hunting opportunities.

R657-5-40. Rocky Mountain Goat Hunts.

(1) To hunt Rocky Mountain goat, a hunter must obtain a Rocky Mountain goat permit.

(2) A person who has obtained a Rocky Mountain goat permit may not obtain any other Rocky Mountain goat permit or hunt during any other Rocky Mountain goat hunt.

(3) A Rocky Mountain goat of either sex may be legally taken on a hunter's choice permit.

(4) The goat permit allows a person to take one goat within the area, during the seasons, and using the weapon type prescribed by the Wildlife Board.

(5) A female-only goat permit allows a person to take one femalegoat within the area, during the seasons, and using the weapon type specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(6) An orientation course is required for Rocky Mountain goat hunters who draw female-goat only permits. Hunters will be notified of the orientation date, time and location.

(7)(a) A person who has obtained a Rocky Mountain goat permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a Rocky Mountain goat.

(b) Rocky Mountain goat permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

R657-5-41. Depredation Hunter Pool Permits.

(1) When big game are causing damage or are considered a nuisance, control hunts not listed in the guidebook of the Wildlife Board for taking big game may be held as provided in Rule R657-44. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) For the purpose of this section, nuisance is defined as a situation where big game animals are found to have moved off formally approved management units onto adjacent units or other areas not approved for that species.

R657-5-42. Carcass Importation.

(1) It is unlawful to import dead elk, moose, mule deer, or white-tailed deer or their parts from the areas of any state, province, game management unit, equivalent wildlife management unit, or county, which has deer or elk diagnosed with Chronic Wasting Disease, except the following portions of the carcass:

(a) meat that is cut and wrapped either commercially or privately;

(b) quarters or other portion of meat with no part of the spinal column or head attached;

(c) meat that is boned out;

(d) hides with no heads attached;

(e) skull plates with antlers attached that have been cleaned of all meat and tissue;

(f) antlers with no meat or tissue attached;

(g) upper canine teeth, also known as buglers, whistlers, or ivories; or

(h) finished taxidermy heads.

(2)(a) The affected states, provinces, game management units, equivalent wildlife management units, or counties, which have deer, elk, or moose diagnosed with Chronic Wasting Disease shall be available at division offices and through the division's Internet address.

(b) Importation of harvested elk, moose, mule deer, or white-tailed deer or its parts from the affected areas are hereby restricted pursuant to Subsection (1).

(3) Nonresidents of Utah transporting harvested elk, moose, mule deer, or white-tailed deer from the affected areas are exempt if they:

(a) do not leave any part of the harvested animal in Utah and do not stay more than 24 hours in the state of Utah;

(b) do not have their deer, elk, or moose processed in Utah; or

(c) do not leave any parts of the carcass in Utah.

R657-5-43. Chronic Wasting Disease - Infected Animals.

(1) Any person who under the authority of a permit issued by the division legally takes a deer, elk, or moose that is later confirmed to be infected with Chronic Wasting Disease may:

(a) retain the entire carcass of the animal;

(b) retain any parts of the carcass, including antlers, and surrender the remainder to the division for proper disposal; or

(c) surrender all portions of the carcass in their actual or constructive possession, including antlers, to the division and receive a free new permit the following year for the same hunt.

(2) The new permit issued pursuant to Subsection (1)(c) shall be for the same species, sex, weapon type, unit, region, and otherwise subject to all the restrictions and conditions imposed on the original permit, except season dates for the permit shall follow the guidebook of the Wildlife Board for taking big game published in the year the new permit is valid.

(3) Notwithstanding other rules to the contrary, private landowners and landowner associations may refuse access to private property to persons possessing new permits issued under Subsection (1)(c).

R657-5-44. Management Bull Elk Hunt.

(1)(a) For the purposes of this section "management bull" means any bull elk with 5 points or less on at least one antler. A point means a projection longer than one inch, measured from its base to its tip.

(b) For purposes of this section "youth" means any person 17 years of age or younger on July 31.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management bull elk archery season published in the guidebook of the Wildlife Board for taking big game.

(2)(a) Management bull elk permits shall be distributed pursuant to R657-62 with thirty percent of the permits being allocated to youth, thirty percent to seniors and the remaining forty percent to hunters of all ages.

(3) Management bull elk permit holders may take one management bull elk during the season, on the area and with the weapon type specified on the permit. Management bull elk hunting seasons, areas and weapon types are published in the guidebook of the Wildlife Board for taking big game.

(4)(a) A person who has obtained a management bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management bull elk.

(b) Management bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(5)(a) Management bull elk permit holders who successfully harvest a management bull elk, as defined in Subsection (1)(a) must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the elk they harvest to a division office for inspection within 48 hours after the date of kill.

(6) Management bull elk permit holders may not retain possession of any harvested bull elk that fails to satisfy the definition requirements in Subsection (1)(a).

(7) A person who has obtained a management bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-33(3).

R657-5-45. General Any Weapon Buck Deer and Bull Elk Combination Hunt.

(1) Permit numbers, season dates and unit boundary descriptions for the general any weapon buck deer and bull elk combination hunt shall be established in the guidebook of the Wildlife Board for taking big game.

(2) A person who obtains a general any weapon buck deer and bull elk combination permit may use any legal weapon to take one buck deer and one bull elk during the season and within the unit specified on the permit.

(a) A general any weapon buck deer and bull elk combination permit does not authorize the holder to hunt deer or elk within any cooperative wildlife management unit.

(3) A person who has obtained a general any weapon buck deer and bull elk combination permit may not hunt during any other deer or elk hunt or obtain any other deer or elk permit, except:

(a) antlerless deer, as provided in Subsection R657-5-27, and

(b) antlerless elk, as provided in Subsection R657-5-33.

(4)(a) Lifetime license holders may obtain a general any weapon buck deer and bull elk combination permit.

(b) Upon obtaining a general any weapon buck deer and bull elk combination permit, the lifetime license holder foregoes any rights to receive a buck deer permit for the general archery, general any weapon or general muzzleloader deer hunts as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the general archery, general any weapon or general muzzleloader deer permit.

R657-5-46. Management Buck Deer Hunt.

(1)(a) For the purposes of this section "management buck" means any buck deer with 3 points or less on at least one antler above and including the first fork in the antler. A point means a projection longer than one inch, measured from its base to its tip. The eye guard is not counted as a point.

(b) For purposes of this section "youth" means any person 17 years of age or younger on July 31.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management buck deer archery season published in the guidebook of the Wildlife Board for taking big game.

(2) Management buck deer permits shall be distributed pursuant to rule R657-62 with thirty percent of the permits being allocated to youth, thirty percent to seniors and the remaining forty percent to hunters of all ages.

(3) Management buck deer permit holders may take one management buck deer during the season, in the area and with the weapon type specified on the permit. Management buck deer hunting seasons, areas and weapon types are published in the guidebook of the Wildlife Board for taking big game.

(4)(a) A person who has obtained a management buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management buck deer.

(b) Management buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(5)(a) Management buck deer permit holders who successfully harvest a management buck deer, as defined in Subsection (1)(a) must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the deer they harvest to a division office for inspection within 48 hours after the date of kill.

(6) Management buck deer permit holders may not retain possession of any harvested buck deer that fails to satisfy the definition requirements in Subsection (1)(a).

(7) A person who has obtained a management buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except as provided in Section R657-5-27.

R657-5-47. Cactus Buck Deer Hunt.

(1) For the purposes of this section "cactus buck" means a buck deer with velvet covering at least 50% of the antlers during the season dates established by the Wildlife Board for a cactus buck deer hunt.

(2)(a) Cactus buck deer permit holders may take one cactus buck deer during the season, in the area, and with the weapon type specified on the permit.

(b) Cactus buck deer hunting seasons, areas and weapon types are published in the guidebooks of the Wildlife Board for taking big game.

(3)(a) A person who has obtained a cactus buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, regardless of whether the permit holder was successful or unsuccessful in harvesting a cactus buck deer.

(b) Cactus buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(4)(a) Cactus buck deer permit holders who successfully harvest a cactus buck deer, as defined in Subsection (1)(a), must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the deer they harvest to a division office for inspection within 48 hours after the date of harvest.

(5) Cactus buck deer permit holders may not retain possession of any harvested buck deer that fails to satisfy the definition requirements in Subsection (1).

(6) A person who has obtained a cactus buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except as provided in Section R657-5-27.

R657-5-48. Hunter Orange Exceptions.

(1) A person shall wear a minimum of 400 inches of hunter orange material on the head, chest, and back while hunting any species of big game, with the following exceptions:

(a) Hunters participating in a once-in-a-lifetime, statewide conservation, or statewide sportsmen hunt;

(b) Hunters participating in an archery or muzzleloader hunt outside of an area where an any weapon general season bull elk or any weapon general season buck deer hunt is occurring;

(c) Hunters hunting on a cooperative wildlife management unit unless otherwise required by the operator of the cooperative wildlife management units; and

(d) Hunters participating in a nuisance wildlife removal hunt authorized under a certificate of registration by the division.

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23-16-5
23-16-6

R657. Natural Resources, Wildlife Resources.
R657-10. Taking Cougar.
R657-10-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking and pursuing cougar.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking cougar.

R657-10-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Canned hunt" means that a cougar is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the cougar.

(b) "Compensation" means anything of economic value in excess of $100 that is paid, loaned, granted, given, donated, or transferred to a dog handler for or in consideration of pursuing cougar for any purpose.

(c) "Cougar" means Puma concolor, commonly known as mountain lion, lion, puma, panther or catamount.

(d) "Cougar control permit" means a harvest objective permit that authorizes a person to take a second cougar on harvest objective units that have an unlimited quota.

(e) "Cougar pursuit permit" means a permit that authorizes a person to pursue cougar during designated seasons.

(f) "Dog handler" means the person in the field that is responsible for transporting, releasing, tracking, controlling, managing, training, commanding and retrieving the dogs involved in the pursuit. The owner of the dogs is presumed the dog handler when the owner is in the field during pursuit.

(g) "Evidence of sex" means the sex organs of a cougar, including a penis, scrotum or vulva.

(h) "Green pelt" means the untanned hide or skin of any cougar.

(i) "Harvest objective hunt" means any hunt that is identified as harvest objective in the hunt table of the guidebook for taking cougar.

(j) "Harvest objective permit" means any permit valid on harvest objective units, including limited-entry permits for split units after the split-unit transition date.

(k) "Immediate family member" means a livestock owner's spouse, child, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchild and grandchild.

(l) "Kitten" means a cougar less than one year of age.

(m) "Kitten with spots" means a cougar that has obvious spots on its sides or its back.

(n) "Limited entry hunt" means any hunt listed in the hunt tables of the guidebook of the Wildlife Board for taking cougar, which is identified as limited entry and does not include harvest objective hunts.

(o) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits and sportsman permits.

(p) "Private lands" means any lands that are not public lands, excluding Indian trust lands.

(q) "Public lands" means any lands owned by the state, a political subdivision or independent entity of the state, or the United States, excluding Indian trust lands, that are open to the public for purposes of engaging in pursuit.

(r) "Pursue" means to chase, tree, corner or hold a cougar at bay.

(s) "Split unit" means a cougar hunting unit that begins as a limited entry unit then transitions into a harvest objective unit.

(t) "Unlimited quota unit" means a harvest objective unit that does not have a limit on the number of cougar that may be harvested during the open season.

(u) "Waiting period" means a specified period of time that a person who has obtained a cougar permit must wait before applying for any other cougar permit.

(v) "Written permission" means written authorization from the owner or person in charge to enter upon private lands and must include:

(i) the name and signature of the owner or person in charge;

(ii) the address and phone number of the owner or person in charge;

(iii) the name of the dog handler given permission to enter the private lands;

(iv) a brief description of the pursuit activity authorized;

(v) the appropriate dates; and

(vi) a general description of the property.

R657-10-3. Permits for Taking Cougar.

(1)(a) To harvest a cougar, a person must first obtain a valid limited entry cougar permit, harvest -objective cougar permit, or cougar control permit, for the specified management units as provided in the guidebook of the Wildlife Board for taking cougar.

(b) Any person who obtains a limited entry cougar permit, harvest objective cougar permit, or cougar control permit, may pursue cougar on the unit for which the permit is valid.

(2) A person may not apply for or obtain more than one cougar permit for the same season, except:

(a) as provided in Subsection R657-10-25(3);

(b) as provided in Subsection R657-10-33; or

(c) if the person is unsuccessful in the limited entry drawing, the person may purchase a harvest objective or cougar control permit.

(3) Any cougar permit purchased after the season opens is not valid until three days after the date of purchase.

(4) To obtain a cougar limited entry permit, harvest objective permit, cougar control permit, or pursuit permit, a person must possess a Utah hunting or combination license.

R657-10-4. Permits for Pursuing Cougar.

(1)(a) To pursue cougar without a limited entry, harvest objective, or cougar control permit, the dog handler must:

(i) obtain a valid cougar pursuit permit from a division office; or

(ii) possess the documentation and certifications required in R657-10-25(2) to pursue cougar for compensation.

(b) A cougar pursuit permit or exemption there from does not allow a person to kill a cougar.

(2) Residents and nonresidents may purchase cougar pursuit permits consistent with the requirements of this rule and

the guidebooks of the Wildlife Board.

(3) To obtain a cougar pursuit permit, a person must possess a Utah hunting or combination license.

R657-10-5. Hunting Hours.

Cougar may be taken or pursued only between one-half hour before official sunrise through one-half hour after official sunset.

R657-10-6. Firearms and Archery Tackle.

A person may use the following to take cougar:

(1) any firearm not capable of being fired fully automatic;

(2) a bow and arrows; and

(3) a crossbow as provided in Rule R657-12.

R657-10-7. Traps and Trapping Devices.

(1) Cougar may not be taken with a trap, snare or any other trapping device, except as authorized by the Division of Wildlife.

(2) Cougar accidentally caught in any trapping device must be released unharmed, and must not be pursued or taken.

(3)(a) Written permission must be obtained from a division representative to remove the carcass of a cougar from any trapping device.

(b) The carcass shall remain the property of the state of Utah and must be surrendered to the division.

R657-10-8. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614-4.

(2) Hunting with a rifle, handgun or muzzleloader in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches.

(3) Hunting with shotguns, crossbows and archery tackle is prohibited within one quarter mile of the above stated areas.

R657-10-9. Prohibited Methods.

(1) Cougar may be taken or pursued only during open seasons and using methods prescribed in this rule and the guidebook of the Wildlife Board for taking cougar. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare or in any way harm or transport cougar.

(2) After a cougar has been pursued, chased, treed, cornered or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

(5) Electronic locating equipment may not be used to locate cougar wearing electronic radio devices.

R657-10-10. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

R657-10-11. Party Hunting.

A person may not take a cougar for another person.

R657-10-12. Use of Dogs.

(1) Dogs may be used to take or pursue cougar only during open seasons as provided in the guidebook of the Wildlife Board for taking cougar.

(2) A dog handler may pursue cougar provided he or she possesses:

(a) a valid cougar permit issued to the dog handler;

(b) a valid cougar pursuit permit; or

(c) the documentation and certifications required in R657-10-25(2) to pursue cougar for compensation.

(3) When dogs are used in the pursuit of a cougar, the licensed hunter intending to take the cougar must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take a cougar and there is not an open pursuit season, the dog handler must have:

(a) a valid cougar permit issued to the dog handler for the unit being hunted;

(b)(i) a valid cougar pursuit permit; and

(ii) be accompanied, as provided in Subsection (3), by a hunter possessing a cougar permit for the area; or

(c)(i) the documentation and certifications required in R657-10-25(2) to pursue cougar for compensation and

(ii) be accompanied, as provided in Subsection (3), by a paying client possessing a valid cougar permit for the area.

(5) A dog handler may pursue cougar under:

(a) a cougar pursuit permit only during the season and in the areas designated by the Wildlife Board in guidebook open to pursuit;

(b) a valid cougar permit only during the season and in the area designated by the Wildlife Board in guidebook for that permit; or

(c) the pursuit for compensation provisions in this rule only during the seasons and in the areas designated by the Wildlife Board in guidebook open to pursuit.

(6) When dogs are used to take cougar and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Subsection (3), or have a cougar permit.

R657-10-13. Tagging Requirements.

(1) The carcass of a cougar must be tagged with a temporary possession tag before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a cougar after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The temporary possession tag:

(a) must remain attached to the pelt or unskinned carcass until the permanent possession tag is attached; and

(b) is only valid for 48 hours after the date of kill.

(4) A person may not possess a cougar pelt or unskinned carcass without a valid permanent possession tag affixed to the pelt or unskinned carcass. This provision does not apply to a person in possession of a properly tagged carcass or pelt within 48 hours after the kill, provided the person was issued and is in possession of a valid permit.

R657-10-14. Evidence of Sex and Age.

(1) Evidence of sex must remain attached to the carcass or pelt of each cougar until a permanent tag has been attached by the division.

(2) The pelt and skull must be presented to the division in an unfrozen condition to allow the division to gather management data.

(3) It is mandatory that a tooth (PM1) be removed by the division at the time of permanent tagging to be used for aging purposes.

(4) The division may seize any pelt not accompanied by its skull or not having sufficient evidence of biological sex designation attached.

R657-10-15. Permanent Tag.

(1)(a) Each cougar must be taken by the permit holder to a conservation officer or division office within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass and for the removal of a tooth.

(b) After regular business hours, on weekends, or on holidays, a conservation officer may be reached by contacting the local police dispatch office.

(2) A person may not possess a green pelt after the 48-hour check-in period, or ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

R657-10-16. Transporting Cougar.

Cougar that have been legally taken may be transported by the permit holder provided the cougar is properly tagged and the permittee possesses the appropriate permit.

R657-10-17. Exporting Cougar from Utah.

(1) A person may export a legally taken cougar or its parts if that person has a valid permit and the cougar is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from Utah, a cougar pelt without first obtaining a shipping permit issued by an authorized division representative.

R657-10-18. Donating.

(1) A person may donate protected wildlife or their parts to another person as provided in Section 23-20-9.

(2) A green pelt of any cougar donated to another person must have a permanent possession tag affixed.

(3) The written statement of donation must be retained with the pelt.

R657-10-19. Purchasing or Selling.

(1) Legally obtained, tanned cougar hides may be purchased or sold.

(2) A person may not purchase, sell, offer for sale, or barter a tooth, claw, paw, or skull of any cougar.

R657-10-20. Waste of Wildlife.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts.

(2) The skinned carcass of a cougar may be left in the field and does not constitute waste of wildlife.

R657-10-21. Livestock Depredation and Human Health and Safety.

(1) If a cougar is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 72 hours:

(a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take cougar, may kill the cougar;

(b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, who shall authorize a local hunter to take the offending cougar or notify a USDA, Wildlife Services specialist; or

(c) the livestock owner may notify a USDA, Wildlife Services specialist of the depredation who may take the depredating cougar.

(2) Depredating cougar may be taken at any time by a USDA, Wildlife Services specialist, supervised by the Wildlife Services program, while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3) A depredating cougar may be taken by those persons authorized in Subsection (1)(a) with:

(a) any weapon authorized for taking cougar; or

(b) with the use of snares only with written authorization from the director of the division and subject to all the conditions and restrictions set out in the written authorization.

(i) The option in Subsection (3)(b) may only be authorized in the case of a chronic depredation situation where numerous livestock have been killed by a depredating cougar and must be verified by Wildlife Services or division personnel.

(4)(a) The Division may issue depredation permits to take cougar on specified private lands and public land grazing allotments with a chronic depredation situation where numerous livestock have been killed by cougar.

(b) The Division may:

(i) issue one or more depredation permits to the affected livestock owner or a designee, provided the livestock owner does not receive monetary consideration from the designee for the opportunity to use the depredation permit;

(ii) determine the legal weapons and methods of take allowed; and

(iii) specify the area and season that the permit is valid.

(5)(a) Any cougar taken under Subsection (1)(a) or (4)(a) shall remain the property of the state and must be delivered to a division office or employee within 72 hours.

(b) The division may issue a cougar damage permit to a person who has killed a depredating cougar under Subsection (1)(a) that authorizes the person to keep the carcass.

(c) A person that takes a cougar under Subsection (1)(a) or (4)(a) may acquire and use a limited entry permit or harvest objective cougar permit in the same year.

(d) Notwithstanding Subsections (5)(b) and (5)(c), a person may retain no more than one cougar annually.

(6)(a) Hunters interested in taking depredating cougar as provided in Subsection (1)(b) may contact the division.

(b) Hunters will be contacted by the division to take depredating cougar as needed.

R657-10-22. Survey.

Each permittee who is contacted for a survey about their cougar hunting experience should participate in the survey regardless of success. Participation in the survey helps the division evaluate population trends, harvest success and collect other valuable information.

R657-10-23. Taking Cougar.

(1)(a) For each permit issued, a person may only take one cougar during the season and from the area specified on the permit.

(b) Limited entry permits may be obtained by following the application procedures provided in this rule and the guidebook of the Wildlife Board for taking cougar.

(c) Harvest -objective permits may be purchased on a first-come, first-served basis as provided in guidebook of the Wildlife Board for taking cougar.

(d) Cougar control permits may be purchased as provided in the guidebook of the Wildlife Board for taking cougar.

(2) A person may not:

(a) take or pursue a female cougar with kittens or kittens with spots; or

(b) repeatedly pursue, chase, tree, corner, or hold at bay, the same cougar during the same day after the cougar has been released.

(3) Any cougar may be taken during the prescribed seasons, except a kitten with spots, or any cougar accompanied by kittens, or any cougar accompanied by an adult.

(4) A person may not take a cougar wearing a radio collar from any areas that are published in the guidebook of the Wildlife Board for taking cougar.

(5) The division may authorize hunters who have obtained a valid cougar permit to take cougar in a specified area of the state in the interest of protecting wildlife from depredation.

(6) Season dates, closed areas, harvest objective permit areas, unlimited quota units, and limited entry permit areas are published in the guidebook of the Wildlife Board for taking cougar.

(7)(a) A person who obtains a limited entry cougar permit on a split unit may hunt on all harvest objective units after the date split units transition into harvest objective units. The split unit transition date is provided in the guidebook of the Wildlife Board for taking cougar.

(b) A person who obtains a limited entry cougar permit on a split unit and chooses to hunt on any harvest objective unit after the transition date is subject to all harvest objective unit closure requirements provided in Sections R657-10-29.

R657-10-24. Extended and Preseason Hunts.

(1) An extended or preseason hunt may be authorized by the division on selected cougar management units to control depredation or nuisance problems.

R657-10-25. Cougar Pursuit.

(1)(a) Except as provided in rule R657-10-3(1)(b) and Subsection (2), cougar may be pursued only by persons who have obtained a cougar pursuit permit.

(b) The cougar pursuit permit does not allow a person to:

(i) kill a cougar; or

(ii) pursue cougar for compensation.

(c) A person may pursue cougar for compensation only as provided in Subsection (2).

(d) To obtain a cougar pursuit permit, a person must possess a Utah hunting or combination license.

(2)(a) A person may pursue cougar on public lands for compensation, provided the dog handler:

(i) receives compensation from a client or customer to pursue cougar;

(ii) is a licensed hunting guide or outfitter under Title 58, Chapter 79 of the Utah Code and authorized to pursue cougar;

(iii) possesses on his or her person the Utah hunting guide or outfitter license;

(iv) possesses on his or her person all permits and authorizations required by the applicable public lands managing authority to pursue cougar for compensation; and

(v) is accompanied by the client or customer at all times during pursuit.

(b) A person may pursue cougar on private lands for compensation, provided the dog handler:

(i) receives compensation from a client or customer to pursue cougar;

(ii) is accompanied by the client or customer at all times during pursuit; and

(iii) possesses on his or her person written permission from all private landowners on whose property pursuit takes place.

(c) A person who is an employee or agent of the Division of Wildlife Services may pursue cougar on public lands and private lands while acting within the scope of their employment.

(3) A pursuit permit is not required to pursue cougar under Subsection (2).

(4)(a) A person pursuing cougar for compensation under subsections (2)(a) and (2)(b) shall comply with all other requirements and restrictions in statute, rule and the guidebooks of the Wildlife Board regulating the pursuit and take of cougar.

(b) Any violation of, or failure to comply with the provisions of Title 23 of the Utah Code, this rule, or the guidebooks of the Wildlife Board may be grounds for suspension of the privilege to pursue cougar for compensation under this subsection, as determined by a division hearing officer.

(5) A cougar pursuit permit authorizes the holder to pursue cougar with dogs on any unit open to pursuing cougar during the seasons and under the conditions prescribed by the Wildlife Board in guidebook.

(6) A person may not:

(a) take or pursue a female cougar with kittens or kittens with spots;

(b) repeatedly pursue, chase, tree, corner or hold at bay, the same cougar during the same day; or

(c) possess a firearm or any device that could be used to kill a cougar while pursuing cougar.

(i) The weapon restrictions set forth in the subsection do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill cougar.

(7) If eligible, a person who has obtained a cougar pursuit permit may also obtain a limited entry cougar permit, harvest objective cougar permit, or cougar control permit.

(8) Cougar may be pursued only on limited entry units, harvest objective units, or unlimited quota units during the dates provided in the guidebook of the Wildlife Board for taking cougar.

(9) A cougar pursuit permit is valid on a calendar year basis.

(10) A person must possess a valid hunting or combination license to obtain a cougar pursuit permit.

R657-10-26. Limited Entry Cougar Permit Application Information.

(1) Limited entry cougar permits are issued pursuant to R657-62-24.

R657-10-27. Harvest Objective General Information.

(1) Harvest objective permits are valid only for open harvest objective management units and for the specified seasons published in the guidebook of the Wildlife Board for taking cougar.

(2) Harvest objective permits are not valid in a specified management unit after the harvest objective has been met for that unit.

R657-10-28. Harvest Objective Permit Sales.

(1) Harvest objective permits are available on a first-come, first-served basis beginning on the date published in the guidebook of the Wildlife Board for taking cougar.

(2) Any cougar permit purchased after the season opens is not valid until three days after the date of purchase unless specifically authorized by the division.

(3) A person must possess a valid hunting or combination license to obtain a Harvest objective permit.

R657-10-29. Harvest Objective Unit Closures.

(1) To hunt in a harvest objective unit, a hunter must call 1-888-668-LION or visit the division's website to verify that the harvest objective unit is still open. The phone line and website will be updated each day by 12 noon. Updates become effective the following day thirty minutes before official sunrise.

(2) Harvest objective units are open to hunting until:
(a) the quota for that harvest objective unit is met and the division closes the unit; or
(b) the end of the hunting season as provided in the guidebook of the Wildlife Board for taking cougar.
(3) Upon closure of a harvest objective unit, a hunter may not take or pursue cougar except as provided in Section R657-10-25.

R657-10-30. Harvest Objective Unit Reporting.
(1) Any person taking a cougar with a harvest objective permit or a cougar control permit must report to the division, within 48 hours, where the cougar was taken and have a permanent tag affixed pursuant to Section R657-10-15.
(2) Failure to accurately report the correct harvest objective unit where the cougar was killed is unlawful.
(3) Any conviction for failure to accurately report, or aiding or assisting in the failure to accurately report as required in Subsection (1) shall be considered prima facie evidence of a knowing, intentional or reckless violation for purposes of permit suspension.

R657-10-31. Wildlife Management Areas.
(1) A person may not use motor vehicles on division-owned wildlife management areas closed to motor vehicle use during the winter without first obtaining written authorization from the appropriate division regional office.
(2) The division may, in its sole discretion, authorize limited motor vehicle access to its wildlife management areas closed to such use during the winter provided:
(a) the person seeking access possesses a valid cougar permit for the area;
(b) motor vehicle access is necessary to effectively utilize the cougar permit; and
(c) motor vehicle access will not interfere with wintering wildlife or wildlife habitat.

R657-10-32. Poaching-Reported Reward Permits.
(1) Cougar poaching-reported reward permits are issued pursuant to rule R657-51 Poaching-Reported Reward Permits.

R657-10-33. Cougar Control Permits.
(1)(a) The division, with approval of the Wildlife Board, may identify a harvest objective unit as an unlimited quota unit.
(b) An individual may acquire a cougar control permit to hunt on an unlimited quota unit if they first obtain:
(i) a harvest objective permit; or
(ii) a limited entry permit for a split unit and the split unit has transitioned to harvest objective status.
(c) An individual may retain a cougar lawfully harvested under a cougar control permit regardless of whether they lawfully harvested and retained a cougar under a permit listed in Subsections (1)(b)(i) or (ii).
(2) An individual may only acquire one cougar control permit each season.
(3) Cougar control permits are only valid within the boundaries of unlimited quota units and during the dates described on the permit and in the guidebook of the Wildlife Board for taking cougar.

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Notice of Continuation August 1, 2016 23-14-19

R657. Natural Resources, Wildlife Resources.
R657-19. Taking Nongame Mammals.
R657-19-1. Purpose and Authority.

(1) Under authority of Sections 23-13-3, 23-14-18 and 23-14-19, this rule provides the standards and requirements for taking and possessing nongame mammals.
(2) A person capturing any live nongame mammal for a personal, scientific, educational, or commercial use must comply with R657-3 Collection, Importation, Transportation and Subsequent Possession of Zoological Animals.

R657-19-2. Definitions.
(1) Terms used in this rule are defined in Section 23-13-2.
(2) In addition:
(a) "Immediate family" means the landowner's or lessee's spouse, children, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchildren, and grandchildren.
(b) "Nongame mammal" means:
(i) any species of bats;
(ii) any species of mice, rats, or voles of the families Heteromyidae, Cricetidae, or Zapodidae;
(iii) opossum of the family Didelphidae;
(iv) pikas of the family Ochotonidae;
(v) porcupine of the family Erethizontidae;
(vi) shrews of the family Soricidae; and
(vii) squirrels, prairie dogs, and marmots of the family Sciuridae.

R657-19-3. General Provisions.
(1) A person may not purchase or sell any nongame mammal or its parts.
(2)(a) The live capture of any nongame mammals is prohibited under this rule.
(b) The live capture of nongame mammals species may be allowed as authorized under Rule R657-3.
(3) Section 23-20-8 does not apply to the taking of nongame mammal species covered under this rule.

R657-19-4. Nongame Mammal Species - Certificate of Registration Required.
(1) A certificate of registration is required to take any of the following species of nongame mammals:
(a) bats of any species; and
(b) pika - Ochotona princeps.
(2) A certificate of registration is required to take any shrew - Soricidae, all species.
(3) A certificate of registration is required to take a Utah prairie dog, Cynomys parvidens, as provided in Sections R657-19-6, R657-19-7, R657-19-8 and R657-19-9.
(4) A certificate of registration is required to take any of the following species of nongame mammals in Washington County:
(a) cactus mouse - Peromyscus eremicus;
(b) kangaroo rats - Dipodomys, all species;
(c) Southern grasshopper mouse - Onychomys torridus; and
(d) Virgin River montane vole - Microtus montanus rivularis, which occurs along stream-side riparian corridors of the Virgin River.
(5) A certificate of registration is required to take any of the following species of nongame mammals in San Juan and Grand counties:
(a) Abert squirrel - Sciurus aberti;
(b) Northern rock mouse - Peromyscus nasutus; and
(c) spotted ground squirrel - Spermophilus spilosoma.
(6) The division may deny a certificate of registration to any applicant, if:
(a) the applicant has violated any provision of:
(i) Title 23 of the Utah Code;
(ii) Title R657 of the Utah Administrative Code;
(iii) a certificate of registration;

(iv) an order of the Wildlife Board; or

(v) any other law that bears a reasonable relationship to the applicant's ability to safely and responsibly perform the activities that would be authorized by the certificate of registration;

(b) the applicant misrepresents or fails to disclose material information required in connection with the application;

(c) taking the nongame mammal as proposed in the application violates any federal, state or local law;

(d) the application is incomplete or fails to meet the issuance criteria set forth in this rule; or

(e) the division determines the activities sought in the application may significantly damage or are not in the interest of wildlife, wildlife habitat, serving the public, or public safety.

R657-19-5. Nongame Mammal Species - Certificate of Registration Not Required.

(1) All nongame mammal species not listed in Section R657-19-4 as requiring a certificate of registration, may be taken:

(a) without a certificate of registration;

(b) year-round, 24-hours-a-day; and

(c) without bag or possession limits.

(2) A certificate of registration is not required to take any of the following species of nongame mammals, however, the taking is subject to the provisions provided under Section R657-19-10:

(a) White-tailed prairie dog, Cynomys leucurus; and

(b) Gunnison prairie dog, Cynomys gunnisoni.

R657-19-6. Utah Prairie Dog Provisions.

(1)(a) A person may not take a Utah Prairie dog, Cynomys parvidens, without first obtaining a certificate of registration from the division.

(b) A certificate of registration for taking Utah prairie dogs may be issued as provided in Subsection (i) or Subsection (ii), or Subsection (iii), if the taking will not further endanger the existence of the species:

(i) in cases where Utah Prairie dogs are causing damage to agricultural lands as provided in the rules of the U.S. Fish and Wildlife Service; or

(ii) as provided in a valid Incidental Take permit issued by the U.S. Fish and Wildlife Service under an approved Habitat Conservation Plan; or

(iii) as provided under a valid Incidental Take permit issued by the U.S. Fish and Wildlife Service allowing take of Utah prairie dogs on specified private lands as part of an approved conservation agreement enacted between the U.S. Fish and Wildlife Service and the owner of those private lands.

(c) A person may apply for a certificate of registration at the division's southern regional office, 1470 North Airport Road, Suite 1, Cedar City, Utah 84721.

(d) A landowner, lessee, or their immediate family member, or an employee on a regular payroll and not hired specifically to take Utah prairie dogs, may apply for a certificate of registration.

(e)(i) A person, other than those listed in Subsection (d), may apply for a certificate of registration to take Utah prairie dogs as a designee of the landowner or lessee provided the application includes:

(A) an explanation of the need for the certificate of registration to be issued;

(B) justification for utilization of the designee; and

(C) the landowner or lessee's signature.

(ii) A maximum of two designee certificates of registration may be issued per landowner or lessee.

(iii) Each designee application shall be considered individually based upon the explanation and justification provided.

(f) An application for a certificate of registration must include:

(i) full name;

(ii) complete mailing address;

(iii) phone number;

(iv) date of birth;

(v) weight and height;

(vi) gender;

(vii) color of hair and eyes;

(viii) social security number;

(ix) driver's license number, if issued;

(x) proof of hunter education certification if the applicant was born after December 31, 1965; and

(xi) the township, range, section and 1/4 section of the agricultural lands where the prairie dogs will be taken.

(g) An applicant must be at least 14 years of age at the time of application and must abide by the provisions for children being accompanied by adults while hunting with a weapon pursuant to Section 23-20-20.

(h) After review of the application, a certificate of registration may be issued.

(i) A maximum of four certificates of registration may be issued to any landowner or lessee, including those issued to the landowner or lessee's designees.

(j) A certificate of registration shall be issued on an individual basis and shall be valid only for the person to whom the certificate of registration is issued.

(k) A certificate of registration is not transferrable and must be signed by the holder prior to use.

(l) If the application and permitting process is accomplished by U.S. Mail, the certificate of registration shall only become valid after a copy of the signed certificate of registration is received by the division's southern regional office.

(2)(a) A person may take Utah prairie dogs with a firearm during daylight hours or by trapping as specified on the certificate of registration.

(b) A person may not use any chemical toxicant to take Utah prairie dogs.

(c) In addition to the requirements of this rule, any person taking Utah prairie dogs must comply with state laws, and local ordinances and laws.

(d) A person at least 14 years of age and under 16 years of age who takes Utah Prairie dogs must be accompanied by an adult with a valid certificate of registration to take Utah Prairie dogs on the same property.

R657-19-7. Areas Open to Taking Utah Prairie Dogs -- Dates Open --Limits on Number of Utah Prairie Dogs Taken.

(1) A person who obtains a valid certificate of registration may take Utah prairie dogs only on private lands within the following counties:

(a) Beaver;

(b) Garfield;

(c) Iron;

(d) Kane;

(e) Millard;

(f) Piute;

(g) Sanpete;

(h) Sevier;

(i) Washington; and

(j) Wayne.

(2) Taking of a Utah prairie dog on any land or by any method, other than as provided in the valid certificate of registration, including any public land, is a violation of state and federal law.

(3) Any person, who is specifically named on a valid certificate of registration, may remove Utah prairie dogs, as provided in the certificate of registration.

(4) The taking of any Utah prairie dog outside the areas provided in this section is prohibited, except by division employees while acting in the performance of their assigned duties.

(5) The taking of Utah prairie dogs is limited to the dates designated on the certificate of registration. All dates are confined to June 15 through December 31, except as provided in Subsection R657-19-6(1)(b)(iii).

(6)(a) A person may take only the total number of Utah prairie dogs designated in the certificate of registration, except as provided in Subsection R657-19-6(1)(b)(iii).

(b) The total annual range-wide take of Utah prairie dogs and the total annual take of Utah Prairie dogs on agricultural lands is governed by federal law.

(c) If the division determines that taking Utah prairie dogs has an adverse effect on conservation of the species, taking shall be further restricted or prohibited.

R657-19-8. Monthly Reports of Take of Utah Prairie Dogs.

(1) The following information must be reported to the division's southern regional office, 1470 North Airport Road, Suite 1, Cedar City, Utah 84721, every 30 days:

(a) the name and signature of the certificate of registration holder;

(b) the person's certificate of registration number;

(c) the number of Utah prairie dogs taken; and

(d) the location, method of take, and method of disposal of each Utah prairie dog taken during the 30-day period.

(2) Failure to report the information required in Subsection (1), within 30 days, may result in the denial of future applications for a certificate of registration to take Utah prairie dogs.

R657-19-9. Unlawful Possession of Utah Prairie Dogs.

A person may not possess a Utah prairie dog or its parts, without first obtaining a valid certificate of registration and a federal permit.

R657-19-10. White-tailed and Gunnison Prairie Dogs.

(1)(a) A license or certificate of registration is not required to take either white-tailed or Gunnison prairie dogs.

(b) There are no bag limits for white-tailed or Gunnison prairie dogs for which there is an open season.

(2)(a) White-tailed prairie dogs, Cynomys leucurus, may be taken in the following counties from January 1 through March 31, and June 16 through December 31:

(i) Carbon County;

(ii) Daggett County;

(iii) Duchesne County;

(iv) Emery County;

(v) Morgan;

(vi) Rich;

(vii) Summit County;

(viii) Uintah County, except in the closed area as provided in Subsection (2)(b)(i);

(ix) Weber; and

(x) all areas west and north of the Colorado River in Grand and San Juan counties.

(b) White-tailed prairie dogs, Cynomys leucurus, may not be taken in the following closed area in order to protect the reintroduced population of black-footed ferrets, Mustela nigripes:

(i) Boundary begins at the Utah/Colorado state line and Uintah County Road 403, also known as Stanton Road, northeast of Bonanza; southwest along this road to SR 45 at Bonanza; north along this highway to Uintah County Road 328, also known as Old Bonanza Highway; north along this road to Raven Ridge, just south of US 40; southeast along Raven Ridge to the Utah/Colorado state line; south along this state line to point of beginning.

(3) The taking of White-tailed prairie dogs, Cynomys leucurus, is prohibited from April 1 through June 15, except as provided in Subsection (5).

(4)(a) The taking of Gunnison prairie dogs, Cynomys gunnisoni, is prohibited in all areas south and east of the Colorado River, and north of the Navajo Nation in Grand and San Juan counties from April 1 through June 15.

(b) Gunnison prairie dogs may be taken in the area provided in Subsection (4)(a) from June 16 through March 31.

(5) Gunnison prairie dogs and White-tailed prairie dogs causing agricultural damage or creating a nuisance on private land may be taken at any time, including during the closed season from April 1 through June 15.

R657-19-11. Violation.

(1) Any violation of this rule is a Class C misdemeanor as provided in Section 23-13-11(2).

(2) In addition to this rule any animal designated as a threatened or endangered species is governed by the Endangered Species Act and the unlawful taking of these species may also be a violation of federal law and rules promulgated thereunder.

(3) Pursuant to Section 23-19-9, the division may suspend a certificate of registration issued under this rule.

KEY: wildlife, game laws

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R657. Natural Resources, Wildlife Resources.

R657-51. Poaching-Reported Reward Permits.

R657-51-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule describing procedures the division may use in issuing permits to individuals who report unlawful taking of protected wildlife in Utah.

R657-51-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and R657-62.

(2) In addition:

(a) "Successful Prosecution" means:

(i) the issuance of a Class B misdemeanor citation for a wildlife violation under Utah Code 23-20-4; or

(ii) the filing of criminal charges eligible for a Class A or Class B misdemeanor or any felony under Section 23-20-4.

(b) "Qualifying Individual" means:

(i) an individual who provides accurate and credible information concerning a wildlife violation in Utah;

(ii) the division uses that information in securing a Successful Prosecution; and

(iii) the individual fully cooperates and supports the division throughout the prosecution process.

R657-51-3. General Permit Availability and Eligibility Provisions.

(1)(a) A poaching-reported reward permit may only be issued on a unit having 10 or more public draw permits issued in the upcoming season.

(b) If a poaching-reported reward permit is unavailable on a given unit, an alternative permit may be issued using the process identified in each species-specific section of this rule.

(c) The division may determine that a permit is unavailable on a unit if:

(i) less than 10 public draw permits will be issued for a

given unit in the upcoming season;

(ii) the illegally harvested animal was taken outside of established unit boundaries; or

(iii) issuing a poaching-reported reward permit would exceed 10% of the total number of permits issued on that unit.

(2) A Qualifying Individual remains eligible to receive a poaching-reported reward permit, regardless of any applicable waiting periods they may otherwise be subject to.

(3) A Qualifying Individual receiving a poaching-reported reward permit will not:

(a) forfeit bonus points or preference points accumulated; or

(b) incur a waiting period, except as described in Subsection (4).

(4) A Qualifying Individual receiving a poaching-reported reward permit for a once-in-a-lifetime species is ineligible to apply for or obtain another once-in-a-lifetime permit for the same species and sex through the division's big game drawing.

(5)(a) The division may only issue one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit may be issued to any one person per Successful Prosecution.

(c) No more than one poaching-reported reward permit per species shall be issued to any one person in any single calendar year.

(d) Nothing in this rule authorizes an individual to use or possess more than one permit for an antlered or horned animal of the same species in a single hunt year.

(e) The Qualifying Individual may choose the weapon type for the permit, so long as a permit for that weapon type is available.

(f) The Qualifying Individual may choose the season for the permit if different seasons are offered, except that multi-season permits may not be issued through the poaching-reported reward permit program.

(6)(a) Poaching-reported reward permits may only be issued to the individual who provides the most pertinent information leading to a Successful Prosecution.

(b) If information is received from more than one individual, the director of the division shall make a determination based on the facts of the case as to which individual is eligible to receive the permit.

(7) Poaching-reported reward permits are non-transferrable.

(8) Any person who receives a poaching-reported reward permit must possess or obtain a Utah hunting or combination license and otherwise be eligible to hunt the species for which the permit is issued for.

(9) The division may determine whether to offer monetary rewards in lieu of issuing a poaching-reported reward permit for a Qualifying Individual.

R657-51-4. Big Game Poaching-Reported Reward Permits.

(1) Successful Prosecutions for the illegal take of bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat, bison, bull elk, buck deer, and buck pronghorn may be eligible to receive a poaching-reported reward permit.

(2)(a) Poaching-reported reward permits for desert bighorn ram, rocky mountain bighorn ram, bull moose, Rocky Mountain goat, and bison may be issued on units or hunts meeting the general permit availability requirements as follows:

(i) a permit may be issued for a male animal of the same species and on the same unit as the animal illegally taken;

(ii) if a permit described in Subsection (a) is unavailable, a permit may be issued for a male animal of the same species on an alternative unit that is closest in proximity to where the animal was illegally taken;

(iii) if a permit described in Subsections (a) and (b) is unavailable, a permit may be issued for a male animal of another once-in-a-lifetime species on a unit that is closest in proximity to the unit where the animal was illegally taken; or

(iv) if a permit described in Subsections (a), (b), and (c) is unavailable, a permit may be issued for a male animal of a limited entry species on an alternative unit selected by the division.

(b) The division may issue a hunter's choice permit in lieu of a permit for a male animal for bison and Rocky mountain goat poaching-reported reward permits.

(3) Poaching-reported reward permits for premium limited entry deer may be issued on units or hunts meeting the general permit availability requirements as follows:

(a) a permit may be issued for a buck deer on the same premium limited entry unit as the animal illegally taken;

(b) if a permit described in Subsection (a) is unavailable, a permit may be issued for a buck deer on an alternative premium limited entry unit that is closest in proximity to where the animal was illegally taken; or

(c) if a permit described in Subsections (a) and (b) is unavailable, a permit may be issued for a buck deer on an alternative limited entry unit closest in proximity to where the animal was illegally taken.

(4) Poaching-reported reward permits for limited entry buck deer, bull elk, and buck pronghorn may be issued on units or hunts meeting the general permit availability requirements as follows:

(a) a permit may be issued for a male animal of the same species and on the same unit as the animal illegally taken; or

(b) if a permit described in Subsection (a) is unavailable, a permit may be issued for a male animal of the same species as the animal taken on an alternative limited entry unit for that species that is closest in proximity to where the animal was illegally taken.

(5) Poaching-reported reward permits for general season buck deer and bull elk may be issued on units or hunts meeting the general permit availability requirements as follows:

(a) a permit may be issued for a male animal of the same species and on the same unit as the animal illegally taken; or

(b) if a permit described in Subsection (a) is unavailable, a permit may be issued for a male animal of the same species as the animal taken on an alternative general season unit for that species that is closest in proximity to where the animal was illegally taken.

(6) If a violation occurs at a location having both general season and limited entry opportunities for the species illegally taken, the division may issue a limited entry permit for that species using the parameters identified in Subsection (4).

R657-51-5. Cougar Poaching-Reported Reward Permits.

(1) Limited-entry and harvest objective cougar units are eligible for poaching-reported reward permits.

(2) Only one poaching-reported reward permit may be issued for each limited-entry cougar unit per year.

(3) Poaching-reported reward permits for cougar may be issued on units or hunts.

(4) Meeting the general permit availability requirements as follows:

(a) if the animal was illegally taken on a harvest objective unit, a permit may be issued for a limited entry unit closest in proximity to that harvest objective unit;

(b) if the animal was illegally taken on a limited entry unit, a permit may be issued on the same limited entry unit; or

(c) if a permit described in Subsections (a) and (b) is unavailable, a permit may be issued on the limited-entry unit that is closest in proximity to where the animal was illegally taken.

R657-51-6. Bear Poaching-Reported Reward Permits.

(1) Limited-entry and harvest objective bear units are

eligible for poaching-reported reward permits.

(2) Only one poaching-reported reward permit may be issued for each limited-entry bear unit per year.

(3) Poaching-reported reward permits for bear may be issued on units or hunts meeting the general permit availability requirements as follows:

(a) if the animal was illegally taken on a harvest objective unit, a permit may be issued for a limited entry unit closest in proximity to that harvest objective unit;

(b) if the animal was illegally taken on a limited entry unit, a permit may be issued on the same limited entry unit; or

(c) if a permit described in Subsections (a) and (b) is unavailable, a permit may be issued on the limited-entry unit that is closest in proximity to where the animal was illegally taken.

R657-51-7. Turkey Poaching-Reported Reward Permits.

(1) General season and limited-entry turkey units are eligible for poaching-reported reward permits.

(2) Poaching-reported reward permits for turkey may be issued on units or hunts meeting the general permit availability requirements as follows:

(a) a permit may be issued on the same unit as the animal that was illegally taken; or

(b) if a permit described in Subsection (a) is unavailable on that unit, a permit may be issued on a limited-entry or general season unit selected by the division.

KEY: wildlife, game laws, big game seasons
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23-14-19
23-16-5
23-16-6

R657. Natural Resources, Wildlife Resources.
R657-57. Division Variance Rule.
R657-57-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 this rule is established to provide authority, standards and procedures for granting remedial relief to persons precluded from obtaining or using a wildlife document because of an event or condition beyond their control.

R657-57-2. Definitions.

(1) The terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "CWMU" means cooperative wildlife management unit, as defined in Section 23-23-2;

(b) "Event or condition" means a circumstance in a person's life beyond their control that precludes or substantially limits their ability to obtain or use a wildlife document;

(c) "Harvesting" means, for purposes of this rule, killing an animal;

(d) "Hunt day" means spending any time in the field hunting the permitted animal species in a single day, during lawful hunting hours, and within the prescribed season;

(e) "Immediate family member" means a person's spouse, child, stepchild, grandchild, brother, sister, parent, stepparent, grandparent, mother-in-law, or father-in-law;

(f)(i) "Limited entry hunt" means any hunt identified in the proclamations and guidebooks of the Wildlife Board as:

(A) a premium limited entry or limited entry hunt; and

(B) that awards a bonus point to unsuccessful permit applicants pursuant to R657-62-8.

(ii) "Limited entry hunt" further includes antlerless moose hunts and CWMU hunts available to the public through a Division administered drawing.

(g) "Once-in-a-lifetime hunt" means any hunt for which a wildlife document is issued to take a bull moose, bighorn sheep, bison, or mountain goat.

(h) "Substantially precluded" means participating in no more than one hunt day during the prescribed hunting season because of a qualifying event or condition set forth in R657-57-6.

(i) "Variance" means remedial relief granted by the Division or Wildlife Board to restore a person's opportunity to obtain or use a wildlife document which is completely lost or substantially impaired because of an intervening event or condition; and

(j) "Wildlife document" means any license, permit, tag, certificate of registration, or wildlife permit voucher issued by the Division.

R657-57-3. Division Variance Authority.

(1) The Division may issue variances to qualified individuals, subject to the standards, limitations, requirements, and procedures in this rule.

R657-57-4. Division Variance Authority Scope.

(1)(a) The Division may grant a season extension variance extending the hunting season on an applicant's wildlife document to the same or substantially similar hunt in the following year, provided:

(i) the variance request involves a wildlife document for a:

(A) once-in-a-lifetime hunt under R657-5;

(B) conservation permit hunt under R657-41;

(C) limited entry landowner permit hunt under R657-43;

(D) poaching-reported reward permit hunt under R657-5; or

(E) CWMU hunt obtained through the operator or landowner under R657-37-9.

(ii) the applicant was substantially precluded during the prescribed hunting season from using a wildlife document because of a qualifying event or condition set forth in R657-57-6; and

(A) the qualifying event or condition was not the result of the applicant's willful misconduct or gross negligent acts or omissions; and

(B) the applicant was unsuccessful in harvesting an animal for which the wildlife document was issued; and

(iii) the season extension occurs the following year and is restricted to the same species, gender, unit, weapon type, and season as the original wildlife document;

(iv) any changes in unit descriptions and season dates in the extension year are applied; and

(v) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.

(b) Any waiting period associated with a wildlife document for which a season extension variance is granted begins on the date the original wildlife document is obtained.

(2)(a) The Division may grant a variance by restoring forfeited bonus points and waiving an incurred waiting period, provided:

(i) the variance request involves a wildlife document for a:

(A) limited entry hunt or once-in-a-lifetime hunt; or

(B) any other hunt that triggers a waiting period to participate in a Division administered drawing;

(ii) the applicant was substantially precluded during the prescribed hunting season from using a wildlife document because of a qualifying event or condition set forth in R657-57-6; and

(A) the qualifying event or condition was not the result of

the applicant's willful misconduct or gross negligent acts or omissions; and

(B) the applicant was unsuccessful in harvesting an animal for which the wildlife document was issued; and

(iii) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.

(b) The Division may not restore a bonus point on a wildlife document that did not cause a bonus point forfeiture.

(3)(a) The Division may grant a variance by restoring forfeited preference points, provided:

(i) the variance request involves a wildlife document obtained through a Division administered drawing and for which preference points are awarded to unsuccessful applicants and forfeited by successful applicants;

(ii) the applicant was substantially precluded during the prescribed hunting season from using a wildlife document because of a qualifying event or condition set forth in R657-57-6; and

(A) the qualifying event or condition was not the result of the applicant's willful misconduct or gross negligent acts or omissions; and

(B) the applicant was unsuccessful in harvesting an animal for which the wildlife document was issued; and

(iii) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.

(4)(a) The Division may grant a variance by awarding a bonus or preference point to a person who filed an untimely wildlife document application in a Division administered drawing, provided:

(i) the variance request involves a wildlife document for any hunt identified in Subsections (2)(a)(i) or (3)(a)(i);

(ii) the applicant was significantly impaired from filing a timely application in a Division administered drawing because of a qualifying event or condition set forth in R657-57-6;

(iii) the untimely application was rejected and a bonus or preference point was not awarded for the selected species;

(iv) the applicant would have been eligible to receive the bonus or preference point had the application been timely filed; and

(v) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.

(5) A Division administered drawing for purposes of subsection (2) does not include a drawing conducted at a wildlife exposition pursuant to R657-55.

(6) The Division may not refund wildlife document fees, except as authorized in Sections 23-19-38, 23-19-38.2 and R657-42-5.

R657-57-5. Group Applications.

(1) Except as provided in Subsection (2), all members of a group successful in obtaining a wildlife document pursuant to R657-62-7 are eligible to receive the same variance relief granted by the Division to any single member of the group under R657-57-4(2) or (3).

(2) Group members are not eligible to receive a refund of the wildlife document fee unless otherwise authorized by Sections 23-19-38, 23-19-38.2, and R657-42-5.

R657-57-6. Qualifying Events and Conditions.

(1) The Division's authority to grant a variance consistent with the requirements of this rule is limited to persons that are completely or substantially precluded during the prescribed season from participating in the hunting activity authorized by an eligible wildlife document, or precluded or substantially impaired from filing a timely wildlife document application in a Division administered drawing because of:

(a) personal illness or injury;

(b) the death, or significant injury or illness of an immediate family member; or

(c) mobilization or deployment under orders of the United States Armed forces, a public health organization, or public safety organization in the interest of national defense or a national emergency.

R657-57-7. Variance Application.

(1) A person may request a variance pursuant to the requirements of this rule by filing an application with the Division within 120 days of the:

(a) last day of the hunting season for which a season extension variance is requested; or

(b) drawing application deadline for which a bonus or preference point variance is sought.

(2) The Division may not grant a variance under this rule when the application is received beyond the 120 days limitation period set forth in Subsection (1).

(3) An application for a season extension variance under R657-57-4(1), a bonus point restoration and waiting period waiver variance under R657-57-4(2), or a preference point restoration variance under R657-57-4(3) shall contain the following information and documentation:

(a) name, address and telephone number of the applicant;

(b) a brief statement of the variance relief sought;

(c) the original wildlife document for which a season extension variance is sought with an undetached and unnotched tag;

(d) a statement verifying the applicant was substantially precluded from participating in a qualified hunt because of:

(i) personal illness or injury;

(ii) the death, or significant injury or illness of an immediate family member; or

(iii) mobilization or deployment under orders of the United States Armed Forces, or a public health or public safety organization in the interest of national defense or a national emergency.

(e) corroborating documentation of the qualifying event or condition listed in Subsection (2)(d), in the form of:

(i) a physician's written statement describing and confirming the qualifying injury or illness of the applicant or an immediate family member;

(ii) a photocopy of the deceased immediate family member's certified death certificate; or

(iii) a photocopy of the military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(A) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which the applicant is deployed or mobilized; and

(B) the nature and length of duty while deployed or mobilized.

(4) An application for a bonus or preference point variance under R657-57-4(4) shall contain the following information and documentation:

(a) name, address and telephone number of the applicant;

(b) a brief statement of the variance relief sought;

(c) a description of the wildlife document application and permit type for which a bonus or preference point variance is sought, including the wildlife species and sex, season dates, and weapon type;

(d) a statement verifying the applicant was precluded or substantially impaired from submitting a wildlife document application because of:

(i) personal illness or injury;

(ii) the death, or significant injury or illness of an immediate family member; or

(iii) mobilization or deployment under orders of the United States Armed Forces, or a public health or public safety organization in the interest of national defense or a national emergency.

(e) corroborating documentation of the qualifying event or condition listed in Subsection (3)(d), in the form of:

(i) a physician's written statement describing and confirming the qualifying injury or illness of the applicant or an immediate family member;

(ii) a photocopy of the deceased immediate family member's certified death certificate; or

(iii) a photocopy of the military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(A) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which the applicant is deployed or mobilized; and

(B) the nature and length of their duty while deployed or mobilized.

(5) The Division may reject an application that is incomplete or that contains false or misleading information.

(6) The Division may require the applicant to provide additional information, documentation, or clarification in conjunction with an application to determine eligibility for a variance.

(7) The Division should make its written decision within 30 days of receiving an application for variance and mail a copy of the decision to the applicant.

R657-57-8. Division Variance Committee.

(1) The Division shall establish a variance committee consisting of the Wildlife Chief, Administrative Services Chief, Licensing Coordinator, and Rules Coordinator, or their designees, which shall:

(a) review variance applications submitted to the Division pursuant to this rule;

(b) determine facts relative to variance requests;

(c) apply the provisions of this rule to relevant facts; and

(d) grant or deny variance requests in accordance with this rule.

(2) Any variance request granted or denied shall be reviewed and approved by the Division director/designee before notice of decision is provided to the variance request applicant.

R657-57-9. Variance Denial.

(1) The variance committee and Division director shall deny a variance request where the applicant:

(a) fails to satisfy the variance criteria set forth in this rule;

(b) is under a judicial or administrative order suspending his/her Utah hunting privileges for the species at the time:

(i) the variance request is filed or at any time during a extension season; or

(ii) the wildlife document application period expired for a bonus or preference point variance;

(c) was legally ineligible to receive or use the wildlife document for which a season extension variance is sought;

(d) is legally ineligible to hunt during the extension season;

(e) is legally ineligible to use the weapon type authorized by the wildlife document during the original hunting season or the extension season;

(f) provides false or misleading information on a material fact in the variance request application; or

(g) provides false or misleading information on a material fact in a previous variance request application.

(2) The Division may deny a variance request when it is contrary to sound public policy, wildlife management objectives, Division policies and interests, or the interests sought to be served by this rule.

R657-57-10. Wildlife Board Appeals.

(1) A person may appeal the Division's decision on a variance application to the Wildlife Board pursuant to the requirements of this rule. The appeal request must be in writing and received by the Division within 30 calendar days of the issuance date on the Division's decision.

(2) The appeal shall contain the following information and documentation:

(a) name, address and telephone number of the petitioner;

(b) a statement of the variance relief sought and justification for the relief;

(c) a description of the wildlife document application for which the variance is sought, including the document number, species and sex, season dates, and weapon type;

(d) the original wildlife document for which the variance is sought;

(e) a statement describing the degree of lost opportunity because of an event or condition; and

(f) corroborating documentation of the event or condition listed in R657-57-7(3)(d) and (4)(d), which may include:

(i) a physician's written statement;

(ii) a certified death certificate photocopy;

(iii) a photocopy of the military orders;

(iv) a letter from an employment supervisor on official letterhead; or

(v) court documentation.

(3) The Wildlife Board may reject a variance appeal that is incomplete or that contains false or misleading information.

(4) The Wildlife Board may require the petitioner to provide additional information, documentation, or clarification in conjunction with the variance appeal.

(5) The Wildlife Board may set a time and date for a hearing on the variance appeal where the petitioner may be given an opportunity to address the Wildlife Board concerning the appeal.

(a) The Wildlife Board will provide the petitioner notice of the date, time, and location of the hearing.

(b) Failure to participate in the hearing may result in dismissal of the variance appeal.

(6) The Wildlife Board may sustain, overturn, or modify the Division's order which is the subject of the variance appeal, provided the relief granted is consistent with the standards, limitations, requirements, and procedures in R657-57-11 through R657-57-13.

(7) The Wildlife Board will prepare a written decision on the variance appeal and mail a copy to the petitioner.

R657-57-11. Wildlife Board Variance Authority.

(1) Except as provided otherwise in this rule, the Wildlife Board may grant a variance to any regulation promulgated in Title R657 of the Administrative Code or in proclamation concerning the acquisition or use of a wildlife document, provided the event or condition justifying the variance:

(a) is not the result of the applicant's willful misconduct or gross negligent acts or omissions;

(b) substantially precludes the applicant from participating in the activity authorized by the wildlife document; or

(c) completely or significantly impairs the applicant from filing a timely application in a Division administered drawing; and

(d) is of a nature that it deprives opportunity from the applicant in a substantially more severe manner than other similarly situated individuals.

(2) The Wildlife Board is limited to considering only those variance applications on which the Division has issued a letter indicating the variance relief sought is beyond its legal authority to grant.

(3) The Wildlife Board shall consider the Division's recommendation on a variance request.

(4) The Wildlife Board may grant a variance that extends a wildlife document season no more than one year into the future.

(5) The Wildlife Board may award a bonus or preference point pursuant to a variance request only when the applicant would have received such a point had the event or condition not intervened.

(6) The Wildlife Board may not grant a variance:

(a) where the request is filed with the Division beyond the 120 day deadline established in R657-57-7(1);

(b) where the applicant is not substantially precluded from participating in the prescribed wildlife activity;

(c) for a season extension on any hunt not identified in R657-57-4(1)(a)(i) as eligible for a season extension;

(d) where the applicant was successful in harvesting an animal for which the wildlife document was issued; or

(e) in direct conflict with any provision of the Wildlife Code or elsewhere in statute.

(7) The Wildlife Board may not refund wildlife document fees, except as authorized in Sections 23-19-38 and 23-19-38.2.

R657-57-12. Variance Guidelines.

(1) The Wildlife Board may use the following guidelines in considering and deciding variance appeals and requests submitted pursuant to this rule:

(a) monetary cost of the wildlife document;

(b) degree of difficulty in obtaining the original wildlife document;

(c) future opportunity to obtain the same or similar wildlife document;

(d) extent of lost opportunity;

(e) time actually engaged in the activity authorized by the wildlife document relative to the overall season length;

(f) time available to engage in the activity authorized by the wildlife document prior to the event or condition precluding further activity;

(g) impact on wildlife management objectives;

(h) degree of difficulty in tracking and monitoring season extensions into the future;

(i) applicant's fault or contribution in failing to mitigate the degree of lost opportunity;

(j) nature of the event or condition contrasted against the advisability of attempting to insure optimal opportunity;

(k) objective of a variance is to restore lost opportunity, not provide increased opportunity; and

(l) consistency with previous variance request decisions.

(2) Nothing herein shall be construed as limiting or prohibiting the Wildlife Board from considering additional factors in its discussions and deliberations concerning variance appeals and requests.

R657-57-13. Wildlife Board Variance Denial.

(1) The Wildlife Board shall deny a variance appeal or request where the applicant:

(a) fails to satisfy the variance criteria set forth in this rule;

(b) is under a judicial or administrative order suspending his/her wildlife document privileges at the time the variance request is filed or at any time while the variance would be in effect;

(c) was legally ineligible to apply for, obtain, or use the original wildlife document for which a variance is sought;

(d) is legally ineligible to engage in the activity proposed for authorization in a variance;

(e) is legally ineligible to use the weapon type or implement authorized by a wildlife document during the original season or the proposed substitute season;

(f) provides false or misleading information on a material fact in the variance request application or the appeal; or

(g) provides false or misleading information on a material fact in a previous variance request application or appeal.

(2) The Wildlife Board may deny a variance appeal or request when it is contrary to sound public policy, wildlife management objectives, Division policies and interests, or the interests sought to be served by this rule.

R657-57-14. Fraud, Deceit, or Misrepresentation.

Any variance obtained under this rule by fraud, deceit or misrepresentation is void.

R657-57-15. Finality of Decision.

(1) The decision of the Wildlife Board on any variance appeal or request under this rule constitutes final agency action and is not subject to:

(a) further administrative review; or

(b) judicial review under Title 63G, Chapter 4 of the Utah Code, Utah Administrative Procedures Act.

(2) The variance relief authorized in this rule is discretionary and neither a right nor entitlement in form or substance. The Division and Wildlife Board shall exercise sole discretion in determining whether relief will be granted and to what extent.

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R657. Natural Resources, Wildlife Resources.
R657-59. Private Fish Ponds, Short Term Fishing Events, Private Fish Stocking, and Institutional Aquaculture.
R657-59-1. Purpose and Authority.

(1) Under the authority of Sections 23-15-9 and 23-15-10 of the Utah Code, this rule provides the standards and procedures for:

(a) private fish ponds;

(b) short term fishing events;

(c) private fish stocking; and

(d) institutional aquaculture.

(2)(a) This rule does not regulate fee fishing or private aquaculture as provided in Title 4, Chapter 37 of the Utah Code, and Department of Agriculture Rule R58-17.

(b) The display of aquatic wildlife in aquaria for personal, commercial, or educational purposes is regulated by R657-3.

(3) A person engaging in any activity provided in Subsection (1) must also comply with all requirements established by Title 4 of Utah Code and all rules promulgated by the Utah Department of Agriculture, including, but not limited to:

(a) requirements for the importation of aquaculture products into Utah; and

(b) requirements for fish health approval for aquaculture products.

(4) Any violation of, or failure to comply with, any provision of Title 23 of the Utah Code, this rule, or any specific requirement contained in a certificate of registration issued pursuant to this rule may be grounds for suspension of the certificate or denial of future certificates, as determined by the division.

R657-59-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aquaculture" means the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions.

(b) "Aquaculture facility" means any facility used for the husbandry, production, harvest, and use of aquatic organisms

under controlled, artificial conditions that holds a valid Certificate of Registration from the Utah Department of Agriculture.

(c)(i) "Aquaculture product" means privately purchased, domestically produced aquatic organisms, or their gametes.

(ii) "Aquaculture product" does not include aquatic wildlife obtained from the wild.

(d) "Aquatic wildlife" for the purposes of this chapter are aquatic organisms that are conceived and born in public waters.

(e) "Certified sterile salmonid" means any salmonid fish or gamete that originates from a health certified source and is incapable of reproduction due to triploidy or hybridization, and is confirmed as sterile using the protocol described in R657-59-13.

(f) "FEMA" means Federal Emergency Management Administration.

(g)(i) "HUC" or "Hyrologic Unit Code" means a cataloging system developed by the US Geological Survey and the Natural Resource Conservation Service to identify watersheds in the United States.

(ii) HUCs are typically reported at the large river basin (6-digit HUC) or smaller watershed (11-digit and 14-digit HUC) scale.

(iii) HUC maps and other associated information are available at http://water.usgs.gov/wsc/sub/1602.html.

(h) "Institutional aquaculture" means aquaculture engaged in by any institution of higher learning, school, or other educational program, or public agency.

(i) "Ornamental aquatic animal species" means any species of fish, mollusk, or crustacean that is commonly cultured and sold in the United States' aquarium industry for display as defined in R657-3-4.

(j) "Private fish pond" means a body of water or any fish culture system which:

(A) is not located on a natural lake, natural flowing stream, or reservoir constructed on a natural stream channel;

(B) is contained entirely on privately owned land; and

(C) is used for holding or rearing fish for a private, noncommercial purpose.

(k) "Purchase" means to buy, or otherwise acquire or obtain through barter, exchange, or trade for pecuniary consideration or advantage.

(l) "Salmonid" means any fish belonging to the trout/salmon family.

(m) "Short-term fishing event" means any event where:

(i) privately acquired fish are held or confined for a period not to exceed ten days in a temporary structure or container;

(ii) for the purposes of providing fishing ar recreational opportunity; and

(iii) no fee is charged as a requirement to fish.

(n) "Sterile" means the inability to reproduce.

R657-59-3. Certificate of Registration Not Required -- Private Fish Ponds and Short Term Fishing Events.

(1) A certificate of registration is not required to receive and stock an aquaculture product in a private fish pond, provided:

(a) the private fish pond satisfies the screening requirements established in R657-59-10;

(b) if a screen is required, the aquaculture product received must be of sufficient size to be incapable of escaping the pond through or around the screen;

(c) the species, sub-species, and sterility of the aquaculture product received is authorized for stocking in the area where the private fish pond is located consistent with the requirements in R657-59-11;

(d) the aquaculture product is:

(i) delivered to the pond by a licensed aquaculture facility as defined in Title 4 Chapter 37 of Utah Code; or

(ii) the owner, lessee, or operator of the private pond:

(A) possesses documentation from the aquaculture facility verifying the information itemized in R657-59-6 and R58-17-14 during transport; and

(B) assumes legal responsibility for directly transporting the fish from the aquaculture facility to the private fish pond;

(e) the owner, lessee, or operator of the pond obtains from the aquaculture facility providing the aquaculture product a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Chapter 4 Title 37 of Utah Code; and

(f) the owner or operator of the private fish pond provides the aquaculture facility a signed written statement that the pond and aquaculture product received are in compliance with this section.

(2) A certificate of registration is not required to receive and stock an aquaculture product in a short-term fishing event, provided:

(a) the temporary container or structure to be stocked is entirely separated from any public waterway or waterbody;

(b) the species, sub-species, and sterility of the aquaculture product received is authorized for stocking in the area where the short-term fishing event is located consistent with the requirements in R657-59-11;

(c) the aquaculture product is:

(i) delivered to the pond by a licensed aquaculture facility as defined in Chapter 4 Title 37 of Utah Code; or

(ii) the owner, lessee, or operator of the short-term fishing event:

(A) possesses documentation from the aquaculture facility verifying the information itemized in R657-59-6 and R58-17-14 during transport; and

(B) assumes legal responsibility for directly transporting the fish from the aquaculture facility to the short-term fishing event;

(d) the owner, lessee, or operator of the pond obtains from the aquaculture facility providing the aquaculture product a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Chapter 4 Title 37 of Utah Code; and

(e) the operator of the short-term fishing event provides the aquaculture facility a signed written statement that the short-term fishing event and aquaculture product received are in compliance with this section.

R657-59-4. Certificate of Registration Required -- Other Fish Stocking Activities.

(1)(a) A certificate of registration must be obtained from the division to receive, possess, stock, or release an aquaculture product or aquatic wildlife in a manner that does not satisfy the certificate of registration waiver requirements identified in R657-59-3.

(b) If a certificate of registration is required, a separate application for each fish stocking request must be submitted, except:

(i) stocking locations are separated by less than 1/2 mile may be placed on a single application; and

(ii) water bodies that drain to, or are modified to drain to, the same drainage may be listed on a single application.

(2) Fish stocked or released in a water body not eligible as a private fish pond or short-term fishing event under R657-59-3 are considered wild aquatic wildlife and may be taken only as provided in Rule R657-13 and the fishing proclamation.

(3) A permanent water body stocked pursuant to a certificate of registration for private stocking may not be screened to contain fish, except:

(a) a water stocked with grass carp to control aquatic weeds must be adequately screened to prevent the grass carp from escaping; and

(b) the division may require screening of the water body to protect wildlife resources found in the water body and any connected waterways.

(4)(a) An application for a certificate of registration for private stocking to stock fish other than grass carp may be approved only if:

(i) the stocking will only occur on privately owned land;

(ii) the body of water to be stocked is a reservoir that is wholly contained on the land owned by the applicant;

(iii) the body of water is not stocked or otherwise actively managed by the division;

(iv) the fish to be stocked are for a non-commercial purpose; and

(v) in the opinion of the division, stocking will not interefere with division management objectives or cause detrimental interactions with other species of fish or wildlife.

(5) An application for a certificate of registration for private stocking of triploid grass carp for control of aquatic weeds will be evaluated based upon:

(a) the severity of the weed problem;

(b) availability of other suitable means of weed control;

(c) adequacy of screening to contain the grass carp; and

(d) potential for conflict with division management objectives or detrimental interactions with other species of fish or wildlife.

R657-59-5. Application for a Fish Stocking Certificate of Registration; Application Criteria; Amendment of Certificate of Registration.

(1)(a) A person may apply to receive a certificate of registration for a fish stocking activity by submitting an application with the required handling and inspection fee to the Wildlife Registration Office, Utah Division of Wildlife Resources, 1594 West North Temple, Salt Lake City, Utah 84114.

(b) Application forms are available at all division offices and at the division's internet address.

(c) The application may require up to 30 days for processing.

(d) The division may require a site inspection of the stocking location be performed to confirm compliance with the provisions found in this rule.

(e) The division may deny an application where:

(i) the application is incomplete, filled out incorrectly, or submitted without the appropriate fee;

(ii) receiving or stocking the aquaculture product or aquatic wildlife may:

(A) violate any federal, state or local law or any agreement between the state and another party;

(B) negatively impact native wildlife species listed by the division as sensitive or by the federal government as threatened or endangered;

(C) pose an identifiable adverse threat to other wildlife species or their habitat;

(D) pose an identifiable adverse impact to the division's game fish stocking regimes or wildlife management objectives; or

(E) non-salmonid aquaculture product will be stocked in a pond within the 100 year flood plain (below 6500 feet in elevation) in the Green River and Colorado River drainages and the pond does not meet FEMA standards on construction and screening; or

(iii) the applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a guidebook of the Wildlife Board, a certificate of registration, an order of the Wildlife Board, or any other law that bears a reasonable relationship to the applicant's ability to responsibly carry out the stocking activity.

(2) An application for a certificate of registration may not be denied without the review and consent of the division director or a designee.

(3) A certificate of registration for a fish stocking activity may remain effective for up to 5 years from the date of issuance as identified on the certificate of registration, unless:

(a) amended by the division at the request of the certificate of registration holder;

(b) terminated or modified by the division pursuant to R657-59-13; or

(c) suspended by the division or a court pursuant to Section 23-19-9.

(4) An amendment to the certificate of registration is required each time fish are stocked, except a person may request to stock fish more than once if the request is made on the application and the request is approved by the division on the certificate of registration.

R657-59-6. Acquiring, Importing, and Transferring Aquaculture Products.

(1)(a) Species of aquaculture products that may be imported into the state are provided in Rule R657-3-23.

(b) Applications to import aquaculture products are available from all division offices and must be submitted to the division's Wildlife Registration Office in Salt Lake City.

(c) Complete applications may require up to 30 days for processing.

(2) Live aquaculture products, other than ornamental fish, may only be:

(a) purchased or acquired from sources approved by the Utah Department of Agriculture and Food to sell such products; and

(b) acquired, purchased or transferred from sources which have been health approved by the Utah Department of Agriculture and Food and assigned a number as provided in Title 4 Chapter 37 of Utah Code.

(3)(a) Any person who has been issued a valid aquaculture certificate of registration may transport live aquaculture products as specified on the certificate of registration to a stocking location.

(b) All transfers or shipments of live aquaculture products must be accompanied by documentation of the source and destination of the product, including:

(i) name, address, certificate of registration number, and fish health approval number of the source;

(ii) number and weight being shipped, by species;

(iii) name, address, and certificate of registration number, if applicable, of the destination; and

(iv) a copy of the importation permit provided by the Utah Department of Agriculture.

(c)(i) Once stocked in a water body, aquaculture products may not be transferred or relocated live.

(4)(a) To import, transport, or stock live grass carp (Ctenopharyngodon idella), each fish must be verified as being sterile triploid by the U.S. Fish and Wildlife Service.

(b) The form verifying triploidy must be obtained from the supplier and be on file with the Wildlife Registration Office of the division in Salt Lake City prior to importation.

(c) A copy of the triploidy verification form must also accompany the fish during transport.

(5)(a) Live aquaculture products may be shipped through Utah without a certificate of registration provided that:

(i) the aquatic wildlife or aquaculture products are not sold or transferred;

(ii) the aquatic wildlife or aquaculture products remain in the original container;

(iii) the water is not exchanged or discharged; and

(iv) the shipment is in Utah no longer than 72 hours.

(b) Proof of legal ownership and destination must accompany the shipment.

R657-59-7. Inspection of Records and Fish Stocking Locations.

(1) Records of purchase, distribution, and acquisition of aquaculture products and copies of certificates of registration must be kept for the duration of the certificate of registration and must be available for inspection by a division representative during reasonable hours.

(2) The division and its authorized representatives may inspect a private fish pond or other stocking location during reasonable hours to verify compliance with the requirements of Title 23 of the Utah Code and this rule.

(3) Consistent with the provisions of Utah Administrative Code R58-17, the division and its authorized representatives may inspect aquaculture products stocked pursuant to this rule to conduct sterility, pathological, fish culture, or physical investigations during reasonable hours to verify compliance with the requirements of Title 23 of the Utah Code and this rule.

R657-59-8. Prohibited Activities.

(1) Live aquatic wildlife may not be collected from the wild and used in stocking activities unless authorized by the Wildlife Board consistent with the requirements in R657-3.

(2) A person may not release or transport any live aquaculture product received or held under the provisions of this rule without prior written authorization of the division and the Fish Health Policy Board.

R657-59-9. Fishing License and Transportation of Dead Aquaculture Product.

(1) A fishing license is not required to:

(a) take fish from a legally recognized private fish pond or short-term fishing event; or

(b) to transport dead aquaculture product from a private fish pond or short-term fishing event.

R657-59-10. Screen Requirements.

(1)(a) Except as provided in Subsection (b), all permanent and intermittant inlets and outlets of a private fish pond shall be screened to prevent the movement of aquatic wildlife into the pond or the escapement of any aquaculture product from the private fish pond into public waters.

(b) Upon request of the private pond owner or lessee, the division may conduct a site analysis and waive screen requirements if it is determined that the waiver of screen requirements will not be detrimental to the wildlife resource.

(c) Any aquaculture product that escapes a private fish pond are considered aquatic wildlife for the purposes of licensing requirements, bag limits, and allowable methods of take.

(2) If a screen is required, the screen must meet the following provisions:

(a) the screen should be constructed of durable materials that are capable of maintaining integrity in a water and air environment for an extended period of time;

(b) the screen shall have no openings, seams or mesh width greater than the width of the fish being stocked;

(c) all water entering or leaving the pond, including run off and other high water events, shall flow through a screen consistent with the requirements of this subsection; and

(d) the screen shall be maintained and in place at all times while any aquaculture product remains in the pond.

R657-59-11. Species and Reproductive Capabilities of Aquaculture Product Authorized by Area for Stocking in Private Fish Ponds and Short-Term Fishing Events.

(1) A certificate of registration must be obtained from the division pursuant to R657-59-4 and R657-59-5 prior to stocking in any private fish pond of:

(a) a non-salmonid aquaculture product; or

(b) any other species or sterility of aquaculture product not specifically authorized in this Section.

(2)(a) Except as provided in Subsection 4, a certified sterile salmonid aquaculture product may be stocked in any private fish pond or short-term fishing event within the state without a certificate of registration.

(b) Triploid salmonids accepted as sterile pursuant to this rule shall originate from a source that is certified as incapable of reproduction using the following protocols:

(i) fish samples shall be collected, prepared, and submitted to a certified laboratory by an independent veterinarian, certified fish health professional, or other professional approved by the division or Utah Department of Agriculture;

(ii) certified laboratories shall be limited to independent, professional laboratories capable of reliably testing fish sterility and approved by the division;

(iv) sterility shall be determined by sampling and testing 60 fish from each egg lot using either flow cytometry, particle analysis, or karyotyping; and

(v) At least 95% of the fish test triploid.

(c) An aquaculture facility that receives certified sterile salmonid aquaculture product is not required to conduct additional sterility testing prior to stocking the aquaculture product, provided the sterile salmonids are kept segregated from other fertile salmonids.

(d) Hybrid salmonid fish species accepted as sterile under this subsection are limited to splake trout (lake trout/brook trout cross) and tiger trout (brown trout/brook trout cross).

(3) Fertile rainbow trout may be stocked without a certificate of registration in any private fish pond or short-term fishing event within the state consistent with R657-59-3, except for waters located within the following drainages designated by County and hydrologic unit code (HUC) or township and range:

Beaver County:

(i) North Creek drainage - HUCs 160300070203, 160300070208; and

(ii) Pine Creek drainage (near Sulphurdale) - HUC 160300070501.

(b) Box Elder County - stocking is prohibited in the following:

(i) Morison Creek drainage - HUC 16020308;

(ii) Bettridge Creek drainage - HUC 16020308;

(iii) Death Creek drainage - HUC 16020308;

(iv) Camp Creek drainage - HUC 16020308;

(v) Goose Creek drainage - HUC 17040211;

(vi) Raft River drainage - HUC 17040210;

(vii) Fat Whorled Pond Snail Springs - Township 10 North, Ranges 4 and 5 West; and

(c) Cache County:

(i) Logan River drainage - HUC 16010203;

(ii) Blacksmith Fork River drainage - HUC 16010203;

(iii) East Fork Little Bear River drainage- HUC 16010203; and

(iv) Little Bear River drainage - HUC 16010203.

(d) Carbon County:

(i) waters above 7000 feet in elevation.

(e) Daggett County:

(i) waters above 7000 feet in elevation.

(f) Duchesne County:

(i) waters above 7000 feet in elevation.

(g) Emery County:

(i) waters above 7000 feet in elevation.

(i) Garfield County:

(i) Birch Creek/Main Canyon drainage - HUC 140700050102;

(ii) Center Creek drainage (tributary to East Fork Sevier R) HUC 160300020412;

(iii) Cottonwood Creek drainage - HUC 160300020406;

(iv) East Fork of Boulder Creek/ West Fork Boulder Creek drainage - HUC 140700050206; and
(v) Ranch Creek drainage (East Fork Sevier River drainage) - HUC 160300020405.
(h) Grand County:
(i) waters above 7000 feet in elevation.
(i) Juab County:
(i) Sulphur Wash drainage - HUC 160203011303;
(ii) Middle Pleasant Valley Draw drainage - HUC 160203011402;
(iii) Lower Pleasant Valley Draw drainage - HUC 160203011403;
(iv) Cookscomb Ridge drainage - HUC 160203011501;
(v) Outlet Salt Marsh Lake drainage - HUC 160203011502;
(vi) Deep Creek Range drainage - HUC 160203011503;
(vii) Snake Valley drainage - HUC 160203011504;
(viii) Little Red Cedar Wash drainage - HUC 160203011505;
(ix) Trout Creek drainage - HUC 160203060101;
(x) Smelter Knolls drainage - HUC 160203060104;
(xi) Toms Creek drainage - HUC 160203060201;
(xii) Goshute Canyon drainage - HUC 160203060202;
(xiii) Indian Farm Creek drainage - HUC 160203060204;
(xiv) Spring Creek drainage - HUC 160203060803;
(xv) Fifteenmile Creek drainage - HUC 160203060804;
(xvi) East Creek/East Deep Creek drainage - HUC 160203060805;
(xvii) East Creek/East Deep Creek drainage - HUC 160203060806;
(xviii) West Deep Creek drainage - HUC 160203060808;
(xix) Horse Valley drainage - HUC 160203060304;
(xx) Starvation Canyon drainage - HUC 160203060305;
(xxi) Cane Springs drainage - HUC 160203060307;
(xxii) Fish Springs Range drainage - HUC 160203060308;
(xxiii) Middle Fish Springs Wash drainage - HUC 160203060309;
(xxiv) Lower Fish Springs Wash drainage - HUC 160203060403;
(xxv) Fish Springs drainage - HUC 160203060405;
(xxvi) Wilson Health Springs drainage - HUC 160203060407;
(xxvii) Vernon Creek drainage - HUC 160203040102;
(xxviii) Outlet Chicken Creek drainage - HUC 160300050206;
(xxix) Little Valley/Sevier River drainage - HUC 160300050403;
(xxx) Pole Creek/Salt Creek drainage - HUC 160202010104; and
(xxxi) West Creek/Current Creek drainage - HUC160202010107.
(j) Millard County
(i) Outlet Salt Marsh Lake drainage - HUC 160203011502;
(ii) Sulphur Wash drainage - HUC160203011303;
(iii) Cockscomb Ridge drainage - HUC 160203011501;
(iv) Tungstonia Wash drainage - HUC 160203011302;
(v) Salt Marsh Lake - HUC 160203011304;
(vi) Indian George Wash drainage - HUC 160203011301
(vii) Outlet Bishop Springs drainage - HUC 160203011203;
(viii) Warm Creek drainage - HUC 160203011204;
(ix) Headwaters Bishop Springs drainage - HUC 160203011202;
(x) Indian Pass - HUC 160203011107;
(xi) Chevron Ridge drainage - HUC 160203011110;
(xii) Petes Knoll drainage - HUC 160203011109;
(xiii) Red Gulch drainage - HUC 160203011102;
(xiv) Horse Canyon drainage - HUC 160203011106;
(xv) Hampton Creek drainage - HUC 160203011105;
(xvi) Knoll Springs drainage - HUC 160203011103;
(xvii) Browns Wash drainage - HUC 160203011101;
(xviii) Outlet Baker Creek drainage - HUC 160203011004;
(xix) Outlet Old Mans Canyon drainage - HUC 160203011003;
(xx) Hendrys Creek drainage - HUC 160203011104;
(xxi) Headwaters Old Mans Canyon drainage - HUC 160203011002;
(xxii) Rock Canyon drainage - HUC 160203011001
(xxiii) Silver Creek drainage - Baker Creek drainage - HUC 160203010806;
(xxiv) Outlet Weaver Creek drainage - HUC 160203010804;
(xxv) Conger Spring drainage - HUC 160203010702; and
(xxvi) Sheepmens Little Valley drainage - HUC 160203010607.
(k) Morgan County:
(i) Weber River drainage - HUC 16020102;
(ii) East Canyon Creek drainage - HUC 16020102; and
(iii) Lost Creek drainage - HUC 16020101.
(l) Piute County:
(i) Birch Creek drainage HUC 160300010603;
(ii) Clear Creek drainage HUC 1603000301;
(iii) Manning Creek drainage - HUC 160300030203;
(iv) Tenmile Creek drainage HUC 160300030204.
(m) Rich County:
(i) Bear Lake drainage - HUC 16010201;
(ii) Big Creek drainage - HUC 16010101;
(iii) Birch Creek drainage from Birch Creek Reservoir, upstream HUC 16010101;
(iv) Little Creek drainage from Little Creek Reservoir, upstream HUC 16010101;
(v) Otter Creek drainage - HUC 16010101;
(vi) Woodruff Creek drainage - HUC 16010101; and
(vii) Home Canyon and Meachum Canyon (Deseret Ranch) drainage - HUC 16010101.
(n) Salt Lake County:
(i) Big Cottonwood Canyon Creek drainage - HUC 160202040201;
(ii) Little Cottonwood Canyon Creek drainage - HUC 160202040202;
(iii) Mill Creek drainage - HUC 160202040301;
(iv) Parleys Creek drainage - HUC 160202040302;
(v) Emigration Creek drainage - HUC 160202040303;
(vi) City Creek drainage - HUC 160202040304; and
(vii) Red Butte Creek/Emigration Creek drainage - HUC 160202040306.
(o) San Juan County:
(i) waters above 7000 feet in elevation.
(p) Sanpete County:
(i) Areas west of the Manti Mountain Range divide:
(A) Dry Creek/San Pitch River drainage - HUC 160300040201;
(B) Oak Creek/San Pitch River drainage - HUC 160300040202;
(C) Cottonwood Canyon/San Pitch River drainage - HUC 160300040203;
(D) Birch Creek/San Pitch River drainage - HUC 160300040204;
(E) Pleasant Creek drainage - HUC 160300040205;
(F) Dublin Wash/San Pitch River drainage - HUC 160300040206;
(G) Cedar Creek drainage - HUC 160300040207;
(H) Spring Hollow/San Pitch River drainage - HUC 160300040208;
(I) Upper Oak Creek drainage - HUC 160300040302;
(J) Petes Canyon/San Pitch River drainage - HUC

160300040306;
(K) Uinta Gulch drainage - HUC 160202020201;
(L) Upper Thistle Creek drainage - HUC 160202020202;
(M) Nebo Creek drainage - HUC 160202020203;
(N) Middle Thistle Creek drainage - HUC 160202020204;
(O) Dry Canyon/San Pitch River drainage - HUC 160300040308;
(P) Maple Canyon/San Pitch River drainage - HUC 160300040309;
(Q) Gunnison Reservoir/San Pitch River drainage - HUC 160300040503;
(R) Outlet San Pitch River drainage - HUC 160300040505;
(S) Beaver Creek drainage - HUC 140700020201;
(T) Box Canyon/Muddy Creek drainage - HUC 140700020203;
(U) Skumpah Creek-Salina Creek drainage - HUC 160300030402; and
(V) Headwaters Twelvemile Creek drainage - HUC 160300040402.
(ii) Waters above 7000 feet in elevation east of the Manti Mountain Range divided.
(q) Sevier County:
(i) Clear Creek drainage HUC 1603000301;
(ii) Salina Creek drainage - HUC 160300030402; and
(iii) U M Creek drainage - HUC 140700030101.
(r) Summit County:
(i) Bear River drainage drainage - HUC 16010101;
(ii) Mill Creek drainage - HUC 16010101;
(iii) Muddy Creek and Van Tassel Creek drainage - HUC 14040108;
(iv) Little West Fork/Blacks Fork drainage - HUC 14040107;
(v) Blacks Fork drainage - HUC 14040107;
(vi) Archie Creek drainage - HUC 14040107;
(vii) West Fork Smiths Fork drainage - HUC 14040107;
(viii) Gilbert Creek drainage - HUC 14040107;
(ix) East Fork Smiths Fork drainage - HUC 14040107;
(x) Dahlgreen Creek drainage - HUC 14040106;
(xi) Henrys Fork drainage - HUC 14040106;
(xii) Spring Creek and Poison Creek drainage - HUC 14040106;
(xiii) West Fork Beaver Creek drainage - HUC 14040106;
(xiv) Middle Fork Beaver Creek drainage - HUC 14040106;
(xv) Echo Creek drainage - HUC 16020101;
(xvi) Chalk Creek drainage - HUC 16020101;
(xvii) Silver Creek drainage - HUC 16020101;
(xviii) Weber River drainage - HUC 16020101;
(xix) Beaver Creek drainage - HUC 16020101;
(xx) Provo River drainage - HUC 16020101;
(xxi) Kimball Creek drainage - HUC 160201020101;
(xxii) Big Dutch Hollow/East Canyon Creek drainage - HUC 160201020103; and
(xxiii) Toll Canyon/East Canyon Creek drainage - HUC 160201020102.
(w) Tooele County:
(i) Toms Creek drainage - HUC 160203060201;
(ii) Goshute Canyon drainage - HUC 160203060202;
(iii) Eightmile Wash drainage - HUC 160203060203;
(iv) Indian Farm Creek drainage - HUC 160203060204;
(v) Willow Spring Wash drainage HUC 160203060205;
(vi) Willow Canyon drainage - HUC 160203080104;
(vii) Bettridge Creek drainage - HUC 160203080106;
(viii) East Creek/East Deep Creek drainage - HUC 160203060806;
(ix) East Deep Creek drainage - HUC 160203060807;
(x) West Deep Creek drainage - HUC 160203060808;
(xi) Gullmette Gulch/Deep Creek drainage - HUC 160203060902;
(xii) Pony Express Canyon/Deep Creek drainage - HUC 160203060904;
(xiii) Badlands drainage - HUC 160203060905;
(xiv) White Sage Flat/Deep Creek drainage - HUC 160203060907;
(xv) Lower Fish Springs Wash drainage - HUC 160203060403;
(xvi) Fish Springs drainage - HUC 160203060405;
(xvii) Wilson Health Springs drainage - HUC 160203060407;
(xviii) East Government Creek drainage - HUC 160203040101;
(xix) Vernon Creek drainage - HUC 160203040102; and
(xx) Faust Creek drainage - HUC 160203040105.
(s) Uintah County:
(i) waters above 7000 feet in elevation.
(t) Utah County:
(i) Starvation Creek drainage - HUC 160202020101;
(ii) Upper Soldier Creek drainage - HUC 160202020102;
(iii) Tie Fork drainage - HUC 160202020103;
(iv) Middle Soldier Creek drainage - HUC 160202020105;
(v) Lake Fork drainage - HUC 160202020106;
(vi) Lower Soldier Creek drainage - HUC 160202020107;
(vii) Upper Thistle Creek drainage - HUC 160202020202;
(viii) Nebo Creek drainage - HUC 160202020203;
(ix) Middle Thistle Creek drainage - HUC 160202020204;
(x) Lower Thistle Creek drainage - HUC 160202020205;
(xi) Sixth Water Creek drainage - HUC 160202020301;
(xii) Cottonwood Canyon drainage - HUC 160202020302;
(xiii) Fifth Water Creek drainage - HUC160202020303;
(xiv) Upper Diamond drainage Fork - HUC 160202020304;
(xv) Wanrhodes Canyon drainage - HUC 160202020305;
(xvi) Middle Diamond Fork drainage - HUC 160202020306;
(xvii) Lower Diamond Fork drainage - HUC 160202020307;
(xviii) Headwaters Left Fork Hobble Creek drainage - HUC 160202020401;
(xix) Headwaters Right Fork Hobble Creek drainage - HUC 160202020402;
(xx) Outlet Left Fork Hobble Creek drainage - HUC 160202020403;
(xxi) Outlet Right Fork Hobble Creek drainage - HUC 160202020404;
(xxii) Upper Spanish Fork Creek drainage - HUC 160202020501;
(xxiii) Middle Spanish Fork Creek drainage - HUC 160202020502;
(xxiv) Peteetneet Creek drainage - HUC 160202020601;
(xxv) Spring Creek drainage - HUC 160202020602;
(xxvi) Beer Creek drainage - HUC 160202020603;
(xxvii) Big Spring Hollow/South Fork Provo River drainage - HUC 160202030502;
(xxviii) Pole Creek/Salt Creek drainage - HUC 160202010104;
(xxix) Middle American Fork Canyon drainage - HUC 160202010802;
(xxx) Mill Fork drainage - HUC 160202020104; and
(xxxi) Upper American Fork Canyon drainage - HUC 160202010801.
(u) Wasatch County:
(i) Willow Creek/Strawberry River drainage - HUC 140600040101;
(ii) Clyde Creek/Strawberry River drainage - HUC 140600040102;
(iii) Indian Creek drainage - HUC140600040104;
(iv) Trout Creek/Strawberry River drainage - HUC

140600040105;
(v) Soldier Creek/Strawberry River drainage - HUC 140600040106;
(vi) Willow Creek drainage - HUC 140600040301;
(vii) Current Creek Reservoir drainage - HUC 140600040401;
(viii) Little Red Creek drainage - HUC 140600040402;
(ix) Outlet Current Creek drainage - HUC 140600040403;
(x) Water Hollow/Current Creek drainage - HUC 140600040404;
(xi) Headwaters West Fork Duchesne River drainage - HUC 140600030101;
(xii) Little South Fork Provo River drainage - HUC 160202030201;
(xiii) Bench Creek/Provo River drainage - HUC160202030202;
(xiv) Lady Long Hollow/Provo River drainage - HUC 160202030203;
(xv) Charcoal Canyon/Provo River drainage - HUC 160202030204;
(xvi) Drain Tunnel Creek drainage - HUC 160202030301;
(xvii) Lake Creek drainage - HUC 160202030302;
(xviii) Center Creek drainage - HUC 160202030303;
(xix) Cottonwood Canyon/Provo River drainage - HUC 160202030304;
(xx) Snake Creek drainage - HUC 160202030305;
(xxi) Spring Creek/Provo River drainage - HUC 160202030306;
(xxii) Daniels Creek drainage - HUC 160202030401;
(xxiii) Upper Main Creek drainage - HUC 160202030403;
(xxiv) Lower Main Creek drainage - HUC 160202030404;
(xxv) Deer Creek Reservoir-Provo River drainage - HUC160202030405;
(xxvi) Provo Deer Creek drainage - HUC 160202030501;
(xxvii) Little Hobble Creek drainage - HUC 160202030402;
(xxviii) Mill Hollow/South Fork Provo River drainage - HUC 160202030104; and
(xxix) Mud Creek drainage - HUC 140600040103.
(v) Washington County:
(i) Ash Creek drainage - HUC 150100080405;
(ii) Beaver Dam Wash drainage - HUC 15010010;
(iii) Laverkin Creek drainage - HUC 150100080302;
(iv) Leeds Creek drainage - HUC 150100080906;
(v) Baker Dam Reservoir/Santa Clara River drainage - HUC 150100080704;
(vi) Tobin Wash drainage - HUC 150100080802;
(vii) Sand Cove Wash drainage - HUC 150100080801;
(viii) Manganese Wash/Santa Clara River drainage - HUC 150100080804;
(ix) Wittwer Canyon/Santa Clara River drainage - HUC 150100080808;
(x) Cove Wash/Santa Clara River drainage - HUC 150100080809;
(xi) Moody Wash drainage - HUC 150100080603;
(xii) Upper Moody Wash drainage - HUC 150100080602;
(xiii) Magotsu Creek drainage - HUC 150100080704;
(xiv) South Ash Creek drainage - HUC 150100080405);
(xv) Water Canyon drainage - HUC 150100080701);
(xvi) Chinatown Wash/Virgin River drainage - HUC 150100080508;
(xvii) Lower Gould Wash drainage - HUC 150100080508;
(xviii) Grapevine Wash/Virgin River drainage - HUC 150100080903;
(xix) Cottonwood Wash/Virgin River drainage - HUC 150100080909;
(xx) Middleton Wash/Virgin River drainage - HUC 150100080910;
(xxi) Lower Fort Pierce Wash drainage - HUC 150100080605;
(xxii) Atkinville Wash drainage - HUC 150100080303;
(xxiii) Lizard Wash drainage - HUC 150100080302;
(xxiv) Val Wash/Virgin River drainage - HUC 150100080307;
(xxv) Bulldog Canyon drainage - HUC 150100080310; and
(xxvi) Fort Pierce Wash drainage - HUC 15010009.
(w) Weber County
(i) North Fork Ogden River drainage - HUC 16020102;
(ii) Middle Fork Ogden River drainage - HUC 16020102; and
(iii) South Fork Ogden River drainage- HUC 16020102.
(4) Brown trout and brown trout hybrids may not be stocked within Washington County.

R657-59-12. Institutional Aquaculture.

(1) A certificate of registration is required for any public agency, institution of higher learning, school, or educational program to engage in aquaculture.
(2) Aquatic wildlife or aquaculture products produced by institutional aquaculture may not be:
(a) sold;
(b) stocked; or
(c) transferred into waters of the state unless specifically authorized by the certificate of registration.
(3) The fish health approval requirements of Title 4 Chapter 37 apply.
(4)(a) A certificate of registration for institutional aquaculture may be obtained by submitting an application to the division.
(b) A certificate of registration may be renewed by submitting an application prior to the expiration date of the current certificate of registration.
(c) The application may require up to 30 days for processing.
(d) The division may require a site inspection of the institutional aquaculture facility be performed to confirm compliance with the provisions found in this rule.
(e) The division may deny an application where:
(i) the application is incomplete, filled out incorrectly, or submitted without the appropriate fee;
(ii) operating the institutional aquaculture facility may violate any federal, state or local law or any agreement between the state and another party;
(iii) the application fails to demonstrate an ability to operate the aquaculture facility in a manner that protects Utah's wildlife, their habitats, and other aquaculture facilities from contamination; or
(iv) the applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a guidebook of the Wildlife Board, a certificate of registration, an order of the Wildlife Board, or any other law that bears a reasonable relationship to the applicant's ability to responsibly operate an institutional aquaculture facility.
(5) An application for a certificate of registration may not be denied without the review and consent of the division director or a designee.
(6) A certificate of registration for a institutional aquaculture may remain effective for up to 5 years from the date of issuance as identified on the certificate of registration, unless:
(a) amended by the division at the request of the certificate of registration holder;
(b) terminated or modified by the division pursuant to R657-59-13; or
(c) suspended by the division or a court pursuant to Section 23-19-9.

R657-59-13. Expiration and Termination of Certificates of

Registration.

(1) If a certificate of registration expires or the division suspends or terminates the certificate of registration, all live aquaculture products permitted under the certificate of registration shall be disposed of as follows:

(a) Unless the Wildlife Board orders otherwise, all aquaculture products or aquatic wildlife must be removed within 30 days of suspension or the expiration date of the certificate of registration, or within 30 days after ice-free conditions on the water; or

(b) At the discretion of the division, aquaculture products and aquatic wildlife may remain in the waters at the facility, but shall only be taken as prescribed within Rule R657-13 for Taking Fish and Crayfish.

KEY: wildlife, aquaculture, fish
March 13, 2017 23-15-9
Notice of Continuation July 19, 2018 23-15-10

R657. Natural Resources, Wildlife Resources.
R657-60. Aquatic Invasive Species Interdiction.
R657-60-1. Purpose and Authority.

(1) The purpose of this rule is to define procedures and regulations designed to prevent and control the spread of aquatic invasive species within the State of Utah.

(2) This rule is promulgated pursuant to authority granted to the Wildlife Board in Sections 23-27-401, 23-14-18, and 23-14-19.

R657-60-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and 23-27-102.

(2) In addition:

(a) "Conveyance" means a terrestrial or aquatic vehicle, including a vessel, or a vehicle part that may carry or contain a Dreissena mussel.

(b) "Decontaminate" or "Decontaminated" means to comply with one of the following methods:

(i) If no adult mussels are attached to the conveyance after exiting the water body, an owner or operator may self-decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) removing all plants, fish, and mud from the equipment or conveyance;

(B) draining all water from the equipment or conveyance, including water held in ballast tanks, bilges, livewells, and motors; and

(C) drying the equipment or conveyance for no less than 7 days in June, July and August;18 days in September, October, November, March, April and May; 30 days in December, January and February; or expose the equipment or conveyance to sub-freezing temperatures for 72 consecutive hours;

(ii) Professionally decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) Using a professional decontamination service approved by the division to apply scalding water (140 degrees Fahrenheit) to completely wash the equipment or conveyance and flush any areas where water is held, including ballast tanks, bilges, livewells, and motors; and

(B) if the division determines that there is a significant risk that mussels remain attached to the conveyance after the scalding water wash, complete a mandatory 30 day dry time after the hot water wash is completed; or

(iii) Complying with all protocols identified in a certificate of registration.

(c) "Detected Water" or "Detected" means a water body, facility, or water supply system where the presence of a Dreissena mussel is indicated in two consecutive sampling events using visual identification or microscopy and the results of each sampling event is confirmed in two polymerase chain reaction tests, each conducted at independent laboratories.

(d) "Dreissena mussel" means a mussel of the genus Dreissena at any life stage, including a zebra mussel, a quagga mussel and a Conrad's false mussel.

(e) "Controlling entity" means the owner, operator, or manager of a water body, facility, or a water supply system.

(f) "Equipment" means an article, tool, implement, or device capable of carrying or containing water or Dreissena mussel.

(g) "Facility" means a structure that is located within or adjacent to a water body.

(h) "Infested Water" or "Infested" means a water body, facility, water supply system, or geographic region where the presence of multiple age classes of attached Dreissena mussels is indicated in two or more consecutive sampling events using visual detection or microscopy and the result of each sampling event is confirmed in two polymerase chain reaction tests, each conducted at independent laboratories.

(i) "Juvenile or adult Dreissena mussel" means a macroscopic Dreissena mussel that is not a veliger.

(j) "Quarantine" means imposing a required minimum period of time where a conveyance must stay at a predetermined location in order to minimize the risk that Dreissena mussels are spread.

(k) "Suspected Water" or "Suspected" means a water body, facility, or water supply system where the presence of a Dreissena mussel is indicated through a single sampling event using visual identification or microscopy and the result of that sampling event is confirmed in two independent polymerase chain reaction tests, each conducted at independent laboratories.

(l) "Veliger" means a microscopic, planktonic larva of Dreissena mussel.

(m) "Vessel" means every type of watercraft used or capable of being used as a means of transportation on water.

(n) "Water body" means natural or impounded surface water, including a stream, river, spring, lake, reservoir, pond, wetland, tank, and fountain.

(o) "Water supply system" means a system that treats, conveys, or distributes water for irrigation, industrial, wastewater treatment, or culinary use, including a pump, canal, ditch or, pipeline.

(p) "Water supply system" does not include a water body.

R657-60-3. Possession of Dreissena Mussels.

(1) Except as provided in Subsections R657-60-3(2) and R657-60-5(2), a person may not possess, import, ship, or transport any Dreissena mussel.

(2) Dreissena mussels may be imported into and possessed within the state of Utah with prior written approval of the Director of the Division of Wildlife Resources or a designee.

R657-60-4. Reporting of Invasive Species Required.

(1) A person who discovers a Dreissena mussel within this state or has reason to believe a Dreissena mussel may exist at a specific location shall immediately report the discovery to the division.

(2) The report shall include the following information:

(a) location of the Dreissena mussels;

(b) date of discovery;

(c) identification of any conveyance or equipment in which mussels may be held or attached; and

(d) identification of the reporting party with their contact information.

(3) The report shall be made in person or in writing:

(a) at any division regional or headquarters office or;

(b) to the division's toll free hotline at 1-800-662-3337; or
(c) on the division's website at www.wildlife.utah.gov/law/hsp/pf.php.

R657-60-5. Transportation of Equipment and Conveyances That Have Been in Waters Containing Dreissena Mussels.

(1) The owner, operator, or possessor of any equipment or conveyance that has been in an infested water or in any other water subject to a closure order under R657-60-8 or control plan under R657-60-9 that requires decontamination of conveyances and equipment upon leaving the water shall:

(a) immediately remove the drain plug or similar mechanical feature and drain all water from the equipment or conveyance at the take out site, including water held in ballast tanks, bilges, livewells, motors, and other areas of containment; and

(b) immediately inspect the interior and exterior of the equipment or conveyance at the take out site for the presence of Dreissena mussels.

(2)(a) If all water in the equipment or conveyance is drained and the inspection undertaken pursuant to Subsection (1)(b) reveals the equipment and conveyance are free from mussels or shelled organisms, fish, plants and mud, the equipment and conveyance may be transported in or through the state directly from the take out site to the location where it will be:

(i) decontaminated; or

(ii) temporarily stored and subsequently returned to the same water body and take out site as provided in Subsection (5).

(b) To the extent feasible, any drain plug or similar mechanical feature that may retain water or conceal aquatic invasive species shall remain open during the transport and storage of a conveyance.

(3) If all the water in the equipment or conveyance is not drained or the inspection undertaken pursuant to Subsection (1)(b) reveals the equipment or conveyance has attached mussels or shelled organisms, fish, plants, or mud, the equipment and conveyance shall not be moved from the take out site until the division provides the conveyance operator written or electronic authorization to move the equipment or conveyance to a designated location for professional decontamination.

(4) Except as provided in Subsection (5), a person shall not place any equipment or conveyance into a water body or water supply system in the state without first decontaminating the equipment and conveyance when the equipment or conveyance in the previous 30 days has been in:

(a) an infested water; or

(b) other water body or water supply system subject to a closure order under R657-60-8 or control plan under R657-60-9 that requires decontamination of conveyances and equipment upon leaving the water.

(5) Decontamination is not required when a conveyance or equipment is removed from an infested water or other water body subject to decontamination requirements, provided the conveyance and equipment is:

(a) inspected and drained at the take out site, and is free from attached mussels, shelled organisms, fish, plants, and mud as required in Subsections (1) and (2);

(b) returned to the same water body and launched at the same take out site; and

(c) not placed in or on any other Utah water body in the interim without first being decontaminated.

(6)(a) Division personnel may provide the operator of a vessel leaving an infested water, or any water subject to a closure order under R657-60-8 or control plan under R657-60-9, with an inspection certification indicating the date which that vessel left the water body.

(b) An individual who receives a certification of inspection from the division must retain that certification of inspection until:

(i) the operator returns to the same body of water and receives a new certification of inspection upon leaving the water body;

(ii) the operator completes a certification of decontamination; or

(iii) the operator receives a professional decontamination certificate.

R657-60-6. Certification of Inspection; Certification of Decontamination; Certificate of Registration to Perform Decontamination.

(1) The owner, operator or possessor of a vessel desiring to launch on a water body in Utah must:

(a) present an inspection certificate to division personnel if required; and

(b) verify the vessel and any launching device, in the previous 30 days, have not been in an infested water or in any other water subject to closure order under R657-60-8 or control plan under R657-60-9 that requires decontamination of conveyances and equipment upon leaving the water; or

(b) certify the vessel and launching device have been decontaminated.

(2) Certification of decontamination is satisfied by:

(a) previously completing self-decontamination since the vessel and launching device were last in a water described in Subsection (1)(b) and completely filling out and dating a decontamination certification form which can be obtained from the division; or

(b) providing a signed and dated certificate by a division approved professional decontamination service verifying the vessel and launching device were professionally decontaminated since the vessel and launching device were last in a water described in Subsection (1)(b); or

(c) complying with the terms identified in a certificate of registration issued for alternative decontamination measures.

(3) A certificate of registration to complete alternate forms of decontamination may be issued to an individual who:

(a) operates conveyances as a part of their business;

(b) whose conveyances cannot be decontaminated using self decontamination or professional decontamination as defined in R657-60-2(b)(i) and (ii).

(4) Both the decontamination certification form and the professional decontamination certificate, where applicable, must be signed and placed in open view in the window of the launching vehicle prior to launching or placing the vessel in a body of water.

(5)(a) It is unlawful under Section 76-8-504 to knowing falsify a decontamination certification form.

(b) It is unlawful under Section 23-13-11(2) to alter or destroy a certificate of inspection prior to completing a decontamination certification form.

(c) The division may suspend, revoke, or terminate a certificate of registration if the business entity or an employee thereof has violated a term of this rule, the Wildlife Resources Code, or a certificate of registration.

R657-60-7. Wildlife Board Designations of Infested Waters.

(1) The Wildlife Board may designate a geographic area, water body, facility, or water supply system as Infested with Dreissena mussels pursuant to Section 23-27-102 and 23-27-401 without taking the proposal to or receiving recommendations from the regional advisory councils.

(2) The Wildlife Board may designate a particular water body, facility, or water supply system within the state as Infested with Dreissena mussels when sampling indicates the water body, facility, or water supply system meets the minimum criteria for an Infested Water as defined in this rule.

(3) The Wildlife Board may designate a particular water

body, facility, or water supply system outside the state as Infested with Dreissena mussels when it has credible evidence suggesting the presence of a Dreissena mussel in that water body, facility, or water supply system.

(4) Where the number of Infested Waters in a particular area is numerous or growing, or where surveillance activities or infestation containment actions are deficient, the Wildlife Board may designate geographic areas as Infested with Dreissena mussels.

(5) The following water bodies and geographic areas are classified as infested:

(a) all coastal and inland waters in:

(i) California;

(ii) Nevada;

(iii) Arizona;

(iv) all states east of Montana, Wyoming, Colorado, and New Mexico;

(v) the provinces of Ontario and Quebec Canada; and

(vi) Mexico;

(b) Lake Powell and that portion of the:

(i) Colorado River within the boundaries of Glen Canyon National Recreation Area;

(ii) Escalante River between Lake Powell and the Coyote Creek confluence;

(iii) Dirty Devil River between Lake Powell and the Highway 95 bridge; and

(iv) San Juan River between Lake Powell and Clay Hills Crossing; and

(c) other waters established by the Wildlife Board and published on the DWR website.

(6) The Wildlife Board may remove an infested classification if:

(a) the division samples the affected water body for seven (7) consecutive years without a single sampling event producing evidence sufficient to satisfy the criteria for a "suspected" classification, as defined in this rule; or

(b) the controlling entity eradicates all Dreissena mussels at the water body, facility, or water supply system through chemical or biological treatments, desiccation, or freezing, and the division verifies in writing that Dreissena mussels are no longer present.

R657-60-8. Closure Order for a Water Body, Facility, or Water Supply System.

(1)(a) The division may classify a water body, facility, or water supply system as suspected or detected if it meets the minimum criteria for suspected or detected, as defined in this rule.

(b) If the division classifies a water body, facility, or water supply system as either suspected or detected, the division director or designee may, with the concurrence of the executive director, issue an order closing the water body, facility, or water supply system to the introduction or removal of conveyances or equipment.

(c) The director shall consult with the controlling entity of the water body, facility, or water supply system when determining the scope, duration, level and type of closure that will be imposed in order to avoid or minimize disruption of economic and recreational activities.

(d) A closure order may;

(i) close the water entirely to conveyances and equipment;

(ii) authorize the introduction and removal of conveyances and equipment subject to the decontamination requirements in R657-60-2(2)(b) and R657-60-5; or

(iii) impose any other condition or restriction necessary to prevent the movement of Dreissena mussels into or out of the subject water.

(iv) a closure order may not restrict the flow of water without the approval of the controlling entity.

(2)(a) A closure order issued pursuant to Subsection (1) shall be in writing and identify the:

(i) water body, facility, or water supply system subject to the closure order;

(ii) nature and scope of the closure or restrictions;

(iii) reasons for the closure or restrictions;

(iv) conditions upon which the order may be terminated or modified; and

(v) sources for receiving updated information on the presence of Dreissena mussels and closure order.

(b) The closure order shall be mailed, electronically transmitted, or hand delivered to:

(i) the controlling entity of the water body, facility, or water supply system;

and

(ii) any governmental agency or private entity known to have economic, political, or recreational interests significantly impacted by the closure order; and

(iii) any person or entity requesting a copy of the order.

(c) The closure order or its substance shall further be:

(i) posted on the division's web page; and

(ii) published in a newspaper of general circulation in the state of Utah or the affected area.

(3)(a) If a closure order lasts longer than seven days, the division shall provide the controlling entity and post on its web page a written update every 10 days on its efforts to address the Dreissena mussel infestation.

(b) The 10 day update notice cycle will continue for the duration of the closure order.

(4)(a) Notwithstanding the closure authority in Subsection (1), the division may not unilaterally close or restrict a suspected or detected water supply system where the controlling entity has prepared and implemented a control plan in cooperation with the division that effectively controls the spread of Dreissena mussels from the water supply system.

(b) The control plan shall comply with the requirements in R657-60-9.

(5) Except as authorized by the Division in writing, a person may not violate any provision of a closure order.

(6) A closure order or control plan shall remain effective so long as the water body, water supply system, or facility remains classified as suspected or detected.

(7) The director or his designee may remove a Suspected classification if:

(a) the division samples the affected water body for three (3) consecutive years without a single sampling event producing evidence sufficient to satisfy the criteria for a "suspected" classification, as defined in this rule; or

(b) the controlling entity eradicates all Dreissena mussels at the water body, facility, or water supply system through chemical or biological treatments, desiccation, or freezing, and the division verifies that Dreissena mussels are no longer present.

(8) The director or his designee may remove a detected classification if:

(a) the division samples the affected water body for five (5) consecutive years without a single sampling event producing evidence sufficient to satisfy the criteria for a "suspected" classification, as defined in this rule; or

(b) the controlling entity eradicates all Dreissena mussels at the water body, facility, or water supply system through chemical or biological treatments, desiccation, or freezing, and the division verifies that Dreissena mussels are no longer present.

R657-60-9. Control Plan Required.

(1) The controlling entity of a water body, facility, or water supply system may develop and implement a control plan in cooperation with the division prior to infestation designed to:

(a) avoid the infestation of Dreissena mussels; and

(b) control or eradicate an infestation of Dreissena mussels that might occur in the future.

(2) A pre-infestation control plan developed consistent with the requirements in Subsection (3) and approved by the division will eliminate or minimize the duration and impact of a closure order issued pursuant to Section 23-27-303 and R657-60-8.

(3) If a water body, facility, or water supply system within the state is classified as infested, detected, or suspected, and it does not have an approved control plan, the controlling entity shall cooperate with the division in developing and implementing a control plan to address the:

(a) scope and extent of the presence of Dreissena mussels;

(b) actions proposed to control the pathways of spread of Dreissena mussels;

(c) actions proposed to control the spread or eradicate the presence of Dreissena mussels;

(d) methods to decontaminate the water body, facility, or water supply system, if possible;

(e) actions required to systematically monitor the presence of Dreissena mussels; and

(f) requirements and methods to update and revise the plan with scientific advances.

(4) All control plans prepared pursuant to Subsection (3) shall be approved by the Division before implementation.

(5) A control plan prepared pursuant to this Section may require that all conveyances and equipment entering or leaving the subject water to comply with the decontamination requirements in R657-60-2(2)(b) and R657-60-5.

(6) Except as authorized by the Division and the controlling entity in writing, a person may not violate any provision of a control plan.

R657-60-10. Procedure for Establishing a Memorandum of Understanding with the Utah Department of Transportation.

(1) The division director or designee shall negotiate an agreement with the Utah Department of Transportation for use of ports of entry for detection and interdiction of Dreissena Mussels illegally transported into and within the state. Both the Division of Wildlife Resources and the Department of Transportation must agree upon all aspects of Dreissena Mussel interdiction at ports of entry.

(2) The Memorandum shall include the following:

(a) methods and protocols for reimbursing the department for costs associated with Dreissena Mussel interdiction;

(b) identification of ports of entry suitable for interdiction operations;

(c) identification of locations at a specific port of entry suitable for interdiction operations;

(d) methods and protocols for disposing of wastewater associated with decontamination of equipment and conveyances;

(e) dates and time periods suitable for interdiction efforts at specific ports of entry;

(f) signage notifying motorists of the vehicles that must stop at the port of entry for inspection;

(g) priorities of use during congested periods between the department's port responsibilities and the division's interdiction activities;

(h) methods for determining the length, location and dates of interdiction;

(i) training responsibilities for personnel involved in interdiction activities; and

(j) methods for division regional personnel to establish interdiction efforts at ports within each region.

R657-60-11. Conveyance or Equipment Detainment.

(1) To eradicate and prevent the infestation of a Dreissena mussel, the division may:

(a) temporarily stop, detain, inspect, quarantine, and impound a conveyance or equipment that the division reasonably believes is in violation of Section 23-27-201 or R657-60-5;

(b) order a person to decontaminate a conveyance or equipment that the division reasonably believes is in violation of Section 23-27-201 or R657-60-5.

(2) The division, a port-of-entry agent or a peace officer may detain, quarantine, or impound a conveyance or equipment if:

(a) the division, agent, or peace officer reasonably believes that the person transporting the conveyance or equipment is in violation of Section 23-27-201 or R657-60-5.

(3) The detainment, quarantine, or impoundment authorized by Subsection (2) may continue for:

(a) up to five days; or

(b) the period of time necessary to:

(i) decontaminate the conveyance or equipment; and

(ii) ensure that a Dreissena mussel is not living on or in the conveyance or equipment.

R657-60-12. Penalty for Violation.

(1) A violation of any provision of this rule is punishable as provided in Section 23-13-11.

(2) A violation of any provision of a closure order issued under R657-60-8 or a control plan created under R657-60-9 is punishable as a criminal infraction as provided in Section 23-13-11.

R657-60-13. Inspection Stations.

(1) Inspection stations may be established for administrative purposes to interdict the spread of Dreissena mussels consistent with Utah Code Title 23, Chapter 27 "Aquatic Invasive Species Act," and this rule.

(2) The Division may establish inspection stations at locations authorized under Section 23-27-301 where:

(a) there is a high probability of intercepting conveyances or equipment transporting Dreissena mussels;

(b) there is typically a high level of boat and trailer traffic; or

(c) inspection of conveyances or equipment will provide increased protection against the introduction of Dreissena mussels into a water body that is not classified as infested, suspected, or detected under R657-60-2.

(3) Inspection stations shall have adequate space for conveyances or equipment to be stopped, inspected, and if necessary, decontaminated, without interfering with the public's use of highways or presenting a safety risk to the public.

(4) Inspection stations shall have adequate signage providing the public:

(a) notice that the inspection station is open and operational;

(b) notice that all persons transporting conveyances or equipment must stop at the inspection station and submit their conveyance and equipment for inspection; and

(c) an adequate opportunity to safely stop at the inspection station.

(5) Any person transporting a conveyance or equipment is required to stop at an inspection station during its hours of operation and submit that conveyance or equipment to the Division for inspection.

(6) The Division shall conduct an inspection of a conveyance or equipment that is stopped at an inspection station as follows:

(a) Division personnel will determine whether the conveyance or equipment has been in an infested, suspected, or detected water body within the past 30 days.

(b) If the conveyance or equipment has not been in an infested, suspected, or detected water body within the past 30

days, the Division will:

(i) conduct a brief visual inspection of the conveyance or equipment to ensure that there are no visible Dreissena mussels;

(ii) provide educational materials regarding aquatic invasive species risks and regulations in Utah; and

(iii) provide a certificate of inspection to the person in possession of the conveyance or equipment.

(c) If the conveyance or equipment has been in an infested, suspected, or detected water body within the past 30 days, the Division will:

(i) verify all water is drained from the conveyance or equipment, including water held in ballast tanks, bilges, livewells, motors, and other areas of containment;

(ii) verify that the surface of the conveyance or equipment is free of Dreissena mussels, shelled organisms, fish, plants, and mud; and

(iii) verify that the conveyance or equipment has been or will be decontaminated as defined in R657-60-2(b) before launching in a Utah water body.

(d) The Division may require professional decontamination of conveyances or equipment that have been in an infested, suspected, or detected water within the past 30 days and failed to comply with the draining and cleaning requirements established in R657-60-5(3).

(7) The Division may issue a certification of inspection and decontamination to persons who complete inspections and any applicable decontamination at an inspection station.

(8) Inspection stations shall be operated in a manner that minimizes the length of time of an inspection while ensuring that conveyances are free from the presence of Dreissena mussels.

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R657. Natural Resources, Wildlife Resources.
R657-65. Urban Deer Control.
R657-65-1. Authority and Purpose.

(1) This rule is promulgated under authority of Sections 23-14-3, 23-14-18, and 23-14-19.

(2) The purpose of this rule is to enable a city to design and administer a control plan for the lethal or non-lethal removal of resident deer damaging private property or threatening public safety within the city.

R657-65-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Deer" means wild deer (Odocoileus hemionus or Odocoileus virginianus) living in nature and does not include privately owned, captive deer.

(b) "Division" means the Utah Division of Wildlife Resources.

(c) "City" means an incorporated municipality with greater than 1,000 residents.

(d) "Resident deer" means a deer that lives within city boundaries year-around.

(e) "Urban deer control plan" means a document designed, created, and administered by a city that establishes the protocols and methodologies it will pursue to control and mitigate private property damage or public safety threats caused by deer within its incorporated boundaries.

R657-65-3. Authorization to Create and Administer an Urban Deer Control Plan.

(1) A city with a resident deer population that is significantly damaging private property or threatening public safety within its boundaries may request the Division for a certificate of registration ("COR") to design, create, and administer an urban deer control plan.

(2) The Division may issue an urban deer control plan COR to a city, provided:

(a) the application is filed by a city;

(b) resident deer are collectively causing significant damage to private property or threatening public safety within the city's incorporated boundaries;

(c) it has enacted an ordinance prohibiting the feeding of deer, elk, and moose;

(d) it has general liability insurance in the amount of $1,000,000.00 or more that covers liability claims that may arise from designing, creating, and administering an urban deer control plan;

(e) it agrees, without waiving immunity or any other limitation or provision in the Utah Governmental Immunity Act, Utah Code Sections 63G-7-101 through 63G-7-904, to hold harmless and indemnify the Division against any claims or damages arising from its deer removal activities undertaken pursuant to the urban deer control plan COR, except for any allocated share of fault and damages attributable to the Division's actual involvement in deer removal activities on the ground: and

(f) it submits with its application the estimated population of resident deer in the city and the final target population number it seeks to achieve through deer removal.

R657-65-4. COR Authorities and Limitations.

(1) An urban deer control plan COR issued to a city will:

(a) specify for each year of the COR term:

(i) the seasonal time period when deer may be removed;

(ii) the total number of deer that may be removed; and

(iii) the number of deer by gender that may be removed: and

(b) authorize it to design, create, and administer an urban deer control plan consistent with the season and number limitations imposed in the COR and the following authorities and limitations.

(2) The COR authorizes the city to:

(a) prescribe and employ lethal methods of take to control deer, provided the methods are otherwise in compliance with state and federal law;

(b) utilize baiting to facilitate safe and effective deer removal activities;

(c) select and supervise individuals to perform specified deer removal activities, provided the city:

(i) issues to each individual authorized to remove deer a written authorization and tag that:

(A) is on a form prescribed by the Division;

(B) is signed by the city manager and recipient;

(C) identifies the recipient's name, address, date of birth, gender, height, weight, and eye color;

(D) describes the locations, time periods, methods of take, and related activities authorized by the city; and

(E) includes a detachable tag consistent with the requirements in Section 23-20-30;

(d) allow a single individual to take more than one deer;

(e) permit spotlighting to facilitate non-lethal deer removal or carcass recovery efforts; and

(f) remove deer consistent with the annual buck and doe take prescriptions and season limitations set forth in the COR.

(3) The city will:

(a) require individuals authorized to lethally remove deer to:

(i) tag the carcass consistent with Section 23-20-30; and

(ii) comply with all federal, state, and local laws pertaining

to the possession, use, and discharge of a dangerous weapon; and

(b) take measures to ensure that:

(i) deer carcasses are salvaged consistent with Section 23-20-8 (Waste of Wildlife) and disposed of as provided by law;

(ii) viscera is removed from the kill site and disposed of as provided by law;

(iii) antlers of lethally removed deer are promptly surrendered to the Division and not retained by the city or the person that takes the animal: and

(iv) submit an annual report to the Division by March 1 on lethal removal activities, including the following information for each permit issued:

(A) name of shooter/permit holder;

(B) sex of the animal;

(C) date of harvest; and

(D) disposition of carcass, ie, retained by hunter, donated, etc.

(4) The city will not:

(a)(i) capture a deer for release outside municipal boundaries without a written capture and relocation plan prepared in coordination with and approved by the Division;

(ii) capture or relocate a deer in violation of the approved capture and relocation plan; or

(iii) allow an employee, officer, agent, licensee, or contractor who has not been certified and approved according to the written capture and relocation plan to capture or release a deer.

(b) sell or barter a deer carcass or otherwise use it for pecuniary gain without prior written approval from the Division;

(c) collect a fee or compensation from a person or entity it authorizes to remove deer from its incorporated boundaries, unless the fee or compensation is:

(i) $50 or less;

(ii) used exclusively to recoup the actual costs incurred by the city in:

(A) selecting and qualifying the person; or

(B) butchering and processing lethally removed deer for donation; and

(iii) approved by the Division in writing;

(d) undertake or authorize deer removal activities outside:

(i) incorporated city boundaries or any unincorporated areas approved by the Division and the county; or

(ii) the the season time frame prescribed in the COR;

(e) remove more deer, collectively or by gender, than authorized in the COR; or

(f) authorize the discharge of firearms or archery equipment for deer removal:

(i) between one half hour after official sunset and one half hour before official sunrise; or

(ii) in violation of federal, state, or local laws.

R657-65-5. Urban Deer Control Plan.

(1) Upon receipt of an urban deer control plan COR, the city must prepare an urban deer control plan consistent with this Subsection and the COR prior to undertaking any deer removal activities.

(2) The urban deer control plan will address and prescribe, at a minimum, the:

(a) lethal methods of take that may be used to remove deer and the conditions under which each may be employed;

(b) conditions and restrictions under which baiting and spotlighting may be used to facilitate deer removal;

(c) persons eligible to perform deer removal activities and the requirements imposed on them;

(d) locations and time periods where specified types of deer removal activities may be employed or authorized;

(e) requirements for tagging deer carcasses;

(f) protocols for carcass removal and disposal;

(g) procedures for promptly returning to the Division all antlers of lethally removed deer;

(h) procedures for obtaining Division input and approval on live capture and relocation projects; and

(i) the estimated population of resident deer in the city and the final target population number the city seeks to achieve through deer removal.

(3) All aspects of the plan must be consistent with the authorizations and limitations imposed in this rule and the COR.

(4) If the city desires to capture and relocate resident deer, it must petition the Division to include a capture and relocation component in its urban deer control plan.

(a) The Division shall have sole discretion to authorize or prohibit capture and relocation as part of an urban deer control plan.

(5)(a) The city will solicit and consider input in the formulation and development of the urban deer control plan from:

(i) the Division;

(ii) the public;

(iii) interested businesses and organizations; and

(iv) local, state, and federal governments.

(b) The Division may provide technical assistance to the city in preparing the urban deer control plan.

(c) After formulating a draft plan, the city will hold a public meeting to take and consider input on the draft before finalizing or implementing it.

(6) The city will assume full responsibility for:

(a) all costs associated with designing, establishing, implementing, and operating the urban deer control plan and all its associated activities; and

(b) for the acts and omissions of its officers, employees, agents, contractors, and licensees in designing, preparing, and implementing its urban deer control plan and undertaking the activities authorized thereunder.

R657-65-6. COR Term, Termination, Renewal, and Amendment.

(1) An urban deer control plan COR issued under this rule will remain valid for three years from the date of issuance.

(2)(a) The Division and the city shall each have the right to unilaterally terminate an urban deer control plan COR with or without cause upon 7 days advance written notice to the other.

(b) Upon termination or expiration of the COR, the city and its officers, employees, agents, contractors, and licensees must cease all deer removal activities formally authorized by the COR.

(3) Upon application by a city, the Division may renew an urban deer control plan COR for an additional three year term, provided:

(a) the city complies with the conditions in R657-65-3(2); and

(b) the application for renewal is presented at a public meeting for comment and approved by the city council.

(4) A urban deer control plan may be amended upon mutual written agreement of the city and Division, provided the amendment is consistent with the authorizations and limitations in this rule.

R657-65-7. Violations.

Pursuant to Section 23-19-9, the Division may suspend, restrict, or deny an urban deer control plan COR for any intentional, knowing, or reckless violation of the Wildlife Code, this rule, or the terms of the COR.

KEY: wildlife, certificate of registration

August 7, 2015 23-14-3

Notice of Continuation July 19, 2018 23-14-18

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-310. Regulation of Bail Bond Recovery and Enforcement Agents.
R722-310-1. Purpose.

The purpose of the rule is to establish procedures for the licensing of bail enforcement agents, bail recovery agents, and bail recovery apprentices.

R722-310-2. Authority.

This rule is authorized by Subsection 53-11-103(5).

R722-310-3. Definitions.

(1) Terms used in this rule are defined in Section 53-11-102.

(2) In addition:

(a) "act involving moral turpitude" means conduct which:

(i) is done knowingly contrary to justice, honesty, or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another's property;

(b) "bureau" means the Bureau of Criminal Identification within the Department of Public Safety established by Section 53-10-201;

(c) "felony" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States for which the penalty is a term of imprisonment in excess of one year;

(d) "licensee" means an individual who has received a bail enforcement agent license, bail recovery agent license or bail recovery apprentice license;

(e) "revocation" means the permanent deprivation of a bail bond recovery license, however revocation does not preclude an individual from applying for a new bail bond recovery license if the reason for revocation no longer exists; and

(f) "suspension" means the temporary deprivation, for a specified period of time, of a bail bond recovery license.

R722-310-4. Application for Licensure.

(1)(a) An applicant seeking to obtain a license as a bail enforcement agent, bail recovery agent, or a bail recovery apprentice shall submit a completed application packet to the bureau.

(b) The application packet shall include:

(i) a written application form provided by the bureau with the applicant's residential or physical address and mailing or business address;

(ii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the applicant submitted a photo which meets these requirements to the bureau within the previous three years;

(iii) a photocopy of a state-issued driver license or identification card;

(iv) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints;

(v) a non-refundable processing fee in the form of cash, check, money order, or credit card in the amount required by Section 53-11-115;

(vi) documentation from an approved provider indicating that the applicant has completed the 16-hour training program, described in Subsection 53-11-108(4); and

(vii) documentation showing the licensee has a surety bond in amount of $10,000 which meets the requirements described in Subsection 53-11-113(3).

(2) If the applicant is applying for license as a bail enforcement agent, the applicant must also provide documentation indicating that the applicant has 2,000 hours of experience related to bail bond recovery and enforcement.

(3) If an applicant for license as a bail enforcement agent wishes to operate a bail bond recovery agency, the applicant shall also provide:

(a) the name under which the bail bond recovery agency will operate; and

(b) a certificate of workers' compensation insurance, if applicable.

(4) If the applicant is applying for license as a bail recovery agent, the applicant shall also provide:

(a) documentation indicating that the applicant has 1,000 hours of experience related to bail bond recovery and enforcement; and

(b) verification from a bail bond recovery agency indicating that the agency will employ or contract with the applicant.

(5) If the applicant is applying for license as a bail recovery apprentice, the applicant shall also provide verification from a bail bond recovery agency indicating that the agency will employ or contract with the applicant.

(6) If the applicant is seeking to carry a firearm as a licensee, the applicant shall comply with all of the requirements found in R722-300 and provide documentation from an approved bail enforcement firearms instructor indicating that the applicant has completed the 16-hour firearms training course required in Subsection 53-11-108(5).

(7) Once the application packet is complete, the bureau shall submit it to the board for their review at the next regularly scheduled meeting.

R722-310-5. Training Program Requirements.

(1) The 16-hour training program described in Subsection 53-11-108(4), which is required for licensure, shall be provided by a training program provider approved by the board.

(2) Training program providers seeking to become approved by the board shall provide a detailed course curriculum for the board's review.

(3)(a) Training programs which are approved by the board shall be open to anyone who wishes to attend.

(b) If a training provider charges a fee for the training program, the same fee shall apply to all participants in the training program.

(4) Training program providers shall notify the bureau, at least five days in advance, of the dates, times, and location of all courses provided.

(5)(a) Bureau investigators shall periodically monitor approved training programs to ensure that the training program is providing instruction as required by Subsection 53-11-108(4).

(b) The training program may not charge an investigator a fee for monitoring the program.

(6) If the board receives information that a training program is not providing instruction as required by Subsection 53-11-108(4), the board may terminate its approval of the training program after notice and an opportunity for a hearing before the board.

R722-310-6. Verification of Experience.

(1) When verifying the experience necessary for licensure as a bail enforcement agent or a bail recovery agent, an applicant shall provide a written statement which lists, in detail, the number of hours and the type of bail bond recovery work performed by the applicant.

(2) The verification of experience shall be signed and notarized by the applicant's employer or by an individual who has personal knowledge of the bail bond recovery work performed.

(3) The bail bond recovery work shall have been performed within ten years from the date of the application.

R722-310-7. Credit for Specified Training.

(1) An applicant who wishes to receive credit towards the experience requirement for licensure, shall provide documentation indicating that the applicant has a criminal justice bachelor's degree or has successfully completed a basic training course described in Subsections 53-11-114(1)(b) or 53-11-114(1)(c).

(2) An applicant may receive up to 1,000 hours of credit towards the experience requirement for licensure under Section 53-11-114.

(3) An applicant seeking credit under Section 53-11-114, is not exempt from completing the 16-hour training course required by Subsection 53-11-108(4).

R722-310-8. Renewal of a License.

(1)(a) A licensee seeking to renew a license as a bail enforcement agent, bail recovery agent, or a bail recovery apprentice shall submit a completed renewal packet to the bureau.

(b) The renewal packet shall include:

(i) a written renewal form provided by the bureau with the licensee's residential or physical address and mailing or business address;

(ii) one recent color photograph of passport quality which contains the licensee's name written on the back of the photograph, unless the licensee submitted a photo which meets these requirements to the bureau within the previous three years;

(iii) a non-refundable processing fee in the form of cash, check, money order, or credit card in the amount required by Section 53-11-115;

(iv) evidence that the licensee has completed eight hours of continuing classroom instruction required by Subsection 53-11-111(2); and

(v) documentation showing the licensee has a $10,000 surety bond which meets the requirements described in Subsection 53-11-113(3).

(2)(a) Once the renewal packet is complete, the bureau shall review it to determine if the licensee meets the requirements for renewal.

(b) If the bureau determines the licensee does not meet the requirements for renewal, the bureau shall submit the renewal packet to the board for their review at the next regularly scheduled meeting.

(3) A licensee whose license has been expired for more than 90 days, shall reapply and meet all requirements found in R722-310-4.

R722-310-9. Requirements for Continuing Classroom Instruction.

(1) A licensee who renews his or her license shall attend eight hours of continuing classroom instruction required by Subsections 53-11-111(2) and 53-11-109(2).

R722-310-10. Criteria for Certified Bail Enforcement Firearms Instructor.

(1) The 16-hour firearms training program described in Subsection 53-11-108(5), shall be provided by a bail enforcement firearms instructor approved by the bureau.

(2) A bail enforcement firearms instructor approved by the bureau shall be a certified Utah concealed firearm permit instructor under Subsection 53-5-704(9) and be in good standing with the bureau.

(3)(a) Each approved bail enforcement firearms instructor shall adhere to the curriculum adopted by the bureau.

(b) An instructor may supplement, but may not detract from the set curriculum.

R722-310-11. Notice to Commissioner.

A bail bond recovery agency may provide notice of a change in the name or address of a bail bond agency, or any change of employees or contract employees, to the commissioner as required by Subsection 53-11-116(5) by sending a written notice to the bureau that is signed by the licensee.

R722-310-12. Adjudicative Proceedings.

(1) All adjudicative proceedings shall be informal according to the provisions in Sections 63G-4-202 through 63G-4-203.

(2)(a) The board may deny a license application or renewal for failure to comply with the requirements in Sections 53-11-108 through 53-11-115, or for any of the reasons set forth in Section 53-11-118.

(b) The bureau may deny a license renewal for failure to comply with the requirements in Sections 53-11-108 through 53-11-115, or for any of the reasons set forth in Section 53-11-118.

(3) The board shall review all investigations presented by the bureau and may take disciplinary action against a licensee based on a violation of Section 53-11-119.

(4)(a) The board shall issue a written decision within ten days after the board meets to decide the matter.

(b) The board's written decision shall indicate that the applicant or licensee may appeal to the commissioner within 30 days from the date that the written decision is issued.

(5)(a) If an applicant or licensee appeals the board's decision, the commissioner, or his designee, shall review the materials in the bureau's file, the findings of the board along with any materials submitted by the applicant or licensee, and may affirm, adopt, modify, supplement, reverse, or reject the board's findings, or return the matter to the board for reconsideration.

(b) If the applicant or licensee requests a hearing, the commissioner, or his designee, shall schedule a hearing within 60 days from the receipt of the request for review.

R722-310-13. Identification of Licensees.

(1)(a) A licensee shall be issued an identification card by the bureau which identifies the licensee as a bail enforcement agent, bail recovery agent or bail recovery apprentice.

(b) The identification card shall indicate on its face if the licensee is authorized to carry a loaded and concealed firearm as provided in Subsection 53-11-108(5).

(2)(a) A bail enforcement agent or bail recovery agent may possess and display a badge that is identical to the badge depicted on the bureau's website in accordance with Section 53-11-121.

(b) A bail enforcement agent or bail recovery agent may obtain a badge from any source, so long as it complies with the following specifications:

(i) the badge shall be 2.55 inches high and 2.66 inches wide;

(ii) the badge shall be in the shape of a five-point star on a circle;

(iii) the star shall be gold in color and the circle must be silver in color;

(iv) the center of the star shall be black in color and contain a seal with the phrase "Liberty and Justice For All";

(v) the text of the badge shall be written in block lettering and must be black;

(vi) the silver circle shall contain two panels with writing to indicate whether the agent is a bail enforcement or bail recovery agent; and

(vii) the badge shall contain two gold panels with writing to indicate the word "Utah" on the top panel and the agent's license number on the bottom panel.

(3) The design approved by the board under Subsection 53-11-121(5) shall contain the words "bail enforcement agent" or "bail recovery agent" written on both the chest and back in writing which is:

(a) at least two inches in height on the back;

(b) at least one half of an inch in height on the front; and

(c) in a color that contrasts with the color of the item of clothing.

KEY: bail bond enforcement agents, bail bond recovery agents, bail bond recovery apprentices, licenses
July 11, 2018 53-11-103(5)
Notice of Continuation January 7, 2015

R746. Public Service Commission, Administration.
R746-344. Filing Requirements for Telephone Corporations with Less Than 5,000 Access Line Subscribers.
R746-344-1. Purpose.

A. Standard filing requirements are to provide uniformity of information for general rate case filings. The required information shall be filed on schedules, approved by the Commission, with the application for a change in rates. Providing this information with the rate application shall simplify proceedings, eliminate expense, and enhance the effectiveness of the fact finding process.

B. The standard filing requirements will provide factual information in an organized and referenced manner. This information may be used by the Commission, the Division of Public Utilities, or other interested parties to the case.

R746-344-2. Applicability.

The completion of the schedules approved by the Commission shall fulfill the requirement to provide necessary information to support proposed rate changes for telephone utilities with less than 5,000 subscriber access lines as set forth in Sections 54-7-12(7). The completed approved schedules shall be received by the Commission at least 30 days in advance of the proposed effective date of the rate changes.

R746-344-3. Hearing Process.

A. The Commission may, upon its own motion or upon complaint, set the case for hearing. If the case is set for hearing, the applicant may resubmit the schedules contained in the filing requirements as its primary exhibits. The Commission may require written direct testimony.

R746-344-4. Selection of a Test Year.

The applicant must base its rate change application on twelve months of data called a test year. The proposed test year can be historical, forecasted, or a combination of historical and forecasted months, not to exceed twelve months of forecasted data from the date the application is first received by the Commission.

R746-344-5. Forecasted Data.

A. The applicant shall provide the Commission with one copy of assumptions and the supporting work papers used to develop forecasted data. The applicant may be required by the Commission to provide updated actual data as it becomes available or to recalculate the forecasted data using justifiable alternative assumptions. An applicant which utilizes forecasted data for the test year, shall use an average rate base and capital structure to calculate the revenue deficiency.

B. The applicant may limit the change to known and measurable changes from the Federal Communications Commission's or state policies, if the revenue change is only required because of changes in those policies.

R746-344-6. Toll Revenues.

The applicant shall provide the Commission with a copy of the work papers and methodology used to develop the toll revenues included in the case.

R746-344-7. Audited Financial Statements.

If the applicant is audited by an independent certified public accounting firm, the applicant shall provide the Commission with one copy of the most recent audited financial statements, management letters and opinions prepared by that firm.

R746-344-8. Assistance Service.

Approved schedules will be self-explanatory. The applicant may contact the Division of Public Utilities for assistance if it does not understand the rate-making process for the schedules. A letter requesting assistance should be sent to:

Manager, Telecommunications Section
Division of Public Utilities
160 East 300 South Street
P.O. Box 45802
Salt Lake City, Utah 84145

KEY: public utilities, telecommunications, rules and procedures
1988 54-7-12(5)(6)
Notice of Continuation July 3, 2018

R746. Public Service Commission, Administration.
R746-345. Pole Attachments.
R746-345-1. Authorization.

A. Authorization of Rules -- Consistent with the Pole Attachment Act, 47 U.S.C. 224(c), and 54-3-1,54-4-1, and 54-4-13, the Public Service Commission shall have the power to regulate the rates, terms and conditions by which a public utility, as defined in 54-2-1 including telephone corporations as defined in 54-2-2, can permit attachments to its poles by an attaching entity.

B. Application of Rules -- These rules shall apply to each public utility that permits pole attachments to utility's poles by an attaching entity.

1. Although specifically excluded from regulation by the Commission in 54-2-1, solely for the purpose of any pole attachment, these rules apply to any wireless provider.

2. Pursuant to these rules, a public utility must allow any attaching entity nondiscriminatory access to utility poles at rates, terms and conditions that are just and reasonable.

C. Application of Rate Methodology -- The rate methodology described in Section R746-345-5 shall be used to determine rates that a public utility may charge an attaching entity to attach to its poles for compensation.

R746-345-2. General Definitions.

A. "Attaching Entity" -- A public utility, wireless provider, cable television company, communications company, or other entity that provides information or telecommunications services that attaches to a pole owned or controlled by a public utility.

B. "Attachment Space" -- The amount of usable space on a pole occupied by a pole attachment as provided for in Subsection R746-345-5(B)(3)(d).

C. "Distribution Pole" -- A utility pole, excluding towers, used by a pole owner to support mainly overhead distribution wires or cables.

D. "Make-Ready Work" -- The changes to be made to a pole owner's poles, its own pole attachments, the existing pole attachments of other attaching entities, or the existing additional equipment associated with such attachments, which changes

may be needed to accommodate a proposed additional pole attachment. Such make-ready work is coordinated by the pole owner and is performed by the owners of the poles or owners of the pole attachments and additional equipment or as otherwise agreed to by these owners.

E. "Pole Attachment" -- All equipment, and the devices used to attach the equipment, of an attaching entity within that attaching entity's allocated attachment space. A new or existing service wire drop pole attachment that is attached to the same pole as an existing attachment of the attaching entity is considered a component of the existing attachment for purposes of this rule. Additional equipment that is placed within an attaching entity's existing attachment space, and equipment placed in the unuseable space which is used in conjunction with the attachments, is not an additional pole attachment for rental rate purposes. All equipment and devices shall meet applicable code and contractual requirements. Pole attachments do not include items used for decorations, signage, barriers, lighting, sports equipment, or cameras.

F. "Pole Owner"-- A public utility having ownership or control of poles used, in whole or in part, for any electric or telecommunications services.

G. "Secondary Pole" -- A pole used solely to provide service wire drops, the aerial wires or cables connecting to a customer premise.

H. "Secondary Pole Attachment" -- A pole attachment to a secondary pole.

I. "Wireless Provider" -- A corporation, partnership, or firm that provides cellular, Personal Communications Systems (PCS), or other commercial mobile radio service as defined in 47 U.S.C. 332 that has been issued a covering license by the Federal Communications Commission.

R746-345-3. Tariffs and Contracts.

A. Tariff Filings and Standard Contracts -- A pole owner shall submit a tariff and standard contract, or a Statement of Generally Available Terms (SGAT), specifying the rates, terms and conditions for any pole attachment, to the Commission for approval.

1. A pole owner must petition the Commission for any changes or modifications to the rates, terms, or conditions of its tariff, standard contract or SGAT. A petition for change or modification must include a showing why the rate, term or condition is no longer just and reasonable. A change in rates, terms or conditions of an approved tariff, standard contract or SGAT will not become effective unless and until it has been approved by the Commission.

2. The tariff, standard contract or SGAT shall identify all rates, fees, and charges applicable to any pole attachment. The tariff, standard contract, and SGAT shall also include:

a. a description of the permitting process, the inspection process, the joint audit process, including shared scheduling and costs, and any non-recurring fee or charge applicable thereto;

b. emergency access provisions; and

c. any back rent recovery or unauthorized pole attachment fee and any applicable procedures for determining the liability of an attaching entity to pay back rent or any non-recurring fee or charge applicable thereto.

B. Establishing the Pole Attachment Relationship -- The pole attachment relationship shall be established when the pole owner and the attaching entity have executed the approved standard contract, or SGAT, or other Commission-approved contract.

1. Exception -- The pole owner and attaching entity may voluntarily negotiate an alternative contract incorporating some, all, or none of the terms of the standard contract or SGAT. The parties shall submit the negotiated contract to the Commission for approval. In situations in which the pole owner and attaching entity are unable to agree following good faith negotiations, the pole owner or attaching entity may petition the Commission for resolution as provided in Section R746-345-6. Pending resolution by the Commission, the parties shall use the standard contract or SGAT.

C. Make-Ready Work, Timeline and Cost Methodology -- As a part of the application process, the pole owner shall provide the applicant with an estimate of the cost of the make-ready work required and the expected time to complete the make-ready work as provided for in this sub-section. All applications by a potential attacher within a given calendar month shall be counted as a single application for the purposes of calculating the response time to complete the make-ready estimate for the pole owner. The due date for a response to all applications within the calendar month shall be calculated from the date of the last application during that month. As an alternative to all of the time periods allowed for construction below, a pole owner may provide the applicant with an estimated time by which the work could be completed that is different than the standard time periods contained in this rule with an explanation for the anticipated delay. Pole owners must provide this alternative estimate within the estimate timelines provided below. Applicants that wish to consider self-building shall inform the pole owner at the time of application that they are considering the self-build option, if available, and they would like a two-alternative make-ready bid. The pole owner and each existing attaching entity are responsible to determine what portion, if any, of the make-ready work their facilities require which may be performed through a self-build option and what conditions, if any, are associated with such self-build option. In the first alternative, the pole owner and attaching entities would be responsible for all necessary make-ready work. For the second alternative, the pole owner and attaching entities will identify what make-ready work they will perform, if any, with an associated cost estimate, and also identify what make-ready work, if any, the owner is agreeable to have performed through a self-build option and the conditions, if any, for such self-build option.

1. For applications up to 20 poles, the pole owner shall respond with either an approval or a rejection within 45 days. At the same time as an approval is given, a completed make-ready estimate must be provided to the applicant explaining what make-ready work must be done, the cost of that work, and the time by which the work would be finished, that is no later than 120 days from receiving an initial deposit payment for the make-ready work.

2. For applications that represent greater than 20 poles, but equal to or less than .5% of the pole owner's poles in Utah, or 300 poles, whichever is lower, the time for the pole owner's approval and make-ready estimate shall be extended to 60 days, and the time for construction will remain at a maximum of 120 days.

3. For applications that represent greater than the number of poles calculated in section 3(2)(C)(2) above, but equal to or less than 5% of the pole owner's poles in Utah, or 3,000 poles, whichever is lower, the time for the approval and make-ready estimate shall be extended to 90 days, and the time for construction will be extended to 180 days.

4. For applications that represent greater than 5% of the pole owner's poles in Utah, or 3,000 poles, whichever is lower, the times for the above activities will be negotiated in good faith. The pole owner shall, within 20 days of the application, inform the applicant of the date by which the pole owner will have the make-ready estimate and make-ready construction time lines prepared for the applicant. If the applicant believes the pole owner is not acting in good faith, it may appeal to the Commission to either resolve the issue of when the make-ready estimate and construction period information should be delivered or to arbitrate the negotiations.

5. If the pole owner rejects any application, the pole owner

must state the specific reasons for doing so. Applicants may appeal to the Commission if they do not agree that the pole owner's stated reasons are sufficient grounds for rejection.

6. For all approved applications, the applicant will either accept or reject the make-ready estimate. If it accepts the make-ready estimate and make-ready construction time line, the work must be done on schedule and for the estimated make-ready amount, or less, and the applicant will be billed for actual charges up to the bid amount.

7. Applicants must pay 50% of the make-ready estimate in advance of construction, and pay the remainder in two subsequent installment payments: an additional 25 percent payment when half of the work is done and the balance after the work is completed. Applicants may elect to pay the entire amount up front.

8. An applicant may, at its own discretion, exercise any of the self-build options given for the required make-ready work subject to the conditions made.

9. An applicant may reject a make-ready estimate if it wishes to contest, before the Commission, that the make-ready estimate or make-ready construction time line is not prepared in good-faith, or is unreasonable or not in the public interest.

D. Pole Attachment Placement -- All new copper cable attachments shall be placed at the lowest level permitted by applicable safety codes. In cases where an existing copper attachment has been placed in a location higher than the minimum height the safety codes require, the pole owner shall determine if the proposed attachment may be safely attached either above or below the existing copper attachment taking account of midspan clearances and potential crossovers. If these attachment locations, above or below the copper cable, comply with the applicable safety code, the attacher may attach to the pole without paying to move the copper cable. The owner of the copper cable may elect to pay the costs of having the cable moved to the lowest position as part of the attachment process, or it may elect to move the cable themselves prior to the attaching entity's attachment. If the copper cable must be moved in order for the attacher to be able to safely make its attachment, the attacher shall pay the costs associated with moving the existing copper cable.

R746-345-4. Pole Labeling.

A. Pole Labeling -- A pole owner must label poles to indicate ownership. A pole owner shall label any new pole installed, after the effective date of this rule, immediately upon installation. Poles installed prior to the effective date of this rule, shall be labeled at the time of routine maintenance, normal replacement, change-out, or relocation, and whenever practicable. Labels shall be based on a good faith assertion of ownership.

B. Pole Attachment Labeling -- An attaching entity must label its pole attachments to indicate ownership. Pole attachment labels may not be placed in a manner that could be interpreted to indicate an ownership of the utility pole. An attaching entity shall label any new pole attachment installed, after the effective date of this rule, immediately upon installation. Pole Attachments installed prior to the effective date of this rule shall be labeled at the time of routine maintenance, normal replacement, rearrangement, rebuilding, or reconstruction, and whenever practicable.

C. Exception -- Electrical power pole attachments do not need to be labeled.

R746-345-5. Rental Rate Formula and Method.

A. Rate Formula -- Any rate based on the rate formula in this Subsection shall be considered just and reasonable unless determined otherwise by the Commission. A pole attachment rental rate shall be based on publicly filed data and must conform to the Federal Communications Commission's rules and regulations governing pole attachments, except as modified by this Section. A pole attachment rental rate shall be calculated and charged as an annual per attachment rental rate for each attachment space used by an attaching entity. The following formula and presumptions shall be used to establish pole attachment rates:

1. Formula:

Rate per attachment space = (Space Used x (1/Usable Space) x Cost of Bare Pole x Carrying Charge Rate)

2. Definitions:

a. "Carrying Charge Rate" means the percentage of a pole owner's depreciation expense, administrative and general expenses, maintenance expenses, taxes, rate of return, pro-rated annualized costs for pole audits or other expenses that are attributable to the pole owner's investment and management of poles.

b. "Cost of Bare Pole" can be defined as either "net cost" or "gross cost." "Gross cost" means the original investment, purchase price, of poles and fixtures, excluding crossarms and appurtenances, divided by the number of poles represented in the investment amount. "Net cost" means the original investment, purchase price, of poles and fixtures, excluding crossarms and appurtenances, less depreciation reserve and deferred federal income taxes associated with the pole investment, divided by the number of poles represented in the investment amount. A pole owner may use gross cost only when its net cost is a negative balance. If using the net or gross cost results in an unfair or unreasonable outcome, a pole owner or attaching entity can seek relief from the Commission under R746-345-5 C.

c. "Unusable Space" means the space on a utility pole below the usable space including the amount required to set the depth of the pole.

d. "Usable Space" means the space on a utility pole above the minimum grade level to the top of the pole, which includes the space occupied by the pole owner.

3. Rebuttable presumptions:

a. Average pole height equals 37.5 feet.

b. Usable space per pole equals 13.5 feet.

c. Unusable space per pole equals 24 feet.

d. Space used by an attaching entity:

(i) An electric pole attachment equals 7.5 feet;

(ii) A telecommunications pole attachment equals 1.0 foot;

(iii) A cable television pole attachment equals 1.0 foot; and

(iv) An electric, cable, or telecommunications secondary pole attachment equals 1.0 foot.

(v) A wireless provider's pole attachment equals not less than 1.0 foot and shall be determined by the amount of space on the pole that is rendered unusable for other uses, as a result of the attachment or the associated equipment. The space used by a wireless provider may be established as an average and included in the pole owner's tariff and standard contract, or SGAT, pursuant to Section R746-345-3 of this Rule.

e. The space used by a wireless provider:

(i) may not include any of the length of a vertically placed cable, wire, conduit, antenna, or other facility unless the vertically placed cable, wire, conduit, antenna, or other facility prevents another attaching entity from placing a pole attachment in the usable space of the pole;

(ii) may not exceed the average pole height established in Subsection R746-345-5(A)(3)(a).

(iii) In situations in which the pole owner and wireless provider are unable to agree, following good faith negotiations, on the space used by the wireless provider as determined in Subsection R746-345-5(A)(3)(d)(v), the pole owner or wireless provider may petition the Commission to determine the footage of space used by the wireless provider as provided in Subsection R746-345-3(C).

f. The Commission shall recalculate the rental rate only when it deems necessary. Pole owners or attaching entities may petition the Commission to reexamine the rental rate.

4. A pole owner may not assess a fee or charge in addition to an annual pole attachment rental rate, including any non-recurring fee or charge described in Subsection R746-345-3(A)(2), for any cost included in the calculation of its annual pole attachment rental rate.

B. Commission Relief -- A pole owner or attaching entity may petition the Commission to review a pole attachment rental rate, rate formula, or rebuttable presumption as provided for in this rule. The petition must include a factual showing that a rental rate, rate formula or rebuttable presumption is unjust, unreasonable or otherwise inconsistent with the public interest.

R746-345-6. Dispute Resolution.

A. Mediation -- Except as otherwise precluded by law, a resolution of any dispute concerning any pole attachment agreement, negotiation, permit, audit, or billing may be pursued through mediation while reserving to the parties all rights to an adjudicative process before the Commission.

1. The parties may file their action with the Commission and request leave to pursue mediation any time before a hearing.

2. The choice of mediator and the apportionment of costs shall be determined by agreement of the parties. However, the parties may jointly request a mediator from the Commission or the Division of Public Utilities.

3. A party need not pay the portion of a bill that is disputed if it has started a dispute proceeding within 60 days of the due date of the disputed amount. The party shall notify the Commission if the dispute process is not before the Commission.

B. Settlement -- If the parties reach a mediated agreement or settlement, they will prepare and sign a written agreement and submit it to the Commission. Unless the agreement or settlement is contrary to law and this rule, R746-345, the Commission will approve the agreement or settlement and dismiss or cancel proceedings concerning the matters settled.

1. If the agreement or settlement 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.

2. If any issues remain unresolved, the matter will be scheduled for a hearing before the Commission.

KEY: public utilities, rules and procedures, telecommunications, telephone utility regulation
August 29, 2006 54-4-13
Notice of Continuation July 16, 2018

R746. Public Service Commission, Administration.
R746-404. Regulation of Promotional Programs of Electric and Gas Public Utilities.
R746-404-1. General Provisions.

An application for approval of promotional programs of the above utilities shall be filed with the Public Service Commission of Utah 30 days before they are to be put into effect. An application for a promotional program requires a docket number and must include a proposed tariff section. The application must also include a forecasted description of net ratepayer benefit. A copy of the application shall be sent by first class mail to the Division of Public Utilities, Committee of Consumer Services, utilities with competing programs and to any other party so designated by the Commission. Any affected person desiring a hearing should notify the Commission in writing within 20 days of the filing of the application. If no person requests a hearing or additional time to investigate, the application shall take effect at the expiration of 30 days from the time of filing. If a hearing or additional time is requested, an order by the Commission is needed for program approval.

R746-404-2.

"Promotional Programs" shall include all programs that allow, give, or promise cash, replacement allowances, discounts, rebates, appliances, equipment, or facilities to a person, firm, association, corporation, or group whatsoever, in consideration of the use of the service of the electric or gas public utility offering the inducement, excluding line extensions made pursuant to rules and orders on file with the Commission. Testing, research, or demonstration projects are not considered promotional programs for purposes of this rule.

R746-404-3.

The following standards shall apply to promotional programs:

A. No promotional program shall be implemented without prior Commission approval.

B. A promotional program may not vary the rates, charges, rules and regulations of the tariff pursuant to which service is rendered to the customer without prior Commission approval.

C. Each promotional program must be uniformly and contemporaneously available to all similarly situated customers.

D. The promotional program must be reasonably expected to promote the interests of the utility and its customers. There must be a demonstrable net ratepayer benefit.

KEY: public utilities, rules and procedure, programs
1988 54-4-1
Notice of Continuation July 16, 2018 54-4-7

R746. Public Service Commission, Administration.
R746-406. Advertising by Electric and Gas Utilities.
R746-406-1. General Provisions.

Except as provided in Subsection C, no electric or gas utility may recover from a person, other than shareholders or other owners of the utility, a direct or indirect expenditure by the utility for political, promotional or institutional advertising.

A. For the purposes of this rule:

1. The term "advertising" means the commercial use, by an electric or gas utility, of media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to the utility's consumers.

2. The term "political advertising" means advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to an issue of public dispute.

3. The term "promotional advertising" means advertising for the purpose of encouraging a person to select or use the service or additional service of an electric or gas utility or the selection or installation of an appliance or equipment designed to use that utility's service.

4. The term "institutional advertising" means advertising which is designed to create, enhance, or sustain an electric or gas utility's public image or good will with the general public or the utility's customer.

B. For the purposes of this rule, the terms "political advertising," "promotional advertising," and institutional advertising" do not include:

1. advertising which informs consumers how they can conserve energy, use energy wisely, or reduce peak demand for energy;

2. advertising required by law or regulation, including advertising required under Part 1 of Title II of the National Energy Conservation Policy Act;

3. advertising regarding service interruption, safety measures, or emergency conditions;

4. advertising concerning employment opportunities with the utility; or

5. an explanation of existing or proposed rate schedules, or notifications of hearing thereon, or

6. information about the availability of energy assistance programs.

C. Notwithstanding the foregoing provisions, expenditures relating to promotional and institutional advertising may be recovered in rates if the Commission has found, after due consideration in either a rate case or separate proceeding prior to implementation, that the advertising is in the public interest.

KEY: public utilities, advertising
1988 54-4-1
Notice of Continuation July 16, 2018 54-4-7

R746. Public Service Commission, Administration.
R746-500. Americans With Disabilities Act Complaint Procedure.
R746-500-1. Authority and Purpose.

A. This rule is promulgated pursuant to Section 54-1-1 and Section 63G-3-201(2) of the State Administrative Rulemaking Act. The Commission, pursuant to 28 CFR 35.107 adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act.

B. The provision of 28 CFR 35 implements the provisions of Title II of the Americans With Disabilities Act, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of that disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by a public entity.

R746-500-2. Definitions.

A. "ADA" means Americans With Disabilities Act.

B. "The ADA coordinator" means the Commission Secretary or designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

C. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

1. Office of Planning and Budget;
2. Department of Human Resource Management;
3. Division of Risk Management;
4. Division of Facilities Construction Management; and
5. Office of the Attorney General.

D. "CFR" means Code of Federal Regulations, 1991 edition.

E. "Disability" means, with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of the impairment; or being regarded as having an impairment.

F. "Individual with a disability," hereafter individual, means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the Commission.

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

H. "Public Entity" means a state or local government; a department, agency, special purpose district, or other instrumentality of a state or local government.

R746-500-3. Filing of Complaints.

A. An individual who feels he has been discriminated against by or at the Commission may file a complaint by filing in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination. However, a complaint alleging an act of discrimination occurring before the effective date of this rule may be filed within 60 days of the effective date of this rule.

B. Each complaint shall be filed with the Commission's ADA coordinator in writing or in another accessible format suitable to the individual.

C. Each complaint shall:

1. include the individual's name and address;
2. include the nature and extent of the individual's disability;
3. describe the Commission's alleged discriminatory action in sufficient detail to inform the public entity of the nature and date of the alleged violation;
4. describe the action and accommodation desired; and
5. be signed by the individual or by a legal representative of that individual.

D. A complaint filed on behalf of a class or third party shall describe or identify by name, if possible, the alleged victims of discrimination.

R746-500-4. Investigation of Complaint.

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

B. When conducting the investigation, the coordinator may seek assistance from the Commission's staff in determining what action shall be taken on the complaint. Before making a decision that would involve:

1. an expenditure of funds which is not absorbable within the Commission's budget and would require appropriation authority;
2. facility modifications; or
3. reclassification or reallocation in grade; the coordinator shall consult with the ADA State Coordinating Committee.

R746-500-5. Issuance of Decision.

A. Within 15 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing, or in another suitable format, what action shall be taken on the complaint.

B. If the coordinator is unable to reach a decision within the 15 working day period, he shall notify the individual with a disability, in writing or other suitable format, why the decision is being delayed and what additional time is needed to reach a decision.

R746-500-6. Appeals.

A. The individual may appeal the decision of the ADA coordinator by filing an appeal within five working days from the receipt of the decision.

B. The appeal shall be filed in writing with the chairman of the Commission or a designee other than the Commission's ADA coordinator.

C. The filing of an appeal shall be considered as authorization by the individual to allow review by the

Commission's chairman, or designee, of information, including information classified as private or controlled.

D. The appeal shall describe in sufficient detail why the coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

E. The Commission chairman or designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making a decision that would involve:

1. an expenditure of funds which is not absorbable and would require appropriation authority;

2. facility modifications; or

3. reclassification or reallocation in grade; the Commission chairman or designee shall also consult with the State ADA Coordinating Committee.

F. The decision shall be issued within ten working days after receiving the appeal and shall be in writing or another format suitable to the individual.

G. If the Commission chairman or his designee is unable to reach a decision within the ten working day period the individual shall be notified, in writing or other suitable format, why the decision is being delayed and the additional time needed to reach a decision.

R746-500-7. Classification of Records.

The record of each complaint and appeal, and the written records produced or received as part of those actions, shall be classified as protected as defined under Section 63G-2-305 until the ADA coordinator, Commission chairman or their designee issues the decision, when a portion of the record that may pertain to the individual's medical condition shall remain classified private as defined under Section 63G-2-302, or as controlled as defined in Section 63G-2-304. Other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the coordinator, Commission chairman or designees shall be classified as public information.

R746-500-8. Relationship to Other Laws.

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

KEY: complaints, disabled persons
1993 63G-3-201(2)
Notice of Continuation July 16, 2018 63G-2-302
63G-2-304
63G-2-305
67-19-32

R746. Public Service Commission, Administration.
R746-600. Postretirement Benefits other than Pensions.
R746-600-1. Postretirement Benefits other than Pensions.

Effective in fiscal years beginning after December 15, 1992, public utilities having more than 500 employees shall begin accruing postretirement benefits other than pensions obligations for financial reporting purposes. For ratemaking purposes, the Commission will determine in general rate proceedings, on a case-by-case basis, the appropriate amount of the costs of postretirement benefits other than pensions to be recovered in rates. The monies recovered from ratepayers in an amount estimated to equal the costs of postretirement benefits other than pensions shall be placed in an external account, specifically maintained for the purpose of funding these benefits for current and future retirees, unless the utility demonstrates substantial savings to the ratepayers by not externally funding. The utility shall make regular, periodic deposits to the fund in a manner calculated to maximize fund earnings.

KEY: public utilities, retirement benefits, rates
1993 54-4-1
Notice of Continuation July 16, 2018

R850. School and Institutional Trust Lands, Administration.
R850-5. Payments, Royalties, Audits, and Reinstatements.
R850-5-100. Authorities.

This rule is authorized by Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution and Section 53C-1-302(1)(a)(ii) of the Utah Code entitling the Director of the School and Institutional Trust Lands Administration to establish fees, procedures and rules for management of the agency.

R850-5-200. Payments.

Payments include rentals, royalties or any other financial obligation owed under the terms of a lease, permit or any other agreement.

1. As a matter of convenience, the agency allows parties other than the obligee to remit payments on the obligee's behalf; however, this practice in no way relieves the obligee of any statutory or contractual obligations concerning the proper and timely payments or the proper and timely filing of reports. For practical reasons, the agency often makes direct requests for reports and other records from parties other than the obligees. Payors should be aware that their actions subject leases to cancellation or subject delinquent royalties to interest charges. It is, therefore, in the best interest of all parties to cooperate in responsibly discharging their obligations to each other and to the Trust Lands Administration.

2. The obligee bears final responsibility for payments. Payments must be for the full amount owed. Partial payments will only be accepted if approved in writing by the agency before submission. In order to fulfill payment obligations of a lease, permit, or other financial contract with the agency, payments must be received as defined in subsection 3 of this rule by the appropriate due dates and must be accompanied by the appropriate report. If the obligee submits payment by electronic fund transfer then appropriate supporting documentation must be submitted by electronic data transfer on the same day.

3. Payments will be considered received if sent by electronic fund transfer, delivered to the agency, or if the postmark stamped on the envelope is dated on or before the due date. If the post office cancellation mark is illegible, erroneous, or omitted, the payment will be considered timely if the sender can establish by competent evidence that the payment was deposited in the United States mail on or before the date for filing or paying. If the due date or cancellation date falls upon a Saturday, Sunday, or legal holiday, the payment shall be considered timely if received as defined herein by the next business day.

4. A $30 return check charge or the actual charge levied by the bank, whichever is greater, will be assessed on all checks returned by the bank. The check must be replaced by cash, certified funds, or immediately available funds. The Director may require future payments with certified funds when notified in writing. If replacement funds are received after the required

due date, R850-5-200(6) will be applied.

5. Any financial obligation not received by its contractual due date will initiate a written cancellation notice by certified mail, return receipt requested. The cancellation date for any lease/permit or other contractual agreement unless otherwise specified by the contract, is defined as 30 days after the postmark date stamped on the U.S. Postal Service Receipt for Certified Mail of the cancellation notice. In the event payment is not received by the agency on or before the cancellation date, the lease, permit or other contractual agreement will be subject to cancellation, forfeiture or termination without further notice.

A default in the payment of any installment of principal or interest due under the terms of any land purchase agreement not received by the agency more than 30 days after the due date shall initiate a certified billing, return receipt requested. If all sums then due and payable are not received within 30 days after the mailing of the U.S. Postal Service certified notice, the agency may elect any of the remedies as outlined in R850-80-700(8). If the cancellation date falls on a weekend or holiday, payment will be accepted the next business day until 5 p.m.

6. A late penalty of 6% or $30, whichever is greater, shall be charged after failure to pay any financial obligation, excluding royalties as provided in R850-5-300(2), within the time limit under which such payment is due.

7. Subject to R850-4-300, rental payments received after the due date which do not include a late fee may be returned to the lessee by certified mail, return receipt requested. Payment may only be accepted for the full amount due.

R850-5-300. Royalties.

1. Royalty Reports and Reporting Periods

(a) All royalty payments shall be made payable to the School and Institutional Trust Lands Administration and shall be accompanied by a royalty report on a form specified by the agency. Check stubs or other report forms are unacceptable and do not satisfy the reporting requirement of this section.

(b) Any report not sufficiently complete and accurate to enable the agency to deposit the royalty to the correct institutional fund must be promptly corrected or amended by the payor. Failure to provide such a report may, after proper notification, subject the lease to cancellation.

(c) Any report submitted which includes entries as described below, may be returned and may be made subject to the penalty provisions of this rule.

i) Any report including adjustments to reporting periods more than 24 months prior to the current report period.

ii) Amendments to prior report periods creating a net adjustment of less than $10.

iii) Any oil and gas royalty report line of original entry submitted after the first 180 days following the month of first production with a volume entry of zero which is subsequently amended with the actual volume.

2. Interest on Delinquent Royalties

Interest shall be based on the prime rate of interest at the beginning of each month as approved by the Director and documented in the agency's Director's Actions, plus 4%. However, interest will not be assessed for prior period adjustments or amendments except as provided in R850-5-300(1)(c) and for amounts of additional royalties due discovered during any audit action. Also, interest will not be accrued or billed for amounts less than $30.

R850-5-400. Audits.

The agency shall have the right at reasonable times and intervals to audit the books and records of any lessee/permittee/payor and to inspect the leased/permitted premises and conduct field audits for the purpose of determining whether there has been compliance with the rules or the terms of agreement.

R850-5-500. Reinstatements.

1. The director may reinstate the following specific leases, permits, and easements, in the event of their cancellation, upon filing of a request for reinstatement, the payment of all late fees, reinstatement fees, and rental fees in arrears, based on a written finding that a reinstatement would be in the best interest of the trust beneficiaries:

(a) Special use leases issued using a competitive process within 60 days of cancellation.

(b) Special use leases issued without using a competitive process within 60 days of cancellation if:

i) there are no apparent competing interests,

ii) the cost of requiring a competitive process would be excessive in light of the potential revenue,

iii) a negotiated settlement appears to present greater opportunity for increased compensation than a competitive settlement, or

iv) there exists compelling reason establishing that the best interests of the trust would be met by waiving the competitive process.

(c) Grazing permits within 60 days of cancellation with the exception that grazing permits cancelled for reasons of non-payment of grazing fees may be reinstated by the director without a written finding.

(d) Easements within 60 days of cancellation provided that:

i) if the easement term is perpetual, then the easement shall be amended so that the term is 30 years beginning as of the original effective date. However, if the remaining number of years on an easement so amended is less than 15, the ending date of the easement shall be set so that there will be 15 years remaining in the easement;

ii) if the easement term is not perpetual, easements shall be reinstated only for the balance of the original term; and

iii) the applicant for an easement reinstatement agrees to pay the difference between what was originally paid for the easement and what the agency would charge for the easement at the time the request for reinstatement is submitted.

(e) Materials permits within 60 days of cancellation.

(f) Materials permits issued without using a competitive process within 60 days of cancellation if:

i) there are no apparent competing interests,

ii) the cost of requiring a competitive process would be excessive in light of the potential revenue,

iii) a negotiated settlement appears to present greater opportunity for increased compensation than a competitive settlement, or

iv) there exists compelling reason establishing that the best interests of the trust would be met by waiving the competitive process.

2. The director may reinstate any application for lease, permit, easement, exchange, or sale cancelled pursuant to R850-30, R850-40-700(3), or R850-80 upon the filing of a request for reinstatement and the payment of applicable reinstatement fees, and based on a written finding that a reinstatement would be in the best interest of the trust beneficiaries.

KEY: administrative procedures
October 22, 2013 53C-1-302(1)(a)(ii)
Notice of Continuation June 27, 2017

R850. School and Institutional Trust Lands, Administration.
R850-8. Adjudicative Proceedings.
R850-8-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-204(3), 53C-1-204(10)(c), and Section 53C-

1-304.

R850-8-200. Scope.

This rule governs adjudicative proceedings conducted by the School and Institutional Trust Lands Administration Board of Trustees or any hearing examiner designated by the board, and judicial review of all such proceedings.

R850-8-300. Definitions.

1. Adjudicative proceeding - means a review by the board of a final agency action that directly determines the legal rights, duties, or other legal interests of one or more identifiable persons.

2. Board - means School and Institutional Trust Lands Administration Board of Trustees. References to the board shall also apply to any hearing examiner appointed unless the context of rules requires otherwise.

3. Director's Actions - means the weekly compendium of actions taken by the director and posted on the agency's website to provide public notice for record-keeping purposes.

4. Final agency action - means a written determination by the Trust Lands Administration of the legal rights, duties, or other legal interests of one or more identifiable persons. The determination may be in any form deemed appropriate by the Trust Lands Administration including, but not limited to, a notation on the Director's Actions, a narrative record of decision, a notice that an instrument will be canceled for nonpayment issued pursuant to R850-5-200(5), or a decision letter. Decisions by the director or the agency to sell, exchange, or lease specific real property are not subject to administrative review pursuant to Subsection 53C-1-304(2)(b), and therefore do not constitute final agency actions.

5. Party - means the Trust Lands Administration or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the board to intervene in the proceeding, and all persons authorized by statute or Trust Lands Administration rule to participate as parties in an adjudicative proceeding.

6. Person - means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.

7. Petitioner - means a person who requests the initiation of any proceeding.

8. Respondent - means a person against whom an adjudicative proceeding is initiated, or whose property interest is directly affected by a proceeding initiated by the board or by another person.

R850-8-400. Liberal Construction.

This rule will be liberally construed to secure just, speedy, and economical determination of issues presented to the board.

R850-8-500. Deviation from Rules.

The board, in its sole discretion, may permit a deviation from this rule for good cause including, but not limited to, situations where compliance is impractical or unnecessary, or in the furtherance of due process or the statutory obligations of the board.

R850-8-600. Appearances and Representations.

1. Natural Persons.

A natural person may appear on his or her own behalf and represent himself or herself at hearings before the board.

2. Attorneys.

Except as provided in R850-8-600(1), representation at hearings before the board will be by attorneys licensed to practice law in the state of Utah, or in the discretion of the board, attorneys licensed to practice law in another jurisdiction.

R850-8-700. Conferences Encouraged.

This rule does not preclude the Trust Lands Administration or the board at any time from holding conferences with parties and interested persons to encourage settlement, clarify the issues, simplify the evidence, facilitate discovery in formal adjudicative proceedings, or otherwise expedite the proceedings.

R850-8-800. Filing of Pleadings.

An original and ten copies of all documents, including any exhibits, required or permitted to be filed, shall be filed at the office of the director. The director shall not accept less than the required number of copies. Each party filing documents with the director shall send one copy by first class mail to each other party to the proceeding.

R850-8-900. Final Agency Action.

1. The final agency action shall be in writing. Except for a notice that an instrument will be canceled for nonpayment issued pursuant to R850-5-200(5), the final agency action shall be signed by the director or his designee.

2. Nothing in this rule 850-8 shall require the agency to mail notice of routine administrative and record-keeping matters otherwise noted on the Director's Actions to any person including, without limitation, assignments, reinstatements, notifications of the expiration of any lease or instrument by its own terms, cancellations of instruments for nonpayment after a notice of cancellation issued pursuant to R850-5-200(5), voluntary relinquishments or amendments, approvals of range improvements or grazing permit renewals, or fee waivers.

3. Final agency actions requiring the payment of funds; providing notice pursuant to R850-5-200(5) that an instrument will be subject to cancellation unless payment of funds is made; exercising any discretionary right of the agency to readjust or otherwise modify an existing agreement; declaring any default under an existing agreement; declining or conditioning any assignment; making rule-based determinations where administrative review is provided by rule; or otherwise directly determining the legal rights or obligations of a person will be mailed to that person and any other person with a right to notice by statute, rule or contract.

R850-8-1000. Appeal of Final Agency Action.

1. The Trust Lands Administration may by rule specifically designate certain categories of Trust Lands Administration actions that are not subject to appeal.

2. Except where no appeal is available pursuant to statute or rule, an appeal may be initiated only by a party to a contract that is the subject of a final agency action, or whose legal interests are directly determined by the final agency action. A written petition must be filed within 14 days of the mailing date of the final agency action requesting an adjudicative proceeding, unless a longer date is specified in writing in the final agency action or required by statute, rule, or contract. In the event an appeal is not filed in the applicable time period, the final Trust Lands Administration action shall become unappealable. The petition for an adjudicative proceeding shall be filed according to the following requirements:

(a) the petition shall be filed at the office of the director pursuant to R850-8-800.

(b) the petition shall state:

i) all facts upon which the petition is based;

ii) any statute, rule, contract provision, or board policy which the final agency action is alleged to violate;

iii) the nature of the violation of the final agency action with the statute, rule, contractual provision or board policy, and the injury that is specific to the petitioner arising from the final agency action. If the injury identified by the petition is not peculiar to the petitioner as a result of the action, the board will decline to hear the appeal; and

iv) the relief requested.

3. Upon receipt of a petition, the director shall initially stay any further actions with respect to the matter for which the adjudicative proceeding is being sought by the petitioner. The board, in its discretion, may lift such suspension or condition the continuation of the stay upon filing of a surety, in an amount specified by the board, sufficient to protect the interests of the beneficiaries.

4. Upon receipt the director shall promptly mail the petition to the board.

5. When the date of mailing is at least ten days prior to a regularly scheduled board meeting, the board may consider the petition at that meeting. In the event that the date of mailing is within ten days of a regularly scheduled board meeting, the petition will be considered at the next succeeding board meeting.

6. In its initial consideration of any petition, the board may schedule the petition for hearing at a future date, make determinations concerning whether the adjudicative proceeding will be formal or informal, address procedural matters such as stays, discovery, etc., or hear the matter on the merits.

7. The board may decline to conduct adjudicative proceedings in response to a petition, in which case the petitioner shall be entitled to judicial review pursuant to Section 63G-4-402.

R850-8-1100. Designation of Adjudicative Proceedings as Formal or Informal.

1. The board, in its discretion, shall determine whether to conduct an adjudicative proceeding formally or informally.

2. Any time before a final order is issued in any adjudicative proceeding, the board may convert a formal adjudicative proceeding to an informal adjudicative proceeding, or an informal adjudicative proceeding to a formal adjudicative proceeding if conversion of the proceeding does not unfairly prejudice the rights of any party.

R850-8-1200. Procedures for Informal Adjudicative Proceedings.

1. The Trust Lands Administration may, but is not required, to file an answer or other pleading responsive to the allegations contained in the petition.

2. The parties to the proceeding shall be permitted to testify, present evidence, and comment on the issues.

3. Hearings will be held only after timely notice to all parties.

4. Discovery is prohibited, but, the board may issue subpoenas or other orders to compel production of necessary evidence.

5. All parties shall have access to information contained in the Trust Lands Administration's files and to all materials and information gathered in any investigation, to the extent permitted by law.

6. Intervention shall be in accordance with R850-8-1400.

7. All hearings shall be open to all parties.

8. Within a reasonable time after the close of an informal adjudicative proceeding, the board shall issue a signed order in writing that states the following:

(a) the decision, and when appropriate, the reasons for the decision;

(b) a notice of any right of judicial review available to the parties;

(c) the time limits for filing an appeal.

9. A copy of the board's order shall be promptly mailed to each of the parties.

10. Recordation of Hearing.

(a) The board may record or have a transcript prepared of any hearing.

(b) Any party, at its own expense may record or have a reporter approved by the board prepare a transcript of the hearing, subject to any restrictions that the board is permitted by statute to impose to protect confidential information disclosed at the hearing.

R850-8-1300. Procedures for Formal Adjudicative Proceedings.

1. An original and ten copies of all papers permitted or required to be filed shall be filed with the Trust Lands Administration and one copy shall be sent by mail to each party.

2. In addition to the final agency action, and the petition for the appeal of the final agency action, additional motions may be submitted for the board's decision on either written or oral argument and the filing of affidavits in support or contravention may be permitted. Any written motion may be accompanied by a supporting memorandum of fact and law.

3. The board may permit or require pleadings in addition to the final agency action and the appeal of the final agency action.

4. Upon motion of a party, and for good cause shown, the board may authorize discovery against another party, including the Trust Lands Administration, in the manner provided by the Utah Rules of Civil Procedure.

5. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence shall be issued by the board when requested by any party, or may be issued upon its own motion.

6. Hearing procedure.

(a) The board shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions.

(b) On its own motion or upon objection by a party, the board:

i) may exclude evidence that is irrelevant, immaterial, or unduly repetitious;

ii) shall exclude evidence privileged in the courts of Utah;

iii) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;

iv) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the board, and of technical or scientific facts within the board's specialized knowledge.

(c) The board may not exclude evidence solely because it is hearsay.

(d) The board shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.

(e) The board may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(f) 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.

(g) The hearing shall be recorded at the board's expense.

(h) Any party, at his own expense, may have a person approved by the board prepare a transcript of the hearing, subject to any restrictions that the board is permitted by statute to impose to protect confidential information disclosed at the hearing.

(i) All hearings shall be open to all parties.

(j) This section does not preclude the presiding officer from taking appropriate measures necessary to preserve the integrity of the hearing.

7. Intervention shall be in accordance with R850-8-1400.

8. Orders.

(a) Within a reasonable time after the hearing, or after the filing of any post-hearing papers permitted by the board, the board shall sign and issue an order that includes:

i) a statement of the board's findings of fact based exclusively on the evidence of record in the adjudicative proceedings, or on facts officially noted;

ii) a statement of the board's conclusions of law;

iii) a statement of the reasons for the board's decision;

iv) a statement of any relief ordered by the board;

v) a notice of any right to judicial review of the order available to aggrieved parties;

vi) the time limits applicable to any review (or reconsideration).

(b) The board may use its experience, technical competence, and specialized knowledge to evaluate the evidence.

(c) No finding of fact that was contested may be based solely on hearsay evidence unless that evidence is admissible under Utah Rules of Evidence.

(d) This section does not preclude the board from issuing interim orders to:

i) notify the parties of further hearings;

ii) notify the parties of provisional rulings on a portion of the issues presented; or

iii) otherwise provide for the fair and efficient conduct of the adjudicative proceeding.

R850-8-1400. Informal or Formal Adjudicative Proceedings - Intervention.

1. Any person not a party may file a signed, written petition to intervene in an adjudicative proceeding with the Trust Lands Administration.

2. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

(a) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law; and

(b) a statement of the relief that the petitioner seeks from the Trust Lands Administration.

3. The board shall grant a petition for intervention if it determines that:

(a) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(b) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing intervention.

4.

(a) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

(b) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

(c) the board may impose the conditions at any time after the intervention.

R850-8-1500. Formal Adjudicative Proceeding - Designation of Hearing Examiner.

1. The board may in its discretion, on its own motion or motion of one of the parties, designate a hearing examiner for purposes of taking evidence and recommending findings of fact and conclusion of law to the board. Any member of the board, or any person designated by the board may serve as a hearing examiner, other than an employee of the Trust Lands Administration.

2. Powers.

The order appointing a hearing examiner may specify or limit the hearing examiner's powers and may direct the hearing examiner to report only upon particular issues: to do or perform particular acts or to receive and report evidence only; and to fix the time and place for beginning and closing the hearing and for filing a report. Unless the hearing examiners's authority is limited the hearing examiner will be vested general authority to conduct hearings in an orderly and judicial matter, including authority to:

(a) summon and subpoena witnesses;

(b) administer oaths, call and question witnesses;

(c) require the production of records, books and documents;

(d) take such other action in connection with the hearing as may be prescribed by the board.

(e) make evidentiary rulings and propose findings of fact and conclusions of law.

3. Conduct of hearings.

Except as limited by the board's order, hearings will be conducted under the same rules and in the same manner as hearings before the board.

4. Rulings, Findings, and Conclusions of the hearing examiner.

During the hearing, objections to evidence will be ruled upon by the hearing examiner. Where a ruling sustains objections to an admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the evidence excluded and the objecting party may then make an offer of proof in rebuttal. Upon completion of the hearing, the hearing examiner will prepare a written summary of all such rulings and will make proposed findings of fact and conclusions of law in a proposed order in conformance with R850-8-1300(8). All such proposed rulings, findings, and conclusions will be distributed to the parties and filed with the board.

R850-8-1600. Default.

1. The board may enter an order of default against a party if:

(a) a party in an informal adjudicative proceeding fails to participate in the adjudicative proceeding: or

(b) a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after being given proper notice.

2. An order of default shall include a statement of the grounds for default and shall be mailed to all parties.

3.

(a) A defaulted party may seek to have the Trust Lands Administration set aside the default order, and any order in the adjudicative order, by following the procedures outlined in the Utah Rules of Civil Procedure.

(b) A motion to set aside a default and any subsequent order shall be made to the board.

4.

(a) In an adjudicative proceeding that has other parties besides the party in default, the board shall, after issuing the order of default, conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default.

R850-8-1700. Reconsideration and Modification of Existing Orders.

1. Any person affected by a final order or decision of the board may file a petition for reconsideration within 20 days after the date the order was issued.

2. A copy of the request for reconsideration shall be sent by mail to each party by the person making the request.

3. The petition for reconsideration will set forth specifically the particulars in which it is claimed the board's order or decision is unlawful, unreasonable, or unfair. If the petition is based upon a claim that the board failed to consider certain evidence, it will include an abstract of that evidence. If the petition is based upon newly discovered evidence, then the

petition will be accompanied by an affidavit setting forth the nature and extent of such evidence, its relevancy to the issues involved, and a statement that the party could not with reasonable diligence have discovered the evidence prior to the hearing.

4. All other parties to the proceeding upon which a reconsideration is sought may file a response to the petition with the director at any time prior to the hearing at which the petition will be considered by the board. Such responses will be served on the petitioner at or before the hearing.

5. The board will act upon the petition for a rehearing at its next regularly scheduled meeting following the date of its filing. If no action is taken by the board within such time, the petition will be deemed to be denied. The board may set a time for a hearing on said petition or may summarily grant or deny the petition.

6. The filing of the request is not a prerequisite for seeking judicial review of the order.

R850-8-1800. Judicial Review - Exhaustion of Administrative Remedies.

1. A party aggrieved may obtain judicial review of a final order issued in an adjudicative proceeding, except where judicial review is expressly prohibited by statute.

2. A party may seek judicial review only after exhausting all administrative remedies available, except that a party seeking judicial review need not exhaust administrative remedies if any statute or rule states that exhaustion is not required.

3.

(a) A party shall file a petition for judicial review of a final order issued by the board within 30 days after the date that the order is issued or considered issued.

(b) The petition shall name the Trust Lands Administration and all other appropriate parties as respondents.

R850-8-1900. Judicial Review.

To seek judicial review of a final board action resulting from informal or formal adjudicative proceedings, the petitioner shall file a petition for review of a board order with the appropriate court in the manner required by Sections 63G-4-402 and 63G-4-403, as appropriate.

R850-8-2000. Judicial Review - Stay and Other Temporary Remedies Pending Final Disposition.

1. The board may grant a stay of its order or other temporary remedy during the pendency of judicial review if it determines a stay would be in the interest of justice and would not unduly harm the beneficiaries. The board, in its discretion, may condition the continuation of the stay upon filing of a surety, in an amount specified by the board, sufficient to protect the interests of the beneficiaries.

2. If the board denies a stay or denies other temporary remedies requested by a party, the board's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary remedy was not granted.

R850-8-2100. Emergency Adjudicative Proceedings.

1. The board may issue an order on an emergency basis without complying with the requirements of this section if:

(a) the facts known by the board or presented to the board show that an immediate and significant danger to the public health, safety, or welfare exists; or

(b) an immediate and irreparable threat to the beneficiaries exists; and

(c) the threat requires immediate action by the board.

2. In issuing its emergency order, the board shall:

(a) limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare; or

(b) the immediate and irreparable threat to the beneficiaries; and

(c) issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the agency's utilization of emergency adjudicative proceedings; and

(d) give immediate notice to the persons who are required to comply with the order.

3. If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the board shall commence an adjudicative proceeding in accordance with the other provisions of this section.

R850-8-2200. Waivers.

Notwithstanding any other provision of these rules, any procedural matter, including any right to notice or hearing, may be waived by the affected person by a signed, written waiver in a form acceptable to the board.

R850-8-2300. Severability.

In the event that any provision, section, subsection or phrase of these rules is determined by a court or body of competent jurisdiction to be invalid, unconstitutional, or unenforceable, the remaining provisions, sections, subsections or phrases shall remain in full force and effect.

R850-8-2400. Time Periods.

Nothing in this section shall be interpreted to restrict the director, or, the board from lengthening or shortening any time period prescribed herein.

KEY: administrative procedures, public petitions, right of petition, adjudicative proceedings
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53C-1-304

R986. Workforce Services, Employment Development.
R986-100. Employment Support Programs.
R986-100-101. Authority.

(1) The legal authority for these rules and for the Department of Workforce Services to carry out its responsibilities is found in Sections 35A-1-104, 35A-1-302, 35A-1-303, 35A-1-306, 35A-3-103, 35A-3-111, 35A-3-302, 35A-3-603, and 35A-3-604.

(2) If any applicable federal law or regulation conflicts with these rules, the federal law or regulation is controlling.

R986-100-102. Scope.

(1) These rules establish standards for the administration of the following programs, for the collection of overpayments as defined in 35A-3-602(7) and/or disqualifications from any public assistance program provided under a state or federally funded benefit program;

(a) Supplemental Nutrition Assistance Program (SNAP)
(b) Family Employment Program (FEP)
(c) Family Employment Program Two Parent (FEPTP)
(d) Refugee Resettlement Program (RRP)
(e) Working Toward Employment (WTE)
(f) General Assistance (GA)
(g) Child Care Assistance (CC)
(h) Emergency Assistance Program (EA)
(i) Adoption Assistance Program (AA)
(j) Activities funded with TANF monies

(2) The rules in the 100 section (R986-100 et seq.) apply to all programs listed above unless a more specific rule applies.

Additional rules which apply to each specific program can be found in the section number assigned for that program. Nothing in R986 et seq. is intended to apply to Unemployment Insurance.

R986-100-103. Acronyms.

The following acronyms are used throughout these rules:

(1) "AA" Adoption Assistance Program
(2) "ALJ" Administrative Law Judge
(3) "CC" Child Care Assistance
(4) "CFR" Code of Federal Regulations
(5) "DCFS" Division of Children and Family Services
(6) "DWS" Department of Workforce Services
(7) "EA" Emergency Assistance Program
(8) "FEP" Family Employment Program
(9) "FEPTP" Family Employment Program Two Parent
(10) "GA" General Assistance
(11) "INA" Immigration and Nationality Act
(12) "IPV" intentional program violation
(13) "ORS" Office of Recovery Service, Utah State Department of Human Services
(14) "PRWORA" the Personal Responsibility and Work Opportunity Reconciliation Act of 1996
(15) "RRP" Refugee Resettlement Program
(16) "SNAP" Supplemental Nutrition Assistance Program
(17) "SNB" Standard Needs Budget
(18) "SSA" Social Security Administration
(19) "SSDI" Social Security Disability Insurance
(20) "SSI" Supplemental Security Insurance
(21) "SSN" Social Security Number
(22) "TANF" Temporary Assistance for Needy Families
(23) "TCA" Transitional Cash Assistance
(24) "UCA" Utah Code Annotated
(25) "UI" Unemployment Compensation Insurance
(26) "USCIS" United States Citizenship and Immigration Services.
(27) "VA" US Department of Veteran Affairs
(28) "WTE" Working Toward Employment Program
(29) "WIOA" Workforce Innovation and Opportunity Act
(30) "WSL" Work Site Learning

R986-100-104. Definitions of Terms Used in These Rules.

In addition to the definitions of terms found in 35A Chapter 3, the following definitions apply to programs listed in R986-100-102:

(1) "Applicant" means any person requesting assistance under any program in Section 102 above.

(2) "Assistance" means "public assistance."

(3) "Certification period" is the period of time for which public assistance is presumptively approved. At the end of the certification period, the client must cooperate with the Department in providing any additional information needed to continue assistance for another certification period. The length of the certification period may vary between clients and programs depending on circumstances.

(4) "Client" means an applicant for, or recipient of, public assistance services or payments, administered by the Department.

(5) "Confidential information" means information that has limited access as provided under the provisions of UCA 63G-2-201 or 7 CFR 272.1. The name of a person who has disclosed information about the household without the household's knowledge is confidential and cannot be released. If the person disclosing the information states in writing that his or her name and the information may be disclosed, it is no longer considered confidential.

(6) "Department" means the Department of Workforce Services.

(7) "Education or training" means:

(a) basic remedial education;
(b) adult education;
(c) high school education;
(d) education to obtain the equivalent of a high school diploma;
(e) education to learn English as a second language;
(f) applied technology training;
(g) employment skills training;
(h) WSL; or
(i) post high school education.

(8) "Employment plan" consists of two parts, a participation agreement and an employment plan. Together they constitute a written agreement between the Department and a client that describes the requirements for continued eligibility and the result if an obligation is not fulfilled.

(9) "Executive Director" means the Executive Director of the Department of Workforce Services.

(10) "Financial assistance" means payments, other than for SNAP, child care or medical care, to an eligible individual or household under FEP, FEPTP, RRP, GA, or WTE and which is intended to provide for the individual's or household's basic needs.

(11) "Full-time education or training" means education or training attended on a full-time basis as defined by the institution attended.

(12) "Group Home." The Department uses the definition of group home as defined by the state Department of Human Services.

(13) "Household assistance unit" means a group of individuals who are living together or who are considered to be living together, and for whom assistance is requested or issued. For all programs except SNAP and CC, the individuals included in the household assistance unit must be related to each other as described in R986-200-205.

(14) "Income match" means accessing information about an applicant's or client's income from a source authorized by law. This includes state and federal sources.

(15) "Local office" means the Employment Center which serves the geographical area in which the client resides.

(16) "Material change" means anything that might affect household eligibility, participation levels or the level of any assistance payment including a change in household composition, eligibility, assets and/or income.

(17) "Minor child" is a child under the age of 18, or under 19 years of age and in school full time and expected to complete his or her educational program prior to turning 19, and who has not been emancipated either by a lawful marriage or court order.

(18) "Parent" means all natural, adoptive, and stepparents.

(19) "Public assistance" means:

(a) services or benefits provided under UCA 35A Chapter 3, Employment Support Act;

(b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;

(c) foster care maintenance payments provided with the General Fund or under Title IV-E of the Social Security Act;

(d) SNAP; and

(e) any other public funds expended for the benefit of a person in need of financial, medical, food, housing, or related assistance.

(20) "Recipient" means any individual receiving assistance under any of the programs listed in Section 102.

(21) Review or recertification. Client's who are found eligible for assistance or certain exceptions under R986-200-218 are given a date for review or recertification at which point continuing eligibility is determined.

(22) "Standard needs budget" is determined by the Department based on a survey of basic living expenses.

(23) "Work Site Learning" or "WSL" means work experience or training program.

R986-100-105. Availability of Program Manuals.

(1) Program manuals for all programs are available for examination on the Department's Internet site. If an interested party cannot obtain a copy from the Internet site, a copy will be provided by the Department upon request. Reasonable costs of copying may be assessed if more than ten pages are requested.

(2) For SNAP, copies of additional information available to the public, including records, regulations, plans, policy memos, and procedures, are available for examination upon request by members of the public, during office hours, at the Department's administrative offices, as provided in 7 CFR 272.1(d)(1) (1999).

R986-100-106. Residency Requirements.

(1) To be eligible for assistance for any program listed in R986-100-102, a client must be living in Utah voluntarily and not for a temporary purpose. There is no requirement that the client have a fixed place of residence. An individual is not eligible for public assistance in Utah if they are receiving public assistance in another state.

(2) The Department may require that a household live in the area served by the local office in which they apply.

(3) Individuals are not eligible if they are:

(a) in the custody of the criminal justice system;

(b) residents of a facility administered by the criminal justice system;

(c) residents of a nursing home;

(d) hospitalized; or

(e) residents in an institution.

(4) Individuals who reside in a temporary shelter, including shelters for battered women and children, for a limited period of time are eligible for public assistance if they meet the other eligibility requirements.

(5) Residents of a substance abuse or mental health facility may be eligible if they meet all other eligibility requirements. To be eligible for SNAP, the substance abuse or mental health facility must be an approved facility. Approval is given by the Department. Approved facilities must notify the Department and give a "change report form" to a client when the client leaves the facility and tell the client to return it to the local office. The change report form serves to notify the Department that the client no longer lives in the approved facility.

(6) Residents of a group home may be eligible for SNAP provided the group home is an approved facility. The state Department of Human Services provides approval for group homes.

R986-100-107. Client Rights.

(1) A client may apply or reapply at any time for any program listed in R986-100-102 by completing and signing an application and turning it in, in person or by mail, at the local office.

(2) If a client needs help to apply, help will be given by the local office staff.

(3) No individual will be discriminated against because of race, color, national origin, sex, age, religion or disability.

(4) A client's home will not be entered without permission.

(5) Advance notice will be given if the client must be visited at home outside Department working hours.

(6) A client may request an agency conference to reconcile any dispute which may exist with the Department.

(7) Information about a client obtained by the Department will be safeguarded.

(8) If the client is physically or mentally incapable or has demonstrated an inability to manage funds, the Department may make payment to a protective payee.

R986-100-108. Safeguarding and Release of Information.

(1) All information obtained on specific clients, whether kept in the case file, in the computer system, maintained by the Department, the state, or somewhere else, is safeguarded in accordance with the provisions of Sections 63G-2-101 through 63G-2-901 and 7 CFR 272.1(c) and 7 CFR 272.8 and PRWORA (1996) Title VIII, Section 837.

(2) General statistical information may be released if it does not identify a specific client. This includes information obtained by the Department from another source. Information obtained from the federal government for purposes of income match can never be released.

R986-100-109. Release of Information to the Client or the Client's Representative.

(1) Information obtained by the Department from any source, which would identify the individual, will not be released without the individual's consent or, if the individual is a minor, the consent of his or her parent or guardian.

(2) A client may request, review and/or be provided with copies of anything in the case record unless it is confidential. This includes any records kept on the computer, in the file, or somewhere else.

(3) Information that may be released to the client may be released to persons other than the client with written permission from the client. All such requests must include:

(a) the date the request is made;

(b) the name of the person who will receive the information;

(c) a description of the specific information requested including the time period covered by the request; and

(d) the signature of the client.

(4) The client is entitled to a copy of his or her file at no cost. Duplicate requests may result in an appropriate fee for the copies in accordance with Department policy which will not be more than the cost to the Department for making copies.

(5) The original case file will only be removed from the office as provided in R986-100-110(6) and cannot be given to the client.

(6) Information that is not released to the client because it is confidential, cannot be used at a hearing or to close, deny or reduce assistance.

(7) Requests for information intended to be used for a commercial or political reason will be denied.

R986-100-110. Release of Information Other Than at the Request of the Client.

(1) Information obtained from or about a client will not be published or open to public inspection in any manner which would reveal the client's identity except:

(a) unless there has been a criminal conviction against the client for fraud in obtaining public assistance. In that instance, the Department will only provide information available in the public record on the criminal charge; or

(b) if an abstract has been docketed in the district court on an overpayment, the Department can provide information that is a matter of public record in the abstract.

(2) Any information obtained by the Department pursuant to an application for or payment of public assistance may not be used in any court or admitted into evidence in an action or proceeding, except:

(a) in an action or proceeding arising out of the client's receipt of public assistance, including fraudulently obtaining or retaining public assistance, or any attempt to fraudulently obtain public assistance; or

(b) where obtained pursuant to a court order.

(3) If the case file, or any information about a client in the possession of the Department, is subpoenaed by an outside source, legal counsel for the Department will ask the court to quash the subpoena or take such action as legal counsel deems appropriate.

(4) Information obtained by the Department from the client or any other source, except information obtained from an income match, may be disclosed to:

(a) an employee of the Department in the performance of the employee's duties unless prohibited by law;

(b) an employee of a governmental agency that is specifically identified and authorized by federal or state law to receive the information;

(c) an employee of a governmental agency to the extent the information will aid in the detection or avoidance of duplicate, inconsistent, or fraudulent claims against public assistance programs, or the recovery of overpayments of public assistance funds;

(d) an employee of a law enforcement agency to the extent the disclosure is necessary to avoid a significant risk to public safety or to aid a felony criminal investigation except no information regarding a client receiving SNAP assistance can be provided under this paragraph;

(e) to a law enforcement officer when the client is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation or when the client has information which will assist a law enforcement officer in locating or apprehending an individual who is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation and the officer is acting in his official capacity. The only information under this paragraph which can be released on a client receiving SNAP is the client's address, SSN and photographic identification;

(f) to a law enforcement official, upon written request, for the purpose of investigating an alleged violation of the Food Stamp Act, 7 USC 2011 et seq., as amended, or any regulation promulgated pursuant to the act. The written request shall include the identity of the individual requesting the information and his/her authority to do so, the violation being investigated, and the identity of the person being investigated. Under this paragraph, the Department can release to the law enforcement official, more than just the client's address, SSN and photo identification;

(g) an educational institution, or other governmental entity engaged in programs providing financial assistance or federal needs-based assistance, job training, child welfare or protective services, foster care or adoption assistance programs, and to individuals or other agencies or organizations who, at the request of the Department, are coordinating services and evaluating the effectiveness of those services;

(h) to certify receipt of assistance for an employer to get a tax credit; or

(i) information necessary to complete any audit or review of expenditures in connection with a Department public assistance program. Any information provided under this part will be safeguarded by the individual or agency receiving the information and will only be used for the purpose expressed in its release.

(5) Any information released under paragraph (4) above can only be released if the Department receives assurances that:

(a) the information being released will only be used for the purposes stated when authorizing the release; and

(b) the agency making the request has rules for safeguarding the information which are at least as restrictive as the rules followed by the Department and that those rules will be adhered to.

(6) Case records or files will not be removed from the local office except by court order, at the request of authorized Department employees, the Department's Information Disclosure Officer, the Department's Quality Control office or ORS.

(7) In an emergency, as determined to exist by the Department's Information Disclosure Officer, information may be released to persons other than the client before permission is obtained.

(8) For clients receiving CC, the Department may provide limited additional information to the child care provider identified by the client as the provider as provided in R986-700-703.

(9) Taxpayer requests to view public assistance payrolls will be denied.

R986-100-111. How to Apply For Assistance.

(1) To be eligible for assistance, a client must complete and sign an application for assistance.

(2) The application is not complete until the applicant has provided complete and correct information and verification as requested by the Department so eligibility can be determined or re-established at the time of review at the end of the certification period. The client must agree to provide correct and complete information to the Department at all times to remain eligible. This includes:

(a) property or other assets owned by all individuals included in the household unit;

(b) insurance owned by any member of the immediate family;

(c) income available to all individuals included in the household unit;

(d) a verified SSN for each household member receiving assistance. If any household member does not have a SSN, the client must provide proof that the number has been applied for. If a client fails to provide a SSN without good cause, or if the application for a SSN is denied for a reason that would be disqualifying, assistance will not be provided for that household member. Good cause in this paragraph means the client has made every effort to comply. Good cause does not mean illness, lack of transportation or temporary absence because the SSA makes provisions for mail-in applications in lieu of applying in person. Good cause must be established each month for continued benefits;

(e) the identity of all individuals who are living in the household regardless of whether they are considered to be in the household assistance unit or not;

(f) proof of relationship for all dependent children in the household. Proof of relationship is not needed for SNAP or child care; and

(g) a release of information, if requested, which would allow the Department to obtain information from otherwise protected sources when the information requested is necessary to establish eligibility or compliance with program requirements.

(3) All clients, including those not required to participate in an employment plan, will be provided with information about applicable program opportunities and supportive services.

R986-100-112. Assistance Cannot Be Paid for Periods Prior to Date of Application.

(1) Assistance payments for any program listed in Section 102 above cannot be made for any time period prior to the day on which the application for assistance was received by the Department.

(2) If an application for assistance is received after the first day of the month, and the client is eligible to receive assistance, payment for the first month is prorated from the date of the application.

(3) If additional verifying information is needed to complete an application, it must be provided within 30 days of the date the application was received. If the client is at fault in not providing the information within 30 days, the first day the client can be eligible is the day on which the verification was received by the Department.

(4) If the verification is not received within 60 days of the date the application was received by the Department, a new

application is required and assistance payments cannot be made for periods prior to the date the new application is received.

(5) If an application for assistance was denied and no appeal taken within 90 days, or a decision unfavorable to the client was issued on appeal, assistance cannot be claimed, requested, or paid for that time period.

R986-100-113. A Client Must Inform the Department of All Material Changes.

(1) A material change is any change which might affect eligibility.

(2) Households receiving assistance must report all material changes to the Department as follows:

(a) households receiving SNAP must report a change in the household's gross income if the income exceeds 130% of the federal poverty level. The change must be reported within ten days from the end of the calendar month in which the change occurred. Changes reported by the tenth of the month following the month when the change occurred are considered timely; and

(b) households receiving GA, WTE, FEP, FEPTP, AA and RRP that do not meet the requirements of paragraph (2)(a) must report the following changes within ten days of the change occurring:

(i) if the household's gross income exceeds 185% of the adjusted standard needs budget;

(ii) a change of address;

(iii) if any eligible child leaves the household and the household receives FEP, FEPTP or AA;

(iv) if a parent, step-parent, spouse, or former spouse moves into the household or if a marriage or adoption occurs with or between the already reported household members;

(v) if a child becomes eligible for foster care or subsidized adoption financial assistance;

(vi) a change in student status of a child in the household;

(vii) if a client receiving TCA is not longer employed or is working less than an average of 30 hours per week;

(viii) if there is a change in disability status of a GA client; and/or

(ix) if a GA client becomes employed.

(3) Households that do not meet the requirements of paragraph (2)(a) of this section will be assigned a review month. In addition to the ten-day reporting requirements listed in paragraph (2)(b) of this section, the household must report, by the last day of the review month, all material changes that have occurred since the last review, or the date of application if it is the first review. The household is also required to accurately complete all review forms and reports as requested by the Department.

(4) Most changes which result in an increase of assistance will become effective the month following the month in which the report of the change was made. If verification is necessary, verification and changes will be made in the month following the month in which verification was received. If the change is to add a person to the household, the person will be added effective on the date reported, provided necessary verification is received within 30 days of the change. If verification is received after 30 days, the increase will be made effective the date verification was received.

R986-100-114. A Client's Continuing Obligation to Provide Verification and Information.

(1) A client who is eligible for assistance must provide additional verification and information, which may affect household eligibility or ongoing eligibility, after the application is approved if requested by the Department.

(2) The client must provide information to determine if eligibility was appropriately established and if payments made under these rules were appropriate. This information may be requested by an employee of the Department or a person authorized to obtain the information under contract with the Department such as an employee of ORS.

R986-100-114a. Determining When a Document or Information is Considered Received by the Department.

(1) The date of receipt of a document filed with the Department is the date the document is actually received by the Department and not the post mark date. Any document or information received after 5 p.m.by Fax, postal mail, email or hand delivery, will be considered received the next day Department offices are open. If an application for assistance or other information is filed through the "myCase" system, it will be considered received the day it was filed online even if it is filed after 5 p.m. or on a Saturday, Sunday, or legal holiday.

(2) If a document has a due date and that due date falls on a Saturday, Sunday, or legal holiday, the time permitted for filing the document will be extended to 5 p.m. on the next day Department offices are open.

(3) "Document" as used in this section means application for assistance, verification, report, form and written notification of any kind.

(4) A verbal report or notification will be considered received on the date the client talks to a Department representative. A voice message received after 5 p.m. will be considered received the next day Department offices are open.

R986-100-115. Underpayment Due to an Error on the Part of the Department.

(1) If it is determined that a client was entitled to assistance but, due to an error on the part of the Department, assistance was not paid, the Department will correct its error and make retroactive payment.

(2) If a client receives assistance payments and it is later discovered that due to Department error the assistance payment should have been made at a higher level than the client actually received, retroactive payment will be made to correct the Department's error.

(3) If the client's public assistance was terminated due to the error, the client will be notified and assistance, plus any retroactive payments, will commence immediately.

(4) An underpayment found to have been made within the last 12 calendar months will be corrected and issued to the client. Errors which resulted in an underpayment which were made more than 12 months prior to the date of the discovery of the error are not subject to a retroactive payment.

(5) Retroactive payment under this section cannot be made for any month prior to the date on which the application for assistance was completed.

(6) The client must not have been at fault in the creation of the error.

R986-100-116. Overpayments.

(1) A client is responsible for repaying any overpayment for any program listed in R986-100-102 regardless of who was at fault in creating the overpayment.

(2) Underpayments may be used to offset an overpayment for the same program.

(3) If a change is not reported as required by R986-100-113 it may result in an overpayment.

(4) The Department will collect overpayments for all programs listed in R986-100-102 as provided by federal regulation for SNAP unless otherwise noted in this rule or inconsistent with federal regulations specific to those other programs.

(5) This rule and R986-100-117 to -135 apply to overpayments determined under contract with the Department of Health unless a Department of Health rule states otherwise.

(6) If an obligor has more than one overpayment account and does not tell the Department which account to credit, the

Department will make that determination.

R986-100-117. Disqualification Periods And Civil Penalties For Intentional Program Violations (IPVs).

(1) An Intentional Program Violation (IPV) occurs when a person, either personally or through a representative, intentionally, knowingly, or recklessly (as those terms are defined in Utah Code Ann. Section 76-2-103 and as shown by clear and convincing evidence) violates a program rule, or helps another person violate a program rule, in an attempt to obtain, maintain, increase, or prevent the decrease or termination of public assistance payment(s) from any of the programs listed in R986-100-102. Acts which may constitute an IPV include but are not limited to:

(a) making false or misleading statements;

(b) misrepresenting, concealing, or withholding facts or information;

(c) posing as someone else;

(d) taking, using or accepting a public assistance payment the person knew they were not eligible to receive or not reporting the receipt of a public assistance payment the person knew they were not eligible to receive;

(e) not reporting a material change as required by and in accordance with these rules;

(f) committing an act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity;

(g) accessing TANF public assistance funds through an electronic benefit transfer, including through an automated teller machine or point-of-sale device, in an establishment in the state that;

(i) exclusively or primarily sells intoxicating liquor,

(ii) allows gambling or gaming, or

(iii) provides adult-oriented entertainment where performers disrobe or perform unclothed; or

(h) committing any act that constitutes a violation of federal or state law for the purpose of using, presenting, transferring, acquiring, receiving, possessing, or trafficking SNAP or EBT cards.

(2) When an IPV is alleged, the Department may:

(a) Refer the case for criminal prosecution;

(b) In SNAP cases, refer the case for an administrative disqualification hearing (ADH); or

(c) In non-SNAP cases, issue an initial decision finding the person committed an IPV, which the person may appeal via the fair hearing process set forth in R986-100-123 to -135.

(3) The Department may not disqualify a person from SNAP unless an ADH has been held or the person has been criminally convicted. The Department may not make concurrent referrals for an ADH and criminal prosecution. If a SNAP case referred for criminal prosecution is dismissed or referred back to the Department without prosecution, the Department may refer the case for an ADH.

(4) A person who is found liable for committing an IPV in either an administrative or criminal proceeding shall:

(a) In the case of any program other than SNAP, be assessed a civil penalty of 10% of the amount of the overpayment; and

(b) In the case of any program other than Medicaid, be disqualified from receiving assistance from the program(s) at issue for a period of:

(i) 12 months for a first offense;

(ii) 24 months for a second offense; and

(iii) Permanently for a third offense.

(c) Disqualifications run concurrently.

(d) A disqualification applies only to the person(s) found to have committed an IPV. However, all adult members of the relevant household at the time the overpayment occurred shall be responsible for repaying the overpayment.

(e) Notwithstanding the foregoing, if a more specific provision of federal or state law provides for different sanctions for committing an act that constitutes an IPV, that provision is controlling.

(5) All income and assets of a person who has been disqualified from assistance for an IPV continue to be counted and affect the eligibility and assistance amount of the household assistance unit in which the person resides.

(6) If an individual has been disqualified in another state, the disqualification period for the IPV in that state will apply in Utah provided the act which resulted in the disqualification would have resulted in a disqualification had it occurred in Utah. If the individual has been disqualified in another state for an act which would have led to disqualification had it occurred in Utah and is found to have committed an IPV in Utah, the prior periods of disqualification in any other state count toward determining the length of disqualification in Utah.

(7) The person being disqualified will be notified that a disqualification period has been determined. The disqualification period shall begin no later than the second month which follows the date the person being disqualified receives written notice of the disqualification and continues in consecutive months until the disqualification period has expired. The Department will also provide written notice to any remaining household members informing them of the allotment they will receive during the disqualification period.

(8) Nothing in these rules is intended to limit or prevent a criminal prosecution for fraud based on the same facts used to determine the IPV.

R986-100-118. Additional Disqualification Penalties.

(1) A person found to have made a fraudulent statement or representation with respect to the identity or place of residence of an individual in order to receive multiple SNAP benefits simultaneously shall be ineligible to participate in SNAP for a period of ten years.

(2) A person found by a federal, state, or local court to have used or received SNAP benefits in a transaction involving the sale of firearms, ammunition, or explosives shall be permanently ineligible to participate in SNAP.

(3) A person convicted in federal, state, or local court of having trafficked SNAP benefits in an aggregate amount of $500 or more shall be permanently ineligible to participate in SNAP.

(4) In all other cases involving SNAP or TANF funds, a person who has been convicted in federal or state court of having made a fraudulent statement or representation with respect to the place of residence in order to receive assistance simultaneously from two or more states is disqualified from receiving assistance for any and all programs listed in R986-100-102 above, for a period of 10 years. This applies even if Utah was not one of the states involved in the original fraudulent misrepresentation.

R986-100-119. Reporting Possible Child Abuse or Neglect.

When a Department employee has reason to believe that a child has been subjected to abuse or neglect, it shall be reported under the provisions of Section 62A-4a-401 et seq.

R986-100-120. Discrimination Complaints.

(1) Complaints of discrimination can be made in person, by phone, or in writing to the local office, the Office of the Executive Director or the Director's designee, the Department's Equal Opportunity Officer, or the appropriate Federal agency.

(2) Complaints shall be resolved and responded to as quickly as possible.

(3) A record of complaints will be maintained by the local office including the response to the complaint.

(4) If a complaint is made to the local office, a copy of the complaint together with a copy of the written response will be

sent to the Office of the Executive Director or the Director's designee.

(5) Discrimination complaints pertaining to SNAP will also be sent to the Secretary of Agriculture or the Administrator of Food and Nutrition Service, Washington, D.C., 20250 in accordance with the provisions of 7 CFR 272.6 (1999).

R986-100-121. Agency Conferences.

(1) Agency conferences are used to resolve disputes between the client and Department staff only in cases involving denial of expedited SNAP assistance.

(2) Clients may have an authorized representative attend the agency conference.

(3) An agency conference will be attended by the client's employment counselor and the counselor's supervisor unless the client or the supervisor request that the employment counselor not attend the conference.

(4) If an agency conference has previously been held on the same dispute, the Department may decline to hold the requested conference if, in the judgment of the employment counselor's supervisor, it will not result in the resolution of the dispute.

(5) If the Department requests the agency conference and the client fails to respond, attend or otherwise cooperate in this process, documentation in the case file of attempts by the staff to follow these steps will be considered as compliance with the requirement to attempt to resolve the dispute.

(6) An agency conference may be held after a client has made a request for hearing in an effort to resolve the dispute. If so, the client must be notified that failure to participate or failure to resolve the dispute at the agency conference will not affect the client's right to proceed with the hearing.

R986-100-122. Advance Notice of Department Action.

(1) Except as provided in (2) below or otherwise set forth by rule, interested persons will be notified in writing when a decision concerning eligibility, amount of assistance payment or action on the part of the Department which affects the interested person's eligibility or amount of assistance has been made. Notice will be sent prior to the effective date of any action to reduce or terminate assistance payments. The Department will send advance notice of its intent to collect overpayments or to disqualify an interested person.

(2) Except for overpayments, advance notice is not required when:

(a) the interested person requests in writing that the case be closed;

(b) a client has been admitted to an institution under governmental administrative supervision;

(c) a client has been placed in skilled nursing care, intermediate care, or long-term hospitalization;

(d) the interested person's whereabouts are unknown and mail sent to the interested person has been returned by the post office with no forwarding address;

(e) it has been determined the interested person is receiving public assistance in another state;

(f) a child in a household has been removed from the home by court order or by voluntary relinquishment;

(g) a special allowance provided for a specific period is ended and the interested person was informed in writing at the time the allowance began that it would terminate at the end of the specified period;

(h) a household member has been disqualified for an IPV in accordance with 7 CFR 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member;

(i) the Department has received factual information confirming the death of the interested person if there is no other relative able to serve as a new payee;

(j) the relevant certification period has expired;

(k) the action to terminate assistance is based on the expiration of the time limits imposed by the program;

(l) the interested person has provided information to the Department, or the Department has information obtained from another reliable source, that the interested person is not eligible or that payment should be reduced or terminated;

(m) the Department determines that the interested person willfully withheld information or;

(n) when payment of financial assistance is made after performance under R986-200-215 and R986-400-454 no advance notice is needed when performance requirements are not met.

(3) For SNAP recipients and recipients of assistance under R986-300, no action will be taken until ten days after notice was sent unless one of the exceptions in (2)(a) through (k) above apply.

(4) Notice is complete if sent to the interested person's last known address. If notice is sent to the interested person's last known address and the notice is returned by the post office or electronically with no forwarding address, the notice will be considered to have been properly served. If an interested person elects to receive correspondence electronically, notice is complete when sent to the interested person's last known email address or posted to the interested person's Department sponsored web page.

R986-100-123. The Right To a Hearing and How to Request a Hearing.

(1) An interested person has the right to a review of an adverse Department action by requesting a fair hearing before an ALJ.

(2) In cases where the Department sends notice of its intent to take action to collect an alleged overpayment but there is no alleged SNAP overpayment, the interested person must request a hearing in writing or orally within 30 days of the date of notice of agency action. In all other cases, the interested person must request a hearing in writing or orally within 90 days of the date of the notice of agency action with which the interested person disagrees.

(3) Only a clear expression by the interested person, whether orally or in writing, to the effect that the interested person wants an opportunity to present his or her case is required.

(4) The request for a hearing can be made by contacting the Department.

(5) If the interested person disagrees with the level of SNAP benefits paid or payable, the interested person can request a hearing within the certification period, even if that is longer than 90 days.

(6) If a request for restoration of lost SNAP benefits is made within one year of the loss of benefits an interested person may request a hearing within 90 days of the date of the denial of restoration.

(7) An interested person may contact the Department and attempt to resolve the dispute. If the dispute cannot be resolved, the interested person may still request a hearing provided it is filed within the time limit provided in the notice of agency action.

(8) In cases not involving an overpayment or disqualification, if the interested person does not submit a timely appeal, the Department decision is final.

R986-100-124. How Hearings Are Conducted.

(1) Hearings are held at the state level and not at the local level.

(2) Where not inconsistent with federal law or regulation governing hearing procedure, the Department will follow the Utah Administrative Procedures Act.

(3) Hearings for all programs listed in R986-100-102 and for overpayments and IPVs in Section 35A-3-601 et seq. are declared to be informal.

(4) Hearings are conducted by an ALJ or a Hearing Officer in the Division of Adjudication. A Hearing Officer has all of the same rights, duties, powers and responsibilities as an ALJ under these rules and the terms are interchangeable.

(5) Hearings are scheduled as telephone hearings. Every party wishing to participate in the telephone hearing must call the Division of Adjudication at the time of the hearing. If the party fails to call in as required by the notice of hearing, the appeal will be dismissed. If a party wishes to have the ALJ call them at the start of the hearing, the party must call the Department and make arrangements to that effect prior to the hearing.

(6) If a party requires an in-person hearing, the party must contact an ALJ and request that the hearing be scheduled as an in-person hearing. The request should be made sufficiently in advance of the hearing so that all other parties may be given notice of the change in hearing type and the opportunity to appear in person also. Requests will only be granted if the party can show that an in-person hearing is necessary to accommodate a special need or if the ALJ deems an in-person hearing is necessary to ensure an orderly and fair hearing which meets due process requirements. If the ALJ grants the request, all parties will be informed that the hearing will be conducted in person. Even if the hearing is scheduled as an in-person hearing, a party may elect to participate by telephone. In-person hearings are held in the office of the Division of Adjudication unless the ALJ determines that another location is more appropriate. A party or witness may participate from the local Employment Center.

(7) the Department is not responsible for any travel costs incurred by any party or witness in attending an in-person hearing.

(8) the Division of Adjudication will permit collect calls from parties and their witnesses participating in telephone hearings.

R986-100-125. When a Party or Witness Needs an Interpreter at the Hearing.

(1) If a party or witness notifies the Department that an interpreter is needed at the time the request for hearing is made, the Department will arrange for an interpreter at no cost to the party or witness.

(2) If an interpreter is needed at the hearing, the party may arrange for an interpreter to be present at the hearing who is an adult with fluent ability to understand and speak English and the language of the person testifying, or notify the Division of Adjudication at the time the appeal is filed that assistance is required in arranging for an interpreter.

R986-100-126. Procedure For Use of an Interpreter.

(1) The ALJ will be assured that the interpreter:

(a) understands the English language; and

(b) understands the language of the party or witness for whom the interpreter will interpret.

(2) The ALJ will instruct the interpreter to interpret, word for word, and not summarize, add, change, or delete any of the testimony or questions.

(3) The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given.

(4) The interpreter will be instructed to translate to the party the explanation of the hearing procedures as provided by the ALJ.

R986-100-127. Notice of Hearing.

(1) All interested will be notified by mail at least 10 days prior to the hearing.

(2) Advance written notice of the hearing can be waived if the party and Department agree.

(3) The notice shall contain:

(a) the time, date, and place, or conditions of the hearing. If the hearing is to be by telephone, the notice will provide the number for the party to call and a notice that the party can call the number collect;

(b) the legal issues or reason for the hearing;

(c) the consequences of not appearing;

(d) the procedures and limitations for requesting rescheduling; and

(e) notification that the party can examine the case file prior to the hearing.

(4) If a party has designated a person or professional organization as the party's agent, notice of the hearing will be sent to that agent. It will be considered that the party has been given notice when notice is sent to the agent.

(5) When a new issue arises during the hearing or under other unusual circumstances, advance written notice may be waived, if the Department and all parties agree, after a full verbal explanation of the issues and potential results.

(6) Each party must notify any representatives, including counsel and witnesses, of the time and place of the hearing and make necessary arrangements for their participation.

(7) The notice of hearing will be translated, either in writing or verbally, for certain clients participating in the RRP program in accordance with RRP regulations.

R986-100-128. Hearing Procedure.

(1) Hearings are not open to the public.

(2) A party may be represented at the hearing. The party may also invite friends or relatives to attend as space permits and consistent with the orderly progress of the hearing.

(3) Representatives from the Department or other state agencies may be present.

(4) All hearings will be conducted informally and in such manner as to protect the rights of the parties. The hearing may be recorded.

(5) All issues relevant to the appeal will be considered and decided upon.

(6) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.

(7) All parties may testify, present evidence or comment on the issues.

(8) All testimony of the parties and witnesses will be given under oath or affirmation.

(9) Any party to an appeal will be given an adequate opportunity to be heard and present any pertinent evidence of probative value and to know and rebut by cross-examination or otherwise any other evidence submitted.

(10) The ALJ will direct the order of testimony and rule on the admissibility of evidence.

(11) Oral or written evidence of any nature, whether or not conforming to the legal rules of evidence including hearsay, may be accepted and will be given its proper weight.

(12) Official records of the Department, including reports submitted in connection with any program administered by the Department or other State agency may be included in the record.

(13) The ALJ may request the presentation of and may take such additional evidence as the ALJ deems necessary.

(14) The parties, with consent of the ALJ, may stipulate to the facts involved. The ALJ may decide the issues on the basis of such facts or may set the matter for hearing and take such further evidence as deemed necessary to determine the issues.

(15) The ALJ may require portions of the evidence be transcribed as necessary for rendering a decision.

(16) Unless an interested person requests a continuance, the decision of the ALJ will be issued within 60 days of the date on which the interested person requests a hearing.

(17) A decision of the ALJ which results in a reversal of the Department decision shall be complied with within 10 days of the issuance of the decision.

R986-100-129. Rescheduling or Continuance of Hearing.

(1) The ALJ may adjourn, reschedule, continue or reopen a hearing on the ALJ's own motion or on the motion of any party. A continuance shall be for no more than 30 days.

(2) If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(a) The request must be received prior to the hearing.

(b) The request must be made orally or in writing to the Division of Adjudication. If the request is not received prior to the hearing, the party must show cause for failing to make a timely request.

(c) After a party has already had one hearing rescheduled, the party making the request must show cause for the request.

(d) Normally, a party will not be granted more than one request for a continuance.

(3) The rescheduled hearing must be held within 30 days of the original hearing date.

R986-100-130. Default Order for Failure to Participate.

(1) Except in cases of SNAP IPVs as stated in R986-100-136, if a person assessed an overpayment or other sanction fails to participate in the administrative process, the Department shall issue a default order confirming the overpayment and any other sanctions and shall move to collect any overpayment by all legal means. Participation means:

(a) signing and returning to the Department an approved stipulation for repayment and making all of the payments as agreed,

(b) requesting and participating in a hearing, or

(c) paying the overpayment in full.

(2) If a hearing has been scheduled at the request of an interested person and the interested person fails to appear at or participate in the hearing, either personally or through a representative, the ALJ will, unless a continuance or rescheduling has been requested, issue a default order dismissing the request for a fair hearing. A default order has the effect of upholding the initial Department decision.

(3) A default order will be based on the record and best evidence available at the time of the order.

R986-100-131. Setting Aside A Default or Reopening the Hearing After the Hearing Has Been Concluded.

(1) If a default order is issued, an adversely affected party may request that the default order be set aside and a hearing or a new hearing be scheduled. If a party failed to participate in a hearing but no decision has yet been issued, the party may request that the hearing be reopened.

(2) The request may be made orally or in writing as set forth in R986-100-123. A request to set aside a default order must be made within thirty days of the issuance of the default order. A request to reopen must be made within thirty days of the hearing date. If a request to reopen is made after a decision is issued, it shall be treated as a request to set aside a default order. If the request is made after the expiration of the relevant time limit, the requesting party must show good cause for not making a timely request. Good cause is defined as a showing that the delay was due to circumstances beyond the party's control, or that the delay was due to circumstances that were compelling and reasonable. Ordinary illness, lack of transportation, and temporary absence do not generally constitute good cause.

(3) The ALJ may, on his or her own motion, set aside a default order or reschedule, continue, or reopen a hearing if it appears necessary to take continuing jurisdiction based on a mistake as to facts or a change in conditions, or if the denial of a hearing would be an affront to fairness. A presiding officer may, on his or her own motion, agree on behalf of the Department to set aside a default order on the same grounds.

(4) If a default order is not set aside or a hearing is not reopened under Subsection (3) above, the request to set aside or reopen shall be forwarded to the Division of Adjudication for assignment to an ALJ. The ALJ shall hold a hearing to determine whether to set aside the default order or reopen the prior hearing unless it is clear from the record before the ALJ that the person seeking to set aside the default order or reopen the hearing cannot meet the applicable standards set forth in this rule or R986-100-132.

(5) If a request to set aside the default order or reopen the hearing is not granted, the ALJ will issue a decision denying the request. A copy of the decision will be given or mailed to each party, with a clear statement of the right of appeal or judicial review. A party may appeal the denial by following the procedure in R986-100-135. The appeal can only contest the denial of the request to set aside or reopen and not the underlying merits of the case. If the denial is reversed on appeal, the Executive Director or designee may rule on the merits or remand the case to an ALJ for a ruling on the merits on an additional hearing if necessary.

R986-100-132. What Constitutes Grounds to Set Aside a Default Order or Reopen a Hearing.

(1) A request to reopen a hearing or set aside a default order for failure to participate:

(a) will be granted if the party was prevented from participating and/or appearing at the hearing due to circumstances beyond the party's control;

(b) may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect or any other reason justifying relief from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances.

(2) Requests to reopen or set aside are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

R986-100-133. Canceling an Appeal and Hearing.

(1) A person who has filed an appeal and requested a fair hearing may withdraw the request either orally or in writing by contacting the Division of Adjudication. The request to withdraw will be granted unless granting the request would impair the due process rights of another interested person. If the request to withdraw is granted, the Department shall issue a written decision dismissing the request. The granting of a withdrawal has the effect of upholding the initial Department decision.

(2) A person may reinstate a previously withdrawn appeal by making a request (either orally or in writing) to the Division of Adjudication that the appeal be reinstated. A request to reinstate must be made within ten days of the date the person receives the withdrawal decision. For purposes of this section, the withdrawal decision is considered to have been received three days after the mailing date on the decision letter. If the request to reinstate is made after the expiration of the ten-day time limit, the person must show good cause (as defined in R986-100-131) for not making the request within ten days.

R986-100-134. Payments of Assistance Pending the Hearing.

(1) A client is entitled to receive continued assistance pending a hearing contesting a Department decision to reduce or terminate SNAP or RRP financial assistance if the client's

request for a hearing is received no later than 10 days after the date of the notice of the reduction, or termination. The assistance will continue unless the certification period expires until a decision is issued by the ALJ. If the certification period expires while the hearing or decision is pending, assistance will be terminated. If a client becomes ineligible or the assistance amount is reduced for another reason pending a hearing, assistance will be terminated or reduced for the new reason unless a hearing is requested on the new action.

(2) If the client can show good cause for not requesting the hearing within 10 days of the notice, assistance may be continued if the client can show good cause (as defined in R986-100-131) for failing to file in a timely fashion.

(3) A client affected by Subsection (1) can request that payment of assistance not be continued pending a hearing but the request must be in writing.

(4) If payments are continued pending a hearing, a client affected by Subsection (1) is responsible for any overpayment in the event of an adverse decision.

(5) If the decision of the ALJ is adverse to a client affected by Subsection (1), the client is not eligible for continued assistance pending any appeal of that decision.

(6) If a decision favorable to a client affected by Subsection (1) is rendered after a hearing, and payments were not made pending the decision, retroactive payment will be paid back to the date of the adverse action if the client is otherwise eligible.

(7) Financial assistance payments under FEP, FEPTP, GA or WTE, and CC subsidies will not continue during the hearing process regardless of when the appeal is filed.

(8) Financial assistance under the RRP will not extend for longer than the eight-month time limit for that program under any circumstances.

(9) Assistance is not allowed pending a hearing from a denial of an application for assistance.

R986-100-135. Further Appeal From the Decision of the ALJ or Presiding Officer.

Either party has the option of appealing the decision of the ALJ or presiding officer 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 or presiding officer.

R986-100-136. SNAP Administrative Disqualification Hearing (ADH) Procedures.

(1) For alleged IPVs involving SNAP, an ADH will be held unless the client formally waives the right to an ADH in writing. If the client does not participate in the hearing, the ALJ will make a decision based solely on the evidence before the ALJ.

(2) The hearing procedures set forth in R986-100-123 through R986-100-135 apply to ADHs unless otherwise specified or inconsistent with this section.

(3) The Division of Adjudication will schedule all ADHs.

(a) A pending ADH has no effect on a household's eligibility or benefit level.

(b) The Department may withdraw a request for an ADH at any time prior to the scheduled hearing by sending written notice to the Division of Adjudication and all parties.

(4) A client may waive the right to an ADH by completing, signing, and returning the waiver form prepared by the Department.

(a) A completed, signed, and submitted waiver constitutes an agreement by the client to forego the ADH and accept the prescribed disqualification period.

(b) If the client accused of the IPV is not the head of household, the waiver must be signed by both the client accused of the IPV and the head of household to be effective. Waiver of the right to an ADH shall result in the client accused of the IPV and all other adult household members being held responsible to repay any overpayment.

(c) A client may rescind a waiver of the right to an ADH by submitting a written statement to the Division of Adjudication requesting that the waiver be rescinded. The written statement must be submitted within 30 days of the date the waiver was submitted, or before the start of the disqualification period, whichever is earlier. Once a valid written statement rescinding the waiver is received, the Division of Adjudication will schedule an ADH.

(5) The notice of hearing shall contain, in addition to the items described in R986-100-127, the following:

(a) The charges against the client;

(b) A summary of the evidence, and how and where it can be examined;

(c) A statement that the client will, upon receipt of the notice, have 10 days from the date of the hearing to present good cause for failure to appear in order to receive a new hearing;

(d) A warning that a determination of IPV will result in a specific disqualification period, and a statement of which penalty the Department believes is applicable to the case;

(e) A listing of the client's rights as outlined in R986-100-128;

(f) A statement that the hearing does not preclude the State or Federal government from prosecuting the client for the IPV in a civil or criminal court action, or from collecting any overissuance(s); and

(g) A statement informing the client about what free legal services are available.

(6) The Division of Adjudication may combine a fair hearing and an ADH into a single hearing if the relevant factual issues arise out of the same or related circumstances.

(a) The notice of hearing shall inform the parties of whether a fair hearing and an ADH will be combined into a single hearing.

(b) If the hearings are combined, the applicable filing and hearing deadlines and timeframes are those contained in this section to the extent of any conflict.

(c) If the client fails to appear or participate in the combined hearing, the fair hearing will be dismissed but the ADH will still be held.

(7) The ALJ shall advise the parties that they have the right to refuse to answer questions during the hearing, and that the ALJ may draw reasonable adverse inferences based on a party's refusal to answer questions during the hearing.

(8) A qualified employee of the Department shall represent the Department at the ADH.

(9) Within 90 days of the date the notice of hearing is issued, the ALJ shall conduct the hearing, arrive at a decision, and issue written notice of the decision to the Department and all parties. If the ADH is postponed for any reason, the 90-day time limit will be extended by as many days as the ADH is postponed.

(10) If any party fails to participate in the hearing and disagrees with the hearing decision, the party may request reopening of the hearing as set forth in R986-100-131.

(11) If the ALJ determines the client did not commit an IPV, no disqualification shall be assessed. Any party, including the Department, may utilize the administrative review process set forth in R986-100-135.

KEY: employment support procedures, hearing procedures, public assistance, SNAP

July 23, 2018 **35A-3-101 et seq.**

Notice of Continuation September 2, 2015 **35A-3-301 et seq.**

35A-3-401 et seq.

R990. Workforce Services, Housing and Community Development.
R990-102. Homeless Shelter Cities Mitigation Restricted Account.
R990-102-1. Authority.

This rule is authorized under Utah Code Ann. Section 35A-8-608, which directs the Department to make rules governing the process for determining whether there is sufficient revenue to operate a grant program for grant eligible entities, the process for notifying grant eligible entities of available grants, and the process for the Department to determine the timeline within the fiscal year for funding such grants.

R990-102-2. Definitions.

Terms used in this rule have the meanings given them in Utah Code Ann. Section 35A-8-601 et seq.

R990-102-3. Availability of Account Funds; Process for Accepting Requests.

(1) In determining whether there is sufficient revenue to the account to offer a grant program for the next fiscal year, the committee shall consider the following:

(a) the amount of account funds allocated to eligible municipalities for the current fiscal year;

(b) any changes anticipated to the amount of account funds allocated to eligible municipalities for the next fiscal year; and

(c) any other considerations identified by the committee.

(3) The Department shall announce whether there is sufficient revenue to the account to offer a grant program for the next fiscal year no later than August 31 of each year. The announcement shall be made at meetings of the committee and on the Division of Housing and Community Development website.

(4) If the committee determines there is sufficient revenue to the account to offer a grant program for the next fiscal year, the committee shall set aside time on the agenda of the committee meeting held in November of each year to allow grant eligible entities to present requests for account funds for the next fiscal year.

R990-102-4. Process for Funding Requests.

(1) A grant eligible entity that is approved to receive account funds under Utah Code Ann. Section 63J-1-802 shall submit an invoice of the grant eligible entity's expenses, with supporting documentation, to the Department monthly for reimbursement.

(2) Each month, the Department shall disburse the revenue in the account to reimburse a grant eligible entity that submits the information described in Subsection (1) for the amount on the invoice or contract.

KEY: grants, Homeless Shelter Cities Mitigation Restricted Account
July 23, 2018 35A-8-608